

# Rules for Appeals to the Appeal Tribunal

## Interpretation and application

1. In these Rules
  - a. “Appeal Record” means the Record of Reconsideration, the written submissions of APS and the Applicant and any other relevant documents provided under Rule 9 and Rule 12;
  - b. “Dispute Resolution Policy” means the “Dispute Resolution Policy for the Public Service Pension Plan”;
  - c. “Directly Affected Individual” means an individual who is not an Applicant, but whose entitlement to a pension or the amount of whose pension may be affected by a decision of an Appeal Tribunal;
  - d. “Record of Reconsideration” means a copy of
    - i. the reconsideration decision of APS under Stage 1 of the Dispute Resolution Policy;
    - ii. all policies and legislative provisions relevant to the reconsideration decision and the issues in the appeal; and
    - iii. all correspondence and documentation within APS's possession or control relevant to the reconsideration decision and the appeal;
  - e. the terms defined in the Dispute Resolution Policy have the same meaning in these Rules.
2. Where a document is to be provided electronically under these Rules, that document must be delivered by email or through an FTP site in a .pdf form or in another electronic form acceptable to the Chief Executive Officer.
3. The Chief Executive Officer may delegate any powers or duties under these Rules, except the powers or duties under Rules 6, 31 and 32, to an employee of the Corporation and, with the exception of Rules 6, 31 and 32, a reference to the Chief Executive Officer includes the delegate of the Chief Executive Officer.
4. These Rules apply to appeals to an Appeal Tribunal under Stage 3 of the Dispute Resolution Policy.

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## Confidentiality

5. All documents relating to an appeal will be treated as confidential and used solely for the purpose of conducting the appeal.

## Procedural directions

6. The Chief Executive Officer may
  - a. hear any preliminary or interim application that deals with procedural or administrative matters before the appeal hearing begins;
  - b. provide any preliminary or interim directions and make preliminary or interim rulings before the appeal hearing begins that are, in the opinion of the Chief Executive Officer, required to facilitate the effective scheduling and conduct of the hearing of an appeal, including waiving or amending time limits and other requirements of these Rules;
  - c. obtain or arrange clerical or administrative services necessary to support the work of the Appeal Tribunal; and
  - d. retain independent legal counsel for the Appeal Tribunal.

## Address for Service

7. An Applicant who files an appeal under section 23 of the Dispute Resolution Policy, must provide the Chief Executive Officer with an address for service that includes an email address and a municipal address or box office at which mail is delivered to the Applicant.

## Notice to APS of Appeal

8. If an Applicant files an appeal to an Appeal Tribunal under section 23 of the Dispute Resolution Policy, the Chief Executive Officer must within a reasonable time provide APS with a copy of the notice of appeal electronically.

## Obligation of APS to Produce Record and Submission

9. Within 30 days of the date that the Chief Executive Officer provides APS with a copy of the notice of appeal, APS must electronically provide to the Chief Executive Officer
  - a. a copy of the Record of Reconsideration; and

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- b. a written submission that includes
  - i. a case summary outlining the facts and APS's understanding of the position of the Applicant;
  - ii. the position of APS on the issues raised by the Applicant, including any relevant case authorities; and
  - iii. any other matters that APS considers relevant to the matter under appeal.
- 10. The Chief Executive Officer must within a reasonable time after receiving the Record and APS's written submission electronically provide a copy to the Applicant.
- 11. If the Chief Executive Officer encounters an issue with providing a copy of the Record and APS's written submission to the Applicant electronically, the Chief Executive Officer may provide a paper copy of the Record and APS's written submission to the Applicant by sending it by ordinary mail to the address provided under Rule 7 and the copy of the Record and APS's written submission are deemed to have been received by the Applicant 7 days after they were placed in the post by the Chief Executive Officer.

## **Applicant's right to provide Written Submission and Disclose Documents**

- 12. Within 30 days of the date that the Chief Executive Officer provides the Applicant with a copy of the Record of Reconsideration and written submission of APS, the Applicant may electronically provide to the Chief Executive Officer
  - a. a written submission that includes the position of the Applicant on the issues raised in the appeal, including any case authorities, legislation or policies, and any response to the written submissions of APS; and
  - b. a copy of any document that is relevant to the matters in the appeal and which is not included in the Record of Reconsideration.
- 13. The Chief Executive Officer must within a reasonable time after receiving the Applicant's written submission and any documents provide a copy to APS electronically.
- 14. If the Applicant does not provide written submissions or documents in accordance with the time limits in Rule 12, the Appeal Tribunal's consideration of the matter shall be restricted to the documents contained in the Record of Reconsideration and the written submissions of APS, unless the Applicant makes an application in writing before the appeal hearing begins to the Chief Executive Officer seeking leave to have other matters or documents considered by the Appeal Tribunal.

