

Legal Education Society of Alberta
Administrative Law & Practice
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The Role of Tribunal Counsel
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NOTES

1. The Role of Tribunal Counsel

- This topic is not only important to tribunal counsel, it is important to parties that appear before tribunal counsel to ensure that your client received fair treatment, but also to give your client the best advantages in having a good decision made and upheld.

2. Why Does a Tribunal Need Legal Counsel

- There has been an evolution in public participation in decision-making.
- Legal issues are becoming more complex. For example, aboriginal issues and *Administrative Procedures and Jurisdiction Act* amendments.
- Board members are usually experts in their field. Let them do their job, and you do your job, which is to worry about the law.
- An important role for counsel is training Board members.
- Tribunal counsel is a significant resource for the parties.
- The main role of tribunal counsel is to ensure that the parties are treated fairly.

3. Chief Cook and Bottle Washer

- Other hats: public relations role and last week working on a video set.
- On large tribunals may only be counsel or could also sit on executive.
- Watch your role and who do you work for: Chair v. Board, Executive Director v. Board, and Department v. Board. These can be or lead to difficult issues.

4. Preparing for a Hearing

- Fairness – documents and motions.
- Standard practice: not Board, not legal advice, share information with all, quick research.
- Some tribunals may not have in-house counsel, but they have regular counsel (bring them in).
- Culture: experts, timers, panel of witnesses, mediation.

5. Legal Opinions of Tribunal Counsel

- Still a significant issue.
- Build relationship with Board members.
- Invite arguments ahead of time to avoid hearing or post hearing issues.

6. At a Hearing

- Still a significant issue.
- Varying levels of intervention from tribunal to tribunal or Board member to Board member.
- Lay members/experts.
- Role with unrepresented parties.
- Danger.

7. Post Hearing

- Still a significant issue.
- Relationship with your client.
- Avoid problems by being proactive – deal with issues ahead of time to avoid undue influence especially with what the significant issues are.
- Assist but do not take over the decision (some disagreement and decisions).
- Differentiate between facts, evidence, outcome and legal argument.

8. On Judicial Review

- If you can afford it, do not do your own judicial reviews.
- Understand what your role is.
- Only concerned with practices (IOL).
- Stand back – may be seen as an amicus of the court – above the fray.
- Fairness.

9. Conclusions

- Fairness without passion or prejudice.
- Invaluable resources (counsel, staff members).
- Thank you.

