

## **Horse Racing Appeal Panel**

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# **RULES OF PROCEDURE**

## **Horse Racing Appeal Panel**

### **Adjudication of Ontario Horse Racing Appeals**

Effective date: November 2017



# Horse Racing Appeal Panel - Rules of Procedure

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# RULES OF PROCEDURE OF THE HORSE RACING APPEAL PANEL

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## PURPOSE OF THESE RULES

The purpose of these Rules is to provide a fair, open and accessible process for parties and other interested persons to increase the efficiency and time lines of proceedings and to assist the Horse Racing Appeal Panel (HRAP) in fulfilling its statutory mandate.

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## APPLICATION OF RULES

These Rules apply to the proceedings where hearings are held by the HRAP in discharge of its responsibilities under the *Horse Racing Licence Act, 2015*.

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## 1. DEFINITIONS

In these Rules,

**Appeal** means a written request for a hearing to consider a decision made under the Rules of Racing or the HRLA that gives the HRAP authority to hear the appeal and shall be considered a trial de novo.

**Appellant** means a person who has filed an appeal with the HRAP.

**Day** means a calendar day.

**Document** includes information and data recorded or stored by any means.

**Electronic hearing** means a hearing held by conference telephone or some other form of electronic technology allowing persons to hear one another.

**Filing** of any document means the effective delivery to the HRAP in accordance with these Rules and its receipt by the HRAP.

**Hearing** means a hearing before the HRAP in which a party has the opportunity to participate and includes an in-person, written and electronic hearing.

**Holiday** means Saturday, Sunday or other day on which the HRAP is closed for business.

**HRAP** means the Horse Racing Appeal Panel.

**HRLA** means the *Horse Racing Licence Act, 2015*.

**Motion** means a request for an order or decision from the HRAP on a particular issue at any stage within a proceeding or intended proceeding.

**Party** means a person, association or corporation, who has the right to participate in a proceeding.

**Pre-Hearing** means a meeting of the parties before the hearing to consider or resolve issues and procedures about the hearing.

**Proceeding** means the entire HRAP process from the filing of a Notice of Appeal to when the matter is finally resolved or decided.

**Registrar** means the Registrar of Alcohol, Gaming and Racing.

**Representative** means a person who acts for a party in a proceeding.

**Rules** mean the HRAP's Rules of Procedure made under authority of the *Statutory Powers Procedures Act* and the HRLA.

**Rules of Racing** mean the *Standardbred Rules of Racing*, the *Thoroughbred Rules of Racing* and/or the *Quarter Horse Rules of Racing* as applicable.

**Service** of any documents means the effective delivery to the person or representative.

**Summons** means an order issued by the HRAP requiring a person to attend a hearing to give evidence and bring documents or things to the hearing.

## **2. GENERAL**

### Application of Rules

- 2.1 The HRAP's Rules will be interpreted to:
- a) promote the fair and efficient resolution of disputes;
  - b) allow parties to participate effectively in the process, whether they have a representative or are self-represented; and
  - c) ensure that procedure, orders and directions are proportional to the importance and complexity of the issues.

### Conflicts

- 2.2 Where any of these Rules is in conflict with any statute or regulation, the provisions of the statute or regulation shall prevail.

### HRAP's Powers

- 2.3 The HRAP may exercise its powers on its own initiative or at the request of a party.
- 2.4 The HRAP may vary or decide not to apply a Rule on its own initiative or at the request of a party, unless otherwise prescribed.
- 2.5 The HRAP may waive or vary any of these Rules at any time.
- 2.6 The HRAP may issue Practice Directions to provide further information about the HRAP's practices or procedures.

### Composition of the Panel

- 2.7 The composition of the panel shall be determined by the Chair of the HRAP in accordance with Rules 2.8 and 2.9.
- 2.8 One member of the panel constitutes quorum for the purposes of a hearing.
- 2.9 In the following circumstances a minimum of three HRAP members shall constitute a panel of the HRAP:
- i. the decision under appeal imposes a monetary penalty greater than \$2000;
  - ii. the decision under appeal imposes a suspension of 15 days or more;
  - iii. the race has a purse of \$200,000 or greater, or is a leg or elimination race in a series with a final purse of \$200,000 or greater; or
  - iv. the decision under appeal involves any of the following: a certificate of positive analysis; medication control; or an equine biological sample.

