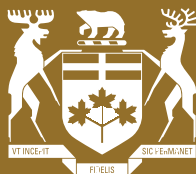


HORSE RACING APPEAL PANEL RULES INFORMATION SHEETS



Ontario

Horse Racing Appeal Panel
10 Carlson Ct, Etobicoke, ON M9W 6A2
Tel: 416 326-8700 or 1 800 522-2876 toll free in Ontario
Fax: 647 723-2198
Email: info@hrappealpanel.ca

A. INFORMATION SHEET: REPRESENTATIVES



The *Rules of Procedure* set out important requirements regarding appointing and having a representative that will act on your behalf in your appeal process.

What is a representative?

A representative is a person who acts as your agent in a proceeding before the HRAP. To be recognized as a representative, the person must complete the [Declaration of Representative](#) form and serve it on all other parties and file it with the HRAP as soon as possible.

What can a representative do for me?

Representatives have a duty to represent you and what they say binds you. This means that what they say and their actions will be considered to be done on your behalf. For example, representatives can file and accept service of documents and make submissions on your behalf.

Who can represent me?

Your representative does not have to be a lawyer. However, representatives must be licensed by the Law Society of Ontario (LSO) (e.g., licensed lawyer or paralegal) or otherwise approved by the LSO.

To confirm the licensing status of a representative or get a current list of exemptions for unlicensed representatives, visit the LSO website at <https://lso.ca> or contact them at 416 947-3300 or toll-free 1 800 668-7380.

Can I have someone assist me who is not my representative?

Someone who is not your representative can still assist you with your appeal.

For example, an individual that does not qualify as and/or does not complete the [Declaration of Representative](#) can still assist you as a non-representative. For instance, an industry representative from a horsepersons' association can assist you as a non-representative. A non-representative may help you fill out your forms and/or accompany you to a hearing or pre-hearing conference to provide support. However, they cannot act on your behalf, submit material for you or provide you with legal advice. Please note that you will still be considered "self-represented" and responsible for all aspects of your appeal.

Do I have to have a representative?

You are not required to have a representative. However, you may have a representative if you wish.

What happens if my representative changes?

If a representative is no longer going to represent you, the representative must provide written notification to the HRAP and all parties of the change in status as soon as possible. The representative must also provide your current contact information in the notification so that the HRAP and all other parties can continue to contact you as required for the hearing.

Relevant Forms:

- [Declaration of Representative](#)

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B. INFORMATION SHEET: MOTIONS



A Motion is a request by a party for an order or decision from the HRAP on a particular issue at any stage in a proceeding. A Motion can be held in-person, in writing, or electronically.

a) Motions

What are Some Examples of Motions?

There are many different kinds of requests that a party can file as a Motion. Common examples of Motions include requests to the HRAP for:

- A stay of the AGCO Official's order, decision, or ruling that is being appealed
- An Order for a party to comply with disclosure requirements
- A production order requiring a party to make something available for inspection

How do I file a Notice of Motion?

You can file a *Notice of Motion* by completing the [Notice of Motion](#) form, serving it on all parties, and then filing it with the HRAP. For delivery and filing requirements, see *Rule 5, Service and Filing*, of the [Rules of Procedure and Information Sheet: Technical Guidelines](#).

Please include in the *Notice of Motion* details on why you think the HRAP should grant your request. You should also attach any document which you intend to rely upon in support of your Motion. If the form is incomplete and/or documents are missing, your request for a Motion may be delayed.

When do I file a Notice of Motion?

The *Notice of Motion*, including all supporting materials, must be filed at least **five days** before the Motion will be considered.

For example, if you would like the Motion considered at the pre-hearing conference, please be sure to file and serve the documents at least **five days** before the pre-hearing. Motions can be considered at the pre-hearing conference, the hearing, or on any other date set by the Panel.

How do I respond to a Notice of Motion?

