

**LAW SOCIETY TRIBUNAL  
APPEAL DIVISION**

**RULES OF PRACTICE AND PROCEDURE**

Effective: January 1, 2017.

# LAW SOCIETY TRIBUNAL – APPEAL DIVISION

## RULES OF PRACTICE AND PROCEDURE

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# RULE 1 APPLICATION AND INTERPRETATION

## Application

**1.1** These Rules, apply to proceedings before the Appeal Division that are commenced on or after July 1, 2012.

## Application of Hearing Division Rules

**1.2** (1) Except where otherwise provided by these Rules, the Hearing Division Rules, where appropriate and with necessary modifications, apply to proceedings before the Appeal Division.

(2) The following Hearing Division Rules do not apply to proceedings before the Appeal Division:

1. Rule 6 [Adding Parties].
2. Rule 7 [Joinder or Severance of Proceedings].
3. Rule 11 [Scheduling].
4. Rule 12 [Proceedings Management].
5. Rule 16.04 [Motion under Rule 21: no notice required].
6. Rule 19 [Disclosure].
7. Rule 20 [Admissions].
8. Rule 21 [Suspension or Restriction Order].
9. Rule 22 [Pre-Hearing Conferences].
10. Rule 23.01 [Consent to hearing by one panelist].
11. Rule 29 [Retired Judge Appearing As Counsel Proceedings and Working with or Employing Unauthorized Persons Proceedings].

## Interpretation

**1.3** In these Rules,

“appeal” includes, where appropriate, a cross-appeal;

“appellant” means a person who commences an appeal, including, where appropriate, a person who commences a cross-appeal;

“Hearing Division Rules” means the rules of practice and procedure applicable to proceedings before the Hearing Division that are commenced on or after July 1, 2009;

“panelist” means a member of the Appeal Division;

“respondent” includes, where appropriate, a respondent by cross-appeal;

“Vice-Chair” means the Vice-Chair of the Appeal Division.

# **RULE 2 APPEALS FROM INTERLOCUTORY ORDERS**

## **Appeals from interlocutory orders**

**2.1** (1) Subject to this rule, there is no appeal from an interlocutory order of the Hearing Division.

## **Interlocutory suspension or restriction order**

(2) A party to a motion for an interlocutory order of the Hearing Division suspending a licensee's licence or restricting the manner in which a licensee may practise law or provide legal services may appeal the Hearing Division's disposition of the motion to the Appeal Division.

## **Grounds**

(3) An appeal under subrule (2) may be made on any grounds.

## **Contravention of rule 2.1**

## **Appeal Division may quash appeal**

**2.2** On a motion by the respondent, the Appeal Division may quash an appeal that does not comply with rule 2.1



## **RULE 3 COMMENCEMENT OF APPEAL**

### **Commencement of appeal**

- 3.1** (1) An appeal shall be commenced by,
- (a) serving a Notice of Appeal (Form 3A or 3B), together with an Information Sheet, (Form 3C or 3D),
    - (i) in the case of an appeal by the person who is the subject of a decision, an order or a disposition that may be appealed, on the Society, and
    - (ii) in the case of an appeal by the Society, on the subject of the decision, order or disposition that the Society is appealing; and
  - (b) filing the Notice of Appeal with the Tribunal, with proof of service, within 30 days after notice of the order is deemed to have been received by the appellant;
- (2) The Law Society must file a Notice of Appeal and Information Sheet electronically.

### **Method of service**

- (3) The Notice of Appeal shall be served in the same way as an originating process.

### **Extension of time for commencing appeal**

- 3.2** (1) The Notice of Appeal may be served on the respondent and filed with the Tribunal, with proof of service, after the 30-day period described above with the written consent of the respondent.

### **Filing of consent**

- (2) The appellant shall file with the Tribunal the respondent's consent, together with the Notice of Appeal, Information Sheet and proof of service of the notice of appeal.

### **Amendment of notice of appeal**

- 3.3** The Notice of Appeal may be amended without leave before the appeal is perfected by serving a Supplementary Notice of Appeal (Form 3E) on the respondent and filing it with the Tribunal, with proof of service.

## **RULE 4 TRANSCRIPTS**

### **Certificate of reporting service to accompany notice of appeal**

**4.1** (1) An appellant shall, at the time the notice of appeal is filed, file with the Tribunal a certificate of the reporting service, that recorded the proceeding of the Hearing Division resulting in the decision, order or disposition being appealed, stating that copies of the transcript as required by these Rules have been ordered.

### **Where certificate unavailable**

(2) Where the appellant cannot through the exercise of reasonable diligence file a certificate of the reporting service as required by subrule (1), the appellant shall,

- (a) at the time the notice of appeal is filed, file with the Tribunal proof that the copies of the transcript as required by these Rules have been ordered; and
- (b) within fifteen days after the time the notice of appeal is filed, file the certificate of the reporting service.

