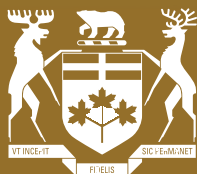


# GUIDE TO APPEALS BEFORE THE HORSE RACING APPEAL PANEL

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Ontario

## Horse Racing Appeal Panel

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# ABOUT THIS GUIDE

This Guide and the accompanying [Information Sheets](#) provide general information for appellants (“you”) in a hearing before the Horse Racing Appeal Panel (“HRAP” or “the Panel”). They are not a substitute for the [Rules of Procedure](#), which should be reviewed for full information. If any information in this Guide is not consistent with the Rules of Procedure, the information in the Rules of Procedure will apply.

This Guide does not constitute legal advice. If you wish to obtain legal advice, please consult with a person licensed by the [Law Society of Ontario](#).

Contact us: If you have additional questions, please contact the HRAP at 416-326-8700 (Toll free in Ontario: 1-800-522-2876) or [info@hrappealpanel.ca](mailto:info@hrappealpanel.ca).

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**[This document is available on the HRAP website](#)**

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# I. BEFORE YOU START: IMPORTANT NOTES

- **Disclosure to Other Parties:** Certain information needs to be shared with other parties before a hearing. Please see Rule 7, Disclosure, Rule 11.1, Notices of Hearing and Rule 11, Hearings of the Rules of Procedure, and Information Sheet: Witnesses, Summons and Evidence.
- **Requesting a Stay:** You can request that HRAP temporarily suspend the decision or ruling you are appealing by requesting a stay. To allow time for the stay request to be processed, be sure to submit your request as soon as possible and before your suspension is scheduled to start. For more information about requesting a stay, please see *Rules 3.4 - 3.7, Stays*, of the [Rules of Procedure](#) and [Requesting a Stay](#) below.
- **Copy all Parties with Written Communications with HRAP:** All written communication (e.g., email, letter, etc.), with the HRAP (except a request for Summons or general inquiries or correspondence with the HRAP) must be copied to all other parties to a proceeding.  
Before filing a document with the HRAP, it must be “served” on all the parties in a way that follows the Rules for service, please see Rule 5.6.
- **Costs:** If you participate in an appeal, you may become responsible for paying costs to another party. For information about potential costs, please see *Rule 13, Costs*, of the [Rules of Procedure](#) and [Information Sheet: Costs](#).
- **Combining Proceedings:** If the matter you appeal involves facts or legal issues that are similar to those in another proceeding, the HRAP may (with the agreement of all parties), combine part or all of your appeal with that other proceeding. For more information, please see *Rules 4.13 - 4.18, Combining Proceedings*, of the [Rules of Procedure](#).

## Accommodations

The Office of the Horse Racing Appeal Panel is committed to treating all people in a way that allows them to maintain their dignity and independence. The HRAP believes in integration and equal opportunity and is committed to meeting the needs of people with disabilities in a timely manner, and will do so by preventing and removing barriers to accessibility and meeting accessibility requirements under the *Accessibility for Ontarians with Disabilities Act, 2005*. If you require accommodation to participate in a proceeding, or if you require any of our materials in an alternative format, please contact the HRAP office. Please also see the Accessibility section on our webpage for information about our accessibility policies and procedures.

## II. HOW TO START AN APPEAL

### **Starting an Appeal – Deadline 15 Days**

If you have received an order, decision, or ruling under the Rules of Racing that you do not agree with and wish to appeal, you must notify the HRAP by serving a copy of the completed [Notice of Appeal](#) upon the Registrar of the Alcohol and Gaming Commission of Ontario (Registrar) and filing it with the HRAP.

You generally have **15 days** from the date of the decision which is being appealed to file a Notice of Appeal form with the HRAP.

Complete the form with all required information, including your contact information, the order, decision, or ruling under the Rules of Racing that you are appealing, as well the reasons you disagree with the order, decision, or ruling. To avoid delays in processing your appeal, please ensure that you provide all information required on the form.

To make sure your appeal is received by the deadline and meets the requirements for service, please follow the requirements in *Rule 5, Service and Filing*, of the [Rules of Procedure](#), also outlined in [Information Sheets: Technical Guidelines](#).

