

THE DANGEROUS DRUGS ACT

THE DANGEROUS DRUGS (CANNABIS LICENSING APPEAL TRIBUNAL) RULES, 2019

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THE DANGEROUS DRUGS ACT

THE DANGEROUS DRUGS (CANNABIS LICENSING APPEAL TRIBUNAL)
RULES, 2019

In exercise of the powers conferred upon the *Cannabis* Licensing Appeal Tribunal by regulation 14 of the Dangerous Drugs (*Cannabis* Licensing Appeal Tribunal) Regulations, and every other power hereunto enabling, the following Rules are hereby made:—

- Citation. 1. These Rules may be cited as the Dangerous Drugs (*Cannabis* Licensing Appeal Tribunal) Rules, 2019.
- Interpretation. 2. In these Rules—
 “appellant” means a person who has filed a notice of appeal under these Rules;

“authorization” means a licence, permit or other authorization under section 9A(2A) of the Dangerous Drugs Act;

“Chairman” means Chairman of the Appeal Tribunal;

“day” means a business day in the Island of Jamaica and excludes Saturday, Sundays and public holidays;

“document” means, in addition to a document in writing, anything, or any manner in which information of any description is recorded or stored;

“party” in relation to an appeal or notice of appeal, means the *Cannabis* Licensing Authority, the appellant, any person declared by the Tribunal to have party status in the appeal, or a person specified as a party in the appeal by operation of any law;

“public holiday” has the meaning assigned to it under section 8(2) of the *Interpretation Act*;

“Registrar” means the person duly authorized to accept documents on behalf of the Tribunal or any member of the Tribunal and to issue notices under the hand of the Chairman;

“Tribunal” means the *Cannabis* Licensing Appeal Tribunal established by regulation 3 of the Dangerous Drugs (*Cannabis* Licensing Appeal Tribunal) Regulations.

Scope of application.

3.—(1) Where, in any proceeding, a question of procedure arises to which these Rules do not provide an answer, or the answer these Rules provide is incomplete, the question shall, subject to any relevant provision of these Rules, be determined in such manner as the Tribunal directs.

(2) The Tribunal may, in the course of conducting its own proceedings, vary or supplement any of these Rules if it is fair and equitable to do so or to provide for a more expeditious or informal process, as the circumstances and considerations of fairness permit.

(3) No proceeding of the Tribunal shall be invalid by reason only of a defect in form or a technical irregularity.

(4) Notwithstanding anything to the contrary, if it is fair and equitable to do so, the Tribunal may extend or abridge any of the time limits fixed by these Rules or otherwise fixed by the Tribunal, either before or after the expiry of any such time limit.

Notice of Appeal.

4.—(1) Any person aggrieved by a decision of the *Cannabis* Licensing Authority to—

(a) refuse to grant an authorization;

- (b) refuse to renew an authorization;
- (c) suspend an authorization;
- (d) revoke an authorization; or
- (e) vary the conditions of an authorization,

may appeal to the Tribunal against any decision of the *Cannabis* Licensing Authority by filing a notice of appeal.

(2) Any appeal made under sub-paragraph (1) shall be made within thirty days of notification of the decision to the appellant, or such longer period as the Tribunal may, for good cause, allow in any case.

(3) A notice of appeal shall include—

- (a) the name and address of the appellant;
- (b) the name of the appellant's attorney-at-law or other authorized representative (if the appellant is represented) and their address for service of documents, email address, telephone number, and facsimile number if any;
- (c) the particulars of the decision of the *Cannabis* Licensing Authority against which the appeal is being made;
- (d) the grounds of appeal;
- (e) copies of the relevant documents which were before the *Cannabis* Licensing Authority;
- (f) a statement whether the appellant intends to call witnesses;
- (g) a statement of the relief or outcome that the appellant is seeking; and
- (h) a copy of the decision or order which is the subject of the appeal.

