
STATUTORY INSTRUMENTS

2009 No. 2657

The Court Martial Appeal Court Rules 2009

PART 6

**APPEALS IN PRELIMINARY PROCEEDINGS
AND AGAINST CERTAIN ORDERS**

CHAPTER 1

**APPEALS AGAINST AN ORDER OR RULING MADE IN
PRELIMINARY PROCEEDINGS OF THE COURT MARTIAL**

Application of Chapter 1

27.—(1) This Chapter applies where a party to preliminary proceedings or the Director seeks permission to appeal against an order or ruling, other than a reporting or public access order, made in those proceedings.

(2) In this Chapter—

a reference to an “appellant” is a reference to such a party;

“appeal notice” means an application to appeal against such an order or ruling;

“party” means a party to the preliminary proceedings; and

“respondent” means a person who serves a respondent’s notice.

Service of appeal notice

28.—(1) The appellant must serve an appeal notice on the registrar not more than seven days after the date of the order or ruling against which the appellant wants to appeal.

(2) The appellant must, at the same time as serving the appeal notice on the registrar, serve a copy of the appeal notice on any other party directly affected by the order or ruling against which the appellant wants to appeal.

(3) Paragraphs (1) and (2) are subject to rule 38.

Appeal notice

29.—(1) An appeal notice must be in made in writing and must—

(a) include the required information;

(b) state with respect to the order or ruling against which the appellant wants to appeal—

(i) the place where the Court Martial was sitting when the order or ruling was made;

(ii) the name of the judge advocate who made the order or ruling; and

(iii) the date on which the order or ruling was made;

(c) attach—

- (i) a transcript or note of the order or ruling; and
- (ii) any relevant skeleton arguments considered by the judge advocate before making the order or ruling;
- (d) state each ground of appeal on which the appellant relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identifying any relevant authorities the appellant intends to cite;
- (e) include or attach—
 - (i) an application for permission to appeal;
 - (ii) any application for an extension of time in which to serve the appeal notice;
 - (iii) any application for permission to adduce evidence, stating the reasons for the application;
 - (iv) a list of the names of the persons on whom the appellant has served the appeal notice.
- (2) An appeal notice must be signed by the appellant or his legal representative.

Respondent's notice

- 30.**—(1) A party on whom an appellant serves an appeal notice may serve a respondent's notice, and must do so if—
- (a) that party wants to make representations to the court;
 - (b) the registrar so directs; or
 - (c) a judge of the court so directs.
- (2) A party serving a respondent's notice must serve it on—
- (a) the appellant;
 - (b) the registrar; and
 - (c) every other person on whom the appellant served the appeal notice.
- (3) Subject to rule 38, a party serving a respondent's notice must do so not more than seven days after—
- (a) receipt of a copy of the appeal notice; or
 - (b) a direction to serve under paragraph (1).
- (4) The respondent's notice must—
- (a) state the name and address of the respondent;
 - (b) state the date on which the respondent was served with the appeal notice;
 - (c) state any ground of opposition on which the respondent relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identifying the ground of appeal to which each relates;
 - (d) summarise any relevant facts not already summarised in the appeal notice;
 - (e) identify any authorities the respondent considers relevant;
 - (f) include or attach any application for the following, stating the reasons for the application—
 - (i) an extension of time within which to serve the respondent's notice;
 - (ii) any application for permission to adduce evidence;
 - (g) identify any other document or thing that the respondent thinks the court will need to decide the appeal.

CHAPTER 2

APPEALS AGAINST A REPORTING OR PUBLIC ACCESS ORDER

Application of Chapter 2

31.—(1) This Chapter applies where a person directly affected by a reporting or public access order wants to appeal against that order.

(2) In this Chapter—

a reference to an “appellant” in this Chapter is a reference to such a person;

“appeal notice” means an application to appeal against such an order;

“party” means a party to the application to the Court Martial to make the order;

“respondent” means a person who serves a respondent’s notice.

