



Membership Guide for Hearings and Decisions

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I. The Hearing

A. Notices

Prior to the hearing, the Hearings Director must:

- (a) at least 30 days before the hearing, give the investigated person a notice to attend and reasonable particulars of the subject matter of the hearing, and
- (b) advise the complainant of the date, time and location of the hearing.

The complaints director, representing the ADA&C, and the investigated person are the parties to the hearing. The complaints director or investigated person are entitled to have any person (including the complainant and investigated person) attend the hearing as a witness and to require the production of any document or any substance or thing in the possession of the witness.

This is done by requesting that the hearings director send to the person a notice to witness to attend the hearing and a notice to produce the documents, substance or thing. Upon being requested to do so, the hearings director must send the appropriate notices. The notices must be signed by the hearings director and a copy kept for the ADA&C's file.

A notice may be given by personal service or sent by registered mail.

B. Hearing Tribunal

i. Number of hearing tribunal members

A hearing tribunal consists of three regulated members (from the hearing tribunal membership list) and one public member (appointed by the Alberta government).

The hearings director will designate a regulated member to be the chair of the hearing tribunal.

A quorum consists of two regulated members and one public member.

ii. Legal counsel to the hearing tribunal

The hearing tribunal is entitled to be advised by legal counsel. The legal counsel for the hearing tribunal cannot be the same as the legal counsel for the complaints director.

If the hearing tribunal is advised by legal counsel, that counsel may not lead or present evidence at the hearing on behalf of the ADA&C. The role of the legal counsel is not to present the case, but rather to advise the hearing tribunal on legal issues that may arise during the hearing.

iii. Hearing tribunal must not have prior involvement

Members of the hearing tribunal must not have any prior involvement with the matter. An individual who has investigated, reviewed or made a decision on a complaint or any matter related to the complaint cannot sit as a member of the hearing tribunal.

Further, if a member of the hearing tribunal knows of any reason why they may have a bias or may be seen to have a bias against the investigated person, this issue should be raised as soon as it comes to the attention of the hearing tribunal member.

C. Investigated Person and the Hearing

The investigated person is entitled to be represented by legal counsel at the hearing. The investigated person must appear and may be compelled to testify at the hearing. The investigated person or his/her legal counsel may examine any witness.

If the investigated person does not appear at a hearing and there is proof that the investigated person has been served with a notice to attend, the hearing tribunal may proceed with the hearing in the absence of the investigated person and decide on the matter being heard in the absence of the investigated person.

D. Witnesses at the Hearing

i. Who may be called as a witness

The complaints director and the investigated person may call as a witness any person, including the complainant and the investigated person.

ii. Evidence under oath

A witness will be examined under oath and will give evidence on matters relevant to the hearing.

iii. Witness to be advised the hearing is open to the public

A witness must be advised that the hearing is open to the public, unless it has been directed that the hearing be held in private (see section E below).

iv. Witness may be compelled to testify

A witness must answer a question even if the answer may

- (a) tend to incriminate the witness;
- (b) subject the witness to orders by the hearing tribunal; or
- (c) tend to establish the witness's liability in a civil proceeding or a prosecution under the *Health Professions Act* or any other enactment.

However, if an answer given by a witness could establish the witness's liability in a proceeding or incriminate the witness that answer may not be used against the witness in a proceeding, except in respect of a charge for perjury or to establish that the witness has given contradictory evidence.

The ADA&C or the investigated person may apply to the Court of Queen's Bench for an order directing the person to comply if a person has been given a notice to attend or a notice to produce and fails

- (a) to attend the hearing;
- (b) to produce the items set out in the notice to produce; or
- (c) to be sworn or to answer any question that the hearing tribunal directs the person to answer.

An application for such an order may be made without notice to the witness if the court is satisfied that it is proper to make the order in the circumstances.

v. Witness outside of the province

If a witness is outside Alberta, a judge of the Court of Queen's Bench may, on an application, direct the issuing of a commission to obtain the evidence of the witness.

