

**DIRECTIONS ON PRACTICE AND PROCEDURE  
BEFORE LSBC TRIBUNAL  
(as of February 25, 2025)**



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## **PRACTICE DIRECTION 1: PURPOSES AND INTERPRETATION**

### **Purposes**

**1.1** The purpose of these Practice Directions is to:

- (a) establish fair, transparent, and efficient processes that consider the interests of the public, the legal professions, all persons appearing before the Tribunal including individual lawyers, and persons applying for call and admission, enrolment as an articled student or reinstatement;
- (b) promote timely determination of proceedings in accordance with the public interest;
- (c) ensure that the Tribunal's processes are clear and understandable;
- (d) allow for flexibility to adapt processes to the needs of particular cases and types of cases, and to ensure that the needs of all those appearing before the Tribunal, including any involving disadvantaged and vulnerable persons, are respected and accommodated;
- (e) promote early identification of issues in dispute and facilitate agreement and resolution;
- (f) ensure that processes and proceedings are transparent to the public, and to lawyers and applicants; and
- (g) allow lawyers and applicants to participate effectively in the process, whether or not they have counsel.

### **Interpretive principles**

**1.2** The Practice Directions shall be interpreted and applied in accordance with its purpose.

**1.3** The Tribunal may exercise its powers at the request of a party or on its own initiative.

## PRACTICE DIRECTION 2: APPLICATION AND DEFINITIONS

### Name

**2.1** These practice directions are referred to as the Directions on Practice and Procedure before the LSBC Tribunal (the “Practice Directions”).

### Application and Paramountcy

**2.2(1)** The Practice Directions apply to all proceedings before the Hearing and Review Divisions of the LSBC Tribunal, starting July 11, 2022. All practice directions issued prior to July 11, 2022 are rescinded.

**(2)** In the event of inconsistency or conflict between these Practice Directions and the Law Society Rules, the Law Society Rules shall take precedence.

### Definitions

**2.3** In the Practice Directions, unless the context requires otherwise:

“**Act**” means the *Legal Profession Act*, SBC 1998, c. 9;

“**appearance**” means a hearing, motion, review or pre-hearing or pre-review conference;

“**applicant**” means a person who has applied under Part 2 of the *Act* [Membership and Authority to Practise Law] for enrolment as an articled student, for call and admission or for reinstatement;

“**assigned hearing panel**” means the Tribunal member or members assigned to a merits hearing or preliminary motion by the Tribunal Chair;

“**authenticity**” includes:

(a) the fact that a document that is said to be an original was printed, written or otherwise produced and signed or executed as it purports to have been;

(b) a document that is said to be a copy is a true copy of the original; and

(c) where the document is a copy of a letter or electronic communication, the original was sent as it purports to have been sent and received by the person to whom it is addressed;

“**Chair**” means the person appointed to preside over a panel or a review board;

“**disciplinary record**” includes any of the following, unless reversed on appeal or review:

(a) any action taken by a governing body as a result of  
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- (i) professional misconduct,
- (ii) incompetence,
- (iii) conduct unbecoming the profession,
- (iv) lack of physical or mental capacity to engage in the practice of law,
- (v) any other breach of a lawyer's professional responsibilities;

(b) disbarment;

(c) a lawyer's resignation or otherwise ceasing to be a member of a governing body as a result of disciplinary proceedings, including resignation as a term of a consent agreement;

(d) restrictions or limits on a lawyer's entitlement to practise, other than those imposed as a result of failure to pay fees to a governing body, insolvency or bankruptcy or other administrative matter;

(e) any interim suspension or restriction or limits on a lawyer's entitlement to practise imposed pending the outcome of a disciplinary hearing;

**“discipline violation”** means any of the following:

- (a) professional misconduct;
- (b) conduct unbecoming the profession;
- (c) a breach of the *Act* or the Law Society Rules;
- (d) incompetent performance of duties undertaken by a lawyer in the capacity of a lawyer;
- (e) conduct that would constitute professional misconduct, conduct unbecoming the profession or a contravention of the *Act* or the Law Society Rules if done by a lawyer or law firm;

**“document”** includes books, documents, maps, drawings, photographs, letters, vouchers, papers and any other thing on which information is recorded or stored by any means whether graphic, electronic, mechanical or otherwise;

**“endorsement”** means a record of an action taken by the Tribunal, made by a member of the Tribunal or Tribunal staff;

**“file”** means to provide a document to the Tribunal in accordance with Practice Direction 4;

**“holiday”** means any Saturday, Sunday, statutory holiday or other day on which the Tribunal Office is closed;

**“impact statement”** includes a signed, written statement of a complainant or witness about the impact that the applicant or respondent’s conduct has had on them personally;

**“interim action board”** means a board appointed under Rule 3-10 of the Law Society Rules [Interim suspension or practice conditions];

**“Law Society”** means The Law Society of British Columbia;

**“Law Society Rules”** means the Law Society Rules 2015;

**“lawyer”** means a member of the Law Society and includes a former member;

**“leave”** means permission granted by a panel;

**“motions adjudicator”** means the Tribunal Chair or a lawyer designated by the Tribunal Chair to decide a matter or conduct a pre-hearing conference or pre-review conference;

**“non-disclosure order”** means an order that the transcript or a part of the transcript of a public appearance be not publicly available, and that anyone who was present may not disclose what occurred;

**“not public order”** means an order that an appearance or document, or a part of the appearance or document, be closed to or not available to the public;

**“originating process”** means a Notice of Referral to Hearing, Citation, Notice of Review, Notice of Cross-Review, Notice of Motion to Vary Interim Conditions or Suspension or Notice of Motion - Terms Dispute;

**“panel”** means the member or members of the Tribunal assigned to an appearance by the Tribunal Chair and, in the case of a single member panel, shall be a lawyer;

**“panelist”** means a member of a panel;

**“previously admitted evidence”** means evidence that was admitted in a proceeding before a court or tribunal, whether in or outside British Columbia, at a hearing that occurred before the hearing in which the evidence is now sought to be admitted;

**“professional conduct record”** means a record of all or some of the following information respecting a lawyer:

- (a) an order under Rule 2-57(5) of the Law Society Rules [Principals], prohibiting the lawyer from acting as a principal for an articled student;
- (b) any conditions or limitations of practice or articles accepted or imposed under the *Act* or the Law Society Rules;
- (c) a decision by a panel or a review board to reject an application for enrolment, call and admission or reinstatement;
- (d) a decision by the Credentials Committee to reject an application for an inter-jurisdictional practice permit;
- (d.1) a consent agreement to resolve a complaint under Rule 3-7.1 of the Law Society Rules [Resolution by consent agreement];
- (e) any suspension or disbarment under the *Act* or the Law Society Rules, including resignation requiring consent under Rule 4-6 [Continuation of membership during investigation or disciplinary proceedings];
- (f) recommendations made by the Practice Standards Committee under Rule 3-19 of the Law Society Rules [Action by Practice Standards Committee];
- (g) an admission accepted by the Discipline Committee under Rule 4-29 of the Law Society Rules [Conditional admission];
- (h) an admission accepted and disciplinary action imposed by a hearing panel under Rule 5-6.5 of the Law Society Rules [Admission and consent to disciplinary action];
- (i) any Conduct Review Subcommittee report delivered to the Discipline Committee under Rule 4-13 of the Law Society Rules [Conduct Review Subcommittee report], and any written dispute of that report considered by the Committee;
- (j) a decision made under section 38 (4)(b) of the *Act* [Discipline hearings];
- (k) an action taken under section 38 (5), (6) or (7) of the *Act* [Discipline hearings];
- (l) an action taken by a review board under section 47 of the *Act* [Review on the record];
- (m) a payment made from the former special compensation fund on account of misappropriation or wrongful conversion by the lawyer;
- (n) an order for costs made against the lawyer under Part 5 of the *Act* [Hearings and Reviews];

(o) any failure to pay any fine, costs or penalty imposed under the *Act* or the Law Society Rules by the time that it is to be paid;

(p) the outcome of an application made by the lawyer under the *Judicial Review Procedure Act* concerning a decision taken under the *Act* or these rules, including a predecessor of either;

(q) the outcome of an appeal under section 48 of the *Act* [Appeal];

(r) any disciplinary or remedial action taken by a governing body or body regulating the legal profession in any other jurisdiction;

(s) a decision of or action taken by the benchers on a review of a decision of a hearing panel;

**“publication ban”** means an order that no one may publish information about what occurred at a public appearance or the contents of public documents;