At least **two days** before a Motion will be considered, you can respond to a Motion by filing with the HRAP and

serving on all parties a response that includes all materials that you will rely on in the Motion hearing. Your response should include all the information that is required in a Notice of Motion form (i.e., request, grounds to be argued and reference to statutory provisions and case law, and evidence to support your position).

b) Motion to Request a Stay

What is the effect of a Motion for a stay?

By requesting a stay, you can ask to temporarily suspend the order, decision or ruling of the Judge, Steward, or Registrar that you are appealing. The effect of temporarily suspending the decision or ruling is that it would not apply for now and until the stay is lifted. For example, if the ruling requires a suspension from racing, the suspension would not apply until the stay is lifted.

How do I request 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.

To request a stay when you are completing the [Notice of Appeal](#) form, please complete *Section B: Notice of Motion (Requesting a stay of an order, decision or ruling)* of the form.

You can also request a stay at any other time by completing the [Notice of Motion](#) form.

For more information, please see [Notice to Industry 001-Requesting a Stay](#) before the HRAP.

Relevant Forms:

- [Notice of Appeal](#) (Section B)
- [Notice of Motion](#)

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C. INFORMATION SHEET: DISCLOSURE / INFORMATION EXCHANGE



The *Rules of Procedure* set out important requirements related to disclosing documents and things and exchanging information with other parties before a hearing.

What is disclosure?

Disclosure is the exchange of documents or things between parties before and during a hearing.

Documents or things required to be exchanged can include videos, invoices, field notes, medication records, wagering reports, expert reports, and other things that will be relied on in a hearing.

Why do parties have to make disclosure?

Disclosure helps to ensure that parties have relevant information before hearings. By sharing documents between parties in advance, hearings can run more smoothly because parties have the chance to review relevant documents before the hearing and prepare a response. In addition, disclosure avoids the element of surprise.

What information must be disclosed?

At least **30 days** before your hearing (or as otherwise ordered by the HRAP), you have to provide to the other parties **a list of the documents** or things that you intend to rely on or present as evidence at the hearing, along with **a list of witnesses** that you intend to call and a brief description of each witness' anticipated evidence.

Subsequently, at least **15 days** before the hearing (or as otherwise ordered by the HRAP), you must then make available to the other parties any documents or other things you intend to rely on or present as evidence. This can be done either by **servicing a copy on those parties** or making the documents **available for inspection**.

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.

Please see the timeline on **page 3 for a summary of the disclosure + filing requirements** in advance of your hearing.

Do I still have to bring copies of my evidence to the hearing?

Yes. Although you will have circulated documents before the hearing to all parties, you still need to bring copies to the hearing, if you intend to use them as evidence.

At the hearing, you must provide a copy for:

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

What is a hearing brief?

A hearing brief is statement of your case that sets out the facts and your legal arguments. You have to serve on all parties and file with the HRAP a copy of your hearing brief at least 5 days before the hearing. In the case of "B" level appeals a Hearing Brief is advisable, but it is not necessary if you so determine. A hearing brief should include:

- a brief summary of the relevant facts and basis for the appeal, or response to the appeal as appropriate;
- a list of all witnesses; and
- any authorities, cases and HRAP Rules and Rules of Racing that you will be relying on.

What happens if I don't disclose?

If you do not disclose information required to be disclosed, you may not be allowed to refer to it, or enter it into evidence at the hearing, unless you are granted permission by the Panel.

What if the other party is not disclosing their documents to me?

If you think that the other party is not disclosing the required information, you can file a Motion with the HRAP requesting that the Panel order the party to share the documents and/or make them available for review.

For information on these requirements, please see Rule 7, Disclosure, Rule 11, Hearings and Rule 3, Motions of the [Rules of Procedure](#), and [Information Sheet: Witnesses, Summons and Evidence](#).