E. Hearing Open to the Public

A hearing is generally open to the public.

i. Witness can be excluded until evidence given

However, a witness, except for the investigated person, may be excluded from the hearing until the witness has given evidence and has been released or dismissed from the hearing. The investigated person is entitled to be present for the entire hearing, unless the hearing tribunal is deliberating in private, in which case the complaints director, investigated person and their respective legal counsel will be excluded from the deliberations.

ii. Hearing, or part of it, can be held in private

Any person may bring an application to hold the hearing, or part of it, in private or, the hearing tribunal may on its own choose to do so if:

- (a) there is risk of probable prejudice to a civil action or the prosecution of an offence;
- (b) there is a need to protect the safety of the complainant, the investigated person, a witness or of the public;
- (c) not disclosing a person's confidential personal, health, property or financial information outweighs the desirability of having the hearing open to the public;
- (d) the presence of the public or complainant could compromise the ability of a witness to testify;
- (e) there are other reasons satisfactory to the hearing tribunal; or
- (f) another Act requires that the hearing or part of the hearing be held in private.

If a hearing or part of a hearing is held in private, the hearing tribunal must state the reason why and must include the reason in the record.

Even if a hearing is held in private:

- (a) the investigated person and the investigated person's counsel are entitled to attend;

- (b) the complaints director, legal counsel for the complaints director, and legal counsel for the hearing tribunal may attend; and
- (c) the complainant may attend unless the hearing tribunal directs otherwise.

F. The Hearing

i. Evidence at the hearing

Evidence may be given before the hearing tribunal in any manner that it considers appropriate, and it is not bound by the rules of law respecting evidence applicable to judicial hearings.

If there is an objection by one party to evidence being adduced by the other party, the hearing tribunal will need to make a ruling on whether or not the evidence will be admitted.

ii. Hearing evidence on matters not in the notice to the investigated person

In some instances, other issues not addressed in the notice to the investigated person may arise during the course of the hearing. The hearing tribunal may hear evidence on any other matters that arise, even if this is not evidence relating to the particulars given to the investigated person before the hearing.

However, the hearing tribunal must give the investigated person notice of its intention to hear this evidence. If the investigated person requests an adjournment before the tribunal hears the evidence, the adjournment must be granted.

iii. Referring another matter to a hearing

If the hearing tribunal is of the opinion that a separate hearing is required with respect to a matter described above, the hearing tribunal may

- (a) refer the matter as a complaint to the complaints director; or
- (b) refer the matter to the hearings director for a hearing.

iv. Expert evidence

The hearing tribunal may request an expert to assess and prepare a written report on any matter that is relevant to the subject-matter of the hearing.

G. The Decision

i. Unprofessional conduct

The hearing tribunal must decide whether the conduct of the investigated person constitutes or does not constitute unprofessional conduct.

If all of the members are not in agreement, the decision shall be made by a majority vote.

ii. Prior findings of unprofessional conduct

If the hearing tribunal decides that the conduct of an investigated person constitutes unprofessional conduct, the hearing tribunal may request the ADA&C to provide it with a copy of any previous decision of unprofessional conduct and a copy of the record of the previous hearing.

iii. Orders of the hearing tribunal

If the hearing tribunal decides that the conduct of an investigated person constitutes unprofessional conduct, the hearing tribunal may make any one or more of the following orders:

- (a) caution the investigated person;
- (b) reprimand the investigated person;
- (c) impose conditions on the investigated person's practice permit generally or in any area of the practice of the regulated profession, including conditions that the investigated person
 - (i) practise under supervision,
 - (ii) practise with one or more other regulated members,
 - (iii) not practise in an area of the practice of the regulated profession until the investigated person has successfully completed a specific course of studies or obtained supervised practical experience of a type described in the order,
 - (iv) not practise in an area of the regulated profession, or
 - (v) report on specific matters to the hearing tribunal, council, committee or individual specified in the order;
- (d) direct the investigated person to satisfy the hearing tribunal, committee or individual specified in the order that the investigated person is not incapacitated and suspend the investigated person's practice permit until the

hearing tribunal, committee or individual is so satisfied;

