

PRIVATE TRAINING INSTITUTIONS BRANCH

Commissioner's Rules of Practice and Procedure for Appeals under Division 2 of Part 5 of the *Private Training Act*

Introduction

These rules for appeals to the commissioner are made under s. 53(b) of the *Private Training Act*. They must be read together with the *Private Training Act*, the associated regulations, the *Administrative Tribunals Act*, and any practice directives issued by the commissioner under s. 53(c) of the *Private Training Act*.

The commissioner has jurisdiction to decide an appeal of:

- (a) a decision of the registrar to cancel an institution's certificate under s. 37 of the *Private Training Act*;
- (b) a reconsideration of the registrar of :
 - (i) a refusal to grant a certificate to an institution under s. 7 of the *Private Training Act*;
 - (ii) the imposition of an administrative penalty on a certified institution under s. 33 of the *Private Training Act*;
 - (iii) the suspension of a certificate under s. 36 of the *Private Training Act*.

The filing of a notice of appeal under these rules does not operate as a stay or suspend the operation of the decision being appealed.

At any time during an appeal or at the time the commissioner issues an appeal decision, the commissioner may make an order requiring an institution to pay all or part of the costs of an appeal if he or she considers the conduct of the institution in relation to the appeal to have been improper, vexatious, frivolous or abusive.

The commissioner may delegate to one or more employees of the ministry any of the commissioner's powers or duties under the *Private Training Act*. The delegation must be in writing and may include any terms or conditions the commissioner considers advisable.

Definitions

1 In these rules:

"Act" means the *Private Training Act*;

"Appeal record" means the record produced by the registrar under rule 12;

"Appellant" means an institution bringing an appeal under Division 2 of Part 5 of the Act;

"Notice of appeal" means a written notice in the form provided on the website of PTIB;

"Page" means a single side of an 8 ½ x 11-inch sheet with:

- (a) font size of at least 12 points;
- (b) typed lines at least 1.5 lines apart; and
- (c) margins of at least 2.5 cm.

“Party” means an appellant or the registrar of the PTIB;

“PTIB” means the Private Training Institutions Branch of the Ministry of Post-Secondary Education and Future Skills

Addresses for Delivery

- 2** A party who is required by these rules to deliver a submission or other document to the commissioner must do so by delivering it via email to: PTIBCommissioner@gov.bc.ca or via personal delivery to: 310-601 Cordova Street W, Vancouver, B.C., V6B 1G1.
- 3** An appellant who is required by these rules to deliver a submission or other document to the registrar must do so by delivering it via email to: PTI@gov.bc.ca or via personal delivery to: 310-601 Cordova Street W, Vancouver, B.C., V6B 1G1.
- 4** Unless the appellant has provided a different address in the notice of appeal, the email address for service provided to PTIB per s.62(3) of the Act will be used for all communications directed to the appellant.

Date of Receipt

- 5** A submission or other document delivered to the commissioner or the registrar under these rules will be deemed to have been received:
 - (a) if delivered in person, by courier, or by mail, on the actual date of receipt by PTIB.
 - (b) if sent by email or, in the case of a notice of appeal, electronically using the form available on the website of PTIB, on the day it was sent unless it was sent after 4:30 pm PST on a weekday or any time on a day on which PTIB’s office is closed in which case it will be deemed to have been received on the next business day.
- 6** A submission or other document delivered to the appellant under these rules will be deemed to have been received:
 - (a) if sent by ordinary or registered mail, on the fifth day after it is mailed.
 - (b) if sent by email, on the third day after it is sent.
 - (c) if delivered in person, on the date of delivery.

Commencing an Appeal

- 7** To commence an appeal under s. 50 of the Act, the appellant must deliver a notice of appeal to the commissioner in accordance with rule 2.
- 8** In accordance with s. 50(2)(c) of the Act, the notice of appeal must be received within 30 days of:

- (a) the notice of cancellation given under s. 37 of the Act.
- (b) the reconsideration decision issued under s. 48 of the Act.

9 The notice of appeal must:

- (a) contain the name of the institution;
- (b) contain the name of the institution representative or the name of the lawyer representing the institution;
- (c) If applicable, an email address for service that will serve as a substitute for the email address provided to PTIB per s.62(3) of the Act;
- (d) identify the decision being appealed;
- (e) state the grounds for the appeal;
- (f) if applicable, include a request for an oral hearing and submissions detailing the basis on which an oral hearing is requested; and
- (g) include the **\$100 appeal fee** prescribed by s. 13(b) of the *Fees and Student Tuition Protection Fund Regulation* which must be paid by cheque, payable to the Minister of Finance, credit card or electronic funds transfer[s.47(1) of the *Fees and Student Tuition Protection Fund Regulation*].

Acknowledgement and Notice to Registrar

10 Within five days of receipt of a notice of appeal, the commissioner will:

- (a) acknowledge receipt in writing to the appellant; and
- (b) notify the registrar by providing a copy of the notice of appeal.

