



Review and Appeal Panel Rules of Procedure Regulation

Enacted under the *Review and Appeal Law*, section 37(2)

TNR 10/2016

Enacted on April 5, 2016

Amended on June 17, 2020

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Deposited in the Tla'amin Registry

June 24, 2020

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PART 1 - INTRODUCTORY PROVISIONS

Authority

1. This Regulation is made pursuant to section 37(2) of the *Review and Appeal Law*.

Purpose

2. The purpose of this Regulation is to set out the matters that must and may be addressed in the Review and Appeal Panel's rules of procedure and the process for approving the rules of procedure. *[Amended June 17, 2020]*¹

Definitions

3. (1) In this Regulation,
"Law" means the *Review and Appeal Law*; and
"rules of procedure" means the rules of procedure of the Review and Appeal Panel.
(2) Unless otherwise expressly provided in this Regulation, all terms used in this Regulation have the same meaning as in the Law. *[Amended June 17, 2020]*²

Application

4. This Regulation applies to the Review and Appeal Panel.

PART 2 - MATTERS TO BE ADDRESSED IN THE REVIEW AND APPEAL PANEL'S RULES OF PROCEDURE

Matters that must be addressed

5. (1) In developing rules of procedure under section 28 of the Law, the Review and Appeal Panel must address the following matters:
(a) forms to be used by applicants and respondents to initiate a review or appeal;

¹ The section enacted on April 5, 2016, originally read:
2. The purpose of this Regulation is to set out the matters that must be addressed in the Review and Appeal Panel's rules of procedure.
Amended June 17, 2020, to:
2. The purpose of this Regulation is to set out the matters that must **and may** be addressed in the Review and Appeal Panel's rules of procedure **and the process for approving the rules of procedure**.

² The subsection enacted on April 5, 2016, originally read:
(2) Unless otherwise expressly provided in this Regulation, all terms used in this Regulation have the same **meanings** as in the Law.
Amended June 17, 2020, to:
(2) Unless otherwise expressly provided in this Regulation, all terms used in this Regulation have the same **meaning** as in the Law.

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- (b) the process for
- (i) replacing standing panel members with alternate panel members,
 - (ii) adding participants to a review or appeal, *[Amended June 17, 2020]*³
 - (iii) exchange of documents and information among the participants, *[Amended June 17, 2020]*⁴
 - (iv) access to documents,
 - (v) issuing notices,
 - (vi) service,
 - (vii) adjournments,
 - (viii) hearing a review or appeal,
 - (ix) calling and excluding witnesses,
 - (x) calling and excluding technical experts or advisors,
 - (xi) public attendance,
 - (xii) withdrawing an appeal,
 - (xiii) filing written submissions and responses,
 - (xiv) amending a review or appeal request or a notice of response, *[Amended June 17, 2020]*⁵
 - (xv) determining and issuing decisions, orders, recommendations and reports, and *[Amended June 17, 2020]*⁶

³ The subclause enacted on April 5, 2016, originally read:

(ii) adding **a party or parties to an application**,

Amended June 17, 2020, to:

(ii) adding **participants to a review or appeal**,

⁴ The subclause enacted on April 5, 2016, originally read:

(iii) exchange of documents and information among the **parties**,

Amended June 17, 2020, to:

(iii) exchange of documents and information among the **participants**,

⁵ The subclause enacted on April 5, 2016, originally read:

(xiv) amending **an application or response to an application**,

Amended June 17, 2020, to:

(xiv) amending **a review or appeal request or a notice of response**,

⁶ The subclause enacted on April 5, 2016, originally read:

(xv) determining and issuing decisions, orders, **rulings**, recommendations and reports, and

Amended June 17, 2020, to:

- (xvi) destroying exhibits after a hearing has been completed;
 - (c) whether and under what circumstances interveners will be permitted to participate in a hearing;
 - (d) admissibility of evidence and other evidentiary matters; *[Amended June 17, 2020]*⁷
 - (e) costs;
 - (f) time requirements;
 - (g) stays; and
 - (h) representation.
- (2) The rules of procedure developed by the Review and Appeal Panel under section 28 of the Law must incorporate the following:
- (a) the standard of proof in respect of evidence in any hearing will be on a balance of probabilities; and
 - (b) where the three panel members are unable to reach a consensus,
 - (i) a determination that is agreed to by two of the standing panel members is considered a determination of the Review and Appeal Panel,
 - (ii) a standing panel member who does not agree with the other two panel members may prepare a dissenting determination, and
 - (iii) if none of the standing panel members are in agreement, the matter will be remitted to the original decision maker and the three standing panel members may provide their views on the matter.

Matters that may be addressed

6. In developing rules of procedure under section 28 of the Law, the Review and Appeal Panel may address the following matters:
- (a) scheduling review or appeal management conferences; *[Amended June 17, 2020]*⁸

(xv) determining and issuing decisions, orders, recommendations and reports, and

⁷ The clause enacted on April 5, 2016, originally read:
(d) admissibility of evidence and other evidentiary matters, **including pre-hearing receipt and disclosure, and the pre-hearing examination of a party on oath, by affirmation or by affidavit;**
Amended June 17, 2020, to:
(d) admissibility of evidence and other evidentiary matters;

⁸ The clause enacted on April 5, 2016, originally read:

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- (b) scheduling pre-hearing conferences, including confidential pre-hearing conferences;
- (c) preliminary or interim matters, including a preliminary assessment;
- (d) consensual alternative dispute resolution processes;
- (e) providing and certifying the appeal record;
- (f) audio and video recordings of hearings; and
- (g) any other matters the Review and Appeal Panel considers advisable for the proper functioning and performance of its duties under the Law.

Process for approving rules of procedure

7. The Review and Appeal Panel will establish, by resolution adopted by panel members, its rules of procedure, including forms to be used in reviews and appeals under the Law, in accordance with sections 8 and 9. *[Added June 17, 2020]*⁹

Providing draft rules of procedure and forms to chief administrative officer

8. At least 15 business days prior to passing a resolution to adopt its rules of procedure, or any form thereunder, the Review and Appeal panel must provide the chief administrative officer with a copy of the draft rules of procedure or form for review and comment. *[Added June 17, 2020]*¹⁰

Review comments from chief administrative officer

9. The Review and Appeal Panel must consider any comments it receives from the chief administrative officer prior to passing a resolution to approve its rules of procedure or any form in accordance with this Regulation. *[Added June 17, 2020]*¹¹

(a) scheduling review or appeal management conferences;
Amended June 17, 2020, to:
(a) scheduling **review or** appeal management conferences;

⁹ Section 7 was added June 17, 2020.

¹⁰ Section 8 was added June 17, 2020.

¹¹ Section 9 was added June 17, 2020.