(4) Every notice of appeal shall be-

- (a) signed by the appellant or the appellant's attorney-at-law and addressed to the Chairman;
- (b) accompanied by the prescribed fee; and
- (c) filed with the Registrar, in accordance with rule 7, within thirty days after the date on which the appellant was notified of the decision against which the appeal is being made.

(5) The Tribunal may decline to hear an appeal where the appellant fails to comply with the provisions of paragraph (3) or (4).

5. The Registrar shall, upon receiving of a notice of appeal under rule 4—

- (a) cause a receipt in acknowledgement thereof to be issued to the appellant; and

- (b) refer a copy of the notice of appeal and supporting documents to the *Cannabis* Licensing Authority within seven days, and request a written statement of the reasons from the *Cannabis* Licensing Authority for the decision appealed against.

Request for additional information.

6.—(1) Upon receipt of the notice of appeal, the Tribunal may request that the appellant submit to it—

- (a) any document, information, or correspondence, relevant to the appeal, which in the opinion of the Tribunal is likely to assist in coming to a decision on the appeal against the decision of the *Cannabis* Licensing Authority; and
- (b) the original of any document, a copy of which was filed with the notice of appeal.

(2) The Tribunal shall proceed to consider the appeal made by the appellant and make such decision as it may think fit, if the appellant fails to comply with the request under sub-paragraph (1).

Filing of notice of appeal and other documents.

7.—(1) A notice of appeal or other documents may be filed at the office of the Tribunal by—

- (a) hand delivery;
- (b) courier service;
- (c) prepaid registered post;
- (d) facsimile; or
- (e) any other means directed by the Tribunal.

(2) Where a filing is made by facsimile, the notice of appeal or other documents shall include a cover page indicating—

- (a) the name, address and telephone number of the sender;
- (b) the name or office of the person with whom it is to be filed;
- (c) the date and time the document is transmitted;
- (d) the total number of pages transmitted, including the cover page;
- (e) the telephone number from which the document is transmitted; and

(f) the name and telephone numbers of a person to contact if a problem arises with the transmission of the facsimile.

(3) When filing a notice of appeal or other documents, otherwise than by facsimile, the party shall provide the original and three copies of each document to the Tribunal.

(4) Filing of documents shall be done Mondays to Fridays, between the hours of 10:00 a.m. and 3:00 p.m.

(5) Where a notice of appeal or other documents are filed by facsimile or other electronic means, the original notice of appeal and three copies of the notice of appeal and the other documents filed shall be delivered by twelve noon of the next day.

(6) The Registrar shall date stamp all notice of appeal or other documents when they are received and a notice of appeal or other documents shall be deemed to be filed as at that date.

Service of
notice of
appeal or
other
documents.

8.—(1) Service of a notice of appeal or other documents, on a party to an appeal may be effected by—

- (a) personal service on a party or the party's authorised representative;
- (b) courier service or prepaid registered post to a party at any address for service within the jurisdiction given by that party;
- (c) facsimile; or
- (d) any other means directed by the Tribunal.

(2) Where no address is given for service, the notice of appeal or other documents may be served by leaving it, posting it or courier delivery at or to—

- (a) the business address of the appellant's authorised representative;
- (b) where the party is an individual, that person's usual or last known place of residence;
- (c) where the party is a proprietor of a business, that person's—
 - (i) usual or last known place of residence; or
 - (ii) place of business or last known place of business; or
- (d) where the party is a firm or partnership, either—
 - (i) the principal or last known address of the firm or partnership or any place where the firm or partnership carries on business and which has a real connection with the appeal; or
 - (ii) the usual or last known place of residence of one of the partners.
- (e) where the party is a company, its registered office.

(3) Service of a notice of appeal or other documents by one party on the other shall be made on any day between the hours of 10:00 am and 3:00 pm.

(4) Where service is made by facsimile the notice of appeal or other documents shall include a cover page indicating—

- (a) the name, address and telephone number of the sender;
- (b) the name or office of the person to be served;
- (c) the date and time the document is transmitted;
- (d) the total number of pages transmitted including the cover page;
- (e) the telephone number from which the document is transmitted; and
- (f) the name and telephone number of a person to contact if a problem arises with transmission of the facsimile.