## Appeals

2.10 Unless prescribed in the Rules of Racing, an appeal shall be requested within 15 days from the date of the decision which is being appealed.

### Notice of Appeal

2.11 A party wishing to commence an appeal with the HRAP shall file a Notice of Appeal, using the form prescribed by the HRAP, containing the following:

- 1) A copy of the decision being appealed;
- 2) A statement of the grounds of appeal; and
- 3) Any other information prescribed by the HRAP.

2.12 The HRAP may decide not to process an appeal unless:

- a) the required documents are complete;
- b) any fee required for processing an appeal is paid; and
- c) documents required in accordance with these Rules are received before the expiry of the applicable time period.

2.13 The HRAP will notify the party who filed an appeal if any of the above requirements are not met, and give the party a reasonable opportunity to comply with the requirements.

2.14 The HRAP may dismiss an appeal without a hearing if it finds:

- a) it is frivolous, vexatious or is commenced in bad faith;
- b) it relates to matters that are outside the HRAP's jurisdiction;
- c) any of the statutory requirements for bringing the appeal have not been met;  
or
- d) the party filing the appeal has abandoned the proceeding.

2.15 Before dismissing an appeal under this Rule, the HRAP will give the parties notice of its intention to dismiss.

2.16 The notice of intention to dismiss an appeal under this Rule will set out the reasons for the intended dismissal and inform the parties of their right to make written submissions to the HRAP within the time specified in the notice, which shall be at least 10 days.

2.17 The HRAP may find that a party has abandoned the proceeding and, subject to Rule 2.15 and 2.16, dismiss the matter and order costs as provided by Rule 17.

### Non-Attendance or Non-Participation

- 2.18 Where Notice of a Pre-Hearing or Hearing has been given to any person and that person fails to attend or leaves before the end of the pre-hearing or hearing, that person is not entitled to any further notice in the proceeding.
- 2.19 Where Notice of a Hearing has been given to any party in accordance with these Rules and any applicable legislation, and the party does not attend at the hearing, either in person, in writing, or electronically as applicable, the HRAP may find that the hearing has been abandoned or proceed in their absence and that party is not entitled to any further notice in the proceeding.

### Appeal Withdrawals

- 2.20 If a party wishes to withdraw its request for an appeal, it must file a Request to Withdraw an Appeal in the form prescribed by the HRAP and seek the consent of all parties prior to filing the request.
- 2.21 The Request to Withdraw an Appeal must include the following:
- a) the reasons for the request including supporting documentation if any;
  - b) confirmation that the consent of all parties was sought; and
  - c) consent of all the parties, if obtained.
- 2.22 If the consent of all parties is not obtained, the HRAP shall consider the submissions of the parties in determining whether the request to withdraw should be granted.
- 2.23 The HRAP may order costs as provided in Rule 17 in relation to the withdrawal as it deems appropriate.

### **3. PROCEEDINGS**

#### Communications with the HRAP

- 3.1 All written communications with the HRAP must be copied to the other parties, except for requests for summonses or general inquiries or correspondence with the HRAP.

#### Format

- 3.2 The hearing of the appeal may be conducted in person, in writing, or electronically at the discretion of the Chair of the HRAP.

#### Representation

- 3.3 A party may be self-represented, represented by a person licensed by the Law Society of Upper Canada or by a person authorized to provide legal services in accordance with the *Law Society Act* and its regulations and by-laws.
- 3.4 The HRAP may require that a representative complete a Declaration of Representative, using the form prescribed by the HRAP, serve it upon the other parties, and file it with the HRAP.
- 3.5 A representative who ceases to represent a party in a proceeding before the HRAP must notify the HRAP and all parties of the change in status, in writing, as soon as possible and provide current contact information for the party.
- 3.6 For clarity, nothing in these Rules precludes a person from assisting a party in any aspect of the proceedings before the HRAP.