**“respondent”** means a person whose conduct or competence is:

(a) the subject of a citation directed to be issued under Rule 4-17(1) of the Law Society Rules [Direction to issue, expand or rescind citation], or

(b) under review by a review board under section 47 of the *Act* [Review on the record],

and includes a representative of a respondent's law firm;

**“review”** means a review of a hearing panel decision by a review board under section 47 of the *Act* [Review on the record];

**“review board”** means the members of the Tribunal assigned to a review by the Tribunal Chair;

**“serve”** means to provide documents to the other party or parties in accordance with Practice Direction 4.1;

**“summary hearing”** means a proceeding under Rule 5-4.5 of the Law Society Rules [Summary hearing];

**“suspension”** means temporary disqualification from the practice of law;

**“Tribunal”** means the LSBC Tribunal, and includes the Tribunal Chair, hearing panels, review boards and motions adjudicators;

**“Tribunal Chair”** means the practising lawyer appointed to preside over the Tribunal or another practising lawyer designated by the Tribunal Chair from time to time to fulfill their functions;

**“Tribunal’s File Sharing Platform”** means an electronic file sharing system established by or approved by the Tribunal for use by parties and others in Tribunal proceedings;

**“Tribunal member”** means a motions adjudicator or member of the Hearing Division or Review Division;

**“Tribunal Office”** means the Tribunal’s place of business, currently located at 900 - 845 Cambie Street, Vancouver British Columbia, V6B 4Z9.

#### **Same meaning as in the Act**

**2.4** If a word or phrase is defined in the *Act* or the Law Society Rules, it has the same meaning in the Practice Directions unless specified otherwise.

#### **Calculating time**

**2.5** In calculating time under the Practice Directions, or under a direction or order made by the Tribunal:

- (a)** where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens but including the day on which the second event happens;
- (b)** where a period of less than seven days is prescribed, holidays shall not be counted;
- (c)** where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday;
- (d)** where a document would be deemed to be received or service would be deemed to be effective on a day that is a holiday, the document shall be deemed to be received or service shall be deemed to be effective on the next day that is not a holiday; and
- (e)** where a document would be deemed to be received by the Tribunal on a day when the Tribunal Office is not open, the time is extended to the next day that the office is open.

## **PRACTICE DIRECTION 3: STARTING AND WITHDRAWING PROCEEDINGS**

### **Originating process**

**3.1(1)** A party starts a proceeding by serving and filing the appropriate originating process (Forms 1-4, 15-18 or 40) and information sheet (Forms 29-32).

**(2)** A party must serve an originating process and information sheet in a manner set out in Rule 10-1 of the Law Society Rules [Service and notice], as directed by the Tribunal, or by any other method agreed to by the person being served.

**(3)** The last known email, business or residential address referred to in Rule 10-1 are:

**(a)** in the case of lawyers, the address and contact information provided to the Law Society under Rules 2-10 [Business address] and 2-11 [Residential address] of the Law Society Rules; and

**(b)** in the case of applicants, the address and contact information provided to the Law Society during the application process.

**(4)** A party must file the originating process and information sheet electronically with the Tribunal Office.

### **Amending an originating process**

**3.2(1)** Law Society counsel may amend an allegation contained in a citation before the hearing begins by giving written notice to the respondent and filing an amended version that clearly indicates the nature of the changes.

**(2)** Written notice to the respondent pursuant to Rule 5-4.2 of the Law Society Rules [Amending an allegation in a citation] shall be sent no later than 10 days before the hearing on the merits.

**(3)** The Law Society may amend an originating process after the hearing has begun with consent of the respondent or with leave.

**(4)** The assigned hearing panel may amend an originating process after the hearing has begun:

**(a)** on the application of a party; or

**(b)** on its own motion.

**(5)** The assigned hearing panel must not amend an originating process unless the applicant or respondent and the Law Society counsel have been given the opportunity to make submissions respecting the proposed amendment.

### **Withdrawing a proceeding or motion**

**3.3(1)** A party may, at any time, withdraw a proceeding or motion by serving and filing a notice of withdrawal (Form 19).

**(2)** Subject to the discretion of the Tribunal, a party that brought a proceeding or motion who does not attend an appearance or meet a deadline set by the Tribunal shall be deemed to have withdrawn the proceeding or motion.

**(3)** A responding party may request costs after a proceeding or motion is withdrawn or deemed withdrawn.

## **PRACTICE DIRECTION 4: SERVICE, FILING, COMMUNICATING WITH THE TRIBUNAL AND FORM OF DOCUMENTS**

### **How to serve**

**4.1** Once an originating process has been commenced, a document may be served on the parties:

- (a)** in accordance with Rule 10-1 of the Law Society Rules [Service and notice];
- (b)** by uploading the document to the Tribunal’s File Sharing Platform and sending notice to the party that the electronic document has been uploaded;
- (c)** as directed by the Tribunal; or
- (d)** by any other method agreed to by the person being served.

### **Effective date of service**

**4.2** Service is deemed to be effective:

- (a)** if the document is served by ordinary mail on the seventh day after it is sent;
- (b)** if the document is served by registered mail or courier, on the next business day after it is left or delivered;
- (c)** if the document is sent by email, on the next business day after it is sent;
- (d)** if the document is posted to the Tribunal’s File Sharing Platform, on the day that service of the notice that the document is posted is deemed effective.

### **Service using contact information in the Law Society’s records**

**4.3** Service on a respondent at the address or contact information provided to the Law Society under Rules 2-10 [Business address] and 2-11 [Residential address] of the Law Society Rules or on an applicant at the address provided to the Law Society during the application process, is considered effective unless otherwise ordered by the Tribunal.

### **Confirmation of service**

**4.4** When a document is filed with the Tribunal, service may be confirmed by:

- (a)** a confirmation of service form (Form 8), which may be provided in the body of an email;
- (b)** an affidavit of the person who served it;

**(c)** an email showing that the document was sent to the other person's email address including by:

- (i)** copying the Tribunal in the original e-mail to the other person; or
- (ii)** forwarding the original e-mail to the Tribunal; or

**(d)** written acceptance of service by the person served, which may be provided by email to the Tribunal.

### **Communication with the Tribunal**

**4.5(1)** All parties must be copied on correspondence sent to the Tribunal about the substance of the proceeding.

**(2)** All communication with a panel, other than during an appearance, shall be sent in writing to the Tribunal Office, and must be sent electronically.

**(3)** The parties to a proceeding must inform the Tribunal and every other party of any change of address, regardless of any other notice to the Law Society.

### **Respectful communication**

**4.6(1)** All documents filed, and all written and oral communications with the Tribunal must be relevant to the proceeding and respectful to all participants in the proceeding and to the Tribunal.

**(2)** Failure to comply with this Practice Direction is a relevant factor in making a costs award.

### **Acceptance of documents by the Tribunal**

**4.7** Acceptance of documents by the Tribunal does not mean that they are timely, properly served or otherwise comply with the Practice Directions or the order or direction under which they were filed. The Tribunal may reject documents after they are filed.

### **Filing requirements: electronic and hard copies**

**4.8** Other than physical documents filed at an in-person appearance, all documents must be filed in electronic form and be in accordance with Practice Direction 4.9 on electronic filing.

### **Filing electronic documents**

**4.9(1)** Where possible, electronic documents must be filed in .pdf format, or, alternatively, in both .pdf and other formats such as Word, PowerPoint, Excel.

**(2)** Electronic documents may be filed with the Tribunal in the following manner:

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- (a) email (if less than 20 MB); or
- (b) by requesting access to the Tribunal's File Sharing Platform and then uploading the document to the Tribunal's File Sharing Platform and sending an email to the Tribunal and other party that the electronic document has been uploaded.

### **Filing physical documents**

**4.10** Where a party files a document in physical form at an in-person appearance:

- (1) The party must file:
  - (a) two copies of the document if the appearance is before a single-member panel;
  - (b) four copies of the document if the appearance is before a three-member panel; or
  - (c) six copies of the document if the appearance is before a five-member board;

together with an electronic copy, or an additional un-tabbed and unbound copy, of the physical document.

- (2) The electronic copy of the physical document filed by the party, or an electronic copy created by the Tribunal if no electronic copy is filed by the party, becomes part of the record of proceeding but the physical document does not.

### **Written submissions**

**4.11 (1)** Parties are encouraged to include the following sections in their written submissions:

- (a) overview;
- (b) issues;
- (c) facts, argument and law;
- (d) the order requested;
- (e) schedule A, containing a list of authorities referred to; and
- (f) schedule B, containing the text of the relevant portions of statutes, regulations, by-laws and rules.

