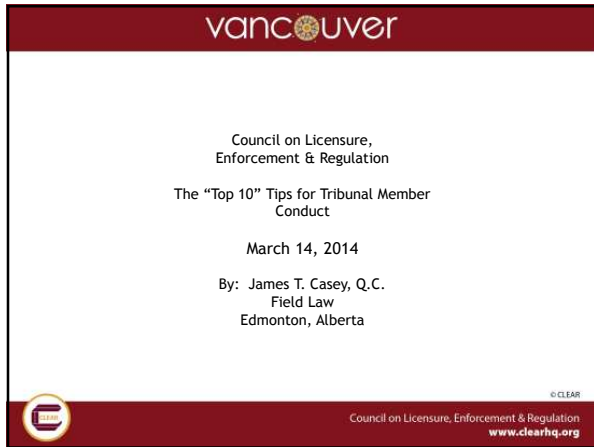
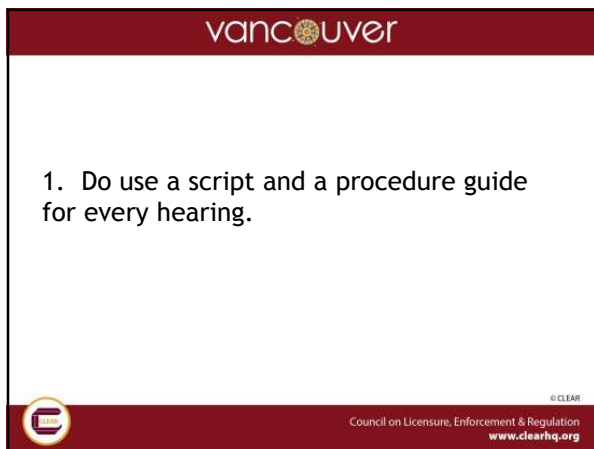


Regional Seminar
Perspectives on Professional Discipline
The Top 10 Tips for Tribunal Member
Conduct

Vancouver, British Columbia
March 14, 2014








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Tip: A step by step guide helps keep the hearing on track. Consider sharing the guide with the investigated member and defence counsel. Using a standard guide helps builds confidence in the Hearing Tribunal process and also can assist in raising the confidence of defence counsel in the fairness of the process. A hearing procedure guide is also very useful for unrepresented investigated members.

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2. Do appear alert and interested.

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Tip: Put yourselves in the shoes of the investigated member. What conclusions would they draw from your appearance? Do you appear bored, disinterested or drowsy? Or do you appear interested and alert understanding the importance and seriousness of the proceeding ?

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3. Do take notes of the important parts of the evidence.

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Tip: Highlight the evidence you consider important. This will assist in having a robust and thoughtful caucus session. Using a “split page” technique for your notes will assist in asking relevant and important questions.

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4. Do follow the 5 key rules with respect to questions by hearing tribunal members:

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1. Keep your questions focussed on the allegations. A discipline hearing is not an excuse for a broad-ranging unrestrained review of a professional's practice. Relevance is determined by the scope of the allegations.
2. Stay neutral. Tribunal members must be careful with the phrasing of their questions. You can and should ask tough questions but keep the questions neutral in tone seeking clarification. Do not engage in cross-examination style questions. Do not ask questions in a way that might suggest that your mind is made up.

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3. Do not take over the running of the case. Do not "descend into the arena" as a combatant.
4. In general, wait until the examination, cross-examination, and re-examination are complete before asking questions.
5. Provide legal counsel the opportunity to ask questions arising from Tribunal member questions.

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Tip: If a Hearing Tribunal member is uncertain whether a question is appropriate, they should slip a note to the Chair asking for a caucus and discuss with the other Tribunal members.

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5. Do ensure there are separate meeting spaces for the Hearing Tribunal, the prosecution, and the investigated member and their counsel.

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Tip: If the “prosecution team” has coffee or lunch with the Hearing Tribunal to the exclusion of the defence, a reasonable apprehension of bias may be created.

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6. Do not act too familiar with either the prosecution or the defence.

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Tip: Maintain a reserved demeanour. Acting too friendly or familiar can create a reasonable apprehension of bias.

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7. Do remember that you control the pace of the hearing- not the prosecution and not the defence. But at the same time seek their input on the need for breaks and the required length of breaks.

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Tip: If questions arise during the hearing about how to proceed, the Hearing Tribunal Chair should feel free to declare a recess and discuss in caucus.

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8. Do avoid small-talk with the witnesses or the investigated members during breaks.

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Tip: Investigated members and witnesses may try to steer small-talk towards the subject matter of the hearing potentially imperilling the fairness of the process.

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9. Do not allow unrestrained argument by legal counsel.

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Tip: Always follow the “rule of 3”. If there is an objection by legal counsel always follow the following steps. One: the objecting counsel states the reason for their objection. Two: the other counsel is given an opportunity to respond. Three: the counsel making the objection has an opportunity to reply to the other counsel. The Chair must retain control of the hearing and insist that the “rule of 3” be followed.

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10. Do ensure that independent legal counsel sits separate from the Hearing Tribunal.

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Tip: Independent legal counsel can provide invaluable assistance to a Hearing Tribunal. But in order to ensure the integrity of the process the role of independent counsel must be understood and respected.

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Independent legal counsel provides advice to the Tribunal on legal and procedural issues which the Tribunal is free to accept or reject and can assist by providing advice on draft decisions prepared by the Tribunal.

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However, independent counsel is not part of the Hearing Tribunal and is not a decision-maker. Having the individual sit apart from the Hearing Tribunal reinforces the proper role of independent legal counsel. Like the Hearing Tribunal members, independent legal counsel must avoid taking over the running of the case.

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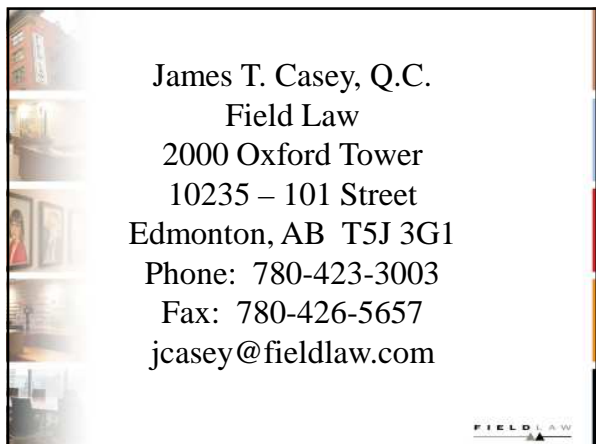
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In conclusion:
Being a member of Hearing Tribunal has been described as “always thankless and frequently distasteful”. (Golomb v. College of Physicians & Surgeons (Ontario)). But Hearing Tribunal members must understand and be fortified by the number 1 rule: always remember the critically important (and interesting) service that they render to the public and their profession!

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James T. Casey, Q.C.
Field Law
2000 Oxford Tower
10235 – 101 Street
Edmonton, AB T5J 3G1
Phone: 780-423-3003
Fax: 780-426-5657
jcasey@fieldlaw.com

FIELD LAW