#### Parties and Other Participants

- 3.7 The following persons are parties for the purpose of these Rules:
- a) persons specified as parties by the statute under which the proceeding arises;
  - b) persons otherwise entitled by law to be parties to the proceeding; and
  - c) persons who, in the opinion of the HRAP, should be added as parties.
- 3.8 The HRAP may add a party for all or part of the proceeding subject to the consideration of any related objections raised by any of the parties, and may make any other order as seems just to minimize prejudice or delay to other parties or persons.

### Summons to Witness

- 3.9 A party to a proceeding may request a summons to a witness from the HRAP upon disclosing the name and address of the witness to be summoned.
- 3.10 A person requesting a summons must file a Summons to a Witness request with the HRAP, using the form prescribed by the HRAP. The request shall provide a brief explanation of the evidence the witness is expected to give at the hearing.
- 3.11 Service of a summons on a witness is the responsibility of the party who obtained the summons. The summons must be served personally on the person summoned.
- 3.12 The party who obtained the summons shall pay the witness' fees and allowances in accordance with Tariff A under the *Rules of Civil Procedure*.

### Public Access to Hearings

- 3.13 Hearings shall be open to the public except where the HRAP is of the opinion that:
- a) matters involving public security may be disclosed; or
  - b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof 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;
- In which case, the HRAP may hold the hearing in the absence of the public.
- 3.14 The HRAP may impose such conditions as the HRAP considers appropriate for the conduct of a hearing held in the absence of the public.
- 3.15 Where a hearing or part of a hearing is held in the absence of the public, unless otherwise ordered by the HRAP, the hearing may be attended by:
- a) the person who is to present the confidential information;
  - b) HRAP staff;
  - c) the parties to a hearing;
  - d) the parties' representatives;
  - e) advisors, to assist representatives, at the discretion of the HRAP; and
  - f) such other persons as the HRAP considers appropriate.
- 3.16 Exhibits, documents and transcripts relating to that part of the hearing that is held in the absence of the public shall be marked "confidential" and shall be kept

separate from the public records and access to this material shall only be by order of the HRAP or as authorized by law.

- 3.17 Where a hearing or part of a hearing is held in the absence of the public or access to documents is restricted, the HRAP may issue a public version of its decision or order.
- 3.18 Agreements approved by the HRAP and decisions or orders which dispose of proceedings and affect any party shall be accessible to the public unless the HRAP directs otherwise.

#### Recording of HRAP Proceedings

- 3.19 No person shall make a visual or audio recording of any part of the HRAP proceeding unless authorized by the HRAP.

#### Interpreters

- 3.20 If a party or witness requires an interpreter in a language other than English, the party shall notify the HRAP and if the language is other than French shall provide an interpreter at their own expense.
- 3.21 An interpreter shall be competent and independent and shall swear or affirm that the interpreter will interpret accurately and impartially.

#### Special Needs

- 3.22 Parties should notify the HRAP as early as possible of any special needs of parties or their witnesses under the *Accessibility for Ontarians with Disabilities Act* or the Ontario Human Rights Code.

## **4. SERVICE AND FILING**

### Service of Documents

- 4.1 For the purpose of Rule 4, “person” means anyone required to be served under these Rules.
- 4.2 Service may be given by delivering the documents:
- a) by personal delivery;
  - b) by regular, registered or certified mail to the last known address of the person;
  - c) by fax to the last known fax number of the person but only if the document inclusive of the cover sheet, does not exceed 10 pages, or where longer, if the receiving party consents;
  - d) by courier, including Priority Post, to the last known address of the person;
  - e) electronic delivery, on consent of the receiving party; or
  - f) by any other means authorized or permitted by the HRAP.
- 4.3 If it is impractical to give service in accordance with Rule 4.2 the HRAP may give such directions for substituted service as it considers appropriate or, where necessary, may dispense with service.
- 4.4 Service is deemed to be effective, when delivered:
- a) by personal delivery before 5:00 p.m., on the day of delivery, and after that time, the next day;
  - b) by mail, on the fifth day after the day of mailing;
  - c) by fax, on the day after it was sent;
  - d) by courier, on the second day after the document was given to the courier;
  - e) by electronic delivery, on the date sent if delivered before 5:00 p.m. and if after that time, the next day; or
  - f) by any means authorized or permitted by the HRAP on the date specified by the HRAP in its direction.
- 4.5 The HRAP may direct that a sworn statement be filed indicating who has been served, what documents have been served, when they were served and by what method.

