



Law Society of Alberta
Pre-Appeal Guideline

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Pre-Appeal Guideline

I. Introduction

1. Section 75 of the *Legal Profession Act* (the “Act”) states that “if the Hearing Committee makes an order under section 72(1), the member in respect of whom the order is made may appeal to the Benchers in accordance with this section.”
2. This guideline provides information to lawyers who have filed a notice of appeal to the Benchers pursuant to s. 75 of the Act.
3. References to the Executive Director in this guideline include the Executive Director’s delegates.
4. References to a lawyer in this guideline include the lawyer’s counsel, if applicable.

II. Notice of Appeal

5. If a lawyer wishes to appeal a finding, order or decision of the Hearing Committee pursuant to s. 75, the lawyer must file a notice of appeal with the Executive Director within 30 days after the date on which the lawyer was given a copy of the hearing report of the Hearing Committee.
6. The Rules do not prescribe a form for the notice of appeal. In order to commence an appeal, a lawyer will file with the Executive Director a letter or a form of pleading setting out:
 - a) the decision or order appealed from;
 - b) the grounds of the appeal; and
 - c) the relief sought.

III. Hearing Record

7. When a lawyer appeals to the Benchers, the Executive Director shall arrange for the hearing record to be prepared at the lawyer’s expense (s. 74(5) of the Act).
8. Counsel for the Law Society will inform the lawyer of the cost of preparing the hearing record and the lawyer will pay the Law Society the cost of the hearing record before it is prepared.
9. In advance of the hearing, the lawyer may bring an application to the Benchers pursuant to s. 74(6) of the Act to waive payment of all or part of the cost of preparing the hearing record.

IV. Notice and Materials

10. Upon receipt of a notice of appeal to the Benchers, the Executive Director shall serve on the lawyer or the lawyer’s counsel:

- a) a notice that sets out the time and place the appeal will be heard by the Benchers and that the lawyer may appear in person or by the lawyer's counsel, and
 - b) a copy of the hearing report and the hearing record.
11. The Executive Director shall provide copies of the hearing report and the hearing record to the panel of Benchers who will hear the appeal.

V. Representation

12. The lawyer may be represented by counsel at the appeal (s. 64 of the Act).
13. The lawyer is encouraged to retain counsel for the appeal at the earliest opportunity.
14. The Law Society maintains a list of lawyers who have appeared as counsel before Law Society panels and are familiar with the regulatory process. A lawyer may request this list from the Law Society.

VI. Responsibility to Other Party

A. General Rule

15. If a party anticipates that a preliminary, procedural or substantive issue will arise, the party will notify the other party as soon as possible.

B. Fresh Evidence

16. If the lawyer or counsel for the Law Society intends to bring an application for leave to receive fresh evidence pursuant to s. 76(6) of the Act, that party shall provide notice to the other party as soon as possible.

C. Written Argument

17. The lawyer and counsel for the Law Society will provide written argument to the Benchers in advance of the hearing of the appeal.
18. The lawyer's written argument must be provided to counsel for the Law Society no later than 60 days after the date the lawyer was served with the hearing record.
19. Counsel for the Law Society must provide a responding written argument to the lawyer within 30 days of receiving the lawyer's written argument.
20. Either party may apply to the chair or vice-chair of the Conduct Committee or the chair of the pre-hearing conference to change the filing schedule.

VII. Pre-Hearing Conferences

21. Pre-hearing conferences, set out in rule 90.1, are a key step in the appeal process. A pre-hearing conference is held before an appeal commences when directed by the chair of the Conduct Committee or at the request of the lawyer or counsel for the Law Society.

22. The purpose of the pre-hearing conference is to resolve preliminary issues so that the appeal may move forward in a timely and efficient manner.

A. Attendance

23. If a pre-hearing conference is directed by the chair of the Conduct Committee, the chair will order the date, time and place or mechanism of the pre-hearing conference be set, and the lawyer and counsel for the Law Society be advised of these particulars.
24. The chair of the pre-hearing conference may determine that additional pre-hearing conferences are required to case manage the matter. In this case, the chair will set the date, time and place or mechanism, and specify the purpose, for additional pre-hearing conferences, and will notify the parties.
25. The lawyer's attendance at a pre-hearing conference, either in person or represented by counsel or both, is mandatory. If the lawyer fails to attend the pre-hearing conference and the chair of the pre-hearing conference confirms the lawyer had proper notice of the particulars of the pre-hearing conference, the chair may proceed with the pre-hearing conference without the lawyer's participation.

B. Powers of the Chair of the Pre-Hearing Conference

26. The chair of a pre-hearing conference has the power to order, direct or permit that steps be taken in order to attempt to resolve the matter or to resolve preliminary issues for a timely, efficient and expeditious appeal.
27. The powers of the chair of the pre-hearing conference are set out in Rule 90.1(8) and include:
- granting adjournments of a pre-hearing conference;
 - ordering a date for the appeal be set;
 - setting a schedule for completing steps in preparation for the appeal; and
 - making any other directions to facilitate the appeal.

VIII. Scheduling the Appeal Hearing

28. Section 76 of the Act requires the Benchers hold a hearing of the appeal as soon as possible once the requirements of section 75 are met. A hearing date of the appeal will be confirmed only when both the lawyer and counsel for the Law Society have provided written argument to the other party.
29. Where practicable, the hearing will be scheduled to allow the filed written arguments, hearing report and hearing record to be provided to the Benchers at least 14 days in advance of the hearing of the appeal.
30. If the lawyer seeks an adjournment of the appeal, applications should be made at the earliest opportunity by advising counsel for the Law Society. Counsel for the Law Society will arrange a tele-conference call with the appropriate decision-maker to discuss the request. The lawyer should be aware they are responsible for any costs that

may arise as a result of an adjournment application. Reference should be made to the Hearing Guide for costs arising from adjournment applications.

IX. Objection to Participation of Benchers in the Appeal Hearing

31. A Bencher is qualified to participate in the hearing of the appeal except as provided in section 76(2) of the Act. If the lawyer or counsel for the Law Society is of the view that a Bencher should be disqualified from participating in the hearing, notice will be given to the other party at the earliest opportunity together with particulars of the basis for disqualification.

X. Standard of Review

32. On appeal, a question of general law that is of central importance to the legal system and outside the expertise of the Hearing Committee is reviewed by the appeal panel of Benchers on a standard of correctness.
33. Deference or the reasonableness standard of review applies where the issue of law is not one that is of central importance to the legal system as a whole, and does engage the expertise of the Hearing Committee.
34. Where a question raises issues of facts or involves inextricably intertwined factual and legal issues, the standard of review of reasonableness applies.
35. The determination of whether conduct amounts to conduct deserving of sanction inextricably intertwines findings of fact with questions of law and must be reviewed on a standard of reasonableness.
36. A review of a decision on the deferential standard of reasonableness is “concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.” (*Dunsmuir v New Brunswick*, [2008] 1 SCR 190, 2008 SCC 9 (CanLII) at paragraph 47.)