- (e) require the investigated person to undertake counselling or a treatment program that in its opinion is appropriate;
- (f) direct that within the time set by the order the investigated person must pass a specific course of study, obtain supervised practical experience of a type described in the order or satisfy the hearing tribunal, committee or individual specified in the order as to the investigated person's competence generally or in an area of the practice of the regulated profession;
- (g) suspend the practice permit of the investigated person for a stated period or until
 - (i) the investigated person has successfully completed a specific course of studies or obtained supervised practical experience of a type described in the order, or
 - (ii) the hearing tribunal or a committee or individual specified in the order is satisfied as to the competence of the investigated person generally or in a specified area of the practice of the regulated profession;
- (h) cancel the registration and practice permit of the investigated person;
- (i) if, in the opinion of the hearing tribunal, the investigated person's fees for professional services were improper or inappropriate or the professional services that the investigated person provided were improperly rendered or required the complainant to undergo remedial treatment, the hearing tribunal may direct the investigated person to waive, reduce or repay the fee for professional services provided by the investigated person;
- (j) direct that the investigated person pay within the time set in the order all or part of the expenses of, costs of and fees related to the investigation or hearing or both, including but not restricted to
 - (i) the expenses of an expert who assessed and provided a written report on the subject-matter of the complaint,
 - (ii) legal expenses and legal fees for legal services provided to the ADA&C, complaints director and hearing tribunal,
 - (iii) travelling expenses and a daily allowance, as determined by the council, for the complaints director, the investigator and the members of the hearing tribunal who are not public members,
 - (iv) witness fees, expert witness fees and expenses of witnesses and expert witnesses,
 - (v) the costs of creating a record of the proceedings and transcripts and of serving notices and documents, and
 - (vi) any other expenses of the ADA&C directly attributable to the investigation or hearing or both;

- (k) direct that the investigated person pay to the ADA&C within the time set in the order a fine not exceeding the maximum amount set out in the Health Professions Act (maximum amount for each finding of unprofessional conduct is \$10,000 and the maximum aggregate amount is \$50,000 for all of the findings of unprofessional conduct arising out of the hearing);
- (l) any other order that the hearing tribunal considers appropriate for the protection of the public.

The complaints director may publish a decision of the hearing tribunal in accordance with the Health Professions Act, the by-laws and any direction of the hearing tribunal.

iv. Written decision

The hearing tribunal must, within a reasonable time after the conclusion of a hearing, make a written decision on the matter in which it

- (a) describes each finding made by it,
- (b) states the reasons for each finding made by it, and
- (c) states any orders made.

v. Service of the decision

The hearing tribunal must forward to the hearings director the written decision and record of the hearing.

The hearings director must, on receiving the decision and the record described above, give a copy of the decision to

- (a) the complaints director and the registrar,
- (b) the complainant,
- (c) the investigated person, and
- (d) the Minister of Justice and Attorney General if so directed by the hearing tribunal,

The hearings director must notify the investigated person of the right to appeal the decision to the council.

vi. Stay of the order

The hearing tribunal may stay the order or a portion of the order on conditions set out in the order.

vii. Failure of investigated person to comply with order

If the complaints director is satisfied that a person has not complied with an order, the complaints director may

- (a) treat the matter as information and act on it as a complaint,
- (b) refer the matter to the hearings director to schedule a hearing before the hearing tribunal, or
- (c) in the case of non-payment of a fine or expenses, suspend the practice permit of the investigated person until the fine or expenses are paid in full or the complaints director is satisfied that they are being paid in accordance with an agreement entered into with the investigated person.

viii. Criminal offence

If the hearing tribunal is of the opinion that there are reasonable and probable grounds to believe that the investigated person has committed a criminal offence, the hearing tribunal must direct the hearings director to send a copy of the written decision to the Minister of Justice and Attorney General and on the request of the Minister of Justice and Attorney General also send a copy of the record of the hearing.