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## Appointing Appeal Tribunal

15. As soon as reasonably possible
  - a. after providing the Applicant's written submissions and documents, if any, to APS within the time permitted under Rule 13, or
  - b. or if no submissions or documents are provided by the Applicant within the time permitted under Rule 12

the Chief Executive Officer must appoint an Appeal Tribunal under the Dispute Resolution Policy and advise the Applicant and APS of the names of the members of the Appeal Tribunal for that appeal.

16. If after an Appeal Tribunal is appointed, a member cannot participate in the appeal for any reason, the Chief Executive Officer may appoint a new member in accordance with the requirements of section 29 of the Dispute Resolution Policy.

## Scheduling the Appeal Hearing

17. The Chief Executive Officer must endeavor to schedule the appeal hearing as soon as reasonably possible after the Hearing Tribunal is appointed.
18. The Applicant and APS must cooperate with the Chief Executive Officer in finding mutually acceptable dates for the appeal hearing.
19. If the Chief Executive Officer is of the opinion that a party is not acting reasonably in the process of scheduling dates, the Chief Executive Officer may schedule the appeal hearing peremptorily.

## Notice of Appeal Hearing

20. The Chief Executive Officer must electronically provide at least 15 days' notice in writing of the time, date and location of the appeal hearing to the Applicant and APS.
21. The notice of the appeal hearing must include
  - a. advice that the Applicant or the Applicant's representative, or both, may appear at the Appeal Tribunal hearing; and
  - b. advice that the hearing will be held in English (and that an interpreter will be provided at Board expense upon request).

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## Provision of Appeal Record

22. No later than 7 days before the scheduled start of an appeal hearing, the Chief Executive Officer must electronically provide a copy of the Appeal Record to the members of the Appeal Tribunal, the Applicant and APS.

## Consideration of a matter without Oral Hearing

23. With the consent of the Parties, the Appeal Tribunal may consider a matter without holding an oral hearing, in which case, the Appeal Tribunal will decide the matter based solely on the Appeal Record.

## Interventions by Directly Affected Individuals

24. If, in the opinion of the Chief Executive Officer, an individual could be directly affected by a matter that is the subject of an appeal, the Chief Executive Officer may
  - a. provide notice of the appeal to that individual, and
  - b. advise that individual of the individual's right to apply to intervene.
25. An individual who claims to be a Directly Affected Individual may apply in writing electronically to the Chief Executive Officer for leave to intervene in an appeal hearing, setting out the grounds and any documents or other evidence in support of the application, no later than the earlier of the following dates:
  - a. 15 days after being provided a notice under Rule 24; or
  - b. 15 days after the date the individual knew or ought reasonably to have known that the appeal may affect that individual's entitlement to a pension or the amount of that individual's pension.
26. If an individual does not make an application within the time limited under Rule 25 that individual shall have no rights to participate in the hearing and shall not be entitled to any further notice in relation to the appeal.
27. The Chief Executive Officer must electronically provide copies of a notice under Rule 24 and the application to intervene, if any, under Rule 25, to the Applicant and APS.
28. The Applicant and APS may electronically provide submissions in writing in response to an application to intervene, setting out the grounds for any objection and any documents

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in support, no later than 10 days after the application to intervene is provided to them by the Chief Executive Officer.

29. The Chief Executive Officer must electronically provide copies of any written submissions received under Rule 28 to the individual who applied to intervene.
30. The individual who applied to intervene may electronically provide submissions to the Chief Executive Officer in response to submissions made under Rule 28 from the Applicant or APS or both, no later than 10 days after the submissions are provided to the applicant by the Chief Executive Officer.
31. The Chief Executive Officer must decide based on the submissions received in writing within the time limited under the Rules 25, 28 and 30:
  - a. whether an individual is to be granted leave to intervene because the individual is a Directly Affected Individual; and
  - b. if the individual is found to be a Directly Affected Individual, the terms and conditions on which a Directly Affected Individual may intervene in the appeal.
32. Where the Chief Executive Officer grants leave to intervene the Chief Executive Officer may provide any directions to the parties and the Directly Affected Individual that the Chief Executive Officer considers necessary for the effective preparation for and conduct of the hearing, including directions adjusting the scheduling of the hearing, the timing of submissions, and adjusting the timing set out in these Rules and order of presentation at the appeal hearing.

