

**SCOTTISH EPISCOPAL CHURCH**

**THE PROVINCIAL APPEALS COMMITTEE FOR THE  
PROTECTION OF CHILDREN AND VULNERABLE ADULTS**

**RULES**

**RULES OF THE PROVINCIAL APPEALS COMMITTEE FOR THE  
PROTECTION OF CHILDREN AND VULNERABLE ADULTS OF THE  
SCOTTISH EPISCOPAL CHURCH**

**1 INTRODUCTION**

1.1 These Rules (hereinafter referred to as “the Rules”) are made under Section 6 of Canon 65 of the Code of Canons of the Scottish Episcopal Church and apply to proceedings before Provincial Appeals Committee for the Protection of Children and Vulnerable Adults (the Appeals Committee)

1.2 The procedure at and conduct of any proceedings shall be at the discretion of the Appeals Committee but the proceedings shall be conducted in accordance with the principles of natural justice.

1.3 Without prejudice to the foregoing generality, the Appeals Committee may, in order to do justice between the parties

- (a) make any order as it thinks fit; and
- (b) disapply or vary any provision of the Rules, or augment the same, as it thinks fit.

1.4 In the event that any member of an Appeals Committee is unable for whatever reason to remain as a member, the Chair of the Appeals Committee shall make whatever provision he or she, in his or her sole discretion, determines is appropriate for the due conduct of the Appeal. In particular, the Chair of the Appeals Committee may:

- (a) appoint another member of the Appeals Committee to sit with the remaining members of the Committee; or
- (b) direct that the remaining members of the Appeals Committee hear the proceedings; or
- (c) adjourn the proceedings; or
- (d) direct that in its subsequent deliberations the Appeals Committee should or should not have regard to part or the whole of any evidence already led in the proceedings; or
- (e) direct that evidence in relation to specific offences be retained, disregarded, or heard of new.

## **2 QUESTION OF LAW AND LAW OF EVIDENCE**

2.1 Any question of law arising in the course of the Appeal shall be determined by the Appeals Committee Chair.

2.2 The Scottish civil law of Evidence shall apply to proceedings brought under the Canon.

## **3 STANDARD OF PROOF**

3.1 Decisions of the Appeals Committee shall be determined on a balance of probabilities.

## **4 HEARINGS**

4.1 The Clerk to the Appeals Committee must, with due regard to the convenience of the appellant and the Provincial Officer (“the parties”), fix the date, time and place of an oral hearing and, where appropriate, set a timetable for the hearing and, not less than 21 days before the date fixed (or a shorter time if agreed by the parties), send to each party a notice that the hearing is to be on that date and at that time and place and the details of any timetable for the hearing.

4.2 At the beginning of any hearing the Chair must explain the manner and order of proceeding, having regard to any applicable burden and standard of proof and rules of evidence.

4.3 Subject to this rule, the Appeals Committee may conduct the hearing in the manner it considers most suitable to the clarification of the issues before it and generally to the just handling of the proceedings; it must so far as appears to it appropriate seek to avoid formality and inflexibility in its proceedings.

4.4 The parties shall be entitled to give evidence, to call witnesses, to question any witnesses and to address the Appeals Committee both on the evidence and generally on the subject matter of the appeal.

4.5 The Appeals Committee may at any stage of the proceedings require the personal attendance of any maker of a witness statement or deponent of an affidavit, or any expert whose report has been filed.

4.6 The Appeals Committee may receive evidence of any fact which seems to the Appeals Committee to be relevant even if the evidence would be inadmissible in proceedings before a court of law.

4.7 At any hearing the Appeals Committee may, if it is satisfied that it is just and reasonable to do so, permit reliance on reasons not stated in the Provincial Officer's decision or the appellant's written appeal, and allow parties to adduce any evidence not presented before or at the time the Provincial Officer took the disputed decision.

4.8 The Chair of the Appeals Committee if entitled to do so, may require any witness to give evidence on oath or affirmation and for that purpose there may be administered an oath or affirmation in due form.

4.9 It shall be the duty of the Appeals Committee to assist any party who seems to it to be unable to make the best of his or her own case without advocating the course that he or she should take.

## **5 PROCEDURAL HEARING**

5.1 The Appeals Committee may of its own motion, or on the motion of any party, hold procedural hearings. The purpose of a procedural hearing is to determine any motion or application made by the parties in advance of a hearing and to permit the effective management of the appeal in terms of:

- (a) the leading of evidence;
- (b) the lodging of productions;
- (c) the duration of the hearing; or
- (d) any other matter.

5.2 The Clerk of the Appeals Committee shall in good time advise parties of the date, place and time of any procedural hearing and the substance of matters to be determined.

