

## TRIBUNAL

### Practice Direction

APRIL 27, 2020

#### Alternatives to in-person oral hearing

##### ***Introduction***

1. As of March 17, 2020 the Law Society building has been closed to the public and it has not been possible to conduct the ongoing business of the Tribunal on the basis of in-person proceedings. A number of hearings have been re-scheduled or, in a few cases, proceeded by alternative means.
2. This situation continues and it is not possible to predict the timing of an end to the COVID-19 crisis and its consequences. The business of the Law Society Tribunal must continue in the public interest and in fairness to the respondents and applicants concerned. Alternative approaches must be employed. After the Law Society building re-opens, there will be cases where in-person appearances will not be necessary, and it will be desirable to save time and costs by using alternative approaches.
3. This Direction is intended to give specific guidance on conducting hearings and reviews in an expeditious and fair manner using alternative methods to the in-person oral hearings that have previously been the norm. It applies to discipline and credentials hearings and section 47 reviews. The Direction will remain in effect until further notice. Once the crisis has passed and the Law Society building re-opens, this Direction will continue, unless rescinded or replaced, for guidance in alternatives to in-person oral hearings where they are appropriate.

##### ***Alternative hearing formats***

4. Adjournment of a hearing or review is to be avoided where it can be conducted expeditiously and fairly under an alternative format. There are three possible alternatives to the in-person oral hearing:

- written submissions only;
  - oral hearing by teleconference; and
  - oral hearing by video conference.
5. When a hearing has been scheduled, counsel should discuss, well in advance, the appropriate alternative for the format of the hearing. One or both parties should bring an application under Rule 4-36 for an order to proceed under one of the alternative formats. The application should include submissions in support of the alternative format proposed and any evidence to support the submissions. Where appropriate, provision will be made for the response of the other party and a reply.
  6. If no application has been made 30 days before a hearing date, the hearing will proceed by video conference. The filing deadlines outlined below will apply, and a pre-hearing conference will be scheduled promptly to make other appropriate arrangements. This will apply to all hearings until October 1, 2020.
  7. Where the hearing is to proceed by written submissions:
    - the oral hearing date will be cancelled; and
    - a time-line for submissions will be established.
  8. Where the hearing is to proceed by teleconference, unless otherwise ordered:
    - the teleconference will take place on the scheduled hearing date(s);
    - oral evidence is not permitted; and
    - documentary evidence must be submitted to the hearing administrator at least seven days before the hearing date.
  9. Where the hearing is to proceed by video conference, unless otherwise ordered:
    - the video conference will take place on the scheduled hearing date(s); and
    - the provisions of this Direction below apply.

### ***Hearing by video conference***

10. Video conferences will proceed on the Zoom platform unless otherwise stated, with these modifications:
  - the “break out room” function will not be available, except to the hearing panel or review board;
  - the “waiting room” function will be used for all participants;
  - the “chat” function will not be used; and
  - the “record” function will not be used.

11. Each party is responsible to ensure that each of their participants is properly equipped with hardware, software, technical support and a suitable venue so that the hearing can proceed in an orderly fashion.
12. At least 14 days before the first scheduled hearing date, each party must submit to the hearing administrator and the other party a complete list of participants including counsel, support staff, parties and witnesses. For each participant, the list must include:
  - full name;
  - contact information including email address and text phone number; and
  - the user name to appear when joining the video conference.
13. At least seven days before the first scheduled hearing date, each party must submit to the hearing administrator and the other party all exhibits to be submitted in the hearing in PDF format and in a clean and unannotated condition.
14. Wherever possible, the Tribunal will arrange a time for a test session of the video conference arrangement in advance of the hearing. Parties are required to arrange the attendance of all of their participants.
15. At least initially, the hearing administrator or other Tribunal staff will attend all video hearings. The staff person will act as “host” of the conference, control admission to the conference, manage the handling of documents and otherwise assist the hearing panel or review board.
16. Law Society hearings are public hearings, and the public will be permitted to attend the hearing, subject to an order of the hearing panel or review board. At least seven days before the first scheduled hearing date, each party must advise the hearing administrator and the other party of any parts of the hearing that the party believes should be closed to the public. The party will need to make an appropriate application to the hearing panel or review board at the beginning of the hearing or at an appropriate time during its course.
17. No recording of the proceeding is permitted except for any used by the court reporter and the official transcript.
18. For security reasons, the Tribunal will notify the participants of the information needed to join the video conference only shortly before the beginning of each session. Where a hearing is to continue after an anticipated break, such as a lunch break, the resumption will be a new session of the video conference.
19. The hearing panel or review board will govern the admission of evidence, but counsel should be prepared to meet these guidelines:

- documentary evidence not provided 7 days before the hearing and in PDF format will not be admitted except by leave of the panel or board;
- witnesses:
  - must be clearly visible, face the camera and speak directly and audibly into the microphone;
  - must sit at a clear desk or table;
  - must be unaccompanied in the room except as permitted by the panel or board;
  - must not use a virtual background so that the surroundings of the witness are at least partially visible at all times;
  - will be excluded when not giving evidence (except the respondent or applicant and expert witnesses); and
  - may be asked to scan with the camera the room in which they are giving their evidence; and
- exhibits must be provided to a witness in clean unannotated form. A witness may be asked to show the document to the panel or board.

### ***Conclusion***

20. No one can deny the seriousness of the circumstances in which we find ourselves. It is incumbent on all of us to cooperate to the full extent possible in order to assure that the Law Society Tribunal continues to serve the public interest while ensuring fair treatment to all those who come before it. In my view, there is some comfort in the possibility that our experience born of necessity in difficult times may benefit the Tribunal and its work in the future.

Craig A.B. Ferris, QC

President