(5) Where service is made by facsimile or other electronic means, a copy of the notice of appeal or other documents shall be delivered by twelve noon of the next day.

(6) Service may be proven by evidence of signed confirmation by the party or the party's authorized representative, inclusive of details in respect of the full name, date, time and method of service.

(7) The Tribunal may direct a party who has served a notice of appeal or other documents to file an affidavit of service stating—

- (a) the date and time of service;
- (b) the precise place or address at which it was served;
- (c) on whom service was made; and
- (d) precisely how the document was served.

(8) Where service is executed by facsimile the affidavit of service referred to in paragraph (7) shall include—

- (a) the date and time of transmission;
- (b) the facsimile number to which it was sent;
- (c) a copy of the document served;
- (d) a copy of any cover sheet referred to in paragraph (4); and
- (e) a copy of the transmission record.

Computation
of time.

9. Where a notice of appeal or other documents are filed or served after 3:00 p.m. or on an excluded day, the document shall be deemed to have been filed or served on the next following day that is not an excluded day.

Cannabis
Licensing
Authority
response to

10. The *Cannabis* Licensing Authority shall, within twenty one days after receiving copy of a notice of appeal and accompanying documents, file with the Tribunal and serve on the appellant a written statement of the reasons for

notice of appeal. the decision in respect of which the appeal is made and the reasons, if any, for controverting the contents of any documents filed by the appellant.

Record of the appellant. 11.—(1) The appellant shall, within twenty one days after receiving the Cannabis Licensing Authority’s reasons, file six copies of the appellant’s record with the Tribunal and serve one copy on the Cannabis Licensing Authority.

(2) The appellant’s record shall include—

- (a) the notice of appeal together with the accompanying documents filed with the Tribunal and served on the *Cannabis* Licensing Authority;
- (b) supporting affidavits; and
- (c) written submissions.

(3) Written submissions referred to in sub-paragraph (2)(c) shall include—

- (a) the facts or evidence on which the appellant intends to rely;
- (b) a statement of the points in issue;
- (c) the arguments in support of the appeal;
- (d) the relief being sought; and
- (e) copies of any legal authorities on which the appellant intends to rely.

Record of the Cannabis Licensing Authority. 12.—(1) The *Cannabis* Licensing Authority shall, within twenty one days after service of the appellant’s record file six copies of the *Cannabis* Licensing Authority’s record with the Tribunal and serve one copy on the appellant.

(2) The record of the *Cannabis* Licensing Authority shall include—

- (a) the response to the notice of appeal and all accompanying documents;
- (b) supporting affidavits;
- (c) written submissions.

(3) The written submissions referred to in sub-paragraph (2)(c) shall include—

- (a) the facts or evidence on which the Commission intends to rely;
- (b) a statement of the points in issue;
- (c) the arguments in response to the appeal;
- (d) the desired outcome of the appeal; and
- (e) copies of any legal authorities on which the *Cannabis* Licensing Authority intends to rely.

Declaration as to party status.

13.—(1) The Tribunal may declare to be a party to any proceedings a person who satisfies the Tribunal that that person has a substantial interest in the proceedings.

(2) A person who is declared to be a party of any proceedings pursuant to sub-paragraph (1) may appear and be heard in that proceeding and may, at the Tribunal's sole discretion, produce evidence and cross examine witnesses.

Notice of hearing.

14.—(1) The Chairman shall, after receiving the appellant's and the *Cannabis* Licensing Authority's records—

- (a) fix a date, time and place for the hearing of the appeal; and
- (b) cause to be served a notice of hearing, informing the parties and any attorney-at-law representing a party of the date, time and place so fixed and of the list of documents required under rule 15.

(2) A notice of hearing referred to in sub-paragraph (1)(b) shall be served not less than fourteen days before the date fixed for the hearing of the appeal.

