

Queensland



Subordinate Legislation 1997 No. 454

Queensland Law Society Act 1952

**QUEENSLAND LAW SOCIETY (SOLICITORS
COMPLAINTS TRIBUNAL) RULE 1997**

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PART 1—PRELIMINARY

Short title

1. This rule may be cited as the *Queensland Law Society (Solicitors Complaints Tribunal) Rule 1997*.

Definitions

2. In this rule—

“**address for service**” means the address a party gives as the address for service of documents under this rule.

“**clerk**” means the person holding office for the time being as the clerk of the tribunal.

“**hearing date**” means the day fixed by notice under the Act, section 6G¹ for hearing a charge.

“**party**” means—

- (a) the person bringing a charge; or
- (b) the person against whom the charge is brought.

PART 2—CHARGES

Division 1—Rules applying before hearing

Bringing a charge against practitioner, clerk or employee

3.(1) A person bringing a charge against a practitioner or a practitioner’s clerk or employee must give to the tribunal written notice of the charge in the approved form.

¹ Section 6G of the Act (Notice of hearing)

(2) The notice must state the particulars on which the person intends to rely.

(3) More than 1 charge may be included in a single notice.

(4) If the person bringing the charge is the council, the notice must be signed by the secretary of the society, someone else authorised by the council to sign applications, or the society's solicitor.

Address for service

4. Within 14 days after the person charged is given notice of the charge, the person must give written notice of the person's address in Queensland for service of notices under this rule—

- (a) the person bringing the charge; and
- (b) the clerk.

Prescribed period for giving notice

5. For section 6G of the Act, the prescribed period of notice is 28 days.

List of documents

6.(1) Each party must give to the clerk and each other party a list of documents on which the party intends to rely at the hearing at least 14 days before the hearing date, unless the tribunal otherwise orders in a particular case.

(2) A party giving a list of documents must also make the documents included in the list available for inspection at least 7 days before the hearing date.

(3) At the request of a party inspecting documents, and on payment of the appropriate amount, the party relying on the document must give to the inspecting party a copy of a document requested.

(4) The appropriate amount is the amount worked out at the rate fixed for photocopies under the *Rules of the Supreme Court*, schedule 2.

(5) Subsection (4) does not prevent a party recovering the cost of copies as part of the costs of the proceeding.

Affidavits

7.(1) Each party must give to the clerk and each other party a copy of each affidavit on which the party intends to rely at the hearing.

(2) The copy must be given as soon as practicable, but no later than 5 days, before the hearing date.

(3) If a party requires someone who has sworn an affidavit for another party to attend the hearing to give evidence or for cross-examination, the party requiring the attendance must, at least 3 days before the hearing date, give to the clerk and the other party, a list of the persons the party requires to attend for the purpose.²

Division 2—Rules applying to hearing

Amendment of charge

8.(1) The tribunal may allow the amendment of a charge or an allegation in a charge.

(2) However, if the tribunal considers the amendment will take the person charged by surprise, the tribunal may adjourn the hearing on conditions the tribunal considers appropriate.

Charge may be decided on affidavit evidence

9. If the tribunal receives in evidence an affidavit of 1 party, the tribunal may proceed to decide all or part of a charge or any relevant fact on the evidence given in the affidavit—

(a) if the other party does not appear; or

² Under section 6M of the Act, if a person does not voluntarily attend, the tribunal may, on application of a party or of its own initiative, issue an attendance notice requiring the person to attend and give evidence before the tribunal.

- (b) with the written consent of the other party; or
- (c) if the party filing the affidavit has given the other party a copy of the affidavit and the name of the person making the affidavit is included in a list of documents given to the other party under section 6.

Division 3—Rehearing and stays

Rehearings

10.(1) This section applies if the tribunal proceeds to hear and decide a charge in the absence of a party.

(2) Within 28 days after the absent party is given written notice of the tribunal's decision, the absent party may, by written notice given to the clerk and each other party, apply to the tribunal for a rehearing of the charge.

(3) The application must state the grounds on which the absent party relies to establish grounds for the rehearing.

(4) If the tribunal is satisfied the charge should be reheard—

- (a) the tribunal may grant the application on conditions the tribunal considers appropriate; and
- (b) the decision and orders of the tribunal on the charge are stayed.

(5) The persons constituting the tribunal for the original hearing must not constitute the tribunal for the rehearing.

(6) The tribunal—

- (a) must decide the rehearing as if the earlier hearing had not taken place; and
- (b) may make the order it considers appropriate; and
- (c) on making the order—must revoke the original orders.

Stay of decision

11.(1) Within 7 days after the tribunal makes an order against a person

charged, the person may apply in writing to the tribunal for a stay of the order.

(2) The application must state the grounds on which the person relies to establish grounds for the stay.

(3) The tribunal may stay the order on conditions the tribunal considers appropriate.

(4) The tribunal must not file the order in the Supreme Court while the order is stayed.

Division 4—General

Leave needed to withdraw charge

12.(1) A charge of which the tribunal is given notice can not be withdrawn unless the tribunal gives leave to withdraw it.

(2) The tribunal may either give leave to withdraw a charge on conditions the tribunal considers appropriate or dismiss the charge.

Directions

13. The tribunal may give directions in relation to the procedures to apply at hearings.³

Findings

14. The tribunal's findings must include the following—

- (a) the charge or charges to which it relates;
- (b) the affidavit material relied on by the parties;
- (c) a record of who appeared;
- (d) a record of the exhibits tendered;
- (e) the names of witnesses called;

³ See also section 6MA of the Act (Applications for directions).

- (f) the decision of the tribunal;
- (g) the orders made by the tribunal;
- (h) the reasons for making the orders.

Record of proceedings

15. The clerk must ensure—

- (a) shorthand notes or tape recordings or both are taken of proceedings before the tribunal; and
- (b) the notes or recordings are transcribed.

Transcript

16. Unless the tribunal otherwise orders, the clerk must not make a transcript of a proceeding before the tribunal available to anyone other than for the following purposes—

- (a) the proceeding to which the transcript relates;
- (b) an appeal to the Court of Appeal;
- (c) to answer a subpoena of a court.

PART 3—PROVISIONS ABOUT APPEALS

Starting appeals to be by application

17.(1) An appeal against an order of the tribunal is started by application.

(2) The application must state the decision appealed and the grounds of the appeal.

(3) The appellant must give to the clerk and each other party a copy of the filed application.

(4) The appeal is to be heard as soon as practicable after 28 days after it is filed.

Notice of abandonment

18.(1) The appellant may, at any time after starting the appeal, abandon the appeal by written notice filed with the registrar of the Court of Appeal and each party to the appeal.

(2) On giving notice under subsection (1), the appeal is taken to have been dismissed.

PART 4—MISCELLANEOUS

Effect of non compliance with rule

19. A proceeding before the tribunal is not a nullity merely because of the failure of a person to comply with this rule.

Giving notice or documents to tribunal

20. A notice or other document that, under this rule, must be given to the tribunal, may be given to the clerk at the tribunal's address for service.

Custody of records

21. The clerk is responsible for the custody of the tribunal's records.

Approval of forms

22. The chairperson may approve forms for use under this rule.

ENDNOTES

1. Made by the solicitors complaints tribunal on 5 December 1997.
2. Approved by Governor in Council on 18 December 1997.
3. Notified in the gazette on 19 December 1997.
4. Laid before the Legislative Assembly on . . .
5. The administering agency is the Department of Justice.