Service of appeal notice

32.—(1) The appellant must serve an appeal notice not later than—

(a) 24 hours after an order was made restricting public access to proceedings of the Court Martial;

(b) 14 days after an order was made restricting reporting of the proceeding of the Court Martial.

(2) The appellant must serve the appeal notice on—

(a) the registrar;

(b) the Director (unless he is the appellant);

(c) the defendant (unless he is the appellant);

(d) any other person directly affected by the order against which the appellant wants to appeal; and

(e) if not within any of sub-paragraphs (b) to (d), the person who applied for the reporting or public access order.

(3) Paragraphs (1) and (2) are subject to rule 38.

Appeal notice

33.—(1) An application must be in writing and must—

(a) include the required information;

(b) specify the order against which the appellant wishes to appeal;

(c) state each ground of appeal on which the appellant relies, numbering them consecutively (if there is more than one), and concisely outlining each argument in support;

(d) summarise the relevant facts;

(e) identify any relevant authorities;

(f) include or attach, with reasons—

(i) an application for permission to appeal;

(ii) any application for an extension of time in which to serve the appeal notice;

(iii) any application for permission to adduce evidence;

(iv) a list of the names of the persons on whom the appellant has served the appeal notice; and

- (g) attach any document or thing that the appellant thinks the court will need to decide the appeal.
- (2) An appeal notice must be signed by the appellant or his legal representative.

Advance notice of an appeal

34.—(1) This rule applies where an appellant wants to appeal against an order (including directions) that he considers may be made by the Court Martial restricting the access of the public to the whole or part of any proceedings of the Court Martial.

(2) The appellant may serve advance written notice of intention to appeal against any such order that may be made.

- (3) The appellant must serve any such advance notice on—
 - (a) the registrar;
 - (b) the Director (unless he is the appellant);
 - (c) the person to whom proceedings relate (unless he is the appellant);
 - (d) any other person who would be directly affected by the order against which the appellant intends to seek permission to appeal if it is made;
 - (e) if not included in sub-paragraphs (b) to (d), the person applying for the order.

(4) Subject to rule 38, any such advance notice must be served not more than seven days after the court administration officer displays a notice of the application for the public access order.

(5) The advance notice must include the same information (with necessary adaptations) as an appeal notice under rule 33.

- (6) The court must treat the advance notice as the appeal notice if the order is made.

Duty of applicant

35.—(1) This rule applies where an appellant has served an appeal notice under rule 33 or an advance notice under rule 34.

(2) As soon as practicable after receipt of such notice, the party who applied for the reporting or public access order must serve on the registrar—

- (a) a transcript or note of the application for the order; and
- (b) any other document or thing that that party thinks the court will need to decide the appeal.

Respondent's notice

36.—(1) A person on whom an appeal notice under rule 33 or an advance notice under rule 34 has been served may serve a respondent's notice, and must do so if—

- (a) that person wants to make representations to the court;
- (b) the registrar so directs; or
- (c) a judge of the court so directs.

(2) A party serving a respondent's notice must serve it on—

- (a) the appellant;
- (b) those persons listed in rule 32(2).

(3) Subject to rule 38, the respondent must serve the respondent's notice not more than five days after—

- (a) the day on which he was served with the appeal notice;

- (b) the day on which he was served with the advance notice;
- (c) a direction to do so.
- (4) The respondent's notice must—
 - (a) state the date on which the respondent was served with the appeal notice;
 - (b) state any ground of opposition on which the respondent relies, numbering them consecutively (if there is more than one), concisely outlining each argument in support and identifying the ground of appeal to which each relates;
 - (c) summarise any relevant facts not summarised in the appeal notice;
 - (d) identify any authorities the respondent considers relevant;
 - (e) include or attach any application for the following, stating the reasons for the application—
 - (i) an extension of time in which to serve the respondent's notice;
 - (ii) permission to adduce evidence; and
 - (f) identify any other document or thing that the respondent thinks the court will need to decide the appeal.