5.3 A procedural hearing may be held to determine any motion or application.

5.4 Procedural hearings may be conducted by the Chair sitting alone.

## **6 MOTIONS**

6.1 A party may apply to the Appeals Committee by motion.

6.2 Without prejudice to the generality of the preceding paragraph, a party may apply to the Appeals Committee for:

- (a) leave to lead additional evidence;
- (b) leave to lodge answers late;
- (c) a period of time within which amendments may be made to the Notice of Appeal or to any answers thereto;
- (d) an order ordaining another party or parties to give greater specification of any matter contained in the Notice of Appeal or any answers thereto;
- (e) leave to lodge late a list of productions (together with any copy of the relative productions) or a list of witnesses, or to lodge a supplementary list of productions or witnesses, as the case may be.

6.3 Without prejudice to the foregoing, a party may apply for an order that all or part of the appeal proceedings be conducted in private.

6.4 Any motion made to the Appeals Committee shall be intimated in writing to the Clerk to the Appeals Committee and at the same time to every other party. As soon as is practicable thereafter the Clerk to the Appeals Committee shall intimate to each party how any motion shall be disposed of and, in particular:

- (a) the period within which any other party may make any representation in relation to that motion;
- (b) whether an oral hearing is to be allowed in respect of any motion and representation relative thereto; and
- (c) the date of any oral hearing to determine the motion;
- (d) if no oral hearing is allowed, the determination of the Appeal Committee in respect of the motion.

6.5 The Appeals Committee may in whole or in part grant, refuse or refuse for the time being any motion made to it.

6.6 A motion made during the course of any hearing may be made orally and without prior intimation to the Clerk.

## **7 REPRESENTATION**

7.1 At any hearing or Procedural Hearing a party may conduct his or her own case (with assistance from any person if he or she wishes) or may be represented by any person whether or not legally qualified.

7.2 At any hearing and at any pre-hearing review the Church may be represented by counsel or a solicitor or by another individual identified by it.

## **8 FAILURE OF PARTIES TO ATTEND**

8.1 If a party fails to be present or represented at a hearing, the Appeals Committee may, if it is satisfied that the party was duly notified of the hearing and that there is no good reason for such absence-

- a) hear and decide the appeal or question in the party's absence; or
- b) adjourn the hearing; and may give directions as it thinks fit.

8.2 Before deciding to dispose of any appeal or question in the absence of a party, the Appeals Committee must consider any representations in writing submitted by that party in response to the notice of hearing and, for the purpose of this rule, the appeal and any reply shall be treated as representations in writing.

## **9 POWER TO DECIDE APPEAL/APPLICATION WITHOUT HEARING**

### **9.1 If-**

- (a) no reply is delivered to the Clerk within the time or any extension of time allowed by the Appeal Committee;
- (b) the respondent states in writing that he or she does not resist the appeal;
- (c) the respondent withdraws his or her opposition to the appeal; or
- (d) all parties agree in writing

the Appeal Committee may decide the appeal on the basis of the notice of appeal and any reply without an oral hearing if-

- (e) there is no other opposition to the appeal;
- (f) having regard to the material before the Appeal Committee and the nature of the issues raised by the appeal, to do so will not prejudice the administration of justice; and
- (g) there is no important public interest consideration that requires a hearing in public.

9.2 Before deciding an appeal in the absence of a party, the Appeal Committee must consider any representations in writing submitted by that party in response to the notice of hearing.

## **10 DECISION OF THE APPEALS COMMITTEE**

10.1 Each member of the Appeals Committee shall have an equal vote in the determination of any matter by it. A decision of the Appeals Committee may be taken by a majority.

10.2 A decision of the Appeals Committee-

- (a) may be given orally at the end of the hearing or reserved;
- (b) whether there has been a hearing or not, must be recorded as soon as possible in a document which must also contain a statement of the reasons for the decision; and
- (c) must be signed by the Chair and dated.

10.3 The Clerk to the Appeals Committee must send a copy of the document recording the decision to each party.

## **11 WITHDRAWAL OF APPEAL**

11.1 The appellant may-

- (a) at any time before the hearing of the appeal withdraw the appeal by delivering to the clerk of the Appeals Committee a notice signed by the appellant or the appellant's representative stating that the appeal is withdrawn; or
- (b) at the hearing of the appeal, with the permission of the Appeals Committee, withdraw the appeal.

## **12 DIRECTIONS**

12.1 At any stage of the proceedings the Appeals Committee may, either on its own initiative or on the application of a party, give the directions it considers necessary or desirable in the conduct of the appeal

## **13 EVIDENCE BY TELEPHONE, VIDEO LINK OR OTHER MEANS**

13.1 The Appeals Committee may allow a witness to give evidence by telephone, through a video link or by any other means of communication if the Appeals Committee is satisfied that this would not prejudice the administration of justice.



## **14     ROLE OF THE CLERK**

14.1   The Clerk to the Appeals Committee shall perform such duties as the Appeals Committee shall require.

14.2   The Clerk to the Appeals Committee shall, as directed by the Appeals Committee make due provision for maintaining a file of all papers relating to any proceedings before it, including every order made by the applicable Tribunal in the course of proceedings.

14.3   The Clerk to the Appeals Committee shall maintain a record of the determination of the Appeals Committee and of any written opinion produced relative thereto by the Appeals Committee.