### **Relief from compliance**

(3) If it is in the interest of justice, a panelist may give special directions and vary the rules governing transcripts.

## **RULE 5 CROSS-APPEALS**

### **Commencement of cross-appeal**

**5.1** (1) If an appeal from a decision, an order or a disposition has already been commenced, the respondent may commence a cross-appeal if the respondent is otherwise entitled under the Act or these Rules to commence an appeal.

### **Same**

- (2) A cross-appeal shall be commenced by,
  - (a) serving a notice of cross-appeal (Form 5A), within the time prescribed by subrule (3), on the appellant in the appeal; and
  - (b) filing the notice of cross-appeal with the Tribunal, with proof of service, within the time prescribed by subrule (3).

### **Time for commencement of cross-appeal**

(3) The notice of cross-appeal shall be served on the appellant in the appeal and filed with the Tribunal, with proof of service, within fifteen days after the respondent has been served with the appellant's notice of appeal.

### **Method of service**

(4) The notice of cross-appeal shall be served in accordance with these Rules as if it were an originating process.

### **Extension of time for commencing cross-appeal**

**5.2** (1) The notice of cross-appeal may be served on the appellant in the appeal and filed with the Tribunal, with proof of service, after the time prescribed by subrule 5.1 (3) with the written consent of the appellant in the appeal.

### **Filing of consent**

(2) Where the appellant in the appeal has consented in accordance with subrule (1) to service and filing of the notice of cross-appeal after the time prescribed by subrule 5.1 (3), the respondent shall file with the Tribunal the appellant's consent, together with the notice of cross-appeal and proof of service of the notice of cross-appeal.

### **Amendment of notice of cross-appeal**

**5.3** The notice of cross-appeal may be amended without leave before the appeal is perfected by serving a supplementary notice of cross-appeal (Form 5B) on the appellant in the appeal and filing it with the Tribunal, with proof of service.

# RULE 6 APPELLANT'S MATERIALS

## Appeal book

**6.1** (1) Subject to subrule (2), the appellant's appeal book shall be titled "Appellant's Appeal Book" and shall contain, in consecutively numbered pages with numbered tabs arranged in the following order,

- (a) a table of contents, listing each document contained in the appeal book and describing each document by its nature and date;
- (b) a copy of the notice of appeal and of any supplementary notice of appeal;
- (c) a copy of the formal decision and order, containing the decision or order appealed from, or a copy of the formal order, containing the order or disposition appealed from;
- (d) a copy of the reasons of the Hearing Division for the decision, order or disposition appealed from;
- (e) a copy of the notice of application or of any other document that initiated the proceeding before the Hearing Division;
- (f) a copy of any exhibits that are referred to in the appellant's factum;
- (g) a copy of any other documents relevant to the hearing of the appeal that were filed with the Tribunal that are referred to in the appellant's factum;
- (h) a copy of any directions given by a panelist at an appeal management conference in respect of the conduct of the appeal;
- (i) a copy of any order of the Appeal Division made in respect of the conduct of the appeal; and
- (j) where any of the materials mentioned in this subrule are subject to a non-publication order made by the Hearing Division, a copy of the non-publication order.

## Appeal book: two volumes

(2) Where the appellant's appeal book, if prepared in compliance with subrule (1), will include a document that is not available for public inspection under subrule 27.01 (4) of the Hearing Division Rules, the appellant's appeal book shall be divided into two volumes titled "Appellant's Appeal Book: Public Volume" and "Appellant's Appeal Book: Non-Public Volume", with "Appellant's Appeal Book: Public Volume" prepared in compliance with subrule (1) but excluding the documents that are not available for public

inspection and “Appellant’s Appeal Book: Non-Public Volume” prepared in compliance with subrule (1) but containing only the documents that are excluded from “Appellant’s Appeal Book: Public Volume” and, at the end, a copy of the order of the Hearing Division resulting in documents contained in the appeal book being unavailable for public inspection.

### **Form of appeal book: binding**

(3) The appellant’s appeal book shall be bound front and back in blue cover stock.