### Filing Documents with the HRAP

- 4.6 Prior to filing a document with HRAP it must be served on all parties. Documents may be filed by any of the methods of delivery set out in Rule 4.2.

- 4.7 Documents are deemed to be filed as of the date they are received by the HRAP or the date specified in Rule 4.4, whichever is later.
- 4.8 A person who serves or files a document shall include with it a statement of the person's address, telephone number and the name of the proceeding to which the document relates.
- 4.9 One (1) copy of a document must be filed with HRAP.

## **5. TIME**

- 5.1 Subject to Rule 4, in computing time periods under these Rules,
- a) where there is a reference to a number of days between two events, the days are counted by excluding the first day and including the last day;
  - b) where a period of less than seven days is prescribed, holidays shall not be counted;
  - c) where the time for doing an act under these Rules ends on a holiday, the act may be done on the next day that is not a holiday; and
  - d) where, under these Rules, a document would be deemed to be received or service would be deemed to be effective on a day that is a holiday, it shall be deemed to be received or effective on the next day which is not a holiday.
- 5.2 The HRAP may order on its own initiative the extension or abridgment of any time period set out in these Rules.

## **6. MOTIONS**

- 6.1 A party may bring a motion by filing a Notice of Motion with the HRAP, along with all supporting materials, and serving them on all parties at least 5 days before the motion is to be considered.
- 6.2 A Notice of Motion shall set out:
- a) the decision or order requested;
  - b) the grounds to be argued, including reference to any statutory provision, rule or case law relied on; and
  - c) the evidence in support of the motion.

- 6.3 A party or person who wishes to respond to a motion shall serve and file a response at least 2 days before the motion is to be considered, accompanied by any materials to be relied upon. The response shall set out the same information as required in Rule 6.2.

## **7. DISCLOSURE**

### Power to Order Disclosure

- 7.1 At any time, the HRAP may order any party or person to provide to any other party or person and to the HRAP such further particulars, information, documents or things as the HRAP considers necessary for a full and satisfactory understanding of the issues in the proceeding.
- 7.2 A party to a hearing shall disclose to all other parties at least 30 days before the hearing or as otherwise ordered by the HRAP:
- a) the existence of every document and thing that it will refer to, rely on or present in evidence at the hearing; and
  - b) a list of witnesses that the party may call and a brief description of the witness' anticipated evidence.
- 7.3 Each party to a hearing shall at least 15 days before the hearing or as otherwise ordered by HRAP:
- a) serve each of the other parties with copies of all documents or things that the party will refer to, rely on or present as evidence at the hearing; and
  - b) make available for inspection and copying by any other party all documents or things that the party will produce or enter as evidence at the hearing.
- 7.4 A party may seek an order from the HRAP at any stage of the proceeding to:
- a) order a party to comply with the disclosure provisions of these Rules; or
  - b) order a party to make available for inspection or testing, anything, that the party will produce or enter in evidence at the hearing.
- 7.5 In making an order under Rule 7.4, the HRAP may impose any conditions it considers appropriate.
- 7.6 If a party fails to comply with the provisions of Rule 7 the party may not refer to the document or thing or enter the document or thing in evidence at the hearing without

the consent of the HRAP, which may be on such conditions as the HRAP considers appropriate.

### Character, Conduct or Competence Issue

7.7 Where a person wishes to question the good character, conduct or competence of a party in a proceeding, the person shall provide the party with reasonable information about those allegations in writing with a copy to be filed with the HRAP at least 15 days prior to the hearing.

