



# Horse Racing Appeal Panel

## Notice to Industry

No. 002 - October 21, 2016

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

On April 1, 2016, legislation came into effect establishing the Horse Racing Appeal Panel (HRAP or Panel) as the new adjudicative body responsible for hearing appeals of decisions made under the Rules of Racing. New Rules of Procedure were established by the HRAP to govern proceedings of matters before the Panel and to ensure a fair, open and accessible process for all parties.

A number of "housekeeping" changes have recently been made to the HRAP's Rules of Procedure to clarify requirements and address minor issues that have come up over the past 6 months. 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 October 2016, available on the HRAP website at [www.hrappelpanel.ca](http://www.hrappelpanel.ca).

#### What are some of the key changes?

Most of the amendments were of a "housekeeping" nature, but there are a few key changes that will affect the process for a hearing before the HRAP.

Disclosure + Filing Documents with the HRAP. There has been some confusion in terms of disclosure requirements between the parties and how evidence should be brought forward at a hearing. Among other things, the Rules have been amended to clarify that parties are **not** required to file their disclosure/evidence with the HRAP in advance of the hearing (Rule 7.3). Disclosure is intended to be between the parties to ensure each party has the chance to review relevant documents before the hearing and prepare a response.

The HRAP has updated its *Information Sheet: Disclosure/Information Exchange* to clarify the new requirements. A copy has been attached to this notice for more details.

Appeal Book. Going forward, the HRAP will create and provide an Appeal Book to the parties in advance of every hearing (Rule 8.4). The Appeal Book will contain a copy of the Notice

of Appeal, the decision(s) or ruling(s) being appealed, the Notice of Hearing and any other orders that the HRAP may have issued relevant to the hearing. The purpose of the Appeal Book is to ensure that the Panel members and all parties have the same basic documentation and official record relevant to the appeal accessible to them at the hearing.

Panel Threshold. Small changes have been made to the **criteria and threshold for three member Panel hearings** (commonly known as “A” appeals) (Rule 2.9(i) and (ii)). Going forward, a hearing will be typically classified as an “A” hearing, and thus have three members preside over it, where the decision under appeal imposes a monetary penalty greater than \$2,000 (previously \$1,000) and/or where the decision under appeal imposes a suspension of 15 days or more (previously 30 days). The other two criteria for three member Panel hearings (i.e. if the race has a potential purse of \$200,000 or greater, and if the decision under appeal involves a certificate of positive analysis, medication control, or an equine biological sample) remain the same.

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

# 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 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 **serving 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 file one copy as the official exhibit for the HRAP record and also provide a copy for:

- each panel member at the hearing;
- the court reporter;
- each witness through whom the document is being introduced, if any; 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. 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 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 8, Notices of Hearing and Rule 13, Hearings of the [Rules of Procedure](#), and [Information Sheet: Witnesses, Summons and Evidence](#).

#### **Last updated: October 2016**

*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 information sheet is not consistent with the Rules of Procedure, the Rules of Procedure will prevail.*

#### **Horse Racing Appeal Panel**

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# Disclosure + Filing Timeline



## 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 8.4*