### **Factum**

#### **Content**

- 6.2** (1) The appellant’s factum shall be titled “Appellant’s Factum” and shall consist of,
- (a) Part I, titled “Statement of the Case”, containing a statement identifying the appellant, the nature of the proceeding before the Hearing Division, the disposition of the proceeding by the Hearing Division and whether the appeal is from a decision, a decision and order, an order or another disposition of the Hearing Division;
  - (b) Part II, titled “Overview of the Case”, containing a concise overview statement describing the nature of the case and of the issues;
  - (c) Part III, titled “Summary of the Facts”, containing a concise summary of the facts relevant to the issues on the appeal, with such reference to the transcript of the proceeding before the Hearing Division and the exhibits as is necessary;
  - (d) Part IV, titled “Issues and the Law”, containing a statement of each issue raised, immediately followed by a concise argument with reference to the law and authorities relating to that issue;
  - (e) Part V, titled “Order Requested”, containing a statement of the order that the Appeal Division will be asked to make;
  - (f) Schedule A, titled “Authorities to be Cited”, containing a list of the authorities referred to, with citations, in the order in which they appear in Part IV or in alphabetical order; and
  - (g) Schedule B, titled “Relevant Legislative Provisions”, containing the text of all relevant provisions of statutes, regulations, by-laws, rules of practice and procedure and rules of conduct.

## **References to transcript**

(2) References to the transcript of the proceeding before the Hearing Division shall be by date, page number and line and references to exhibits shall be by tab and page number in the appeal book.

## **Arrangement of Parts I to V**

(3) Parts I to V shall be arranged in paragraphs numbered consecutively throughout the factum.

## **Length of factum**

(4) The appellant's factum, excluding the schedules, shall not exceed thirty pages in length.

## **Form of factum: binding**

(5) The appellant's factum shall be bound front and back in blue cover stock.

## **Form of factum: printing details**

(6) The appellant's factum shall be printed on white paper 8 ½ inches by 11 inches in size and the text shall be printed, typewritten, written or reproduced legibly, using characters of at least 12 point or 10 pitch size, on one side only double spaced, except for quotations which may be single spaced, with margins of 1 ½ inches on the left-hand side.

## **Book of Authorities**

**6.3** (1) The appellant's book of authorities shall be titled "Appellant's Book of Authorities" and shall contain only those authorities intended to be referred to in oral argument.

(2) The authorities contained in the appellant's book of authorities shall be marked to indicate those passages intended to be referred to in oral argument.

(3) The appellant's book of authorities shall be bound front and back in blue cover stock.

## **Factum, supplementary appeal book and supplementary book of authorities: cross-appeal**

**6.4** (1) Where a respondent has served a notice of cross-appeal, the appellant shall prepare a factum as a respondent by cross-appeal.

(2) Subrules 8.2 (1) to (4) and (6) apply, with necessary modifications, to the appellant's factum as a respondent by cross-appeal.

(3) The appellant's factum as a respondent by cross-appeal shall be bound front and back in blue cover stock.

(4) The appellant as a respondent by cross-appeal may prepare a supplementary appeal book and a supplementary book of authorities if documents relevant to the hearing of the cross-appeal that are referred to in the appellant's factum as a respondent by cross-appeal are not already included in the appellant's or respondent's appeal book and authorities intended to be referred to in oral argument of the cross-appeal are not already included in the appellant's or respondent's book of authorities.

(5) Rules 6.1 and 6.3 apply, with necessary modifications, to the appellant's supplementary appeal book and supplementary book of authorities, respectively.

### **Tribunal Office may refuse documents**

**6.5** (1) Subject to subrule (2), the Tribunal Office may refuse to accept for filing an appellant's appeal book, an appellant's factum, an appellant's book of authorities, an appellant's factum as a respondent by cross-appeal, an appellant's supplementary appeal book or an appellant's supplementary book of authorities that does not comply with this Rule.

### **Relief from compliance**

(2) If it is in the interest of justice, a panelist may give special directions and vary the rules governing the appellant's appeal book, the appellant's factum, the appellant's book of authorities, the appellant's factum as a respondent by cross-appeal, the appellant's supplementary appeal book and the appellant's supplementary book of authorities.

### **Date for filing appellant's materials as respondent by cross-appeal**

**6.6** (1) Where a respondent has commenced a cross-appeal, the appellant shall, by not later than fourteen days before the date on which the appeal is to be heard,

- (a) serve on the respondent one copy of the appellant's supplementary appeal book, one copy of the appellant's factum as a respondent by cross-appeal and one copy of the appellant's supplementary book of authorities; and
- (b) file with the Tribunal, with proof of service,
  - (i) in appeals to be heard by five panelists, six copies of the appellant's supplementary appeal book, factum as a respondent by cross-appeal and supplementary book of authorities; and
  - (ii) in appeals to be heard by three panelists, four copies of the

appellant's supplementary appeal book, factum as a respondent and supplementary book of authorities.

**Confirmation of or update to estimated length of time for oral argument**

(2) Where a respondent has commenced a cross-appeal, the appellant shall, by not later than ten days after being served with the respondent's materials, file with the Tribunal, a certificate,

- (a) confirming that the estimated total length of time for the oral argument of the appellant stated in the certificate of perfection remains the same; or
- (b) stating the new estimated total length of time for the oral argument of the appellant.