### Expert Witnesses

7.8 A party who intends to rely on or refer to the evidence of an expert witness shall provide every other party with the following information in writing:

- a) the name of the expert witness;
- b) a signed statement from the expert, as prescribed by the HRAP, acknowledging his or her duty to:
  - i. provide opinion evidence that is fair, objective, and non-partisan;
  - ii. provide opinion evidence that is related to matters within his/her area of expertise; and
  - iii. provide such additional assistance as the HRAP may reasonably require to determine a matter in issue.
- c) the qualifications of that expert witness, referring specifically to the education, training and experience relied upon to qualify the expert;
- d) a written report signed by the expert that sets out the expert's conclusions and the basis for those conclusions on the issues to which the expert will provide evidence to the HRAP; and
- e) where the expert report exceeds 12 pages, excluding photographs, a summary stating the facts and issues that are admitted and those that are in dispute, and the expert's findings and conclusions.

7.9 The disclosure required under Rule 7.8 shall be made:

- a) by the party who filed the Notice of Appeal, at least 30 days before the hearing;
- b) by any other party at least 20 days before the hearing; or
- c) as ordered by the HRAP.

7.10 A party intending to challenge an expert's qualifications, report or witness statement shall give notice, with reasons for the challenge, to the other parties as soon as possible and no later than 15 days before the hearing and must file a copy with the HRAP.

## **8. NOTICES OF HEARING**

### Notice of Hearing

- 8.1 Unless otherwise ordered, a Notice of Hearing shall be given by the HRAP to the parties and other persons as required by statute and to such other persons as the HRAP considers necessary.
- 8.2 All Notices of Hearing shall include:
- a) a reference to the statutory authority under which the hearing is to be held;
  - b) a statement of the purpose of the hearing;
  - c) the intended format of the hearing;
  - d) the time and place the hearing will be held;
  - e) a statement that the party may have a representative at the hearing; and
  - f) a statement that the hearing will be open to the public unless the HRAP directs otherwise.
- 8.3 The HRAP may include in a Notice of Hearing any other information or directions it considers necessary for the proper conduct of the hearing.
- 8.4 The Notice of Appeal, the decision(s) being appealed, the Notice of Hearing and any other orders that the HRAP may have issued or other documents relevant to the appeal shall form the Appeal Book for the appeal and the HRAP will provide a copy of the Appeal Book to each party in advance of the hearing.

### Objections to Format of the Hearing

- 8.5 A party may serve on all parties and file with the HRAP an objection to the format of the hearing within 5 days after receiving the Notice of Hearing.
- 8.6 After consideration of the written submissions of all parties, the HRAP may vary or maintain the format of the hearing and give directions it considers necessary for the proper conduct of the hearing.

## **9. PRE-HEARING CONFERENCE**

### Direction to Attend

- 9.1 Where the Chair of the HRAP considers it appropriate, the HRAP will schedule a pre-hearing conference and provide notice to all parties.
- 9.2 A pre-hearing conference may be requested by any party at any time prior to the final resolution of a matter, by written request to the HRAP. The request shall be granted at the discretion of the Chair.
- 9.3 The purpose of the pre-hearing conference is to consider any matter including;
- a) identification of parties and other interested persons and the scope of their participation at the hearing;
  - b) issues relating to disclosure and the exchange of information;
  - c) identification and simplification of issues;
  - d) identification of preliminary motions;
  - e) procedural issues including the dates by which any steps in the proceeding are to be taken or started, the estimated duration of the hearing and the date that the hearing will start;
  - f) identification of facts or evidence that may be agreed upon;
  - g) settlement of any or all of the issues; and
  - h) any other matter that may assist in the just and most expeditious disposition of the proceeding.

### Notice of Pre-Hearing Conference

- 9.4 Unless otherwise ordered, written notice of a pre-hearing conference shall be given by the HRAP to the parties and to such other persons as the HRAP considers necessary.
- 9.5 The notice shall include:
- a) the format, time, place and purpose of the pre-hearing conference;
  - b) whether parties (or other persons) are required to attend in person, and,
    - i. if so, that they may have a representative at the pre-hearing conference, or
    - ii. if not, that their representative must be given authority to make agreements and give undertakings on their behalf respecting the matters to be addressed at the pre-hearing conference.

### Preparation for Pre-Hearing Conference

- 9.6 The HRAP may direct the parties to exchange and file documents or submissions prior to the pre-hearing conference.

