



NOVA SCOTIA BARRISTERS' SOCIETY

POLICY ON APPEALS TO CREDENTIALS APPEAL PANEL OF CREDENTIALS COMMITTEE DECISIONS

1.1 Credentials Committee Decisions Subject to Appeal

1.1.1 Applicants are entitled to appeal credentialing decisions of the Credentials Committee (the “Committee”) to the Credentials Appeal Panel pursuant to subregulations 3.3.5, 3.7.7, 3.8.9, 5.6.7, 5.10.10, and 6.2.9.

THE CREDENTIALS APPEAL PANEL

2.1 Authority

2.1.1 The appeal process is conducted by the Credentials Appeal Panel (the “Panel”) in accordance with Regulation 3.11.

Standard for Review by the Panel

2.1.2 The standard for review is *de novo*: the Panel will review the matter afresh.

2.2 Composition

2.2.1 The Panel will be comprised of three persons selected from the Hearing Committee constituted under Section 41 of the *Legal Profession Act*.

Selection of the Panel

2.2.2 In the event of an appeal of a Committee decision, the Chair of the Hearing Committee is responsible for appointing a Panel Chair and empaneling members of the Hearing Committee to sit as the Panel. Whenever possible the Chair should endeavour to empanel at least one person who is not a member of the Nova Scotia Barristers’ Society (the “Society”).

APPEALING A RULING

3.1 Appeal of Credentials Committee Decision

3.1.1 When the Committee makes a decision pursuant to the subregulations listed in paragraph 1.1.1, the Committee will provide the applicant with written reasons and inform the applicant of the right to appeal to the Credentials Appeal Panel.

Time Limit for Appeal

3.1.2 Within 30 days from the day the Committee’s decision was sent to the applicant, the applicant may request an appeal of the Committee’s decision.

Form of Appeal

3.1.3 The appeal must be made in writing to the Executive Director.

Responsibility of Executive Director

3.1.4 Upon receipt of an appeal, the Executive Director will:

- a) acknowledge the request;
- b) determine if the appeal was made within the 30 day timeframe, and
 - (i) if the appeal was made in a timely manner,
 - a. refer it to the Chair of the Hearing Committee, in accordance with subregulation 3.11.5;
 - and

- b. within a reasonable time, provide the Panel and the applicant with:
 - i. a copy of the Committee's written decision; and
 - ii. a copy of all records related to the application in the possession of the Society, subject to any lawful restrictions.

or,

- (ii) if the appeal was not made within the 30 day timeframe, notify the applicant that the appeal is out of time.

THE APPEAL

4.1 Security for the Costs of an Appeal

4.1.1 The Society may apply to the Panel to request that the applicant deposit with the Society security for the appeal. If the Panel determines it is appropriate for the applicant to deposit security, it will fix the form and amount of the security.

Time and Place of Hearing

4.1.2 The Panel will set a time and place to hear the appeal.

Notice of Hearing

4.1.3 The Executive Director will

- a) give written notice to the applicant of the time and place for the hearing, at least fourteen days prior to the commencement of the hearing; and

after giving written notice to the applicant,

- b) publish a notice on the Society's website within seven days that outlines the nature of the appeal and specifies the date(s), time and location for the hearing, but that does not disclose the name or other identifying information of the applicant; and
- c) give notice to such others, if any, as directed by the Panel Chair.

The Parties

4.1.4 The parties to the appeal are the Society and the applicant.

The Rights of the Parties

4.1.5 Both parties may be represented by legal counsel, have the right to disclosure of relevant information and documents as prescribed by regulation, and the right to present evidence, make submissions and cross-examine witnesses.

Conduct of the Appeal

4.1.6 At the hearing, the Society presents evidence first. The applicant (or his or her counsel) then has the opportunity to cross-examine the Society's witnesses, if any. The applicant (or the applicant's counsel) may then present evidence, including witnesses who are subject to cross-examination. The Society may elect to call rebuttal evidence. After all of the evidence has been presented, oral submissions are usually made.

Applicant is a Compellable Witness

4.1.7 In a hearing before the Panel, the applicant is a compellable witness.

Applicant's Failure to Appear

4.1.8 Pursuant to Regulation 3.11.27, if an applicant fails to appear at a hearing, the Hearing Panel may proceed with the hearing in the applicant's absence.

THE PANEL'S DECISION

5.1 Written Decision containing Reasons

5.1.1 Following the hearing, the Panel will render its decision within a reasonable time, and will provide a written decision with reasons within 60 days of making its decision.