# **RULE 7 PERFECTING APPEALS**

## **Service and filing of appellant's materials**

- 7.1 (1) Subject to subrule (2), the appellant shall,
- (a) serve on the respondent one copy of the appellant's appeal book, one copy of the appellant's factum, one copy of the appellant's book of authorities and one copy of the transcript; and
  - (b) file with the Tribunal, with proof of service,
    - (i) in appeals to be heard by five panelists, six copies of the appellant's appeal book, factum and book of authorities and one copy of the transcript; and
    - (ii) in appeals to be heard by three panelists, four copies of the appellant's appeal book, factum and book of authorities and one copy of the transcript.

## **Exempt from requirement to serve and file transcript**

(2) Where the appellant has made a motion to stay the decision, order or disposition being appealed and has served and filed with the Tribunal a copy of the transcript in the appellant's motion record, the appellant is not required to serve or file a further copy of the transcript.

## **Certificate of perfection**

- (3) The appellant shall file with the Tribunal a certificate of perfection stating,
- (a) that the appellant's appeal book, factum and book of authorities have been served and filed in compliance with subrule (1);
  - (b) that the transcript has been served and filed in compliance with subrule (1) or (2);
  - (c) that the transcript is complete; and
  - (d) the estimated total length of time for the oral argument of the appellant.

## **Time for perfection**

- (4) The appellant shall perfect the appeal by complying with subrules (1) and (3) by the later of:
- (a) 60 days after notice of the order is deemed to have been received by the appellant; or

(b) 60 days after the appellant has received the transcript.

## **RULE 8 RESPONDENT’S MATERIALS**

### **Appeal book**

**8.1** (1) Subject to subrule (2), the respondent’s appeal book shall be titled “Respondent’s Appeal Book” and shall contain, in consecutively numbered pages with numbered tabs arranged in the following order,

- (a) a table of contents, listing each document contained in the appeal book and describing each document by its nature and date;
- (b) a copy of any notice of cross-appeal and of any supplementary notice of cross-appeal;
- (c) a copy of any exhibits that are referred to in the respondent’s factum that are not included in the appellant’s appeal book; and
- (d) a copy of any other documents relevant to the hearing of the appeal that were filed with the Hearing Division that are referred to in the respondent’s factum that are not included in the appellant’s appeal book.

### **Appeal book: two volumes**

(2) Where the respondent’s appeal book, if prepared in compliance with subrule (1), will include a document that is not available for public inspection under subrule 27.01 (4) of the Hearing Division Rules, the respondent’s appeal book shall be divided into two volumes titled “Respondent’s Appeal Book: Public Volume” and “Respondent’s Appeal Book: Non-Public Volume”, with “Respondent’s Appeal Book: Public Volume” prepared in compliance with subrule (1) but excluding the documents that are not available for public inspection and “Respondent’s Appeal Book: Non-Public Volume” prepared in compliance with subrule (1) but containing only the documents that are excluded from “Respondent’s Appeal Book: Public Volume” and, at the end, a copy of the order of the Hearing Division resulting in the documents contained in the appeal book being unavailable for public inspection, if it is not included in the appellant’s appeal book.

### **Form of appeal book: binding**

(3) The respondent’s appeal book shall be bound front and back in green cover stock.

### **Factum**

#### **Content**

**8.2** (1) The respondent’s factum shall be titled “Respondent’s Factum” and shall consist of,

- (a) Part I, titled “Respondent’s Overview of the Case”, containing a concise overview statement describing the nature of the case and of the issues;
- (b) Part II, titled “Respondent’s Statement as to Facts”, containing a statement of the facts in Part III of the appellant’s factum that the respondent accepts as correct or substantially correct and those facts with which the respondent disagrees and a concise summary of any additional facts relied on, with such reference to the transcript of the proceeding before the Hearing Division and the exhibits as is necessary;
- (c) Part III, titled “Response to Appellant’s Issues”, containing the position of the respondent with respect to each issue raised by the appellant, immediately followed by a concise argument with reference to the law and authorities relating to that issue;
- (d) Part IV, titled “Additional Issues”, containing a statement of any additional issues raised by the respondent, immediately followed by a concise argument with reference to the law and authorities relating to that issue;
- (e) Part V, titled “Order Requested”, containing a statement of the order that the Appeal Division will be asked to make;
- (f) Schedule A, titled “Authorities to be Cited”, containing a list of the authorities referred to, with citations, in the order in which they appear in Parts III and IV or in alphabetical order; and
- (g) Schedule B, titled “Relevant Legislative Provisions”, containing the text of all relevant provisions of statutes, regulations, by-laws, rules of practice and procedure and rules of conduct.