Appeal Record

11 An appeal to the commissioner is an appeal on the record.

12 Within 10 days of receipt of a notice of appeal, the registrar must deliver the appeal record to the appellant and the commissioner.

13 The appeal record must contain:

- (a) In an appeal under s.50(1)(a) of the Act [cancellation of certificate], all documents, including records and correspondence, which may be relevant to the decision being appealed; and
- (b) In an appeal under s. 50(1)(b) of the Act [reconsideration decision]:
 - (i) the reconsideration record produced by the registrar in accordance with the Registrar's Rules of Practice and Procedure in the course of the registrar's reconsideration process;
 - (ii) any submissions made by the appellant in the course of the registrar's reconsideration process;
 - (iii) any additional information or record provided by the appellant or the registrar in the course of the registrar's reconsideration process; and

(iv) the registrar's reconsideration decision.

- 14** Notwithstanding rule 11, the appellant may apply to the commissioner to tender new evidence that is not part of the record and the commissioner may allow such evidence only where it is found to be reasonably required for full and fair disclosure of all matters related to the decision under appeal.

Appeal by Written Submissions

- 15** Unless otherwise ordered by the commissioner in his or her sole discretion, appeals will be conducted by way of written submissions.
- 16** The appellant must deliver written submissions to the commissioner and to the registrar within 21 days of:
- (a) receipt of the appeal record when no request for an oral hearing was made; or
 - (b) receipt of the decision of the commissioner denying a request for an oral hearing.
- 17** If the appellant does not deliver written submissions, the commissioner will advise the parties in writing the appeal has been closed and no substantive decision will be rendered.
- 18** If the appellant delivers written submissions, the registrar may deliver to the commissioner and the appellant within 14 days of receipt of those submissions, either:
- (a) response submissions; or
 - (b) written notice the registrar does not intend to deliver response submissions.
- 19** Submissions delivered under rules 16 and 18(a) are limited to 30 pages.
- 20** If the registrar delivers response submissions, the appellant may deliver reply submissions to the commissioner and the registrar within seven days of receipt of the registrar's response submissions.
- 21** Submissions delivered under rule 20 are limited to 10 pages.

Request for Appeal by Oral Hearing

- 22** If the appellant requests an oral hearing, the registrar may deliver to the commissioner and the appellant within 14 days of receipt of the notice of appeal with those submissions, either:
- (a) response submissions on the request for an oral hearing; or
 - (b) written notice the registrar does not intend to deliver response submissions on the request for an oral hearing.
- 23** The commissioner will advise the parties of his or her decision respecting an oral hearing within 30 days of receipt of the registrar's response submissions or written notice the registrar does not intend to make such submissions.

24 Submissions made in respect of a request for an oral hearing are limited to 10 pages.

Appeal by Oral Hearing

- 25** If an oral hearing is ordered, the commissioner will schedule a pre-hearing conference call with the parties to determine the date of the hearing, the procedure to be followed, and a schedule for written submissions.
- 26** If the parties cannot agree on a schedule for the exchange of written submissions, or if either party requires an extension to the dates agreed upon, such schedule or extensions will be established at the sole discretion of the commissioner.
- 27** Any written submissions to be exchanged as determined in the pre-hearing conference call must be exchanged directly between the parties and provided to the commissioner in accordance with the agreed upon schedule.
- 28** The commissioner will determine, in his or her sole discretion, whether to record or otherwise transcribe the oral hearing and, if a record or transcription is deemed necessary or desirable, the manner of any such recording or transcription.

Interim Applications

29 Interim applications must:

- (a) be made in writing to the commissioner with a copy provided to the application respondent;
- (b) be delivered:
 - (i) in the case of an application under rule 14 [tender new evidence] , within 10 days of receipt of the appeal record;
 - (ii) in the case of an application under rule 35 [extend time limit], no later than the date upon which the time limit subject to the application expires.
- (c) include an explanation of the basis on which the interim application is made.

30 The filing of an interim application under rule 14 or 35 operates as a stay of the appeal process otherwise set out in these rules until such time as an interim order is made.

31 The commissioner may, on his or her own discretion, request submissions from the respondent in an interim application and if such a request is made, set a deadline for provision of those submissions.

Interim Orders

32 The commissioner will issue written reasons to the parties respecting an interim order within seven days of receipt of the interim application or, if applicable, the respondent's submissions made under rule 31.

Appeal Decisions

33 In accordance with s. 50(6) of the Act, the commissioner may make an order doing one or more of the following in respect of an appeal:

- (a) dismissing the appeal;
- (b) allowing the appeal and giving any directions to the registrar that the commissioner considers appropriate in the circumstances;
- (c) varying the decision under appeal, including reducing the amount of an administrative penalty.

34 The commissioner may, within seven days of the date an appeal decision is issued, amend the decision to:

- (a) correct a typographical, an arithmetical or another similar error in the decision; and
- (b) correct an obvious error or omission in the decision.

Extension of Time

35 The commissioner may, on an application by either party or on his or her own initiative, extend or shorten any time limit provided for in these rules except those referred to in rule 8 [notice of appeal].