- (2) Parties are encouraged to limit their written submissions to less than 30 pages.

**(3)** Parties are encouraged to provide a Word version of their written submissions to the Tribunal Registry.

### **Books of authorities**

**4.12(1)** Parties are encouraged to highlight or hyperlink those passages in their book of authorities to which they intend to refer in oral argument.

**(2)** Parties should not include authorities contained in the Tribunal Book of Authorities or in a book of authorities already filed by another party.

**(3)** The Tribunal Book of Authorities can be located on the LSBC Tribunal website. It contains cases that are frequently cited during hearings that do not need to be included in a party's book of authorities.

## **PRACTICE DIRECTION 5: SCHEDULING, ADJOURNMENTS AND ACCOMMODATION**

### **In-person hearings, hearings in writing, virtual hearings and first appearances**

**5.1(1)** All appearances less than five days will be scheduled by the Tribunal Office as virtual hearings unless in accordance with Practice Direction 8.3, the parties consent or obtain leave for all or part of the hearing to proceed in writing or by way of an in-person hearing.

**(1.1)** All appearance for five days or more will be scheduled by the Tribunal Office as in-person hearings unless the parties consent or obtain leave for all or part of the hearing to proceed in writing or virtually.

**(2)** On consent, or in cases where a respondent or applicant is unresponsive, a hearing on the merits may proceed by way of a hearing in writing, subject to any order by the assigned hearing panel to the contrary.

**(3)** For a summary hearing or a motion to vary or cancel an interim suspension or condition or a Rule 3-9.10 [Dispute resolution] terms dispute, the first appearance is the scheduled hearing date. The party initiating the proceeding must confirm the availability of a proposed hearing date with the Tribunal Office before including it in the information sheet.

**(4)** For all other proceedings, the first appearance is a pre-hearing conference or pre-review conference.

**(5)** Available pre-hearing and pre-review conference dates are posted on the Tribunal website.

### **Who may schedule or adjourn**

**5.2(1)** An appearance may be scheduled or adjourned by:

- (a)** a motions adjudicator;
- (b)** the assigned hearing panel or its chair;
- (c)** the assigned review board or its chair; or
- (d)** the Tribunal Chair.

**(2)** The parties may schedule an appearance on consent.

**(3)** Subject to section (4) below, the parties may adjourn an appearance on consent.

**(4)** The parties may not adjourn on consent a scheduled hearing on the merits. The parties may not adjourn on consent a pre-hearing or a pre-review conference to set the date for a hearing on the merits unless the conference is adjourned to a specified date within six weeks of the originally scheduled pre-hearing or pre-review conference.

**(5)** A review hearing may only be scheduled once the review has been perfected.

### **Notice of hearing**

**5.3(1)** When a date is set for a hearing on the merits, the Tribunal Office shall notify the parties in writing of the date, time and place of the hearing (Forms 33-35).

**(2)** Written notification under Practice Direction 5.3 may be made at the same time a citation is served under Rule 4-19 of the Law Society Rules [Notice of citation] or at a later time.

**(3)** Practice Direction 5.3(2) does not apply when a scheduled hearing on the merits is adjourned and re-set for another date.

### **Adjournments of hearings and reviews**

**5.4(1)** Adjournments are not automatic, even if the parties consent. Once an appearance before the assigned hearing panel or a review board is scheduled, that date is firm and adjournments will be granted only in exceptional circumstances. Parties must be ready to proceed on the dates scheduled.

**(2)** Exceptional circumstances may include matters such as the illness of a party, witness or representative. Late retention of counsel, the unavailability of counsel or the parties' wishes to engage in last-minute settlement discussions will generally not be considered exceptional circumstances.

**(3)** An order adjourning an appearance may include such terms and conditions as the panel, review board or motions adjudicator considers appropriate.

**(4)** A party seeking an adjournment before the scheduled hearing date should bring an application by filing a Notice of Motion (Form 5) to have the matter heard at the next regularly scheduled pre-hearing or pre-review conference. At the same time, the party seeking the adjournment must advise the Tribunal Office if the adjournment request is on consent, opposed or unopposed.

**(5)** If there is no regularly scheduled pre-hearing or pre-review conference between the date of the request and the hearing, the party applying for the adjournment should bring a short leave motion by filing a Request for Short Notice Motion (Form 7), setting out complete submissions in support of the adjournment and indicating whether the request is on consent, opposed or

unopposed. A motions adjudicator may deal with the matter as hearing in writing or direct that a special pre-hearing or pre-review conference be scheduled. The availability of a special pre-hearing or pre-review conference is not guaranteed. Parties are expected to make use of regularly scheduled pre-hearing and pre-review conference dates.

**(6)** If there is a seized hearing panel or review board, an adjournment request will normally be dealt with by the panel or board or the chair of the panel or board. An adjournment request where there is a seized panel or board should be made to the panel or board or chair of the panel or board by filing a Notice of Motion (Form 5), setting out complete submissions in support of the adjournment and indicating whether the request is on consent, opposed or unopposed. The adjournment request must also provide a selection of alternative proposed dates for the hearing. The panel, board or its chair may deal with the matter through a case conference in writing or direct that an oral case conference be scheduled.

### **Accommodation**

**5.5** Participants in proceedings are entitled to reasonable accommodation of their needs. A participant who has personal characteristics protected under the Human Rights Code who requires accommodation so that they can fully participate in a proceeding should notify the Tribunal as soon as possible of any accommodation needed.

### **Accommodation for witnesses**

**5.6** Where it would be fair and in the interests of justice, the Tribunal may:

- (a)** permit a support person to sit near a witness while the witness testifies;
- (b)** order that a witness testify in a manner that would allow the witness not to see or be seen by the applicant, respondent or any other person;
- (c)** order that an applicant or respondent not personally conduct the cross-examination of a witness, and appoint counsel for the purpose of conducting the cross-examination with cost recoverable in accordance with Rule 5-11(5); and
- (d)** make any other orders as reasonable to accommodate or protect witnesses.

### **Failure to attend or participate**

**5.7** Where notice of an appearance has been given to a party and the party does not attend or does not participate, the panel may proceed in the absence of the party or without the party's participation.

## **PRACTICE DIRECTION 6: HEARING MANAGEMENT**

### **Principles**

**6.1** The Tribunal applies active hearing management throughout the course of proceedings, so that, among other things:

- (a)** proceedings move forward in a fair and timely way, in the public interest;
- (b)** scheduled hearing time is used efficiently and effectively so the assigned hearing panel hears and decides the issues in dispute;
- (c)** issues are identified early; and
- (d)** adjournments are granted only due to unforeseeable and exceptional circumstances.

### **Hearing management directions**

**6.2** Hearing management directions may be made at the request of a party or on the Tribunal's own initiative at:

- (a)** a pre-hearing conference including a comprehensive pre-hearing conference;
- (b)** a case conference, by the assigned hearing panel;
- (c)** a case conference, by the chair of the assigned hearing panel, prior to or between hearing days or
- (d)** a pre-review conference.

### **Endorsement**

**6.3** A motions adjudicator or hearing clerk shall prepare an endorsement after each conference, recording any directions or orders made and appearances scheduled.

### **Pre-hearing and pre-review conferences**

**6.4(1)** The Tribunal may hold a pre-hearing or pre-review conference on its own initiative or at the request of any party. Pre-hearing and pre-review conferences are open to the public and will be recorded.

**(2)** The Tribunal will schedule a pre-hearing conference in every proceeding (other than: a summary hearing; a motion to vary or cancel an interlocutory suspension or restriction; a terms

dispute, or a review) within three months of the proceedings being initiated, unless the matter is set for hearing (Form 36).

**6.5** A request for a pre-hearing or pre-review conference by a party must be made by way of notice of motion (Form 5).

#### **Directions at pre-hearing and pre-review conferences**

**6.6** A motions adjudicator may:

- (a)** schedule or adjourn an appearance or review;
- (b)** set timelines and deadlines for steps in the proceeding;
- (c)** hear and decide a procedural motions;
- (d)** make a not public order, non-disclosure order or publication ban;
- (e)** order a comprehensive pre-hearing conference; and
- (f)** make any other orders pursuant to Rules 5-5.1 [Pre-hearing conference] and 5-25 [Pre-review conference] that would aid in the disposition of the hearing or review.

**6.7** If an order made at the pre-hearing or pre-review conference affects the conduct of the hearing or review, the hearing panel or review board may rescind or vary the order on the application of a party or on the hearing panel's or review board's own motion.