### **References to transcript**

(2) References to the transcript of the proceeding before the Hearing Division shall be by date, page number and line and references to exhibits shall be by tab and page number in the appropriate appeal book.

### **Arrangement of Parts I to V**

(3) Parts I to V shall be arranged in paragraphs numbered consecutively throughout the factum.

### **Length of factum**

(4) The respondent’s factum, excluding the schedules, shall not exceed thirty pages in length.

### **Form of factum: binding**

(5) The respondent's factum shall be bound front and back in green cover stock.

### **Form of factum: printing details**

(6) The respondent's factum shall be printed on white paper 8 ½ inches by 11 inches in size and the text shall be printed, typewritten, written or reproduced legibly, using characters of at least 12 point or 10 pitch size, on one side only double spaced, except for quotations which may be single spaced, with margins of 1 ½ inches on the left-hand side.

### **Factum: cross-appeal**

**8.3** (1) Where a respondent has commenced a cross-appeal, the respondent shall prepare a factum as an appellant by cross-appeal.

(2) The respondent's factum as an appellant by cross-appeal may be incorporated into the respondent's factum or may be a separate document.

(3) Subrules 6.2 (1) to (4) apply, with necessary modifications, to the respondent's factum as an appellant by cross-appeal.

(4) If the respondent's factum as an appellant by cross-appeal is prepared as a separate document, it shall be bound front and back in green cover stock.

(5) If the respondent's factum as an appellant by cross-appeal is prepared as a separate document, it shall be printed on white paper 8 ½ inches by 11 inches in size and the text shall be printed, typewritten, written or reproduced legibly, using characters of at least 12 point or 10 pitch size, on one side only double spaced, except for quotations which may be single spaced, with margins of 1 ½ inches on the left-hand side.

### **Book of Authorities**

**8.4** (1) The respondent's book of authorities shall be titled "Respondent's Book of Authorities" and shall contain only those authorities intended to be referred to in oral argument that are not included in the Appellant's Book of Authorities.

(2) The authorities contained in the respondent's book of authorities shall be marked to indicate those passages intended to be referred to in oral argument.

(3) The respondent's book of authorities shall be bound front and back in green cover stock.

### **Tribunal Office may refuse documents**

**8.5** (1) Subject to subrule (2), the Tribunal Office may refuse to accept for filing a respondent's appeal book, a respondent's factum, a respondent's factum as an appellant

by cross-appeal or a respondent's book of authorities that does not comply with this Rule.

### **Relief from compliance**

(2) If it is in the interest of justice, a panelist may give special directions and vary the rules governing the respondent's appeal book, the respondent's factum, the respondent's factum as an appellant by cross-appeal and the respondent's book of authorities.

### **Date for filing respondent's materials: no cross-appeal**

**8.6** (1) Subject to subrule (2), a respondent shall, by not later than fourteen days before the date on which the appeal is to be heard,

- (a) serve on the appellant one copy of the respondent's appeal book, one copy of the respondent's factum and one copy of the respondent's book of authorities; and
- (b) file with the Tribunal, with proof of service,
  - (i) in appeals to be heard by five panelists, six copies of the respondent's appeal book, factum and book of authorities; and
  - (ii) in appeals to be heard by three panelists, four copies of the respondent's appeal book, factum and book of authorities.

### **Date for filing respondent's material: cross-appeal**

(2) A respondent who has commenced a cross-appeal shall, by not later than 30 days after being served with the appellant's materials,

- (a) serve on the appellant one copy of the respondent's appeal book, one copy of the respondent's factum, one copy of the respondent's factum as appellant by cross-appeal, if any, and one copy of the respondent's book of authorities; and
- (b) file with the Tribunal, with proof of service,
  - (i) in appeals to be heard by five panelists, six copies of the respondent's appeal book, factum, factum as appellant by cross-appeal, if any, and book of authorities; and
  - (ii) in appeals to be heard by three panelists, four copies of the respondent's appeal book, factum, factum as appellant by cross-appeal, if any, and book of authorities.

### **Estimated length of time for oral argument**

(3) A respondent shall file with the Tribunal a certificate stating the estimated total length of time for the oral argument of the respondent,

- (a) where the respondent has not commenced a cross appeal, by not later than 10 days after being served with the appellant's materials;  
or
- (b) where the respondent has commenced a cross appeal, at the same time as the respondent files documents with the Tribunal under clause (2) (b).

# **RULE 9 COMPENDIUM**

## **Compendium required**

**9.1** The appellant and the respondent shall each prepare a compendium.

## **Appellant's compendium**

**9.2** (1) The appellant's compendium shall be titled "Appellant's Compendium" and shall contain excerpts from the transcript intended to be referred to in oral argument and may contain any other documents or excerpts of any other documents contained in the appellant's appeal book, the appellant's supplementary appeal book, if any, or the respondent's appeal book intended to be referred to in oral argument.