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Step 1	Step 2	Step 3	Step 4
<p>Notify other parties of documents or things you will refer to, rely on, or present as evidence at the hearing.</p> <p>Provide a list of witnesses you might call + describe the evidence they may discuss at the hearing.</p> <p><i>Rule 7.2</i></p>	<p>Serve all parties copies of documents you will refer to, rely on, or present as evidence at the hearing.</p> <p>Allow parties to inspect or copy any documents or things you will enter as evidence at the hearing.</p> <p><i>Rule 7.3</i></p>	<p>File with the HRAP and serve on the other parties a HEARING BRIEF that sets out your legal case and authorities.</p> <p><i>Rule 10.2</i></p>	<p>Bring to the hearing any documents or things (original or a copy) you intend to file with the HRAP as an official exhibit.</p> <p>Also bring one copy for:</p> <ul style="list-style-type: none"> a. each panel member at the hearing (As-3 members; Bs-1 member); b. the court reporter; c. the witness stand; and d. each party (if not already served in advance). <p><i>Rule 5.10 and Rule 2.9</i></p>



30 DAYS
in advance of hearing



15 DAYS
in advance of hearing



5 DAYS
in advance of hearing



HEARING DAY

Expert Witnesses

If you want to rely on or refer to the evidence of an expert witness, advance notification requirements apply. See Rule 7 and Information Sheet: Witnesses, Summons and Evidence for more information.

Appeal Book

The HRAP will provide an Appeal Book to all parties in advance of the hearing. The Appeal Book will contain the Notice of Appeal, the decision(s) being appealed, the Notice of Hearing and any other orders that the HRAP may have issued.

Rule 11.4

D. INFORMATION SHEET: WITNESSES, SUMMONS AND EVIDENCE



The *Rules of Procedure* set out important requirements related to calling witnesses and using evidence. Please see the [Rules of Procedure](#) for more information, and in particular *Rule 10, Evidence, Rule 11, Hearings, and Rule 7, Disclosure* of the [Rules of Procedure](#).

Witnesses

Who can be a witness?

A witness is someone who has knowledge about an event or issue and is able to give evidence about what happened. Witnesses deal with facts. The best kind of witness is someone who has direct knowledge of events that are relevant to your case.

You (the appellant) can be a witness at your hearing but are not required to do so.

Witnesses are required to swear an oath or affirmation that their evidence will be true, and may be asked questions by other parties and/or the Panel during the hearing.

Can witnesses be excluded from a hearing?

In some cases, the HRAP may require that witnesses not be present at the hearing except when they are providing evidence. This helps to ensure that their evidence is not influenced by the evidence of other witnesses or the information in the hearing. For information about attendance at a hearing by witnesses, please see *Rule 11.5-11.7, Exclusion of Witnesses*, of the [Rules of Procedure](#).

Expert Witness

Who is qualified to be an expert witness?

You may want to have an expert witness provide a report or provide evidence at the hearing about your case. An expert witness is an individual who has specific professional education, training and experience that may be permitted to testify or provide evidence with respect to their specific field as it relates to a matter being heard by the HRAP. Expert witnesses may give opinion evidence while other witnesses may not ordinarily do so.

How do I rely on the evidence of an expert witness?

If you intend to call an expert witness then you must serve notice on all other parties within **30 days of the hearing**, unless otherwise ordered by the Panel. The responding parties to the hearing can serve the notice **20 days** before the hearing.

The notice must include an acknowledgement of expert's duty signed by the expert. For information on what to include in the notice, please see *Rule 9.5-9.7, Expert Witnesses* of the [Rules of Procedure](#) and [Notice of Expert Witness & Acknowledgement of Expert's Duty](#)

How do I raise concerns with an expert witness' qualifications?

If you want to challenge an expert's qualifications, report or witness statement, give notice to the other parties as soon as possible (and within **15 days** before the hearing) and include your reasons for the challenge. You also have to file a copy with the HRAP.

Summons to a Witness

How do I request a witness attend the hearing?