#### **Comprehensive pre-hearing conference**

**6.8** The purpose of a comprehensive pre-hearing conference is to facilitate the just and most expeditious disposition of a proceeding.

#### **Issues discussed at comprehensive pre-hearing conference**

**6.9** A comprehensive pre-hearing conference adjudicator may discuss with the parties:

- (a)** the identification, limitation or simplification of the issues in the proceeding;
- (b)** the identification and limitation of evidence and witnesses;
- (c)** the possibility of settlement of any or all of the issues in the proceeding;
- (d)** the possibility of the parties entering into an agreed statement of facts; and

(e) the procedural steps appropriate to moving the matter toward a hearing in a fair and timely manner.

### **When a comprehensive pre-hearing conference is scheduled**

**6.10** The Tribunal will schedule a comprehensive pre-hearing conference in every proceeding (other than: a summary hearing; a motion to vary or cancel an interlocutory suspension or restriction; or a terms dispute) that has not been set for hearing within eight months of the proceedings being initiated (Form 37).

**6.11** The Tribunal will schedule a comprehensive pre-hearing conference in any proceeding that is set for hearing for more than five days.

**6.12** The Tribunal may, at the request of a party, or on its own initiative, schedule a comprehensive pre-hearing conference in any proceeding, at any time.

### **Confidential and without prejudice**

**6.13(1)** A comprehensive pre-hearing conference is confidential and without prejudice. No one may disclose what occurred at a comprehensive pre-hearing conference or what is contained in a comprehensive pre-hearing conference memorandum, unless otherwise ordered or required by law.

(2) The motions adjudicator's endorsement of any agreements reached and any directions or orders made are not confidential or privileged and may be disclosed.

(3) Comprehensive pre-hearing conferences are not open to the public.

### **Orders at comprehensive pre-hearing conference**

**6.14(1)** A comprehensive pre-hearing conference adjudicator may:

(a) schedule or adjourn an appearance;

(b) set timelines and deadlines for steps in the proceeding;

(c) set guidelines and deadlines with respect to expert reports; and

(d) make any other orders pursuant to Rule 5-5.1 [Pre-hearing conference] that would aid in the disposition of the hearing or review.

(2) A motions adjudicator may make orders at a comprehensive pre-hearing conference whether or not the parties consent.

## **Comprehensive pre-hearing conference memoranda**

**6.15(1)** Each party must prepare a comprehensive pre-hearing conference memorandum containing a statement of the facts the party relies upon and its position on the issues in the proceeding.

**(2)** Each party's memorandum must be sent by email to the other parties and to the Tribunal Office. The Law Society's memorandum must be sent at least two weeks prior to the first comprehensive pre-hearing conference. The respondent's or applicant's memorandum must be sent at least one week prior to the first comprehensive pre-hearing conference.

## **Limitation on assignment of comprehensive pre-hearing conference Tribunal member to panel**

**6.16(1)** Except with agreement of the parties, a motions adjudicator who conducts a comprehensive pre-hearing conference shall not be appointed to the panel deciding the hearing on the merits or to any review of that proceeding, nor shall a member of the panel assigned to a hearing preside at a comprehensive pre-hearing conference. The parties must confirm their agreement by filing a consent (Form 24).

**(2)** This Practice Direction does not preclude a Tribunal member who conducted a comprehensive pre-hearing conference from conducting a regular pre-hearing conference in the same matter.

## **Case conference**

**6.17(1)** The Tribunal may hold a case conference on the assigned hearing panel's, or its chair's, own initiative, or at the request of any party.

**(2)** A party requesting a case conference must do so by filing a request for case conference (Form 14).

**(3)** The Tribunal Office will schedule a case conference within two months of a decision on facts and determination being issued if the disciplinary action phase of the hearing has not been set for hearing (Form 38).

**(4)** The Tribunal Office will schedule a case conference within two months of an adjournment of a hearing or review if the continuation of that hearing or review has not been set (Form 38).

## **Orders at case conference**

**6.18** At a case conference, the assigned hearing panel or its chair may:

**(a)** schedule or adjourn an appearance;

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- (b)** set timelines and deadlines for steps in the proceeding;
- (c)** hear and decide a motion;
- (d)** make a not public order, non-disclosure order or publication ban; and
- (e)** make any other orders that would aid in the disposition of the hearing or review.

## **PRACTICE DIRECTION 7: MOTIONS**

### **Motions**

**7.1(1)** A party seeking directions or an order from the Tribunal must do so by way of notice of motion (Form 5).

**(2)** On consent or with leave of the Tribunal, a motion may be heard by way of written materials only, without an oral hearing.

### **Date and time of hearing of motion**

**(3)** The hearing of a motion must be set for 9:00 a.m. on a date on which the Tribunal hears motions or at such other time or date as has been fixed by the Tribunal.

**(4)** The Tribunal has currently set aside every Thursday of the month to hear motions and conduct pre-hearing and pre-review conferences by way of a video conference.

**(5)** Motions that cannot be set on a Thursday due to urgency or other scheduling difficulties may be scheduled through the Tribunal Office.

**(6)** The Tribunal may direct that the parties attend a pre-hearing, comprehensive pre-hearing, pre-review or case conference before setting a date for hearing.

**(7)** A motion may not be brought prior to the start of the proceeding to which it relates.

### **Service and filing of motion materials**

**7.2(1)** This practice direction applies where a motion is made by notice of motion, unless the Tribunal has made specific directions otherwise.

**(2)** In the case of motions to be heard on a regularly scheduled Thursday, the moving party must serve and file a notice of motion (Form 5), together with any supporting materials by no later than the Monday of the week before the hearing of the motion.

**(3)** In all other cases, the moving party must serve and file a notice of motion together with any supporting material upon which the party intends to rely at least 10 business days before the hearing of the motion.

### **Response**

**(4)** In the case of motions to be heard on a regularly scheduled Thursday, the responding party to the motion must serve and file a motion response (Form 6), together with their supporting materials, if any, by at least the Monday of the week of the scheduled hearing of motion.

**(5)** In all other cases, the responding party must serve and file a motion response (Form 6) together with any supporting material upon which the party intends to rely at least five business days before the hearing of the motion.

### **Short leave**

**(6)** On consent or with leave of the Tribunal Chair, a motion may be heard on short notice.

**(7)** A party seeking leave to have a motion heard on short notice must file a request for short notice motion (Form 7).

### **Motions on consent or unopposed motions**

**7.3** When a motion is on consent or unopposed, the moving party must file a draft of the order sought and any consents with their motion materials.

## **PRACTICE DIRECTION 8: APPEARANCES**

### **Manner of appearance**

**8.1(1)** As directed by the Tribunal, an appearance may occur by telephone, by videoconference, in writing or in person.

**(2)** In directing the manner of an appearance, the Tribunal takes into account the purposes set out in the Practice Directions, that applications before the Tribunal involve parties, witnesses and members who may be remote from the Tribunal and that there are costs and benefits associated with virtual as opposed to in-person hearings to be taken into account.

### **Hybrid hearings**

**8.2(1)** Subject to Practice Direction 8.2(2), a party or the party's counsel may attend an in-person appearance by videoconference on consent or with leave.

**(2)** A witness giving oral evidence and counsel or self-represented party examining a witness must attend an in-person appearance in person, unless the other party consents or the Tribunal gives leave.

**(3)** Subject to direction by the panel, a panelist may attend an in-person appearance by videoconference.

### **Converting the manner of appearance**

**8.3(1)** The assigned hearing panel may convert the appearance to a virtual, an in-writing or an in-person appearance from the manner of appearance otherwise scheduled or directed.

**(2)** At least two weeks prior to the scheduled hearing date, the parties may apply on consent to convert the appearance to a virtual, an in-writing or an in-person appearance from the manner of appearance otherwise scheduled by filing a Consent to Vary Manner of Appearance (Form 26) with the Tribunal Office.

**(3)** A party may apply by way of notice of motion (Form 5) for an order that the manner of appearance be converted from that scheduled.

### **Language**

**8.4(1)** Documents provided in a language other than English must be accompanied by a translation of the document into the language of the proceeding by a qualified translator as well as a certificate by the translator setting out that the translation is a true and accurate translation to the best of the translator's skill and ability.

(2) A party intending to call a witness whose testimony will require interpretation must notify the Tribunal as early as possible, no later than seven days before the hearing at which the witness will be examined.