## Appearance at Appeal Hearing

33. The Applicant and APS may appear at the appeal hearing.
34. The Applicant and APS may have legal counsel or other representation at the appeal hearing.
35. If a person is served with notice of the appeal hearing and has not arrived at the scheduled time, the Appeal Tribunal may adjourn the hearing or proceed in their absence.

## Adjournments and procedural directions by Appeal Tribunal

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36. Once an appeal hearing starts, the Appeal Tribunal hearing the appeal may
  - a. adjourn the hearing of the appeal, with or without conditions, on the request of a party or on the Appeal Tribunal's own motion, if doing so will facilitate the effective and fair conduct of the hearing; and
  - b. provide any other directions or orders necessary to facilitate the effective and fair conduct of the hearing.
37. Before commencing the hearing, the chair of the Appeal Tribunal will ask if either party objects to the involvement of any Appeal Tribunal member due to a reasonable apprehension of bias.
38. If there is an objection, the Appeal Tribunal will hear submissions on the issue and then recess the hearing to decide whether the Appeal Tribunal member should continue to serve on the Appeal Tribunal or be recused.
39. If an Appeal Tribunal member is recused, the Chief Executive Officer must appoint a new member in accordance with section 29 of the Dispute Resolution Policy.
40. If, during the course of an appeal hearing, it appears to the Appeal Tribunal that an individual may be directly affected by the appeal and that individual has not received a notice under these Rules, the Appeal Tribunal may
  - a. adjourn the hearing of the appeal in order to allow notice to be given to the individual who may be directly affected; and
  - b. may provide any other directions that the Appeal Tribunal considers necessary with respect to the potential intervention and the procedures to be followed in relation to potential intervention.

## **Presentations at Appeal Hearing**

41. At the hearing, the Applicant and APS may present oral and written evidence and argument.
42. Oral evidence presented to the Appeal Tribunal is subject to cross-examination by the party adverse in interest.
43. The Appeal Tribunal may ask a witness or the parties' questions.

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44. The rules of evidence which apply to judicial hearings do not apply to hearings before the Appeal Tribunal.
45. Unless the chair of the Appeal Tribunal directs otherwise, the presentation of evidence and arguments will proceed in the following order:
  - a. evidence of the Applicant;
  - b. evidence of APS;
  - c. rebuttal evidence, if any, of the Applicant;
  - d. argument of the Applicant;
  - e. argument of APS; and
  - f. rebuttal argument, if any, of the Applicant.

## **Independent legal advice provided to an Appeal Tribunal**

46. In the event that the Appeal Tribunal obtains legal advice in relation to the appeal, that advice is subject to solicitor client privilege and the Appeal Tribunal will not disclose it to the parties unless, in the opinion of the Appeal Tribunal, it raises a new point of law or jurisdiction that is likely to affect the decision of the Appeal Tribunal.
47. If the legal advice raises a new point of law or jurisdiction that is likely to affect the decision of the Appeal Tribunal, the Appeal Tribunal must disclose the substance of the advice to the parties through the Chief Executive Officer or independent legal counsel.
48. Where the substance of legal advice is provided under Rule 48, the parties must be given at least 30 days to provide a written response to the advice and may request the opportunity to make oral submissions to the Appeal Tribunal about the matter raised.

## **Appeal Tribunal deliberation and decision**

49. After evidence and argument have been heard by the Appeal Tribunal, the Appeal Tribunal must meet in private to deliberate.
50. During the deliberations, neither the Applicant nor any representative of APS can be present.

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51. If the Chief Executive Officer is not the chair of the Appeal Tribunal, the Chief Executive Officer may be present at the conclusion of the Appeal Tribunal's deliberations to document the Appeal Tribunal's decision and the reasons for that decision.
52. The Appeal Tribunal may use the assistance of independent legal counsel in the preparation of reasons for its decision.
53. The Appeal Tribunal is not bound by previous decisions of the Appeal Tribunal or the former PSP Board under the former *Public Sector Pension Plans Act* but may have regard for them.
54. After the Appeal Tribunal has made its decision, the Chief Executive Officer must within a reasonable time, electronically provide the Appeal Tribunal's written decision, including the reasons for the decision, to the Applicant and to APS.

Approved: October 29, 2019