### **Requesting a Stay**

If you want to request that the HRAP temporarily suspend the decision or ruling you are appealing, you can request a “stay” by completing *Section B: Notice of Motion (Requesting a stay of an order, decision or ruling)* of the [Notice of Appeal](#) form.

You can also submit a Notice of Motion using the form available on the HRAP website or by contacting the HRAP. To allow time for the stay to be processed, be sure to submit your request as soon as possible and well before your suspension will start. Be sure to include information

about why you should be granted a stay on the form. If your request for a stay is opposed by the Registrar, the HRAP will notify you, and you may have to provide further information.

The effect of temporarily suspending the decision or ruling is that it allows things to continue as normal until the stay is lifted or until your appeal hearing is held. For example, if the ruling suspends you from racing, a stay allows you to keep racing until the stay is lifted. Please see [Information Sheet: Motions](#) and [Notice to Industry 001 - Requesting a Stay before the HRAP](#) for more information.



## ***Dismissal of an Appeal by the HRAP before a Hearing***

If you file a *Notice of Appeal*, it does not mean that the HRAP will automatically consider the matter.

There are some cases where the HRAP may choose not to hear a matter, such as when:

- the appeal relates to a matter that is outside of the HRAP's jurisdiction,
- legal requirements for bringing the appeal have not been met,
- you have abandoned the appeal, or
- in the opinion of the HRAP, the appeal is frivolous, vexatious or is commenced in bad faith.

Before the HRAP dismisses an appeal (i.e., declines to hear the appeal), you will receive notice explaining the reasons for the intended dismissal, and you, as well as the other parties, will have an opportunity to respond. Parties have at least **10 days** to make written submissions to the HRAP about the intended dismissal. The HRAP will consider any submissions of the parties before making a final decision on the dismissal of an appeal. If there is no response, the appeal will be automatically dismissed. The HRAP will confirm its decision to dismiss an appeal by issuing an order.

## ***Using a Representative***

You can represent yourself, or can choose to have a representative. Representatives must be licensed by the Law Society of Ontario (LSO) (e.g., licensed lawyer or paralegal) or fall within the exceptions or exemptions approved by the LSO.

A representative has a duty to represent you, and their actions on your behalf can bind you. If you

would like to have a representative, have them complete the [Declaration of Representative](#) form and serve it on all other parties and file it with the HRAP immediately.

An industry representative from a horsepersons' association such as Ontario Harness Horse Association, Central Ontario Standardbred Association or Horsemen's Benevolent and Protective Association of Ontario can represent you if they fall within the exemptions allowed in the Law Society of Ontario by-Laws. Alternatively, they can assist you with your appeal.

## ***Using an Assistant***

An assistant can accompany you to your hearing or help you fill out forms, however they cannot act on your behalf or provide you with legal advice. Please see *Rules 4.6 - 4.9, Representation of the [Rules of Procedure](#) and [Information Sheet: Representatives](#)* for more information.

## ***Format of your Hearing: In-person, Written, or Electronic***

Hearings are generally held in-person. However, in some special circumstances, the hearing can be held in writing or electronically (e.g., telephone conference, etc.) if the Chair of the HRAP allows it. Written permission must be sought 30 days before the hearing to have an electronic hearing or to have a witness attend electronically. See Rule 4.3.

- **In-person hearings** are heard at 10 Carlson



Court, 4th Floor- Suite 400, Toronto, ON M9W 6A2.

- **Written hearings** involve all parties providing their written submissions and evidence by certain deadlines.
- **Electronic hearings** involve meeting over devices like a telephone conference or a video call at a pre-arranged telephone number or electronic platform provided by HRAP in advance.

The Chair of the HRAP will determine the format of the hearing after the *Notice of Appeal* is filed. Note that a party can also disagree with the format of the hearing by serving all parties and the HRAP with an objection within **five days** of receiving the Notice of Hearing. The HRAP may change the format of the hearing after considering the submissions of all parties. The Chair of the HRAP will make the final decision about the format of the hearing. See Rules 4.4 – 4.5.

## Interpreters

A French interpreter will be provided by the HRAP upon request. Please notify the HRAP at least 30 days before a hearing or as soon as possible if you require a French interpreter.