If you are concerned that a witness will not attend the hearing, you can ask the HRAP to issue a summons for the witness to attend. Please complete the [Summons to a Witness](#) form and file it with the HRAP for signature. You are responsible for serving the document (signed by HRAP) on the witness. The summons must be served personally on the person summoned.

Please note that you are responsible for paying witness' fees and allowances in accordance with Tariff A under the [Rules of Civil Procedure](#).

You can include in your *Summons to a Witness* a requirement that the witness bring with him or her certain documents and things to be produced at the hearing.

Evidence

What is evidence?

Evidence deals with facts and is information that is submitted to prove a case. The most helpful evidence is usually direct and relevant original documents and statements by eyewitnesses.

What is a document for the purposes of evidence?

A document is any information that is recorded or stored, and can include paper documents, videos, and photographs, etc. If you want to submit a document as evidence in a hearing, you need to file the original (or a copy) with the Panel at the hearing. This is known as the official exhibit.

Do I need the original of a document?

Providing the original of a document is ideal because it can be used to show that the copy has not been changed. If you only provide a copy of a document, the authenticity of it can be challenged and it may not be allowed as evidence, or it may be allowed as evidence but given less weight.

When do I file my evidence with the Panel?

In order to have your evidence considered by the Panel, it has to be presented and filed as an official exhibit at the hearing. You are **not** required to file this documentation with the HRAP in advance. The Panel will not have access to evidence before the hearing.

Do I need to bring extra copies of my documents?

Yes. You should bring copies of any documents or materials that you intend to enter as evidence for:

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

When can race videos be useful evidence?

Race videos can be useful evidence in many cases, such

as when there is a race infraction or question about the order of finish. The AGCO will often provide a copy of the official race video. You may bring your own video copy, but please note that issues surrounding authenticity and altering may be raised. If you require a copy of the official race video please ensure you request it from the AGCO.

What if I want to present a video during the hearing? Will I require equipment to play the video?

Contact the HRAP Office who will work with you to make the necessary arrangements.

Relevant Forms:

- [Summons to a Witness](#)
- [Notice of Expert Witness & Acknowledgement of Expert's Duty](#)

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The HRAP can award costs to a party(ies) in certain circumstances (see *Rule 17, Costs of the [Rules of Procedure](#)*).

E. INFORMATION SHEET: COSTS



The HRAP can award costs to a party(ies) in certain circumstances (see Rule 13, Costs of the [Rules of Procedure](#)).

In what circumstances can costs be awarded?

If a party believes that another party in the proceeding has acted unreasonably, frivolously, vexatiously or in bad faith, that party can ask the HRAP to award costs.

The party also has to notify other parties in writing before making the request.

The HRAP has the ability to award costs on its own initiative.

How and when can I make a request for costs?

A request for costs may be made verbally at a motion, pre-hearing conference or hearing, or in a written submission to the HRAP at any time before the decision or order is released. Parties will have an opportunity to respond and make submissions about the proposed cost award before the HRAP makes its decision with respect to costs.

Is there a maximum amount of costs that can be awarded?

The maximum amount of costs that can be awarded to a party is \$2500 (plus reasonable disbursements and H.S.T.) for each full day of preparation and/or attendance at a motion, pre-hearing or hearing.

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F. INFORMATION SHEET: TECHNICAL GUIDELINES



A. Calculation of Time

Rule 5, Calculating Time (deadlines) in the [Rules of Procedure](#) sets out certain rules regarding calculating time for the purposes of meeting deadlines. References to time periods in the *Rules of Procedure* and the Guide follow these principles:

Principle	Example
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	<p>A Notice of Appeal is due within 15 days of a final order, decision, or ruling of a Judge, Steward, or Registrar.</p> <p>If the final order, ruling or decision was issued on March 1, the deadline to file your Notice of Appeal is March 16.</p>
Where a period of less than seven days is prescribed, holidays shall not be counted	<p>A <i>Notice of Motion</i> must be filed at least five days before the Motion will be considered.</p> <p>“Holiday” includes weekends. See Rule 1, Definitions</p> <p>If you want your <i>Notice of Motion</i> to be heard at your hearing taking place on July 2, the weekend and the Canada Day holiday of July 1 will not be counted in the calculation of five days. Please see Rule 6.</p>
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	<p>A <i>Notice of Appeal</i> is due within 15 days of a final order, decision, or ruling of a Judge, Steward, or Registrar.</p> <p>If the 15th day is July 1, Canada Day holiday, the Notice of Appeal can be filed on July 2.</p>
Where (according to the <i>Rules of Procedure</i>) a document would be deemed to be received or service would be deemed to be effective on a day that is a holiday, it is deemed to be received or effective on the next day which is not a holiday	<p>You file and serve a <i>Notice of Motion</i> on July 1, Canada Day. The <i>Notice of Motion</i> will be considered to have been received and filed effective July 2.</p>

B. Service and Filing of Documents

In some cases, you are required to file certain documents with the HRAP. Before you file a document with the HRAP, the documents must be “served” on all parties according to the rules set out in *Rule 5, Service and Filing of the Rules of Procedure*.

When you file or serve a document, you must include your address, telephone number and the name of the related proceeding.

Service to Other Parties

Service to a party means effective delivery to a person or their declared representative.

Please see Rules 5.2 and 5.4. You can serve a document to other parties by the following methods:

Type of Service	Date deemed effective
Personal delivery (i.e., delivery to the person directly)	Before 5:00 p.m., on the day of delivery, and after that time, the next day.
Regular, registered or certified mail to the last known address of the person	On the fifth day after the day of mailing.
Fax, to the last known fax number of the person (Note: If the document is longer than 10 pages, you can only send it if the receiving party provides their consent)	On the day after it was sent.
Courier, including Priority Post, to the last known address of the person	On the second day after the document was given to the courier.
Electronic delivery (e.g., email) if the receiving party has provided their consent or the sender can provide evidence of service	On the date sent if delivered before 5:00 p.m. and if after that time, the next day.

If it is not practical to give service by following these rules, the HRAP can allow for different types of service or may also remove the requirement for service.

You should keep good records of service of documents. You may be required to file a sworn statement indicating who has been served, when they were served, and by what method.

Filing Documents with the HRAP

You can file documents with the HRAP using all the same methods of delivery set out above in Service to Other Parties. However, once the material is filed, an electronic version of the material must also be filed with the HRAP, unless it was originally filed electronically, please see Rule 5.7. You are still responsible for bringing any hard copies that may be necessary for the hearing, as outlined in Rule 5.10.

There are some key differences in terms of the date the filing will be considered completed. For documents filed with the HRAP, the date that the documents are deemed to be filed is the later of the effective dates in *Rule 5.4* of the [Rules of Procedure](#) (and listed in the chart above) or the date it is actually received by the HRAP.

For example, if you have filed documents using regular mail and the HRAP does not receive them in the mail until **10 days** after the date listed as the date of mailing, then the documents will be deemed to be filed on that 10th day, and not the fifth day.

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G. INFORMATION SHEET: PRE-HEARING CONFERENCES



The *Rules of Procedure*, and in particular *Rule 8, Pre-Hearing Conferences* of the [Rules of Procedure](#), set out important information about pre-hearing conferences.

Who can request a pre-hearing conference?

A party may request a pre-hearing conference or the HRAP may order one on its own initiative

How do I prepare for a pre-hearing conference?

All documents or materials that you wish to be discussed or considered at the pre-hearing, must be sent to all parties **five days** in advance of the pre-hearing conference. If your pre-hearing conference is held in person, please also bring a copy of these documents.