(2) The appellant's compendium shall be bound front and back in blue cover stock.

## **Respondent's compendium**

**9.3** (1) The respondent's compendium shall be titled "Respondent's Compendium" and shall contain excerpts from the transcript intended to be referred to in oral argument and may contain any other documents or excerpts of any other documents contained in the appellant's appeal book, the appellant's supplementary appeal book, if any, or the respondent's appeal book intended to be referred to in oral argument.

(2) The respondent's compendium shall be bound front and back in green cover stock.

## **Date for filing compendium**

**9.4** The appellant and the respondent shall, by not later than five days before the date on which the appeal is to be heard, each,

- (a) serve on the other one copy of their compendium; and
- (b) file with the Tribunal, with proof of service,
  - (i) in appeals to be heard by five panelists, six copies of their compendium; and
  - (ii) in appeals to be heard by three panelists, four copies of their compendium.

## **Relief from compliance**

**9.5** If it is in the interest of justice, a panelist may give special directions and vary the rules governing the appellant's and respondent's compendia.



# **RULE 10 ABANDONMENT AND DISMISSAL FOR DELAY**

## **Abandonment by appellant**

**10.1** An appellant may abandon an appeal or a cross-appeal by delivering a notice of abandonment (Form 10A).

## **Deemed abandonment**

### **Appeal**

**10.2** (1) Where the appellant has not perfected the appeal within one year after the time for doing so has passed, the appeal shall be deemed to have been abandoned and the Tribunal shall send a notice to that effect to the appellant and the respondent.

### **Cross-appeal**

(2) Where a respondent who has commenced a cross-appeal has not complied with subrule 8.6 (2), the cross-appeal shall be deemed to have been abandoned and the Tribunal shall send a notice to that effect to the appellant and the respondent.

## **Motion for dismissal for delay**

### **Appeal**

**10.3** (1) Where an appellant has not perfected the appeal within the time prescribed by subrule 7.1 (4) or by an order of the Appeal Division, the respondent may make a motion to the Appeal Division to have the appeal dismissed for delay.

### **Cross-appeal**

(2) Where a respondent who has commenced a cross-appeal has not complied with subrule 8.6 (2) or an order of the Appeal Division with respect to the time for filing the respondent's materials where the respondent has commenced a cross-appeal, the appellant may make a motion to the Appeal Division to have the cross-appeal dismissed for delay.

## **Order dismissing appeal or cross-appeal for delay**

(3) On a motion by the respondent, the Appeal Division may dismiss an appeal or cross-appeal for delay.

## **Effect on cross-appeal where appeal abandoned or dismissed for delay**

**10.4** (1) Where an appeal is abandoned or dismissed for delay, a respondent who has cross-appealed and wishes to proceed with the cross-appeal shall, within fifteen days after the appeal is abandoned or dismissed for delay, deliver a notice of election to

proceed (Form 10B).

### **Cross-appeal deemed abandoned**

(2) Where a respondent does not deliver a notice of election to proceed under subrule (1), the respondent's cross-appeal shall be deemed to have been abandoned and the Tribunal shall send a notice to that effect to the respondent and the appellant.

### **Motion to set aside**

**10.5** (1) An appellant whose appeal is deemed to have been abandoned or a respondent whose cross-appeal is deemed to have been abandoned may make a motion to the Appeal Division to have the appeal or cross-appeal reinstated.

### **Order reinstating appeal or cross-appeal**

(2) On a motion by the appellant, the Appeal Division may reinstate an appeal or a cross-appeal that is deemed to have been abandoned.

# **RULE 11 SCHEDULING**

## **Hearing of appeal**

**11.1** (1) Subject to subrule (2), the Tribunal Office shall schedule the hearing of an appeal.

## **Hearing of cross-appeal**

(2) Where a respondent has commenced a cross-appeal and the cross-appeal is not dismissed for delay or deemed to have been abandoned, the cross-appeal shall be heard on the same date as the appeal is heard.

## **Hearing of motion**

**11.2** Except where otherwise provided by these Rules, a motion may be scheduled for hearing on a date obtained from the Tribunal Office.

# **RULE 12 APPEAL MANAGEMENT**

## **Appeal Management Conference**

**12.1** (1) An appeal management conference shall be conducted by a panelist.

### **Format**

(2) An appeal management conference may be held in person, by telephone conference, by exchange of documents or by any combination of the aforementioned formats.

### **Attendance at or participation in appeal management conference**

(3) Unless otherwise directed by the panelist conducting the appeal management conference, the appellant and the respondent, or their representatives, are required to attend at or participate in the appeal management conference.