H. The Record

The record consists of all evidence presented at the hearing, including:

- (a) all the reports, exhibits and documents presented at the hearing, and
- (b) a record of the evidence, including all testimony given.

i. Examination of the record

The investigated person may examine the record of the hearing and, on paying the reasonable costs of transcribing, copying and delivering the record, receive a copy of it.

The complainant may examine the record of the hearing, except any part of the record relating to a part of the hearing that the complainant was directed not to attend. On paying the reasonable costs of transcribing, copying and delivering that record, the complainant may receive a copy of it, except any part where the complainant was directed not to attend.

The public may examine the decision and the record of the hearing except any part of the record relating to a part of the hearing that was held in private. On paying the reasonable costs of transcribing, copying and delivering that decision and record, a member of the public may receive a copy of them, except any part held in private.

II. Appeal to Council

A. Appeal Procedure and Notices of Appeal

An investigated person or the complaints director, on behalf of the ADA&C, may commence an appeal to the council of the decision of the hearing tribunal by a written notice of appeal that identifies the appealed decision and states the reasons for the appeal.

A notice of appeal must be given to the hearings director within 30 days after the date on which the decision of the hearing tribunal is given to the investigated person.

A hearings director must, on being given a notice of appeal,

- (a) give a copy of the notice of appeal, and make a copy of the decision and record of the hearing available, to each member of the council or to the panel of council hearing the appeal,
- (b) ensure that the complaints director, the investigated person and the complainant are given a notice of the appeal hearing that states the date, time and place at which the council will hear the appeal, and
- (c) ensure that the investigated person and the complaints director are given a copy of the record of the hearing.
- (d) The hearings director must:
- (e) 30 days before the appeal hearing, give the investigated person a notice to attend and particulars of the appeal; and

- (f) before the appeal hearing, provide the complainant notice of the date, time and location of the appeal hearing.

B. Council or Panel of the Council

i. Number of panel members

The appeal may be heard by the council or a panel of council consisting of 3 members, of which 2 are council members and one public member.

ii. Legal counsel to the council or panel

If the council or panel is advised by legal counsel at an appeal hearing, that legal counsel may not lead or present evidence at the appeal hearing on behalf of the ADA&C nor be counsel of the complaints director.

iii. Council or panel members must not have prior involvement

Members of the council or panel must not have any prior involvement with the matter. An individual who has investigated, reviewed or made a decision on a complaint or hearing cannot sit as a member of the council or panel on appeal.

Further, if a member of the council or panel knows of any reason why they may have a bias or may be seen to have a bias against the investigated person, this issue should be raised as soon as it comes to the attention of the council or panel member.

C. Parties to the Appeal

The complaints director and the investigated person may appear and be represented by counsel at the appeal hearing.

If the investigated person does not appear at an appeal hearing and there is proof that the investigated person has been given a notice to attend, the council may

- (a) proceed with the appeal hearing in the absence of the investigated person and
- (b) act or decide on the matter being heard in the absence of the investigated person.

D. Stay Pending Appeal

A decision of the hearing tribunal remains in effect pending an appeal to the council. However, the investigated person may apply for a stay of the decision until the appeal is heard. A person or committee designated by the council will decide whether or not to stay the decision pending the appeal.

The application for a stay must be in writing and the investigated person may make written submissions with respect to an application for a stay.

If the person or committee designated by the council

- (a) decides not to stay the decision of the hearing tribunal, or
- (b) does not make a decision within 10 days, excluding holidays, of the application,

The investigated person may apply to the Court of Queen's Bench for a stay of the decision of the hearing tribunal pending an appeal to the council.

E. Scheduling Appeal

If conditions have been imposed on the practice permit of the investigated person or if the registration or practice permit of the investigated person has been suspended or cancelled, the appeal must be scheduled within 45 days after the date of service of the notice of appeal.

In all other cases, the appeal must be scheduled within 90 days after the date of service of the notice of appeal.