If you require an interpreter for any other language, you may arrange for your own interpreter. Your interpreter can be someone you hire (at your own cost) to interpret for you at your hearing. Your interpreter can also be someone you know who is willing to interpret for you at the pre-hearing conference or hearing or someone that is fluent in English and the language which you speak. Interpreters must be independent and competent, and will be required to swear or affirm that they will interpret

accurately and impartially.

## Parties

When you first serve and file your *Notice of Appeal*, you and the Registrar are usually the only parties to the appeal. However, others can become part of your appeal where the law requires and if the HRAP chooses to add other interested parties. For example, if your appeal involves reconsideration about a decision related to the order of a finish in a race, other owners, trainers, drivers or jockeys may wish to be included as parties because they have an interest in the result of the hearing. The HRAP may add parties to the appeal as they consider appropriate in the circumstances. Others can also make requests to the HRAP to be added as parties.

## Withdrawing Your Request for Appeal

If you do not want to continue with your appeal, you must file a written request with the HRAP and serve it on the other parties in the appeal. Please complete the [Notice of Request to Withdraw an Appeal](#) form.

You need to ask for the consent of all parties before you file your request to withdraw your appeal. Your [Notice of Request to Withdraw an Appeal](#) must include the reasons for the request and any supporting documentation. An Order will be issued by the HRAP, acknowledging the withdrawal, making a decision and/or ordering any further actions as may be determined.

If you withdraw your appeal, the penalties of the decision you had under appeal will immediately apply or resume and your file will be closed. You will no longer have a right to a hearing before the HRAP on this particular matter. You can still be subject to costs even if you withdraw your appeal. Please see Rules 3.12 – 3.15, [Information Sheet: Costs](#) for more information.

# III. PRE-HEARING CONFERENCES

## **About Pre-Hearing Conferences**

A party can request that a pre-hearing conference be held, or the HRAP may decide to hold one on its own initiative.

Typically, a pre-hearing conference will occur in cases involving more serious infractions and penalties. However, please note that the Chair of the HRAP will make the final decision on whether to hold a pre-hearing conference.

The purpose of the pre-hearing conference is to consider or resolve certain issues and procedures about the hearing in order to make the hearing quicker or even to settle the issues before the hearing.

These could include such matters as disclosure, expert witnesses, identification of preliminary motions or any other matter that may assist in the just and expedition disposition of a proceeding. Please see Rule 8.3.

Pre-hearing conferences are not recorded and they

are not open to the public. This is meant to encourage dialogue between the parties. Any settlement discussions between the parties at the pre-hearing conference are held confidentially and without prejudice to the parties.

The Panel in a pre-hearing conference may or may not be the same Panel hearing your appeal. This is contingent upon the parties' consent and the Panel's availability.

The date of the pre-hearing conference is scheduled by the HRAP office.

**If you have received a Notice of a Pre-Hearing Conference, please see *Rule 8, Pre-Hearings of the Rules of Procedure and Information Sheet: Pre-Hearing Conferences* for more information.**



# IV. HEARINGS

## **a) About Hearings**

The hearing is your opportunity to tell your side of the story and explain why you think the order, decision, or ruling under the Rules of Racing is not correct and provide your evidence.

Appeal Hearings before the HRAP are conducted “de novo”. This means that the Panel will consider the matter as a new matter and is not bound by the original findings or evidence relied upon. See information sheet: De Novo Hearings.

You and the other parties have the opportunity to present new arguments and evidence that may not have appeared at the initial Judges’ review. You may also have witnesses. The Panel and the other party(ies) may ask you and/or witnesses questions, and then make a decision about the issues.

The hearing is presided over by at least one Panel member, and sometimes depending on the nature of the appeal, as many as three Panel members. For more information about the composition of the Panel, please see *Rule 2.7-2.9 Composition of the Panel*, of the [Rules of Procedure](#).

## **b) Before Your Hearing**

### **Notice of your Hearing**

You will receive a written Notice of Hearing that will include important information about your hearing, including the intended format, the time and place of the hearing and other information or directions from HRAP.