List of documents for hearing.

15.—(1) A notice of hearing shall require each party to provide to the Tribunal and to every other party a list of all documents on which the party proposes to reply.

(2) The lists shall, unless otherwise ordered by the Tribunal, be provided by the parties at least ten days before the date fixed for the hearing.

Inspection of documents.

16.—(1) Each party may inspect the documents included in the list provided by any other party.

(2) A copy of any document included in the list of a party referred to in sub-paragraph (1) shall, on the application of the party for disclosure and inspection, be provided to that party by the other within three days after the receipt of the request.

Tribunal order for disclosure.

17. A party may seek an order from the Tribunal at any stage of the proceeding ordering a party to—

- (a) disclose the existence of every document the party intends to present as evidence at the hearing;
- (b) disclose a list of witnesses whom the party may call to give evidence at the hearing and a brief description of each witnesses' intended testimony;
- (c) serve any other party at least ten days before the hearing, or as otherwise ordered by the Tribunal, copies of all documents that the party will produce or present as evidence at the hearing;

- (d) make available for inspection all documents, subject to conditions established by the Tribunal, that the party will present as evidence at the hearing; or
- (e) produce to the tribunal and to the other parties for inspection, and to supply copies of, any document in their possession or control which the tribunal considers relevant to the appeal and material to its outcome.

Failure to
comply with
disclosure
rules.

18. If a party fails to comply with any order granted by the Tribunal pursuant to rule 17, with respect to disclosure or inspection of documents or list of witnesses granted, that party shall not rely on the document or call the witnesses to give evidence, without the consent of the Tribunal.

Interim
Action by
Tribunal.

19.—(1) The Tribunal may, of its own volition or on the application of the appellant or the *Cannabis* Licensing Authority, issue directions as to the procedure to be adopted in the conduct of the appeal.

(2) The directions referred to in sub-paragraph (1) may include—

- (a) extending any time limit for making an appeal or carrying out any procedure pursuant to these Rules;
- (b) suspending the effect of any notice issued by the *Cannabis* Licensing Authority;
- (c) allowing the *Cannabis* Licensing Authority or the appellant to provide further information or supplementary statements or amending any document or response previously issued;
- (d) requiring any party to file a list of its proposed witnesses and statements of any such witnesses;
- (e) providing for the manner in which evidence may be given; (f) providing, where two or more appeals have been filed in respect of the same matter and covering the same interests and issues, that the appeals be consolidated.

(3) Where a party applies to the Tribunal for the issue of directions pursuant to sub-paragraph (2), that party shall at the same time serve a copy of the application on the other party, which party shall, if it wishes to contest that application, file a written response with the Tribunal within [seven days] of receiving the copy of the application, and at the same time serve a copy of that response on the applicant.

(4) The Tribunal may determine any interim applications by either party on the basis of the written submissions or may, in addition, hear evidence from the parties and their respective witnesses.

(5) Where the Tribunal decides that a hearing should be held, the Chairman shall set a date, time and place for the hearing and the Registrar shall, by notice in writing, notify the parties accordingly.

(6) Interim hearings shall be held in private unless the Tribunal determines, on its own initiative or on the application of either party, that the hearing should be held in public.

(7) Once the respondent to an interim application has been notified, at least [three days] before the hearing of the interim application, or at such time as may be directed by the Chairman, the applicant shall file with the Tribunal four sets of all relevant documents, duly indexed.

Powers of
Tribunal in
relation to
hearings.

20. The Tribunal may—

- (a) instead of holding an oral hearing deal with a matter based on written submissions and affidavits submitted by the parties;
- (b) direct that any evidence be given in written form;
- (c) summon and enforce the attendance of witnesses and compel them to give evidence on oath or otherwise and produce documents and records pertaining to the appeal;
- (d) conduct a hearing without the attendance of any parties;
- (e) direct that notice of any appeal or application be given to any person;
or
- (f) take any other step, give any other direction or make any other order for the purpose of conducting and managing the appeal.

