



Horse Racing Appeal Panel

Notice to Industry

No. 004 - June 2020

CHANGES TO THE HORSE RACING APPEAL PANEL'S RULES OF PROCEDURE FOR APPEALS

The Horse Racing Appeal Panel (HRAP or Panel) is committed to periodically reviewing and updating its Rules of Procedure to ensure that its adjudicative process remains efficient and effective and continues to meet the needs of the horse racing industry.

To that end, the HRAP has recently made a number of changes to both its Rules of Procedure and its associated policies and practices that govern appeal proceedings. These changes were informed by feedback provided by key stakeholders as part of a consultation process undertaken by the Panel in 2019. The changes are also intended to address and reflect public health concerns and restrictions arising from the coronavirus outbreak, and to facilitate a shift towards more remote hearings, which we hope among other things will increase the industry's access to the appeal process.

One of the key objectives of the review and the changes that are being introduced is to streamline the hearing of appeals and attempt to remove barriers and delays, so that cases are heard and resolved as expeditiously as possible, while making sure that all necessary administrative and procedural safeguards continue to be in place. The Panel was of the view that this could be achieved through various incremental changes, which can be easily implemented and assessed, as opposed to radical or sweeping reform.

These changes have been approved by the Panel and are effective immediately. All appeals heard by the HRAP moving forward will be under its Rules of Procedure dated June 2020 and the new policies and practices articulated below.

What are the key changes?

Electronic Hearings.

As part of its ongoing efforts to provide open and accessible services to the public while at the same time keeping Ontarians safe, in particular during the coronavirus outbreak, the HRAP will be enhancing its use of videoconferencing technology in order to allow hearings to be conducted remotely. Going forward, as a general rule, electronic hearings shall be given

preference by the Panel, at the least during the coronavirus outbreak, unless it would cause prejudice to either of the parties or there are other justifiable reasons for not so doing. The attached Practice Direction provides more details on the policies and protocols associated with electronic hearings.

In addition, the Rules around the filing of documents have been amended so as to distinguish and clarify requirements and expectations as they relate to both in-person hearings and electronic hearings (see in particular Rule 5.10).

Pre-Hearing Conferences.

Going forward, the Panel will begin holding pre-hearing conferences as a standard practice in "A" hearings (these are cases that involve more serious infractions and penalties, and in which three Panel members typically preside). Although the Panel has always had the authority to hold pre-hearing conferences, it has usually done so only upon request of the parties (and as such, infrequently). The Panel recognizes that pre-hearing conferences can be an effective forum to resolve preliminary matters in advance of a hearing, and can help facilitate the timely exchange of documents and information between the parties, an issue that was raised by many stakeholders. By making pre-hearing conferences the norm in "A" cases, the goal and expectation is that they move through the appeal process more seamlessly, with fewer delays and need for interlocutory motions.

The Panel has issued the attached Practice Direction to provide more detail about its approach to pre-hearing conferences. As a complement to this new Practice Direction, Rule 8.9 has been revised to allow members who preside over pre-hearing conference to also preside at the subsequent hearing with the consent of the parties.

Parties and Notice.

The Panel recognizes that at times the issues before the HRAP will have implications that go beyond the parties participating in the appeal, and it is therefore important that it have procedures to allow impacted parties to participate in the appeal process, where appropriate.

The HRAP already posts information regarding all its appeals and hearings on its website, but going forward, the Panel will now also provide notice directly to potentially impacted trainers in cases where placement is at issue (e.g. "B" appeals like interference, or in equine drug cases). The trainers best know the current connections of their horses and are in the best position to notify those affected. This will ensure that those who might be impacted by an appeal are, at the very least, aware of it, and thus also have an opportunity to attend the hearing and/or seek greater involvement by requesting to be added as a party or intervener.

Timelines for "B" Appeals.

Effective immediately, the HRAP has put in place a new Practice Direction (attached) outlining its approach to the management of "B" appeals. Most importantly, the Panel's intent is to schedule and hold "B" hearings within 45 days of the filing of the notice of appeal, unless there are exceptional circumstances. "B" hearings typically involve appeals of on-track violations, such as urging or interference, where the evidence is fairly straightforward (usually it is just video of the race) and the number of witnesses are

few. There is a clear need – both on the part of the AGCO as the regulator and industry stakeholders who are looking for certainty regarding the results – that these matters be resolved in as fair, just and expeditious a timeframe as possible.

Costs.

Rule 13.5 has been amended to increase the amount of costs that may be awarded by the Panel to \$2,500 (plus reasonable disbursements and H.S.T.) for each full day of preparation and/or attendance at a motion, pre-hearing or hearing. Previously, the maximum cost award per day was \$1,500. There was broad consensus that this amount should be increased to better reflect the costs of conducting an appeal.

Electronic Service.

Rule 5.2 has been amended to allow service between parties by electronic delivery, whether on consent of the receiving party, or now alternatively, with a proper read receipt. The Rule change reflects how commonplace and convenient electronic service has become, while maintaining a necessary safeguard by requiring a read receipt.

The Rules of Procedure have also been revised to clarify that electronic copies of all submissions should be filed with the HRAP in addition to paper.

Ordering.

Finally, the ordering of the Rules of Procedure has been slightly modified to group like provisions together (e.g. types of motions) and to make it a more user friendly document for those that are new to the appeal process.

Questions

If you have any questions about these changes, or for more information generally about HRAP proceedings, please visit www.hrappealpanel.ca or contact the HRAP office at info@hrappealpanel.ca or 416-326-8700 (or Toll free in Ontario: 1-800-522-2876).