### **Failure to attend or participate**

(4) Where an appellant or a respondent is required to attend at or participate in an appeal management conference and the appellant or the respondent, or the appellant's or respondent's representative, does not attend at or participate in the conference, the panelist conducting the conference may proceed in the absence of the appellant or the respondent or without the appellant's or respondent's participation

### **Notice of endorsement of results where conference proceeds under subrule (4)**

(5) Where a panelist conducts an appeal management conference in the absence of a person or without a person's participation under subrule (4), the Tribunal shall send to the person a copy of the endorsement of the results of the conference.

### **Matters to be dealt with**

- 12.2** (1) At an appeal management conference, a panelist may,
- (a) schedule a further appeal management conference;
  - (b) schedule or adjourn the hearing of an appeal;
  - (c) schedule or adjourn the hearing of a motion; and
  - (d) give directions with respect to the conduct of an appeal or a motion.

### **Endorsement of results**

(2) At the conclusion of an appeal management conference, the panelist who

conducted the conference shall endorse on the appellant's appeal book, if available, or on the notice of appeal the results of the conference.

### **Hearing of motions**

(3) Despite rule 11.2, a panelist conducting an appeal management conference may convert the conference into the hearing of a motion made by the appellant or the respondent if,

- (a) the motion was made by notice of motion;
- (b) both the moving party and the responding party have complied with their respective obligations with respect to the delivery of motion records, facta and books of authority and have exercised or declined to exercise their respective rights with respect to the delivery of motion records, facta and books of authority;
- (c) the panelist has already been assigned by the Chair or Vice-Chair to the hearing of the motion; and
- (d) the moving party and the responding party consent to the hearing of the motion at that time.

### **Request for appeal management conference**

**12.3** (1) After an appeal has been commenced, the appellant or the respondent may, at any time, request to attend before a panelist for an appeal management conference.

### **Request to Tribunal Office**

(2) A request to attend before a panelist for an appeal management conference shall be made to the Tribunal Office.

### **Notice of appeal management conference**

(3) Where a request to attend before a panelist for an appeal management conference has been made, the Tribunal shall notify the appellant and the respondent of the date, time and, if applicable, location of the appeal management conference.

### **Direction to attend an appeal management conference**

**12.4** (1) After an appeal has been commenced, the Chair or Vice-Chair may, at any time, direct the appellant and respondent to attend before a panelist for an appeal management conference.

## **Notice of appeal management conference**

(2) Where the Chair or Vice-Chair directs the appellant and respondent to attend before a panelist for an appeal management conference, the Tribunal shall notify the appellant and the respondent of the direction and of the date, time and, if applicable, location of the appeal management conference.

# RULE 13 MOTIONS

## Making motions

**13.1** (1) Subject to subrule (2), a motion to the Appeal Division may not be made unless an appeal has been commenced.

## Motion to extend time for commencing appeal

(2) A motion to extend the time for commencing an appeal may be made at any time, however, the moving party shall include in the motion record, a draft notice of appeal.

## Motion to stay decision or order

**13.2** A motion to stay a decision or order appealed from shall be made by notice of motion.

## Motions to be heard by one panelist

**13.3** Pursuant to subsection 4.2 (1) of the *Statutory Powers Procedure Act*, the Chair or Vice-Chair may assign one panelist to hear and determine procedural or interlocutory motions, including the following motions:

1. A motion to quash an appeal for failure to comply with Rule 2.1.
2. A motion to dismiss an appeal or a cross-appeal for delay.
3. A motion to reinstate an appeal or a cross-appeal that is deemed to have been abandoned.
4. A motion to extend the time for commencing an appeal.
5. A motion to stay the decision or order appealed from.

# **RULE 14 FRESH EVIDENCE**

## **Tendering fresh evidence**

**14.1** (1) Subject to rule 14.2, an appellant who wishes to introduce at the hearing of the appeal evidence that was not before the Hearing Division shall make a motion to the Appeal Division to do so.

## **Notice of motion**

(2) A motion under subrule (1) shall be made by notice of motion.

## **Materials on motion**

(3) The appellant who makes a motion under subrule (1) shall file with the Tribunal, together with the motion record,

- (a) where the appeal is to be heard by a panel consisting of three panellists, four copies of the evidence, each copy in a separate sealed envelope; and
- (b) where the appeal is to be heard by a panel consisting of five panellists, six copies of the evidence, each copy in a separate sealed envelope.

## **Exchange of evidence**

(4) As soon as possible after service on the responding party of the motion record for a motion under subrule (1), the moving and responding parties shall consult to determine a timetable for the exchange of material related to the evidence and any cross-examination on that material.

## **Hearing of motion**

(5) Despite rule 11.2, a motion under subrule (1) shall be heard on the date on which the appeal is scheduled to be heard.