Conduct of
hearing of
appeal.

21.—(1) The Tribunal shall meet at such times and places as it shall determine.

(2) Each party shall be entitled to appear before the Tribunal in person and may be accompanied and represented by an attorney-at-law or other representative authorised by that party.

(3) At the hearing of the appeal, the Tribunal shall enquire into the grounds of appeal and may—

- (a) hear evidence from the parties and any witness; and
- (b) seek the advice of any persons who, in the opinion of the Tribunal, has the requisite expertise to assist the Tribunal in its deliberations.

(4) Subject to sub-paragraphs (5) and (6), the Tribunal may, in its discretion, either as the whole case or as to any particular fact or facts, proceed and act upon evidence given by affidavit.

(5) Unless the Tribunal is satisfied that—

- (a) the affidavit is purely formal; and
- (b) requiring the attendance of the deponent is made with the sole object of causing delay,

any party may require the attendance upon summons of any person who has sworn an affidavit in the matter for the purpose of giving oral evidence.

(6) Where evidence is to be given by affidavit, the affidavit shall be delivered to the Tribunal not later than ten days before the hearing date.

(7) Where the party's evidence is required to be given orally at the hearing of the appeal, notice of such evidence shall be given by the party to the Tribunal not later than ten days before the hearing.

(8) Where either party to the appeal intends to make an application to adduce new evidence at a hearing, that party shall disclose that evidence to the other party no later than fourteen days prior to the hearing.

(9) A party to whom evidence is disclosed under sub-paragraph (8) may object to the new evidence being adduced by filing with the Tribunal and serving on the applicant, submissions in support of its objection within seven days of the evidence having been disclosed to it.

(10) Upon receipt of submissions under sub-paragraph (9) the Tribunal shall conduct a hearing into the objection within a reasonable time and may make such orders as it deems fit.

(11) Where the Tribunal orders a hearing to be held in private, it may be attended only by the parties, their authorized representatives, and any other person allowed by the Tribunal.

(12) A record of the evidence given by each witness at a hearing shall be made and the Chairman of the Tribunal shall sign that record and shall also mark, date and initial all documents produced at the hearing and attach such documents to the other papers pertaining to the appeal.

(13) A decision shall not become effective until affirmed by a majority of the members of the Tribunal and notified to the parties.

Dismissal of
an appeal
without a
hearing.

22.—(1) The Tribunal may dismiss an appeal without a hearing or at any stage after the commencement of a hearing if—

- (a) the appeal is frivolous, vexatious, commenced in bad faith, or is otherwise an abuse of process;
- (b) the appeal relates to matters that are outside the Tribunal's jurisdiction;
- (c) any of the statutory requirements for bringing the appeal have not been met; or
- (d) the party filing the appeal has abandoned the proceeding.

(2) Before dismissing an appeal under this Rule, the Tribunal shall—

- (a) give the parties notice of its intention to dismiss;

- (b) provide the reasons for its intended decision to dismiss; and
- (c) inform the parties of their right to make written submissions to the Tribunal within the time limits set out in the notice, which shall be at least ten days.

(3) In making a decision under paragraph (1)(a), the Tribunal shall consider the nature of any injustice or abuse of administrative process, including but not limited to the nature, content, language or subject matter of—

- (a) the request for access or the appeal;
- (b) any prior or contemporaneous requests or appeals by the party making the request or taking the appeal; and
- (c) other verbal and written communications to any agency or any official of any agency from the party making the request or taking the appeal.

Consolidation
of appeals.

23.—(1) If it appears to the Tribunal that—

- (a) the facts of two or more appeals before it are similar;
- (b) it is convenient to the parties;
- (c) some common issue of law or fact arises in both or all of the appeals;
- (d) no prejudice will result from consolidating the appeals; and
- (e) the requisite notice is given,

the Tribunal may order that the appeals be consolidated.