### Format of Pre-Hearing Conference

- 9.7 A pre-hearing conference may be held in person, in writing or electronically.

### Access to the Public

- 9.8 A pre-hearing conference shall not be open to the public.
- 9.9 The HRAP member presiding over the pre-hearing conference shall not preside at the hearing.
- 9.10 Settlement discussions at a pre-hearing conference shall be held confidentially and without prejudice to any party.
- 9.11 Evidence filed or statements made for the purpose of settlement, and statements made “without prejudice”, shall not be revealed at the hearing by any party and shall not be communicated to the member presiding at the hearing.

### Orders, Agreements and Undertakings

- 9.12 Orders, agreements and undertakings made at a pre-hearing conference shall be recorded in a memorandum prepared by or under the direction of the member presiding at the pre-hearing conference.
- 9.13 Copies of this memorandum shall be provided to the parties and to the member presiding at the hearing and to such other persons as the member presiding at the pre-hearing conference directs.
- 9.14 The orders, agreements and undertakings in the memorandum shall govern the conduct of the proceeding and are binding upon the parties to the proceeding unless otherwise ordered by the HRAP.
- 9.15 An agreement to settle any or all of the grounds for relief binds the parties to the agreement unless otherwise ordered by the HRAP.

## **10. EVIDENCE**

### Form of Evidence

10.1 The HRAP may direct the form in which evidence shall be filed.

### Hearsay Evidence

10.2 At a hearing, the HRAP may admit any evidence, including hearsay, relevant to the subject-matter of the proceeding.

### Agreed Facts

10.3 The HRAP may receive and act on any facts agreed on by the parties without proof or evidence.

### Expert Assistance Sought by the HRAP

10.4 The HRAP may request a person having professional, technical or other knowledge to assist the HRAP in any capacity in respect of any matters before it.

10.5 Where the HRAP receives such assistance, it will not rely upon any evidence or upon any new issue raised without notifying the parties and providing them with an opportunity to make submissions.

## **11. COMBINING PROCEEDINGS**

11.1 If two or more proceedings before the HRAP involve the same or similar questions of fact or law, the HRAP may, at the request of the parties or on its own initiative, combine the proceedings or any part of them or hear the proceedings at the same time, with the consent of the parties.

11.2 Where the HRAP combines or hears together two or more proceedings it may do so subject to conditions it considers appropriate.

11.3 Where two or more proceedings are combined:

- 1) statutory procedural requirements for any one of the original separate proceedings apply to the combined proceedings;
- 2) the parties to each of the original separate proceedings are parties to the combined proceeding; and
- 3) evidence presented in each proceeding is evidence in the combined proceeding.

- 11.4 Where two or more proceedings are heard together:
- 1) statutory requirements for each of the proceedings apply only to the part of the hearing respecting that proceeding and not to the part of the hearing respecting the other proceedings;
  - 2) parties to the hearing are parties to their individual proceedings only and are not parties to the other proceedings; and
  - 3) unless otherwise ordered by the HRAP, evidence in the hearing is evidence in all the proceedings.
- 11.5 Where two or more proceedings, or any part of them, have been combined, if combining the proceedings unduly complicates or delays the proceedings or causes prejudice to a party, the HRAP may order that the proceedings are no longer combined and continue with the proceedings separately.
- 11.6 Where two or more proceedings are heard together, if hearing the proceedings together unduly complicates or delays the proceedings or causes prejudice to a party, the HRAP may require separate hearings for all or any part of the proceedings.

## **12. ADJOURNMENTS**

- 12.1 A hearing may be adjourned by the HRAP of its own motion or at the request of a party.
- 12.2 A request for an adjournment of a hearing must be in writing, in a form prescribed by the HRAP, and be served on the other parties.
- 12.3 Except in extraordinary circumstances, the HRAP will refuse an adjournment where:
- a) the hearing date was scheduled as “peremptory” against the party requesting the adjournment; or
  - b) where the only ground for the adjournment is that the party unreasonably delayed retaining a representative.
- 12.4 In granting an adjournment, the HRAP may impose such conditions as it considers appropriate.