## **Preparing for the Hearing - Evidence and Witnesses**

As you prepare for your hearing, it is useful to gather evidence to prove the basis for your appeal. Evidence can include testimony by witnesses and documents. You should make sure to prepare this information well in advance, since you have to share certain information with other parties before the hearing (see [Required Disclosure](#) below). For important information on how to prepare for and what to expect at the hearing, please see [Information Sheet: Disclosure/Information Exchange](#) and [Information Sheet: What to Expect at Your Hearing](#).

You can also request that certain witnesses attend the hearing by completing a [Summons to a Witness form](#) and filing it with the HRAP for signature. You are responsible for serving it on the witness. The summons must be served personally on the person summoned.

For important information about how to prepare and present evidence at the hearing and ensuring the attendance of witnesses, see *Rule 10, Evidence, Rules 9.1 - 9.4, Summons to Witness* of the [Rules of Procedure](#), and [Information Sheet: Witnesses, Summons, and Evidence](#).



## Required Disclosure

You are required to share certain documents and information with other parties before the hearing.

At least **30 days** before your hearing (or as otherwise ordered by the HRAP), you must disclose and serve on all other parties:

- A **list** of the documents or things that you intend to refer to, rely on, or present as evidence at the hearing; and
- A **list** of witnesses that you may call and a brief description of each witness' anticipated evidence.

Then, at least **15 days** before the hearing (or as otherwise ordered by the HRAP), you must

- Serve the other parties with a copy of all the documents or other things you will rely on or present as evidence at the hearing; and
- Make documents or other things that you will produce or enter as evidence at the hearing available for inspection and copying by any party.

It is important to keep in mind that disclosure is between the parties and you are **not** required to file this documentation with the HRAP in advance. The Panel will not have access to evidence before the hearing. In order to have your evidence considered by the Panel, it has to be presented and filed as an official exhibit at the hearing.



For important information about requirements and timelines to disclose documents and information about witnesses, see *Rule 7, Disclosure* of the [Rules of Procedure](#) and [Information Sheet: Disclosures / Information Exchange](#).

### **Preparing for the Hearing – Submitting a Hearing Brief**

Five days before your hearing, you must file with the HRAP and serve on all parties a hearing brief. The hearing brief should include a brief summary of the relevant facts and basis for the appeal, list of all witnesses, and any authorities, cases and/or the sections of the Rules of Racing which you intend to rely on.

### **Appeal Book**

The HRAP will provide a copy of an Appeal Book to you before the hearing containing the decision(s) being appealed, the Notice of Hearing and any other orders that the HRAP may have issued. Be sure to bring this Appeal Book to the hearing.

### **Expert Witnesses**

You may want to have an Expert Witness provide an expert report or present evidence at the hearing about your case. Expert Witnesses may give opinion evidence while other witnesses may not ordinarily do so. If you intend to call an Expert Witness or refer to an Expert's report, you must serve notice on all other parties within **30 days** of the hearing, unless otherwise ordered by the Panel. Responding parties to the proceedings have to serve their notice of an Expert Witness at least **20 days** before the hearing.

For more information about using Expert Witnesses, please see *Rules 9.5 - 9.7, Expert Witnesses* of the [Rules of Procedure](#), [Notice of Expert Witness & Acknowledgement of Expert's Duty](#) and [Information Sheet: Witnesses, Summons and Evidence](#).

### **Representatives**

If you have a representative, your representative may attend the hearing on your behalf if you have filed a Declaration of Representative with the Panel.

### **Changing your Hearing Date**

If you need more time to file your appeal and you want to reschedule the date of your hearing, you can ask the HRAP to change the date. You can do this by serving on all parties and filing with the HRAP a Motion for an adjournment.

The HRAP may deny your request to reschedule the date in certain cases, such as if:

- the only reason to change the date is because you took too long to retain a representative (without a good reason), or
- the hearing was scheduled as “peremptory” (meaning the date cannot be moved by you).

If the HRAP denies your request for a new hearing date or if you have not received a response to your request, you must attend the hearing on the scheduled date. If the HRAP changes the date of a hearing, they will notify you of the change. Please see [Information Sheet: Motions](#) for more information.

### ***c) At Your Hearing***

**For important information on how to prepare for and what to expect at the hearing, please also see [\*Information Sheet: What to Expect at Your Hearing\*](#).**

#### ***What to Expect at Your Hearing***

If your hearing is in-person, please arrive at least 30 minutes early. There is no dress code for the hearing.