Options for Panel

5.1.2 The Panel may:

- a) make any decision the Committee could have made with respect to the application; and
- b) assess costs, if any, to be paid by the applicant, and determine how the security and deposit provided pursuant to subregulation 3.11.7 will be credited towards the cost or refunded to the applicant.

Decision is Final

5.1.3 The Panel's decision is final.

POWERS GRANTED TO THE PANEL

6.1 Powers of the Credentials Appeal Panel

6.1.1 The Panel acts in a judicial capacity at the formal hearing. The Panel hears evidence, makes evidentiary rulings, receives submissions and renders a decision. Regulation 3.11.8 sets out the specific powers granted to the Panel. A Credentials Appeal Panel may determine its own procedure and may:

- a) order pre-hearing procedures, including pre-hearing conferences that are held in private, and direct the times, dates and places of the hearing for those procedures;
- b) order that a hearing, parts of a hearing or pre-hearing conference be conducted using a means of telecommunication that permits the parties and the panel to communicate simultaneously;
- c) administer oaths and solemn affirmations;
- d) receive and accept such evidence and information on oath, affidavit or otherwise as the appeal panel in its discretion sees fit, whether admissible in a court of law or not;
- e) prescribe the disclosure obligations of the parties prior to a hearing;
- f) adjourn or postpone a proceeding from time to time;
- g) amend or permit the amendment of any document filed in connection with the proceeding, including a notice of hearing.

EVIDENCE

7.1 Submission of Evidence

7.1.1 The Panel sits as an administrative tribunal. Evidence before the Panel may be given by oral examination or by declaration under the *Canada Evidence Act* or the *Evidence Act*, or partly by both. Subregulation 3.11.25 provides the following:

The following evidence is not admissible at a hearing unless the opposing party has been given, at least ten (10) days before the hearing,

- a) in the case of written or documentary evidence, an opportunity to examine the evidence;
- b) in the case of evidence of an expert, a copy of the expert's written report or if there is no written report, a written summary of the evidence and the qualifications of the expert; or
- c) in the case of evidence of a witness, the identity of the witness.

Power to Allow Otherwise Inadmissible Evidence

7.1.2 The Panel may in its discretion allow the introduction of evidence that would be otherwise inadmissible and may make directions it considers necessary to ensure that a party is not prejudiced. The Panel has the jurisdiction

to ensure that counsel are introducing relevant evidence. If the relevancy of a piece of evidence is in question, the Panel can require counsel to make submissions in that regard.

PUBLIC DISCLOSURE

8.1 Open Hearings

8.1.1 Subject to subregulation 3.11.17, a hearing before the Panel is open to the public.

***In camera* hearings**

8.1.2 Applications can be made to the Panel to hold all or part of the hearing *in camera*. The Panel may make an order that the public, in whole or in part, be excluded from a hearing or any part of it if the Panel is satisfied of the following:

- a) matters involving solicitor/client privilege which have not otherwise been waived may be disclosed;
- b) financial or personal or other matters may be disclosed at the hearing of such a nature that the desirability of avoiding public disclosure of those matters in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public; or
- c) the safety of a person may be jeopardized;

however, the Panel:

- d) will allow the parties and their legal representatives to attend the hearing; and
- e) may allow other persons the Panel considers appropriate to attend all or part of the hearing.

Motion pursuant to subregulation 3.11.17

8.1.3 The Panel may make an order to exclude the public from the part of a hearing dealing with a motion pursuant to subregulation 3.11.17.

8.2 Disclosure and Publication Bans

8.2.1 While the media is, in general terms, constitutionally entitled to publish information about trials, there are exceptions to this right. The Courts may (and frequently must) impose publication bans to protect the fairness and integrity of the trial, the privacy or safety of a victim or witness, or the identity of a young offender. Likewise, the Panel has the authority to order that there be a ban on the publication of certain details or the entire proceeding in general. Accordingly, the Panel may make orders it considers necessary to prevent the public disclosure of matters disclosed at a hearing, including orders prohibiting publication or broadcasting of those matters; however, no order can be made to prevent the publication of anything that is otherwise available to the public.

8.3 Reasons Required

8.3.1 Subject to any orders pursuant to Regulation 3.11, the Panel will state, at the hearing, its reasons for an order made pursuant to Regulation 3.11.

8.4 Electronic Recording not permitted

8.4.1 Public attendance at a hearing without restriction does not constitute authorization to take photographs, record sound, videotape or otherwise mechanically or electronically record the proceedings, and no such recording will be permitted, unless specifically authorized by the Panel. Lap top computers are permitted provided there is no disturbance to the proceeding and the computers are used solely for the purpose of note-taking. Cell phones must be turned off and never used during the proceedings.

Approved by the Credentials Committee – March 26, 2010