(3) The Tribunal does not provide language interpreters for tribunal proceedings. The party intending to call a witness whose testimony will require interpretation is responsible for ensuring the attendance of any interpreter needed.

(4) Any interpreter or translator used in a tribunal proceeding must be court certified, unless otherwise ordered by the Tribunal.

## **Location**

**8.5(1)** Subject to an order of the Tribunal, an in-person hearing shall be held at the Tribunal Office in Vancouver.

(2) The Tribunal may order that a hearing be held in another place.

## **Hearing proceedings together, consecutively or apart**

**8.6(1)** A party wishing to join two citations or to sever allegations in a citation must serve and file a notice of motion (Form 5).

(2) Where an order is made under Rule 5-4.4 [Severance and joinder], the Tribunal may give directions concerning the manner in which the hearing or hearings are to proceed.

## **Hearing before one member of the Tribunal**

**8.7** The Tribunal Chair may direct that a citation hearing be heard by one member of the Tribunal under Rule 5-2(2) of the Law Society Rules [Appointment of hearing panel].

## **Transcripts and exhibits**

**8.8(1)** Subject to the *Legal Profession Act*, the Law Society Rules and the *Freedom of Information and Protection of Privacy Act*, any person may obtain, at the person's own expense, a copy of a transcript of any part of a hearing that is open to the public or of an exhibit entered in evidence when a hearing is open to the public.

(2) The transcript or exhibit may be obtained through the Tribunal Office by making a written request for the transcript or exhibit and paying the transcription costs in advance.

(3) The first party to obtain a transcript of a hearing is also responsible for the cost of the Tribunal's electronic and hard copies, which will be provided to the Tribunal directly by the reporting service.

**(4)** Transcripts and exhibits requested by non-parties will be reviewed and redacted by the Law Society for client confidentiality, privilege and privacy prior to being forwarded to the non-party.

**(5)** This Practice Direction must not be interpreted to permit the disclosure of any information, files or records that are confidential or subject to a solicitor client privilege.

### **Images and recording**

**8.9(1)** All proceedings at a hearing must be recorded.

**(2)** No one other than the Tribunal may, without leave:

- (a)** take photographs or make a video or audio recording in the Tribunal premises or the hearing room;
- (b)** take a screen shot or make a video or audio recording of a telephone or video-conference appearance; or
- (c)** operate cell phones or electronic devices in the hearing room.

**(3)** Notwithstanding Practice Direction 8.9(2), the parties and the Tribunal may operate computers in the hearing room.

### **Hearings in writing**

**8.10(1)** A hearing may be conducted on written materials only and without an oral hearing ("Hearing in Writing") on consent (by letter or email) or by order made by a motions adjudicator following an application made by either party (Form 5).

**(2)** The consent or application must be accompanied by all documents to be considered in the Hearing in Writing including:

- (a)** the consent of the parties to proceed by way of a Hearing in Writing or proof of service of the application including accompanying documents on the responding party;
- (b)** the citation with proof of service;
- (c)** a book of exhibits containing all proposed exhibits to the Hearing in Writing, including any letter of admission of misconduct, affidavit evidence, agreed statement of facts or admissions or deemed admissions with proof of service of the corresponding notice of admit;
- (d)** submissions of the moving party for use on the Hearing in Writing or, if on consent, the submissions of both parties;

- (e) any application under Rule 5-8(2) for non-disclosure of information, including submissions of the parties on that application;
- (f) a book of authorities or a hyperlinked list of all authorities referred to;

(3) If the Hearing in Writing proceeds on consent, the Tribunal Chair will appoint a hearing panel to consider the materials filed.

(4) If an application is made and an order for a Hearing in Writing is granted, the Tribunal Chair will appoint a hearing panel to consider the materials filed and any further materials received in accordance with the order made by the motions adjudicator.

(5) The appointed hearing panel will proceed to decide the matter in a Hearing in Writing. Exhibits submitted, if admissible, will be marked as such for the purposes of Rule 5-9.

(6) Upon considering the written materials filed, the appointed hearing panel may request further written materials or may order all or part of the Hearing in Writing to proceed by way of an oral hearing. In either case, the appointed hearing panel is seized of the matter.

(7) The time and commencement date of a Hearing in Writing is 9:30 am on the next business day after the date by which all materials were to be filed by the parties. The location of the Hearing in Writing is Vancouver.

## **PRACTICE DIRECTION 9: DISCLOSURE AND PRODUCTION**

### **Law Society's obligation to disclose**

**9.1(1)** At any time after a proceeding starts and before the hearing begins, an applicant or respondent may demand in writing under Rule 5-4.6 [Demand for disclosure of evidence] that the Law Society disclose the evidence that it intends to introduce at the hearing.

**(2)** On receipt of a demand for disclosure under Rule 5-4.6, the Law Society counsel must provide the following to the applicant or respondent by a reasonable time before the beginning of the hearing:

- (a)** a copy of every document that the Law Society intends to tender in evidence;
- (b)** a copy of any statement made by a person whom the Law Society intends to call as a witness;
- (c)** if documents provided under paragraphs (a) and (b) do not provide enough information, a summary of the evidence that the Law Society intends to introduce;
- (d)** a summary of any other relevant evidence in Law Society counsel's possession or in a Law Society file available to Law Society counsel, whether or not counsel intends to introduce that evidence at the hearing.

**(3)** Despite Practice Direction 9.1(2), discipline counsel must not provide any information or documents about any discussion or other communication with the Ombudsperson in that capacity.

### **Further production from the Law Society**

**9.2** An applicant or respondent bringing a motion for further production from the Law Society must do so by filing a notice of motion (Form 5) and include in their motion materials prior correspondence to the Law Society's counsel requesting the documents and the Law Society counsel's response.

### **Production from third parties**

**9.3(1)** Where a party seeks production of documents from a third party prior to the commencement of the hearing, the party seeking the documents must obtain a motion date, and serve on the third party:

- (a)** a summons to witness requiring the third party to attend on the motion date;
- (b)** attendance money; and

- (c) a notice of motion (Form 5) setting out the relevance of the documents requested from the third party.
- (2) The Tribunal may make an order under section 44(4)(b) of the *Act* requiring the third party to produce for the Tribunal or a party a document in their possession or control that is admissible and relevant to an issue in a proceeding.
- (3) The Tribunal may apply to the Supreme Court for an order directing a person to comply with an order made by the Tribunal.

### **Evidence of respondent or applicant**

**9.4(1)** Law Society counsel may apply under Rule 5-5(2)(a) [Compelling witnesses and production of documents] for an order at a hearing on the merits that the applicant or respondent give evidence at the hearing.

**(2)** Law Society counsel must give 10 days notice to the applicant or respondent of an intention to bring a motion for an order that the applicant or respondent give evidence at the hearing. A notice of motion (Form 5) is not required.

**(3)** The applicant or respondent need not give notice to Law Society counsel of an intention to testify at the hearing.

### **Exchange of witness statements and document books**

**9.5(1)** Each party must provide to every other party:

- (a) a copy of every document they anticipate tendering into evidence at the hearing;
- (b) a list of witnesses (other than the applicant or respondent) that the party intends to call, including, subject to Practice Direction 9.5(4), their contact information; and
- (c) an affidavit, signed witness statement or summary of the anticipated oral evidence of each witness (other than a witness previously interviewed by the Law Society if their testimony has been disclosed to the applicant or respondent and remains substantially unchanged).

**(2)** The Law Society must comply with Practice Direction 9.5(1) no later than 14 days before a summary hearing and no later than 21 days before any other merits hearing.

**(3)** An applicant or respondent must comply with Practice Direction 9.5(1) no later than seven days before a summary hearing and no later than 14 days before any other merits hearing.

**(4)** In cases where a witness requests that their contact information not be provided to the other party, the party calling the witness must:

- (a)** inform the other party of the witness' name;
- (b)** offer alternative means of communicating with the witness.

## **Expert reports**

### ***Duty of expert witness***

**9.6(1)** An expert appointed under this section by one or more parties or by the Tribunal has a duty to assist the Tribunal and is not to be an advocate for any party.

### ***Advice and certification***

**(2)** If an expert is appointed by one or more parties or by the Tribunal, the expert must prepare a written report or affidavit (the “report”) and, in accordance with subsection 9.6(3) below, certify that the expert

- (a) is aware of the duty referred to in subsection 9.6(1),
- (b) has made the report in conformity with that duty, and
- (c) will, if called on to give oral or written testimony, give that testimony in conformity with that duty.

