

IAD Hearings from Start to Finish

Course Summary: This course will involve a practical discussion on how to prepare appeals before the Immigration Appeal Division of the Immigration and Refugee Board of Canada. Beginning with an overview of the right of appeal and the types of appeal, the instructor will advise on practical considerations to keep in mind when filing an appeal, preparing an Appeal Record and trying to find an early resolution to the litigation. Important issues in preparing for an appellate hearing will also be discussed, including the burden of proof, how to prepare one's client and witness examination. There will also be a brief discussion of ethical issues that arise during the representation of clients in IAD appeals.

Course Outline:

1. Who has a right of appeal?
 - Statutory framework
 - IAD jurisdiction
 - Exceptions to jurisdiction
 - What to do if there is no right of appeal to the IAD
2. Types of appeals to the IAD
 - Sponsorship appeals, Removal Order appeals, Residency obligation appeals
3. Equitable jurisdiction of the IAD
 - Statutory references
 - Case law
4. Filing the appeal
 - Using the correct Notice of Appeal
 - Where to file
 - Language of interpretation
 - IAD Rules
5. The Appeal Record
 - IAD Rules concerning content and timing
 - Reviewing the Record – what to look for
6. Early Resolution options
 - IAD policies
 - Roles of the parties
 - Procedures

7. Setting a date for the hearing
 - Procedure
 - IAD Rules re postponements and adjournments
8. General preparation for the hearing
 - Reviewing the Appeal Record
 - Isolating the issues
 - Burden of proof, standard of proof, legal test
 - Discussions with Minister's Counsel
 - Evidence and disclosure – relevance and admissibility of documents, deadlines, IAD Rules re format
 - Witnesses – when to call witnesses, relevance and admissibility of testimony, IAD Rules re witnesses
9. The burden of proof and role of the players
 - Role and responsibilities of Minister's Counsel
 - Role and responsibilities of the interpreter
 - Role and powers of the Board Member
10. Preparing your direct examination questions
 - Isolating relevant issues
 - What evidence do you need to get on the Record in order to win?
 - Open ended vs. leading questions
 - Referring to the documentary evidence
 - Addressing the weaknesses
11. Preparing your client and witnesses for oral testimony
 - Explaining the proceedings
 - Explaining the legal and evidentiary issues
 - Reviewing the importance of telling the truth
 - Reviewing the types of questions
 - “Preparing” vs. “coaching”
 - Addressing the weaknesses
 - How much preparation is enough?
12. The hearing
 - Virtual vs. in person hearings
 - When to arrive
 - Who is allowed to attend
 - Hearing room etiquette
 - Order of proceedings

13. Interlocutory matters

- Problems with disclosure – lateness, format, admissibility
- Problems with interpretation
- Postponements and adjournments

14. The decision

- Bench decisions vs. reserved decisions
- Timing of decision

15. Challenging a negative decision

- Federal court deadline
- Assessment of the merits

16. Ethical issues

- Competence
- Honest assessment of the merits
- Quality of service
- What can/should be delegated?
- Encouraging respect for the administration of justice
- Dealing with Minister's Counsel – duty of civility
- Duty when faced with real or possible misrepresentation
- Mandatory and optional withdrawal of services
- Conflicts of interest
- Handling errors

17. Questions and Answers