A council may, on the written request of the investigated person or the complaints director, extend the periods referred to above for one or more additional periods, but

- (a) if the registration or practice permit of the investigated person has been suspended or cancelled, no extension may be granted without the consent of the investigated person, and
- (b) in all other cases, no extension may be granted without the consent of the investigated person and the complaints director.

F. Hearing Open to the Public

An appeal hearing is open to the public but is subject to the same conditions for holding the appeal hearing or part of it in private as a hearing in front of a hearing tribunal.

G. Council's Powers on Appeal

An appeal to the council must be based on the record of the hearing and the decision of the hearing tribunal.

The council on an appeal may

- (a) grant adjournments of the proceedings or reserve the determination of the matters before it for a future meeting of the council but no adjournment may be granted without the consent of the investigated person if that person's practice permit is suspended or cancelled,
- (b) on hearing an application for leave to introduce new evidence, direct the hearing tribunal that held the hearing to hear that evidence and to reconsider its decision and quash, confirm or vary the decision, and
- (c) draw inferences of fact and make a determination or finding that, in its opinion, should have been made by the hearing tribunal.

H. The Decision

The council must, within 90 days from the date of the conclusion of the appeal hearing before it, make a decision and, by order, do any or all of the following:

- (a) make any finding that, in its opinion, should have been made by the hearing tribunal,
- (b) quash, confirm or vary any finding or order of the hearing tribunal or substitute or make a finding or order of its own,
- (c) refer the matter back to the hearing tribunal to receive additional evidence for further consideration in accordance with any direction that the council may make, or
- (d) refer the matter to the hearings director to schedule it for rehearing before another hearing tribunal composed of persons who were not members of the hearing tribunal that heard the matter, to rehear the matter.

The council may direct the investigated person to pay, within the time set by the council, in addition to expenses, costs and fees referred to previously, all or part of the expenses

of, costs of and fees related to the appeal, including

- (a) legal expenses and legal fees for legal services provided to the ADA&C, complaints director and council;
- (b) travelling expenses and a daily allowance, as determined by the council, for the complaints director and the members of the council who are not public members;
- (c) the costs of creating a record of the proceedings and transcripts and of serving notices and documents; and
- (d) any other expenses of the ADA&C directly attributable to the appeal.

I. Application to Vary Order

If the time for filing an appeal has passed or, due to a change in circumstances, an order is impossible to carry out, the person to whom the order is directed or the complaints director may apply to the council for a variation of the order.

III. Appeal to the Court of Appeal

A. Appeal Procedure and Notice of Appeal

An investigated person may appeal to the Court of Appeal any finding, order or direction of the council.

An appeal may be commenced within 30 days of the investigated person receiving the decision of council by

- (a) filing a notice of appeal with the clerk of the court in Edmonton or Calgary, and
- (b) giving a copy of the notice of appeal to the complaints director and the complainant.

B. Stay

A decision of the council remains in effect pending an appeal to the Court of Appeal unless the Court of Appeal, on application, stays the decision pending the appeal.

C. Appeal is on the Record

The appeal to the Court of Appeal must be based on the record of the hearing before the council and the council's decision, including the reasons for the decision.

The hearings director, at the expense of the appellant, must arrange for the preparation of the record of the hearing before the council.

If part of the hearing was held in private, the hearings director must ensure that the part of the record that relates to it is sealed.

The part of a record that is sealed may be reviewed by the Court of Appeal, and the Court of Appeal may direct that it remain sealed or that it be unsealed in whole or in part.

D. Powers of the Court on Appeal

The Court of Appeal on hearing an appeal may

- (a) make any finding that, in its opinion, should have been made,
- (b) quash, confirm or vary the finding or order of the council or any part of it,
- (c) refer the matter back to the council for further consideration in accordance with any direction of the Court, or
- (d) if the appeal is wholly or partly successful, direct that all or part of the cost of preparation of the record be repaid by the ADA&C to the appellant or be applied to reduce the amount of penalties or costs otherwise payable to the ADA&C by the appellant.

The Court of Appeal may make any award as to the costs of an appeal to it that it considers appropriate.