### ***Requirements for report and responding report***

**(3)** An expert's report that is to be tendered as evidence at a hearing must be signed by the expert, must include the certification required under subsection 9.6(2) or attach an Acknowledgement of Expert's Duty (Form 13), and must include the following:

- (a) the expert's name, address and area of expertise;
- (b) a statement of the expert's qualifications, employment and educational experience in the expert's area of expertise;
- (c) the instructions provided to the expert in relation to the proceeding;
- (d) the nature of the opinion being sought and the issues in the proceeding to which the opinion relates;
- (e) the expert's opinion respecting those issues;

- (f) the expert's reasons for the expert's opinion, including
  - (i) a description of the factual assumptions on which the opinion is based,
  - (ii) a description of any research conducted by the expert that led the expert to form the opinion, and
  - (iii) a list of every document, if any, relied on by the expert in forming the opinion.

***Proof of qualifications***

- (4) The assertion of qualifications of an expert is evidence of them.

***Reports must contain complete evidence of expert***

- (5) Unless the Tribunal otherwise orders, opinion evidence of an expert, other than an expert appointed by the Tribunal, must not be tendered at a hearing unless that evidence is included in a written report of that expert that has been prepared and served in accordance with Practice Direction 9.6.

***Restrictions on calling expert as witness at hearing***

- (6) Unless the Tribunal otherwise orders, if a party appoints their own expert,
  - (a) the party must not call the expert to give oral evidence at hearing unless
    - (i) the expert's attendance has been demanded under subsection 9.6(10), or
    - (ii) the expert's report has been served in accordance with subsection 9.6(7) or (8), and the party believes direct examination of the expert is necessary to clarify terminology in the report or to otherwise make the report more understandable and any direct examination of that expert is limited to those matters,
  - (b) the party must not cross-examine the expert at hearing.

***Service of report***

- (7) Unless the Tribunal otherwise orders, at least 84 days before the scheduled hearing date, an expert's report, other than the report of an expert appointed by the Tribunal, must be served on every party of record, along with written notice that the report is being served under Practice Direction 9.6,

- (a) by the party who intends, with leave of the hearing panel or otherwise, to tender the expert's report at hearing, or

(b) for jointly appointed experts, by each party who intends to tender the expert's report at hearing.

***Service of responding report***

**(8)** Unless the Tribunal otherwise orders, if a party intends to tender an expert's report at a hearing to respond to an expert witness whose report is served under subsection 9.6(7), the party must serve on every party of record, at least 42 days before the scheduled hearing date,

(a) the responding report, and

(b) notice that the responding report is being served under this subsection.

***Notice of objection to expert opinion evidence***

**(9)** A party who receives an expert report to be tendered at the hearing must, at least 21 days before the scheduled hearing date, serve on every party of record a notice of any objection to the admissibility of the expert's evidence that the party receiving the report or supplementary report intends to raise at the hearing.

***Cross-examination of expert***

**(10)** Within 21 days of service of the report under subsections 9.6(7) or (8), a party of record may demand that an expert attend at the hearing for cross-examination.

***Virtual Examination and Cross Examination of Witness***

**(11)** An expert required to attend for cross examination shall attend the hearing virtually unless otherwise ordered by the Tribunal.

***When Tribunal may dispense with requirement of this section***

**(12)** At the hearing, the panel may allow an expert to provide evidence, on terms and conditions, if any, even though one or more requirements of this sections have not been complied with, if

(a) the non-compliance is unlikely to cause prejudice

(i) by reason of an inability to prepare for cross-examination, or

(ii) by depriving the party against whom the evidence is tendered of a reasonable opportunity to tender evidence in response, or

(b) the interests of justice require it.

***Costs of Expert Report and testimony***

**(13)** In accordance with Rule 5-11(5), the Tribunal may order that the costs of disbursements reasonably incurred by a party for an expert report and the expert's attendance at the hearing, be added to the costs payable under the Rule.

***Costs of cross-examination***

**(14)** If an expert has been required to attend at a hearing for cross-examination and the Tribunal is of the opinion that the cross-examination was not of assistance, the Tribunal may order the party who demanded the attendance of the expert to pay to the other party or to the expert costs in an amount the Tribunal considers appropriate.

***Filing of reports with the Tribunal***

**(15)** All expert reports that the parties intend to tender at the hearing to assist the Tribunal together with any notice of objection to the admissibility of the reports served under subsection 9.6(9), shall be filed with the Tribunal and available for inspection by the panel at least 7 days prior to the commencement of the hearing. Filing such documents does not preclude another party from objecting to their admissibility at the hearing.

## **PRACTICE DIRECTION 10: EVIDENCE**

### **Agreed facts**

**10.1** A panel may receive and rely on any facts agreed or deemed agreed to by the parties without further proof or evidence.

### **Affidavit evidence**

**10.2(1)** The evidence-in-chief of a witness may be given by affidavit, unless the Tribunal orders otherwise.

**(2)** Any cross-examination on an affidavit will take place before the assigned hearing panel, unless the parties agree or the Tribunal orders that it take place before a court reporter.

**(3)** Cross-examination on an affidavit of an applicant or respondent is not limited to the matters raised in the affidavit.

**(4)** The party tendering the affidavit must ensure the attendance of the witness for cross-examination.

### **Notice to admit and deemed admissions**

**10.3(1)** At any time, but not less than 45 days before a date set for the hearing, a party may request the other party to admit, for the purposes of the hearing only, the truth of a fact or the authenticity of a document.

**(2)** A request made under Practice Direction 10.3 (1) must:

**(a)** comply with Form 10 and be served on the other party; and

**(b)** include a complete description of the fact, the truth of which is to be admitted, or attach a copy of the document, the authenticity of which is to be admitted.

**(3)** A party may make more than one request.

**(4)** The party on whom the request is served must serve a response no later than 21 days after the date of service.

**(5)** The time for response may be extended by agreement of the parties or by an order of the Tribunal.

**(6)** A response must be in Form 11 and must contain, in relation to each fact described in the request and each document attached to the request:

- (a) an admission of the truth of the fact or the authenticity of the document attached to the request; or
- (b) a statement that the party making the response specifically does not admit the truth of the fact or the authenticity of the document, along with the reasons for not doing so.

(7) If a party who has been served with a request does not respond in accordance with this Practice Direction, the party is deemed, for the purposes of the hearing only, to admit the truth of the fact described in the request or the authenticity of the document attached to the request.

(8) If a party on whom a request to admit was served does not attend or does not participate in the hearing on the merits of the proceeding, whether or not the party served a response, the party will be deemed, for the purposes of the hearing only, to admit the truth of the facts or the authenticity of the documents mentioned in the request to admit.

(9) If a party does not admit the truth of a fact or the authenticity of a document under this Practice Direction, and the truth of the fact or authenticity of the document is proven in the hearing, the panel may consider the refusal when exercising its discretion respecting costs.

(10) A party who has admitted or is deemed to have admitted the truth of a fact or the authenticity of a document under this Practice Direction may only withdraw the admission with the consent of the other party or with leave granted on a motion to the Tribunal.

### **Uploading electronic material before the hearing**

10.4(1) At any time before the commencement of a hearing, a party may upload a copy of the citation or notice of referral to hearing, an agreed statement of facts, an admission made or deemed to be made, submissions, book of authorities, or any other materials as agreed upon by the parties, for the panel to review in advance of the hearing.

(2) Uploading the documents referred to in Practice Direction 10.4(1) does not preclude another party from objecting to their admissibility at the hearing.

(3) In uploading documents for use at a virtual hearing, the parties shall comply with Practice Direction 4.9 [filing electronic documents] and the Tribunal's Guide to Using Sync Platform.

(4) Parties are encouraged to upload documents referred to in this Practice Direction at least five days prior to the commencement of the hearing.

## **Summons**

**10.5(1)** A party to a proceeding may prepare and serve a summons, requiring a person to attend an oral or electronic hearing to give evidence on oath or affirmation at a hearing and/or to produce specified documents and things (Form 12).

**(2)** A party may apply to the Supreme Court under section 44(3) of the *Act [Witnesses]* for an order directing a person to comply with the summons served on them.

**(3)** Before a hearing begins, a party may apply to the Tribunal under section 44(4) of the *Act [Witnesses]* for an order directing a person to attend an oral or electronic hearing or to produce to the Tribunal a document or other thing in the person's possession or control.

**(4)** The Tribunal may apply to the Supreme Court under sections 44(5) [*Witnesses*] or 44.1 [*Application of Administrative Tribunals Act*] for an order directing a person to comply with an order made by the Tribunal or referred to in section 48 of the *Administrative Tribunals Act* [*Maintenance of order at hearings*].

