



Interim Practice Directive 15: Evidence, Witnesses and Experts

1. Purpose

This practice directive explains:

- how parties present evidence in a discipline proceeding;
- how parties identify and manage witnesses and experts;
- how a party requests an order requiring a person to attend as a witness or produce records; and
- how the discipline panel manages evidence, witnesses, and experts to support a fair and efficient hearing.

2. Authority

The Health Professions Discipline Tribunal (Discipline Tribunal) operates under the Health Professions and Occupations Act (HPOA). When this practice directive mentions a section, it refers to a section of the HPOA unless it says otherwise.

The Discipline Tribunal also applies the Administrative Tribunals Act (ATA) to the extent it is incorporated by the HPOA or otherwise applies.

3. Scope and application

This practice directive applies to a discipline proceeding from the time the Discipline Tribunal serves the citation through completion of the hearing.

This practice directive governs how parties present evidence and how the discipline panel receives and manages evidence in a discipline proceeding, including issues about exhibits, witnesses, orders requiring attendance or production, and expert evidence. It does not govern the technical or format requirements for hearing materials used at the hearing, including hearing books and electronic exhibits. Those are addressed in Practice Directive 18: Hearing Format and Remote Participation.

This practice directive also does not apply to accommodation requests, protection orders, or applications about sensitive records. See, respectively, Practice Directive 3: Accessibility and Accommodations; Practice Directive 16: Protection Orders; and Practice Directive 17: Sensitive Records.



The Discipline Tribunal manages all records filed under this practice directive in accordance with Practice Directive 4: Privacy, Confidentiality & Disclosure of Records.

The Discipline Tribunal may vary the process set out in this practice directive in a particular case.

4. Definitions

In this practice directive:

- **Discipline panel:** the panel appointed under the HPOA to hear and decide a citation, including the hearing chair, which is the discipline panel member designated by the Discipline Tribunal to manage hearing procedure and make procedural directions and orders on the discipline panel's behalf.
- **Parties:** the regulatory college and the respondent.
- **Pre-hearing application:** an application requesting a procedural or evidentiary order before the first day of the discipline hearing. See Practice Directive 14: Hearing Management Conferences and Pre-Hearing Applications for details.

5. Evidence in a discipline proceeding

5.1 General approach to receiving evidence

The discipline panel decides how evidence is received and used, including:

- what evidence the panel receives and accepts; and
- what weight, if any, the panel gives the evidence.

The discipline panel may consider any information, including hearsay, that helps it decide the issues, except privileged information. It may refuse information that is repetitive.

5.2 How parties present documentary and physical evidence

The parties must file and serve documentary and other exhibits (items the discipline panel receives as evidence) in the form, manner, and by the deadlines set in case management directions, an order made at a hearing management conference or on a pre-hearing application. The parties must present exhibits in an organized manner.

The discipline panel may give directions about the organization and use of exhibits in the proceeding, including whether the parties must prepare a joint hearing book and whether an exhibit list is required. Technical and format requirements for hearing books, exhibits,



and other hearing materials are addressed in Practice Directive 18: Hearing Format and Remote Participation.

5.3 Evidentiary issues and pre-hearing rulings

A party who seeks an evidentiary ruling before the hearing must raise the issue at a hearing management conference or by pre-hearing application, as described in Practice Directive 14: Hearing Management Conferences and Pre-Hearing Applications.

5.4 Agreed facts, authenticity, and narrowing issues

The parties must make reasonable efforts to narrow the issues, including agreed facts and document authenticity. The discipline panel may direct the parties to file one or both of the following:

- a statement of agreed facts; and
- a list describing any remaining authenticity issues.

6. Witnesses

6.1 Witness lists and witness information

The Director, through case management directions, and the discipline panel, through orders made at hearing management conferences or on pre-hearing applications, may set deadlines and requirements for:

- witness lists;
- witness statements; and
- time estimates for witness evidence.

The parties must each file and serve a witness list by those deadlines.

A witness list must identify each witness and summarize the evidence the witness will give, including:

- the name and role of the witness;
- the topics the witness will address;
- an estimate of the time required for direct examination and cross-examination;
- whether the witness requires interpretation or other accommodations; and
- whether a party seeks an order to compel attendance or production.