As you prepare for the pre-hearing conference, consider whether there are any reasonable resolutions to the issue you are appealing. For example, if you are appealing a ruling that includes a requirement to pay a monetary penalty, perhaps you do not disagree with the basis for the ruling, but would like to request a lesser monetary penalty.

What can I expect at the pre-hearing conference?

At the pre-hearing conference, parties can agree on certain issues related to the proceedings (e.g., sharing documents, determining the issues to be heard, etc.). In some cases, parties can even agree to resolve or settle a matter.

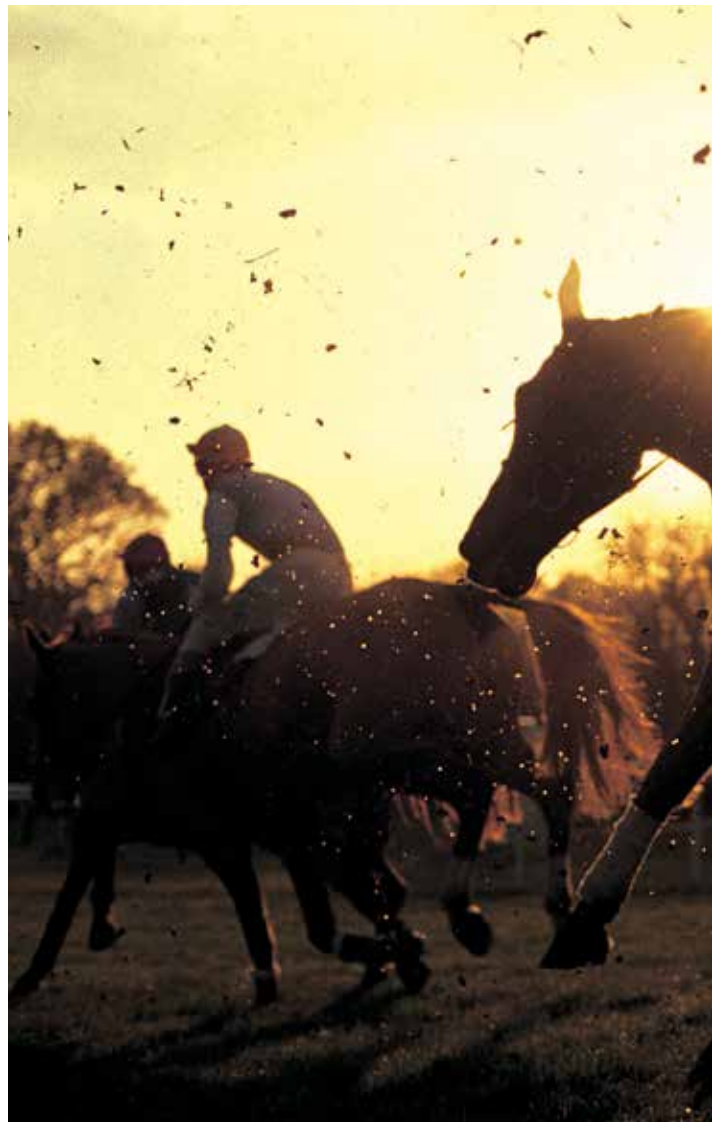
If your hearing date has not yet been scheduled, the pre-hearing conference can be used to set the hearing date. You must know your availability and the availability of your witnesses.

After the pre-hearing conference, you will receive a document that sets out any orders, agreements, and undertakings that were made at the pre-hearing conference, and you will be required to comply with any requirements outlined in the document.

Can my representative attend the pre-hearing conference on my behalf?

The written notification of a pre-hearing conference will set out whether you are personally required to attend the pre-hearing conference, or if you are allowed to instead send your representative on your behalf.

If the notice of pre-hearing conference allows you to send a representative and you choose to have a representative attend on your behalf, that person must have the legal authority to enter into agreements for you. Please see [Information Sheet: Representatives](#) for more details.



What happens if I do not attend the pre-hearing conference?