**(5)** Under section 49 of the *Administrative Tribunals Act* [*Contempt proceeding for uncooperative witness or other person*], the failure or refusal of a person summoned as a witness to do any of the following makes the person, on application to the court by the Tribunal, liable to be committed for contempt as if in breach of an order or judgment of the court:

- (a)** attend a hearing;
- (b)** take an oath or affirmation;
- (c)** answer questions;
- (d)** produce the records or things in their custody or possession.

## **Exclusion of witnesses**

**10.6(1)** Subject to Practice Direction 10.6(2), the Tribunal may direct that a witness be excluded from a hearing until the witness is called to give evidence.

**(2)** A party or a person instructing a party's counsel or a complainant shall not be excluded, but an order may be made that that person's evidence be called before the party's other witnesses.

**(3)** Unless the Tribunal orders otherwise, there must be no communication to an excluded witness of any evidence given during the witness' absence until after the witness has given evidence.

## **Admission of evidence**

**10.7(1)** The Tribunal may accept any of the following as evidence:

- (a)** an agreed statement of facts;
- (b)** oral evidence;
- (c)** affidavit evidence;
- (d)** evidence tendered in a form agreed to by the respondent or applicant and Society counsel;
- (e)** an admission made or deemed to be made under Rule 5-4.8 [Notice to admit];
- (f)** a respondent's professional conduct record;
- (g)** an impact statement;
- (h)** character reference letter;
- (i)** any other evidence it considers appropriate.

**(2)** The Tribunal on a citation hearing may not consider the respondent's professional conduct record, an impact statement or a character reference letter until the disciplinary action phase of the hearing.

## **Previously admitted evidence**

**10.8** Previously admitted evidence may be admitted on consent, or if:

- (a)** the party against whose interest the evidence is sought to be admitted was a party to the other proceeding; and
- (b)** the party against whose interest the evidence is sought to be admitted either gave the evidence sought to be admitted or had the opportunity to cross-examine the witness who gave the evidence at the other proceeding; and
- (c)** an issue in the other proceeding is substantially similar to an issue in the current proceeding.

## **Limits on examination or cross-examination**

**10.9(1)** A panel shall not permit cross-examination that is repetitive, abusive or otherwise inappropriate.

(2) A panel may reasonably limit further examination or cross-examination of a witness where it is satisfied the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.

## **PRACTICE DIRECTION 11: RECORD OF PROCEEDING AND TRANSPARENCY**

### **Record of proceeding**

**11.1** The record of proceeding consists of:

- (a)** all materials filed by the parties with the Tribunal Office, unless the Tribunal rejects them for failure to comply with the Practice Directions, an order or other direction;
- (b)** all exhibits, including any marked “for identification”;
- (c)** all notices of hearing;
- (d)** all endorsements;
- (e)** all orders made by the Tribunal;
- (f)** all reasons issued by the Tribunal; and
- (g)** all transcripts filed with the Tribunal.

### **Open Tribunal**

**11.2(1)** The contents of the record of proceeding, and all appearances except comprehensive pre-hearing conferences, are public, unless the Tribunal or a court orders otherwise.

**(2)** Anyone may attend a public hearing unless the Tribunal orders otherwise.

### **Departing from openness**

**11.3(1)** The Tribunal under Rule 5-8 of the Law Society Rules [Public hearing] may make a not public order, non-disclosure order or publication ban only if:

- (a)** the public interest or the interest of an individual in the order outweighs the public interest in the principle of open hearings in the case before the Tribunal; or
- (b)** the order is required to protect the safety of an individual.

**(2)** If a not public order, non-disclosure order or publication ban is necessary, the Tribunal shall make the order that affects openness the least while achieving the objective.

## **Children and sexual misconduct complainants**

**11.4** A not public order, non-disclosure order or publication ban shall be made to ensure that the identities of children and persons who allege sexual assault or misconduct are not made public, except where an adult who alleges sexual assault or misconduct against themselves requests otherwise.

## **Privilege and client confidentiality**

**11.5** Nothing in the Practice Directions shall be interpreted to permit the disclosure of any information, files or records that are subject to privilege or client confidentiality.

### **Effect of not public order**

**11.6(1)** When an appearance is not public, no one may attend except for the respondent or applicant, the parties' representatives, witnesses and anyone else permitted by the panel.

**(2)** When an appearance is not public, no one other than the respondent or applicant and the parties' representatives may receive or view the transcript, except that witnesses may view the transcript of their own testimony.

**(3)** When a document is not public, it must not be provided to anyone other than the parties, their representatives, or a witness testifying about the document.

**(4)** No one may disclose what occurred during a not public appearance to anyone other than the parties or their representatives.

**(5)** No one who has become aware of a not public document as a result of the proceeding may disclose its contents to anyone other than the parties or their representatives.

### **Effect of non-disclosure order**

**11.7(1)** When there is a non-disclosure order, no one other than the respondent or applicant and the parties' representatives may receive or view the transcript, except that witnesses may view the transcript of their own testimony.

**(2)** No one may disclose what occurred during an appearance subject to a non-disclosure order to anyone other than the parties or their representatives.

**(3)** No one who has become aware of a document subject to a non-disclosure order as a result of attending the appearance may disclose its contents to anyone other than the parties or their representatives.

**(4)** By virtue of the operation of section 88 of the *Act* [Non-disclosure of privileged and confidential information] and Rule 5-9 [Transcript and exhibits], there is a statutory non-disclosure order made with respect to any privileged, client confidential or private information raised in Law Society proceedings.

**Effect of publication ban**

**11.8(1)** When a publication ban has been made, the hearing and Tribunal file remain open to the public.

**(2)** No one may publish in any document, or broadcast or transmit in any way, information or documents subject to a publication ban.

**(3)** The Tribunal and the court reporting service that transcribes the proceeding shall include a written notice of a publication ban on documents and transcripts to which it applies.

**Effect of order**

**11.9** No order under this part prevents Tribunal staff or panelists from accessing materials in the Tribunal's file or attending an appearance.

## **PRACTICE DIRECTION 12: ORDERS AND REASONS**

### **Orders**

**12.1** Unless otherwise provided, an order or direction is effective from the date it is made, whether orally on the record, in an endorsement, in reasons or in a formal order, and whether or not an endorsement or formal order has been issued.

### **Formal order**

**12.2(1)** Any party may prepare a draft of a formal order.

**(2)** A formal order shall be in one of Forms 20-23 as appropriate.

**(3)** A party that has prepared a draft of a formal order may submit it to the Tribunal before or after a panel makes its decision.

**(4)** The draft order will be treated as a submission and the panel may amend the order.

**(5)** Where a formal order is not prepared by any party, it may be prepared by the Tribunal Office.

**(6)** Any member of a panel may sign the formal order or reasons on behalf of the panel.

### **Reasons**

**12.3** A copy of the panel's reasons shall be delivered promptly by the Tribunal to each party once issued.

### **Correction of errors**

**12.4** At any time, the Tribunal may:

- (a)** correct an error in an order or decision that arose from a clerical mistake or from any other accidental slip or omission; or
- (b)** amend an order or decision to provide for any matter that should have been but was not adjudicated.

### **Motion to vary or rescind certain orders or motion to determine whether terms of order met**

**12.5(1)** A party may apply to the Tribunal for:

- (a)** an extension of time:

- (i) to pay a fine or the amount owing under Rule 5-11 of the Law Society Rules [Costs of hearings]; or
- (ii) to fulfill a condition imposed under sections 22 [Credentials hearings], 38 [Discipline hearings], or 47 [Review on the record] of the *Act*;

(b) a variation of a condition referred to in paragraph (a)(ii);

(c) a change in the start date for a suspension imposed under sections 38 [Discipline hearings] or 47 [Review on the record];

(d) a variation or rescission of another order that has not been fully executed or fulfilled;

(e) a variation of an order made under Rule 5-8(2)(a) of the Law Society Rules [Public hearing]; or

(f) a determination of whether the terms and conditions specified in an order have been met.

(2) A motion to vary, rescind or determine terms of an order does not stay the order that the applicant seeks to vary, rescind or determine.

**12.6** A party or person seeking a variation of an order under Rule 5-8 [Public hearing] or a determination of whether the terms and conditions have been met under Rule 5-8 or Rule 3-9.10 [Dispute resolution] must do so by way of notice of motion (Form 5).