6.2 Oral evidence, written evidence, and adopting written statements

Witness evidence is usually given orally. The discipline panel may permit or direct the use of a witness statement or affidavit for efficiency and fairness. A witness statement is not evidence only because it is filed or served.

If a party relies on a witness statement or affidavit as evidence of the facts asserted, the discipline panel may require the witness to attend for examination or cross-examination. A request to modify how a witness is questioned for protective reasons must be made under Practice Directive 16: Protection Orders.

6.3 Witness management

The discipline panel may direct that witnesses:

- remain in the virtual waiting room, or leave the videoconference, until called; and
- not observe other witness testimony, including by livestream, recording, or other means.

6.4 Remote testimony protocol

A witness giving evidence by videoconference must:

- confirm identity on the record;
- take an oath or affirmation on the record;
- remain alone while giving evidence, unless the discipline panel permits another arrangement, including for accommodation or a protection order; and
- not receive prompts, coaching, or off-camera assistance while testifying.

The discipline panel may direct how the witness uses documents during testimony, including whether the witness may refer to notes.

7. Orders to compel attendance and production

This section applies to a request to require a person other than the respondent to attend as a witness, produce records, or both. A party may not prepare or serve a summons without a prior order of the discipline panel. If the discipline panel makes an order, the Discipline Tribunal may issue a summons or other document to give effect to the order.

This section does not apply to an application for production of a sensitive record under sections 188 and 189 of the HPOA. Those applications are addressed in Practice Directive 17: Sensitive Records.



7.1 Requesting an order (attendance and production)

A party who seeks an order requiring a person to attend as a witness or produce records must file a pre-hearing application, or raise the issue at a hearing management conference if the discipline panel directs, that includes:

- the person's name and contact information, if known;
- what the party seeks (attendance, production, or both);
- the relevance of the anticipated evidence or records to a live issue;
- the date or dates when the person's attendance or production is required; and
- why voluntary attendance or production is not reasonably available.

7.2 Serving the summons or order and proving service

The party who requested the order must:

- serve the person named in the summons or order in accordance with Practice Directive 1: Filing and Service; and
- send a copy of the summons or order to the other party.

7.3 Enforcement

If a person does not comply with an attendance or production order, the discipline panel may apply to the Supreme Court of British Columbia for an order directing compliance.

7.4 Witness expenses

The party who requested the order must address witness expenses in the application materials if the issue is relevant; for example, a non-party witness who incurs travel costs. The discipline panel may give directions about logistics and expenses.

8. Experts

8.1 Expert duty and independence

An expert's role is to assist the discipline panel with opinion evidence within the expert's specialized knowledge. An expert's duty is to assist the discipline panel, not the party who retained the expert. An expert report must be independent and must not be advocacy.



8.2 Expert reports: content requirements

An expert report must include:

- the expert's qualifications, including a current CV;
- the issues the expert addresses;
- the facts, assumptions, and instructions the expert relies on;
- the expert's opinions and reasons;
- any actual or potential conflict of interest;
- any limitations or qualifiers; and
- a list of the materials the expert reviewed or relied on.

8.3 Service and responding expert evidence

The Director, through case management directions, and the discipline panel, through orders made at hearing management conferences or on pre-hearing applications, may set deadlines and requirements for:

- service of expert reports;
- responding expert reports; and
- expert meetings and joint statements.

The discipline panel may direct experts to meet and file a joint statement identifying what opinions, facts, and assumptions they agree on and what remains in dispute.

8.4 Calling experts to testify

A party who relies on an expert opinion must:

- make the expert available for examination and cross-examination; or
- submit an application requesting the report to be admitted without the expert attending.

The discipline panel may limit cross-examination, including by setting time limits or restricting topics, once it has enough information to decide the issues and further questioning would not materially assist or impact fairness of the proceedings.



9. Remedies and consequences for non-compliance

If a party does not comply with this practice directive, a case management direction, or an order made at a hearing management conference or on a pre-hearing application about evidence, witnesses, or experts, the discipline panel may:

- extend or shorten deadlines;
- require corrected materials, for example a revised witness list or compliant expert report;
- refuse to receive late evidence, in whole or in part, or give it reduced weight; and
- adjourn part or all of the hearing, if required for fairness.

A party seeking relief from a deadline or other requirement must file a request as soon as possible and include:

- the reason for non-compliance;
- the steps taken to mitigate prejudice; and
- the remedy sought.