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, you will not be entitled to any further notice in the entire appeal process. This means that the appeal process can continue and you may not receive further notifications of it, such as information about any upcoming hearings.

Is my pre-hearing conference confidential?

Pre-hearing conferences are private and are not open to the public.

Settlement discussions at a pre-hearing conference are confidential and “without prejudice” to either party. This means that evidence filed or statements made for the purpose of settlement, and statements made “without prejudice”, cannot be revealed at the hearing by any party and will not be communicated to the Panel member presiding at the hearing. Also, the Panel member who conducts the pre-hearing conference will not be present at or make any decisions at your hearing, unless with the consent of the parties.

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H. INFORMATION SHEET: WHAT TO EXPECT AT YOUR HEARING



A hearing is the part of a proceeding before the HRAP where your case will be heard. The Panel is responsible for conducting a fair, open and accessible process and making a final decision on the issues. The *Rules of Procedure* set out important requirements related to your hearing.

What do I use to prove my case?

At your hearing, you will be expected to present submissions and evidence that support your appeal. Evidence can include testimony by witnesses and documents such as videos, invoices, medication records, or expert reports.

Five days before your hearing, you have to file with the HRAP and serve on all parties a hearing brief. This will contain a brief summary of the relevant facts and basis for the appeal, list of all witnesses, and any authorities, cases and/or rules on which you plan to rely.

Please see *Rule 10.2, Hearing Briefs, Rule 10, Evidence of the Rules of Procedure* and [Information](#)

[Sheet: Witnesses, Summons, and Evidence](#) for more information.

How do I prepare for the hearing?

You should collect evidence that you intend to rely on to argue your case and make sure you share the documents with other parties before the hearing according to the disclosure requirements. Please see Rule 7, [Disclosure and Information Sheet: Disclosure / Information Exchange](#) for more information.

You may also wish to prepare questions for your witnesses, or the witnesses called by the other party(ies). However, you must not direct the witnesses how to answer the questions.

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, any other orders that the HRAP may have issued, and such other documents as the HRAP may determine. Be sure to bring this Appeal Book to the hearing.



How does the Panel use the information from evidence, such as witnesses, documents and things?

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 of the AGCO Official (e.g., Judge, Steward, or Registrar) or evidence relied upon by them.

How do I present my case?

At a hearing, you have the opportunity to present your case including evidence and statements. Hearings typically follow this format:

- a. Calling evidence:** Present your evidence to the Panel. This includes calling your witnesses, who will be sworn in, and submitting documents as evidence in the hearing by filing them as official exhibits. For more information, see *Rule 10, Evidence, Rules 9.1-9.4, Summons to Witness* of the [Rules of Procedure](#), and [Information Sheet: Witnesses, Summons, and Evidence](#).
- b. Cross-examination:** You will have the opportunity to cross-examine other parties (if they testify) and their witnesses. This means you can ask the other party or witnesses questions.
- c. Re-examination:** After your witnesses have testified, and have been cross-examined by the other party(ies), you have the opportunity to ask your witness more questions regarding topics that were raised during the cross-examination. A Panel member is also able to ask questions at any stage of the hearing.
- d. d. Submissions:** You may also be asked to provide an opening and closing statement. These are also called submissions.

- An **opening statement** is a short summary of the reasons for your appeal, the evidence you intend to submit and the main points of your case.
- A **closing statement** is your final opportunity to sum up your case and explain why the Panel should decide in your favour. You should not be submitting new evidence at this time. In your closing statement, you should include the specific order that you are requesting from HRAP.

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Horse Racing Appeal Panel

10 Carlson Ct, Etobicoke, ON M9W 6A2

Tel: 416 326-8700 or 1 800 522-2876 toll free in Ontario

Fax: 647 723-2198, Email: info@hrappealpanel.ca

I. INFORMATION SHEET: DE NOVO HEARINGS



As you prepare for your hearing it is important to keep in mind that appeal hearings before the Horse Racing Appeal Panel (HRAP or Panel) are considered *de novo*.