(2) Subject to sub-paragraph (1), the Tribunal shall give the parties an opportunity to show cause why any appeal should not be consolidated.

Withdrawal
of appeal.

24.—(1) An appellant may withdraw a notice of appeal—

- (a) before the hearing, by filing a notice in writing with the Tribunal and serving same on the *Cannabis* Licensing Authority and any other party; or
- (b) at the hearing, by way of a motion with the consent of the Tribunal.

(2) A party may by motion seek to discontinue its participation in the proceeding at any time before a final decision.

(3) The Tribunal may impose conditions on any withdrawal or discontinuance, including costs, as it considers appropriate.

Decisions of
the Tribunal.

25.—(1) The Tribunal shall, within fourteen days of the hearing give its decision in writing and may either—

- (a) dismiss the appeal and affirm the *Cannabis* Licensing Authority's decision;

- (b) vary the *Cannabis* Licensing Authority's decision; or
- (c) set aside the *Cannabis* Licensing Authority's decision and make a new decision in its place.

(2) The Tribunal shall within two days thereafter forward a copy of its decision to the *Cannabis* Licensing Authority and the appellant, together with a written statement of the reasons for its decision.

(3) Notwithstanding sub-paragraph (2) the Tribunal is not obligated to disclose the reasons for its determination to an appellant if the Tribunal considers that the disclosure would not be in the interests of national security.

Failure of party to attend appeal.

26.—(1) Where neither the *Cannabis* Licensing Authority nor the appellant appears at the appeal and the Tribunal is satisfied that those parties have received notice of the hearing in accordance with these Rules, the Tribunal may strike out the appeal.

(2) Where only one of the parties referred to in paragraph (1) appears, the Tribunal may proceed in the absence of the other if satisfied that the party who does not appear has received notice of the hearing in accordance with these Rules.

Application to set aside decision in party's absence.

27.—(1) A party who was not present at an appeal at which a decision was made or the appeal struck out in the absence of that party, may apply to set-aside that order.

(2) The application must be made within fourteen days after the date on which the decision was served on the applicant.

(3) The application to set aside the order must be supported by evidence on affidavit showing—

- (a) a good reason for failing to attend the hearing; and
- (b) that it is likely that had the applicant attended some other decision might have been made.

Adjournment.

28. The Tribunal may of their own motion or upon the application of any party, adjourn the appeal upon such terms as to cost, or otherwise as to the Tribunal may appear just.

Cost and recovery of cost.

29.—(1) The Tribunal may make such order as to costs with respect to the appeal, as it thinks fit, having regard to all the circumstances of the appeal.

(2) The Tribunal may order that the unsuccessful party to the appeal, pay the costs of another party and the Tribunal's costs of the proceeding.

(3) The Tribunal's costs of a proceeding consist of the expenses, including costs of any investigation that the Tribunal and the *Cannabis* Licensing Authority incurred in connection with the proceeding.

(4) In the absence of agreement as to costs the successful party shall lay that party's bill of costs calculated in accordance with the Supreme Court schedule of fees and rules as to cost, and shall be taxed by the Tribunal and the quantum of cost thereby determined.

(5) Any costs ordered by the Tribunal to be paid, may be recovered in the Supreme Court or Parish Court by or on behalf of the successful party as a civil debt due.

Sitting of
Tribunal.

30. The sittings of the Tribunal shall take place over three terms as follows—

- (a) the 7th January to the Friday before Good Friday.
- (b) the first Wednesday after Easter Monday to the 31st of July.
- (c) the 16th September to the 20th of December.

Variation of
Rules.

31. The Tribunal may, in the course of conducting its own proceedings, vary or supplement any of these Rules—

- (a) if it is fair and equitable to do so; or
- (b) in order to provide for a more expeditious or informal process, as the circumstances and considerations of fairness permits.

Dated this 19th day of April, 2019.

MAURICE BAILEY
Chairman,
Cannabis Licensing Appeal Tribunal.