## **13. HEARINGS**

### Hearing Brief

13.1 Each party shall serve on all other parties and file with the HRAP a hearing brief, not less than 5 days prior to a hearing, which shall include:

- a) a brief summary of the relevant facts and basis for the appeal, or response to the appeal as appropriate;
- b) a list of all witnesses; and
- c) any authorities, cases and Rules or Rules of Racing upon which they intend to rely.

### Filing Documents at a Hearing

13.2 Any person submitting a document as evidence in a hearing:

- a) shall file the original, or a copy, for the HRAP record, which shall be marked as the official exhibit; and
- b) should provide one copy for:
  - a. each panel member at the hearing;
  - b. the court reporter;
  - c. each witness through whom the document is being introduced if any; and
  - d. each party if not already served in accordance with Rule 7.3.

### Oath or Affirmation

13.3 Oral examination of witnesses shall be conducted under oath or affirmation that the evidence of the witnesses will be true.

### Exclusion of Witnesses

13.4 The HRAP may order that witnesses be excluded from the hearing until called to give evidence.

13.5 An order under Rule 13.4 may not be made in respect of a party to the proceeding or a witness whose presence is essential to instruct counsel for the party calling the witness, but the HRAP may require any such party or witness to give evidence before any other witnesses are called to give evidence on behalf of that party.

13.6 Where an order is made excluding witnesses from the hearing, there shall be no communication to the witness of any evidence given during their absence from the hearing, until after the witness has been called and has given the evidence.

## Argument and Submissions

- 13.7 After the parties have had an opportunity to present evidence, the HRAP shall give all parties an opportunity to make a final argument in support of the decision or order they want the HRAP to make.
- 13.8 Parties should include in their argument the specific order requested.

## **14. DECISIONS AND ORDERS**

### Oral and Written Decisions or Orders

- 14.1 The HRAP may reserve its decision or order or may indicate its decision orally at the end of the hearing.
- 14.2 Despite Rule 14.1, the HRAP shall issue a written final decision or order, which shall be the official decision or order of the HRAP.
- 14.3 A decision or order of the HRAP takes effect immediately unless the decision or order provides otherwise.
- 14.4 If there is a discrepancy between an oral and written decision or order, the written one shall prevail.
- 14.5 If a decision or order requires clarification, a party may apply to the HRAP for direction on notice to the other parties.
- 14.6 If requested by any party, the HRAP shall issue written reasons for its decision or order.
- 14.7 The HRAP may issue its written reasons for decision at a different time and in a separate document from its decision or order.

## **15. REVIEW OF A DECISION**

- 15.1 The HRAP may at any time correct a typographical error, an error of calculation or similar error in its decision or order.
- 15.2 The HRAP may at any time clarify a decision or order that contains a misstatement or ambiguity, which is not substantive and does not change the decision or order.

## **16. STAYS**

- 16.1 Any party affected by a decision or order for which a Notice of Appeal has been filed may bring a motion to the HRAP for an order staying the decision or order.
- 16.2 After hearing the submissions of all parties, the HRAP may grant a stay if the following criteria are met:
- a) there are reasonable grounds for the appeal;
  - b) there would be irreparable harm to the applicant if the stay were not granted;  
and
  - c) the balance of convenience favours the granting of the stay.
- 16.3 The HRAP may place conditions on a stay as the panel deems appropriate in the circumstances or as agreed by the parties.
- 16.4 A motion for a stay will be held in person, in writing, or electronically at the discretion of the HRAP.

## **17. COSTS**

- 17.1 Where a party believes that another party in the proceeding has acted unreasonably, frivolously, vexatiously or in bad faith, that party may make a request to the HRAP for costs, which shall be made with notice to the other parties.
- 17.2 A request for costs may be made orally at a motion, pre-hearing or hearing, or in a written submission to the HRAP at any time before the decision or order is released.
- 17.3 The HRAP will not award costs, whether requested by a party or on its own initiative, without giving the parties an opportunity to make submissions.
- 17.4 A representative's conduct on behalf of a party may be deemed to be the conduct of a party for the purposes of this Rule.
- 17.5 The amount of costs shall not exceed \$1500 for each full day of preparation and/or attendance at a motion, pre-hearing or hearing.