#### ***What to Bring to your Hearing***

You should bring any materials that you received from the other party (or parties), such as the evidence that the other party (or parties) is(/are) bringing forward in the appeal.

**You must bring sufficient copies of any documents or materials that you intend to enter as evidence.**

You must bring copies of evidence for:

- each Panel member at the hearing (1-3);
- the court reporter;
- the witness box; and
- each party (if you did not already serve them with these documents).

#### ***Evidence and Witnesses***

Evidence relates to the facts you will wish the Panel to consider. At your hearing, you will be expected to present and file evidence that proves the basis for your appeal. Evidence is normally testimony by witnesses and documents.

When all evidence is heard, each party to the proceeding will be entitled to make submissions (closing remarks) to the Panel.

For important information about how to present evidence at the hearing and call witnesses, please see *Rule 10, Evidence*, of the [\*Rules of Procedure, Information Sheet: Witnesses, Summons, and Evidence\*](#), and [\*Information Sheet: What to Expect at Your Hearing\*](#).

#### ***Confidentiality and Who Can Attend a Hearing***

Hearings are generally open to the public, unless the Panel directs otherwise. For written hearings, this means that the public must be provided reasonable access to written documents submitted for the hearing upon request. For electronic hearings, this means that the hearing will be held in a manner that is open to the public, except where it is not practical to do so.

You can bring a Motion at any time to make a hearing (or part of a hearing) private. The HRAP may decide to make a hearing private in certain cases. For example,

- I. where a hearing involves sensitive matters and where the benefit of avoiding wide disclosure of the information outweighs the benefit of having the hearing open to the public, and/or
- II. where the matters may involve information that can affect public security.

If the HRAP decides that the hearing (or part of a hearing) is not open to the public, the hearing (or part) can only be attended by certain people that the Panel will determine.

Documents, exhibits, and transcripts relating to a part of the hearing that is not public will not be part of the public record. Access to this material will only be provided by an order of the HRAP or as otherwise required by law.

Please see *Rule 4.19, Public Access to Hearings* of the [Rules of Procedure](#) for more information.

### ***Non-Attendance or Non-Participation at a Scheduled Hearing***

If you have received a Notice of Hearing, you must attend the hearing or have your representative attend on your behalf. If you are not able to attend on that date and need to reschedule, see [Changing your Hearing Date](#) above.

If you do not contact the HRAP in advance, and you or your representative do not attend or stay until the end of the hearing, the HRAP can continue with the hearing without you and you will not have the right to receive further notice in the proceeding. This means that the HRAP and the other parties are no longer required to contact you with updates about the appeal (though they may still do so). The HRAP may find that you have abandoned the hearing and can dismiss the appeal. See Dismissal of an Appeal before a Hearing above for more information.

### ***Hearing Recording and Transcripts***

You can order transcripts of your hearing for a fee. Contact the HRAP office at 416-326-8700 (Toll free in Ontario: 1-800-522-2876) or [info@hrappealpanel.ca](mailto:info@hrappealpanel.ca) if you want to order transcripts.



# V. DECISIONS & AFTER THE HEARING

## ***Decisions and Orders***

When the hearing is over, the Panel will consider all the evidence and submissions. The Panel may provide an oral decision at the end of the hearing or provide its decision at a later date. Whatever the case, a written decision will always be provided. The decision or order takes effect immediately when it is provided, unless the Panel indicates otherwise.

The Panel can make different types of decisions or orders. The appeal can be denied, allowed, or the original decision, order or ruling may be varied.

## ***Written Decisions***

If there are differences between an oral and written decision, the written decision will prevail. The Panel

will also usually include reasons for their decision or order. If no reasons are provided, parties can ask the Panel to issue written reasons for a decision or order.

## ***Requesting Clarification of the Decision or Order***

If you have any questions about the decision or order, you can request clarification by writing to the HRAP and providing written notification to the other parties.

## ***Publication of Decisions***

Published decisions are available free of charge on the HRAP website at [www.hrappealpanel.ca](http://www.hrappealpanel.ca) (under “HRAP Proceedings”) and the [Canadian Legal Information Institute website](#) (CanLII).