What is a de novo hearing before the HRAP?

In a *de novo* hearing, the **Panel decides a matter “from scratch” as if it were a new hearing**. In other words, the Panel will decide the matter on the basis of what they hear and what they see at the hearing itself, without taking into account the decision of the Judges or Stewards under appeal. The Panel has the power to confirm, vary, or set aside the decision that has been appealed, based on the evidence presented at the hearing.

What does this mean for parties?

There are a few key elements that parties may wish to consider in a *de novo* hearing before the HRAP:

- **The Panel does not use any findings of fact or conclusions from the ruling of the Judges or Stewards in making their decisions. Instead, they decide the matter solely on the evidence and submissions made before them at the hearing.**
 - » **Evidence** comprises the testimony made by witnesses in the witness box and documents that are filed as exhibits at the hearing (e.g. medication records, notes, invoices).
 - » **Submissions** are not evidence but rather the arguments that parties make based on the evidence, the Rules of Racing/HRAP Rules of Procedure and any relevant law in an effort to persuade the Panel to accept their positions (e.g. opening and closing statements).
 - » Parties should come to the hearing prepared to **offer any evidence that they wish the Panel to consider** and to support their positions by making submissions.

- Parties may present new evidence in a hearing at the HRAP, including **evidence that was not presented to the Judges or Stewards** that made the ruling under appeal.
- The **burden of proof is on the Registrar** to satisfy the Panel on a balance of probabilities that the violation of the rule occurred, meaning that the Panel will weigh the evidence to determine whether it is more likely than not that the alleged violation occurred. The Registrar will also make submissions as to penalty. The Registrar will present their case first at the hearing, and then the appellant follows to respond to the Registrar’s case.

Last updated: March 2020

This information sheet is intended to provide general information to appellants and other related parties regarding the appeal process of the Horse Racing Appeal Panel. It does not constitute legal advice. If any information in this Guide is not consistent with the Rules of Procedure, the Rules of Procedure will prevail.

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J. INFORMATION SHEET: PENALTIES

Many appeals that come before the Panel deal with penalties in whole or in part. The Panel considered that it would be helpful to the Industry to understand the Panel's mandate and approach to such issues.

The [Horse Racing Licence Act](#) provides that on an appeal, "the Panel may confirm or vary the decision being appealed or set it aside." This means that the Panel may increase, decrease or set aside a penalty imposed by the Stewards or Judges. Hearings before the Panel are hearings "de novo." This means that the appeal proceeds as a new hearing. The Panel is not bound by the decision of the Stewards or Judges but must decide the matter based entirely on what it may hear and see in evidence and submissions during the appeal.

In some cases, Guidelines are in place that deal with penalties, eg. Penalty Guidelines for Inappropriate Urging of a Horse during a race and Penalty Guidelines for Equine Drug, TCO2 and Non-Therapeutic Drug Violations. It should be noted that these are only guidelines and the Panel may, in its discretion, depart from them as it deems appropriate to fit the circumstances of each individual case.

Other decided cases are of little value as precedents in determining the appropriate penalty in the case that the Panel is dealing with. Each case has its own mitigating and/or aggravating factors that must be taken into account in order to arrive at a just decision. To strive solely for consistency or uniformity and ignore the unique features of each case does a disservice to the parties and does not serve the interests of justice. Some may think that they were treated more harshly than others but they rarely know the circumstances of those other cases; what were the mitigating and/or aggravating factors that distinguish those cases that led to a different penalty? For example, in headline reporting, a Class II drug violation with aggravating circumstan-

ces can appear to be dealt with more harshly than a Class I violation with mitigating circumstance.

Accordingly, parties are encouraged to bring forward before the Panel all of the oral and written evidence that they believe will assist the Panel in reaching a just decision.

Last updated: December 2024

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