## **Hearing of appeal in any event**

(6) The appellant and the respondent shall be prepared to proceed with the hearing of the appeal regardless of the disposition of a motion under subrule (1).

## **Deemed abandonment of motion**

- (7) A motion under subrule (1) shall be deemed to have been abandoned if,
  - (a) the moving party does not comply with any requirement with respect to service of documents or filing of documents with respect to the motion; or



- (b) the moving party does not comply with any direction given by a panelist with respect to the conduct of the motion.

### **Documents not available for public inspection**

(8) Materials filed with the Tribunal under subrule (3) are not available for public inspection.

### **Respondent consents to introduction of fresh evidence**

**14.2** (1) Rule 14.1 does not apply where the respondent consents to the appellant introducing at the hearing of the appeal evidence that was not before the Hearing Division.

(2) Where the respondent consents to the appellant introducing at the hearing of the appeal evidence that was not before the Hearing Division, both the appellant and the respondent may include the evidence in their respective appeal books and compendia and may refer to the evidence in their respective facta, but the appellant and the respondent shall clearly identify the evidence as evidence that was not before the Hearing Division.

# **RULE 15 HEARING OF APPEAL**

## **Time limits on oral argument**

**15.1** (1) The Chair or Vice-Chair shall specify the time to be allotted to the appellant and respondent for oral argument and reply on the appeal and any cross-appeal.

## **Notice of time limits**

(2) The Tribunal shall notify the appellant and the respondent of the time allotted to them for oral argument and reply on the appeal and any cross-appeal as soon as practicable after it is specified by the Chair or Vice-Chair.

## **Complying with time limits**

(3) The appellant and the respondent shall limit their oral argument and their reply on the appeal and any cross-appeal to the time allotted to them.

## **Varying time limits**

(4) If it is in the interest of justice, a panelist may give special directions and vary the time limits imposed on the appellant or the respondent under this Rule.

## **RULE 16 REASONS**

### **Written reasons: where required**

- 16.1** (1) A panel shall give written reasons for,
- (a) its decision to allow or dismiss an appeal; and
  - (b) any other decision or order made by the panel if a party requests written reasons in accordance with subrule (2).

### **Making request for written reasons**

- (2) For the purposes of subrule (1), a party may request written reasons for a decision or order made by a panel by,
- (a) making an oral request for written reasons to the panel immediately after the decision or order is made; or
  - (b) making a written request for written reasons by submitting the written request to the Tribunal within sixty days after the decision or order is made.

# **RULE 17 SUMMARY ORDER APPEALS**

## **Summary order appeals**

**17.1** (1) Rule 17 applies to appeals from orders under sections 46, 47, 47.1, 48, or 49 of the Act (“summary order appeals”).

(2) Rules 1, 9, 10, 12, 13 and 15 apply with necessary modifications to summary order appeals. Rules 2, 3, 4, 5, 6, 7, 8, 11, 14 and 16 do not apply to summary order appeals.

## **Commencement of summary order appeal**

**17.2** (1) An appellant shall commence a summary order appeal by serving on the Society and filing with the Tribunal a Notice of Summary Order Appeal (Form 17A) and an Information Sheet (Form 3D).

(2) The Notice of Summary Order Appeal shall be served on the Society in the same way as an originating process.

## **Time for commencement of summary order appeal**

(3) The Notice of Summary Order Appeal shall be served on the Society and filed with the Tribunal within 30 days of the date the summary order is deemed to have been received by the appellant.

## **Extension of time for commencing summary order appeal**

(4) A summary order appeal may be commenced beyond this time limit with consent of the Society or leave of the Tribunal. Leave may be sought by filing a motion in accordance with these Rules.

## **Summary order appeals on consent**

**17.3** Where a summary order appeal is on consent, the appeal may be heard in writing. The written consent of the parties and a draft order shall be filed with the Tribunal at the time the notice of summary order appeal is filed or as soon thereafter as possible. Despite rule 17.4, where a summary order appeal is on consent no other material need be filed by the parties.

## **Filing of Affidavits and Hearing**

**17.4** (1) The Society shall file an affidavit or affidavits that set out the factual basis for making the summary order no later than 30 days after the filing of the Notice of Summary Order Appeal.

(2) The appellant shall file an affidavit or affidavits that set out the factual basis for the appeal no later than 45 days after the filing of the Notice of Summary Order

Appeal.

(3) Cross-examination on the affidavits and any reply evidence will be heard orally at the appeal hearing, unless otherwise ordered.

(4) No facta need be filed prior to the hearing, unless otherwise ordered.

### **Pre-hearing conference**

**17.5** The Tribunal Office shall schedule a pre-hearing conference in every summary order appeal after filing of the affidavits. Rule 22 of the hearing panel rules applies to the pre-hearing conference, with necessary modifications.