CHAPTER 3

POWERS OF THE COURT AND THE REGISTRAR UNDER PART 6

Application and interpretation of Chapter 3

37. This Chapter applies with respect to any application or appeal under Chapter 1 or 2 and to any hearing with respect to such an application or appeal and any reference in this Chapter to “appellant”, “appeal”, “application”, “hearing”, “party” or “respondent” shall be construed accordingly.

Power to vary requirements of Chapters 1 and 2

- 38.** A judge of the court or the registrar may—
- (a) shorten a time limit or extend it (even after it has expired);
 - (b) allow a person to vary any notice which that person has served;
 - (c) direct that a notice or application be served on any person; and
 - (d) allow an application to be presented orally.

Hearings

- 39.**—(1) Unless the court directs otherwise, the court must hear in public an application or appeal.
- (2) Where a hearing relates to a public interest order that hearing must be in private unless the court otherwise directs.
- (3) Where an appellant wants to appeal against an order (including directions) of the Court Martial restricting the access of the public to the whole or part of any proceedings of the Court Martial, the court—
- (a) may decide without a hearing—
 - (i) an application, including an application for permission to appeal, and
 - (ii) an appeal; but
 - (b) must announce its decision on such an appeal at a hearing in public.
- (4) A judge of the court or the registrar may exercise any of his powers under Chapter 1 or 2—
- (a) at a hearing in public, in private or in the absence of a party and his legal representative; or

- (b) without a hearing.

Notice of hearings and decisions

40.—(1) Subject to paragraph (3), the registrar must give as much notice as is reasonably practicable of every hearing to—

- (a) the parties;
- (b) the custodian, if any, of any party;
- (c) any other person whom the court requires to be notified; and
- (d) the court administration officer.

(2) Subject to paragraph (3), the registrar must serve every decision of a judge of the court, the court or the registrar on—

- (a) the parties;
- (b) any other person whom the court requires to be served; and
- (c) the custodian, if any, of any party where the decision determines an appeal or an application for permission to appeal.

(3) Where a hearing or decision is about a public interest order, the registrar must not—

- (a) give notice of the hearing to, or
- (b) serve that decision on,

anyone other than the Director, unless the court otherwise directs.

Right to attend a hearing

41.—(1) An appellant or respondent who is in custody has a right to attend a hearing in public.

(2) If the court or the registrar so directs, a right to attend under paragraph (1) may be met by attendance by live link.

(3) In paragraph (2) “live link” means an arrangement by which a person, when not in the place where proceedings are being held, is able to see and hear, and to be seen and heard by, the court during proceedings (and for this purpose any impairment of eyesight or hearing is to be disregarded).

Powers of a judge of the court

42. A judge of the court may grant or refuse—

- (a) permission to appeal under this Part; or
- (b) an application for permission to adduce evidence.

Exercise by a judge of the court or the registrar of a power under this Part

43.—(1) Where a judge of the court or the registrar exercises, or refuses to exercise, a power specified in rule 38 or a judge of the court exercises, or refuses to exercise, a power specified in rule 42, the registrar must, within seven days of the exercise or refusal, serve notice on the appellant and the respondent of the exercise of, or refusal to exercise, that power.

(2) If the registrar refuses an application on the part of the appellant or respondent to exercise in his favour any of the powers specified in rule 38, the appellant or respondent (as the case may be) shall be entitled to have the application determined by a judge of the court.

(3) If a judge of the court refuses an application on the part of the appellant or respondent to exercise in his favour any of the powers specified in rule 38 or 42, the appellant or respondent (as

the case may be) shall be entitled to have the application determined by the court as duly constituted for the purpose in accordance with section 5.

Determination of appeal

- 44.** On hearing an appeal to which this Part applies, the court shall have power to—
- (a) confirm, reverse or vary the order or ruling complained of; and
 - (b) make such order as to costs as it thinks fit.