## **PRACTICE DIRECTION 13: COSTS OF HEARINGS AND REVIEWS**

### **Costs payable by applicant or respondent**

**13.1(1)** The Tribunal may order that an applicant or respondent pay the costs of a hearing or review and may set a time for payment.

**(2)** Costs deposited under Rule 2-92 of the Law Society Rules [Security for costs] must be applied to costs ordered under Rule 5-11 [Costs of hearings].

**(3)** Subject to a direction by the Credentials Committee, an applicant must not be enrolled, called and admitted or reinstated until the costs ordered under the Law Society Rules or the *Act* are paid in full.

**(4)** Any money received from the lawyer or former lawyer is to be applied to the costs ordered prior to being applied to the annual fee.

**(5)** An applicant or respondent may apply to the Tribunal to extend the time for payment of the costs by way of notice of motion (Form 5).

### **Costs payable by the Law Society**

**13.2(1)** The Tribunal has the discretion to direct that the applicant be awarded costs if no adverse finding is made.

**(2)** If the citation is dismissed or rescinded after the hearing has begun, the Tribunal has the discretion to direct that the respondent be awarded costs.

**(3)** In exercising its discretion, the Tribunal will consider that costs will not ordinarily follow the event given the Law Society's obligation to discharge its responsibilities as a regulator of the profession but that costs may be imposed where the citation was improperly brought or costs were incurred or wasted by undue delay, negligence or other default.

### **Disbursements**

**13.3** The cost of disbursements that are reasonably incurred may be added to costs payable under Rule 5-11 of the Law Society Rules [Costs of hearings].

### **Calculating costs**

**13.4(1)** The party seeking costs shall prepare a draft bill of costs in Form 27 for consideration by the Tribunal at the hearing or review.

**(2)** Subject to Rule 5-11(3) of the Law Society Rules [Costs of hearings], the Tribunal must have regard to the tariff of costs in Schedule 4 to the Law Society Rules [Tariff for hearing and review costs] in calculating the costs payable by an applicant, a respondent or the Law Society.

**(3)** The Tribunal may order that the Law Society, an applicant or a respondent recover no costs or costs in an amount other than that permitted by the tariff in Schedule 4 if, in the judgment of the Tribunal, it is reasonable and appropriate to so order.

## **PRACTICE DIRECTION 14: REVIEWS**

### **Orders that may be reviewed**

**14.1(1)** Section 47 of the *Act* sets out when a review of a final order may be started.

**(2)** There is no review pursuant to section 47 of the *Act* of an interim or interlocutory order of the Hearing Division.

### **Deadline for review and cross-review**

**14.2(1)** To initiate a review, the party must file a notice of review (Form 16 or 17) within 30 days after being notified of the decision of the panel.

**(2)** A copy of the notice of review must be served promptly on the other party.

**(3)** A party receiving a notice of review who wishes to file a cross-review must file a notice of cross-review (Form 18) within 10 days after receiving a notice of review.

### **Extension of time to initiate a review**

**14.3(1)** A party may apply to the Tribunal to extend the time within which a review may be initiated under section 47 of the *Act*.

**(2)** A party applying for an extension of time to initiate a review must do so by way of notice of motion (Form 5).

### **Notice of review or cross-review**

**14.4** A notice of review or cross-review must contain the following in summary form:

- (a)** a clear indication of the decision to be reviewed by the review board;
- (b)** the nature of the order sought; and
- (c)** the issues to be considered on the review.

### **Perfecting the review**

**14.5** The party initiating the review must perfect the review by:

- (a)** serving and filing the review record within 60 days in accordance with Rule 5-24.1 [Preparation and delivery of record] and Form 30 - Information Sheet - Review Record Completion Instructions; and

**(b)** serving and filing written submissions and a book of authorities within 30 days of filing the review record.

#### **Extending time to file review record or perfect review**

**14.6(1)** The time for filing the review record or perfecting the review may be extended by agreement of the parties or with leave of the Tribunal.

**(2)** The party initiating the review must advise the Tribunal of any agreement to extend the time for filing the review record or perfecting the review by filing consent (Form 28). The time within which to perfect the review may not be extended by consent for more than 30 days.

**(3)** A party applying for an extension of time to file the review record or perfect the review must do so by way of notice of motion (Form 5).

#### **Preliminary order for costs of preparing review record**

**14.7(1)** The party initiating the review may apply for an order that the Law Society bear all or part of the cost of obtaining and copying all or part of the review record by way of notice of motion.

**(2)** A motion for an order that the Law Society bear all or part of the costs does not extend the time for perfecting the review.

**(3)** A preliminary order relating to the preparation of the review record is without prejudice to an order of the review board under Rule 5-11 of the Law Society Rules [Costs of hearings].

#### **Scheduling review hearing**

**14.8** No date may be set for the hearing of a review unless the party initiating the review has perfected the review.

#### **Deadline for responding party's materials if no cross-review filed**

**14.9** If the responding party has not filed a cross-review, the responding party must serve and file the responding party's written submissions and book of authorities no later than 30 days after the review is perfected.

#### **Deadline for respondent's materials if cross-review filed**

**14.10** If the responding party has filed a cross-review, the responding party must serve and file their written submissions and book of authorities no later than 30 days after the review was perfected. The written submissions must cover both the review and cross-review.

**Reply and response to cross-review materials**

**14.11** If the responding party has filed a cross-review, the party who initiated the review may file written submissions as responding party by cross-review and may file a supplementary book of authorities no later than 30 days after receiving the responding party's written submissions.

**14.12** Any written reply submissions must be served and filed no later than 15 days after receiving a responding party's written submissions.

## **PRACTICE DIRECTION 15: NEW OR FRESH EVIDENCE ON REVIEW**

### **Motion to introduce new or fresh evidence**

**15.1** Except where the responding party consents, a party initiating the review who wishes to introduce evidence at the hearing of the review that was not before the Hearing Division must, by notice of motion, make a motion (Form 5) to the review board to do so.

### **Proposed new or fresh evidence motion**

**15.2** The party who initiates the review who makes a new or fresh evidence motion must file, together with the motion record, sufficient copies of the evidence as required by Practice Direction 4.10, each copy in a separate sealed envelope, which shall not be public pending a decision on the motion.

### **Hearing of new or fresh evidence motion**

**15.3** A motion under this Practice Direction will be heard at the beginning of the review hearing.

### **Hearing of review in any event**

**15.4** The parties must be prepared to proceed with the hearing of the review on the date scheduled regardless of the disposition of a motion to introduce new or fresh evidence.

### **Where responding party consents**

**15.5** Where the responding party consents to the introduction of fresh evidence, the evidence may be included and referred to in the parties' materials, so long as the evidence is clearly identified as fresh evidence that was not before the Hearing Division.

### **Timing of new or fresh evidence motion**

**15.6** A new or fresh evidence motion shall be served and filed at the same time as the review is perfected, unless the new or fresh evidence is discovered after that time.

## **PRACTICE DIRECTION 16: REVIEW MATERIALS**

### **Review record**

**16.1** The review record book must contain, in consecutively numbered pages with numbered tabs:

- (a)** a table of contents listing each document contained in the review record and describing each document by its nature and date;
- (b)** where any of the materials are subject to a non-publication order, a copy of the non-publication order;
- (c)** a copy of the notice of review and any notice of cross-review, as amended;
- (d)** a copy of the order or orders under review;
- (e)** a copy of all endorsements and reasons of the Hearing Division in the proceeding;
- (f)** a copy of the originating process that initiated the proceeding before the Hearing Division;
- (g)** a copy of all exhibits that were entered or marked for identification before the Hearing Division;
- (h)** a copy of any directions, orders or reasons given at a pre-review conference;
- (i)** a transcript of the proceedings before the hearing panel;
- (j)** any written arguments or submissions received by the hearing panel; and
- (k)** a copy of any new or fresh evidence that the parties agree may be entered on the review.

### **Review record of a committee order for costs**

**16.2** Unless the parties agree otherwise, the record for a review of a committee order for costs consists of:

- (a)** a table of contents listing each document contained in the review record and describing each document by its nature and date;
- (b)** a copy of the notice of review and any notice of cross-review, as amended;
- (c)** a copy of the order or orders under review;
- (d)** a copy of all written reasons of the committee relating to costs;

**(e)** all correspondence between the Law Society and the lawyer relating to the assessment and ordering of costs.

**16.3** Any documents subject to a not public order, non-disclosure order or publication ban must be clearly identified in the review record.

**16.4** The parties should comply with the information sheet (Form 30).