

**第 6 部****上訴**

(第 6 部由 1994 年第 77 號第 12 條代替)

**43. 釋義**

(1) 在本部中——

**上訴通知** (notice of appeal) 指根據第 47 條發出的上訴通知；

**上訴審裁小組** (Appeal Tribunal) 就任何上訴而言，指根據第 48 條組成以便就該上訴進行聆訊和作出裁定的審裁小組；

**上訴審裁小組秘書** (Secretary to the Appeal Tribunal) 指根據第 46(2)(a) 條獲委擔任該職的人；

**主席** (Chairman) 就任何上訴審裁小組而言，指根據第 48(1) 條獲委任為該審裁小組主席的人；

**職能** (functions) 包括權力及職責。

(2) 本部內凡提述職能的執行，包括提述權力的行使或職責的履行。

**44. 就建築事務監督的決定提出上訴**

(1) 除本條例另有規定外，任何人因建築事務監督行使根據本條例賦予他的酌情決定權所作的任何決定而感到受屈，可按照本部及根據第 38(1B) 條訂立的規例，就該項決定提出上訴。

(2) 如——

(a) 根據第 (1) 款提出的上訴所針對的決定，規定進行工程；及

(b) 有上訴通知根據第 47 條就該項決定發出，

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(Part 6 replaced 77 of 1994 s. 12)

**43. Interpretation**

(1) In this Part—

**Appeal Tribunal** (上訴審裁小組) in relation to an appeal means the tribunal constituted under section 48 to hear and determine that appeal;

**Chairman** (主席) in relation to an Appeal Tribunal means the person appointed as its chairman under section 48(1);

**functions** (職能) includes powers and duties;

**notice of appeal** (上訴通知) means a notice of appeal given under section 47;

**Secretary to the Appeal Tribunal** (上訴審裁小組秘書) means the person appointed as such under section 46(2)(a).

(2) Any reference in this Part to the performance of a function includes the exercise of a power or discharge of a duty.

**44. Appeals from decisions of Building Authority**

(1) A person aggrieved by any decision made by the Building Authority in the exercise of a discretion conferred on him under this Ordinance may, except where this Ordinance provides otherwise, appeal from that decision in accordance with this Part and regulations made under section 38(1B).

(2) If—

(a) a decision appealed from under subsection (1) requires the carrying out of works; and

則除第 (3) 款另有規定外，由發出通知之日起，建築事務監督不得強制執行或准許強制執行該項決定，直至上訴獲得處置為止，或除非上訴被撤回或放棄。

- (3) 如建築事務監督認為有緊急情況存在，而經考慮該緊急情況後認為必需強制執行第 (2) 款所提述的任何決定，並向上訴人送達通知，述明因有緊急情況而必需強制執行該項決定和進行工程或採取其他行動，則建築事務監督可強制執行該項決定，或准許予以強制執行。
- (4) 如建築事務監督決定就第 (3) 款而言有緊急情況存在，則任何人不得根據第 44 條就此項決定提出上訴。

#### 45. 上訴審裁團

- (1) 現設立一個審裁團，名為上訴審裁團。
- (2) 行政長官須委任以下人士為上訴審裁團的成員——
  - (a) 他認為適合出任根據第 48 條組成的上訴審裁小組的成員的人；及
  - (b) 具備第 48(2) 條所提述的資格的人，由他們出任主席。
- (3) 根據第 (2) 款作出的每項委任，任期不得超逾 3 年，由行政長官在委任時決定。
- (4) 上訴審裁團的成員可藉向行政長官發出的書面通知而辭去職位。
- (5) 任何不再是上訴審裁團成員的人，有資格再獲委任為審裁團成員。
- (6) 根據本條作出任何委任，須在憲報刊登公告。

- (b) a notice of appeal as regards that decision is given under section 47,

subject to subsection (3), with effect from the day the notice is so given, the Building Authority shall neither enforce nor permit the enforcement of such decision, until the appeal is disposed of or unless it is withdrawn or abandoned.

- (3) The Building Authority may enforce a decision referred to in subsection (2) or permit its enforcement where he is of the opinion that an emergency exists and that having regard to that emergency such enforcement is necessary and serves a notice on the appellant stating that due to an emergency the enforcement of the decision and the carrying out of works or other action is necessary.
- (4) The decision of the Building Authority that an emergency exists for the purposes of subsection (3) shall not be subject to an appeal under section 44.

#### 45. Appeal Tribunal Panel

- (1) There shall be a panel to be known as the Appeal Tribunal Panel.
- (2) The Chief Executive shall appoint to the Appeal Tribunal Panel—
  - (a) such persons as he considers suitable to serve as members of an Appeal Tribunal constituted under section 48; and
  - (b) persons with the qualifications referred to in section 48(2) to serve as Chairmen.
- (3) Each appointment under subsection (2) shall be for a period which shall not exceed 3 years and which shall be determined by the Chief Executive at the time of the appointment.

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- (7) 行政長官如認為上訴審裁團的任何成員不適合擔任審裁團成員的職位，可藉書面通知而將該人免職。

(由 2000 年第 62 號第 3 條修訂)

#### 46. 上訴審裁小組秘書

- (1) 為向上訴審裁小組提供行政服務，現設立上訴審裁小組秘書一職。
- (2) 上訴審裁小組秘書——
- (a) 須由局長委任；(由 1997 年第 362 號法律公告修訂；由 1999 年第 330 號法律公告修訂；由 2002 年第 106 號法律公告修訂；由 2007 年第 130 號法律公告修訂；由 2011 年第 16 號第 29 條修訂)
- (b) 須為公職人員；及
- (c) 須為上訴審裁團成員以外的人。

#### 47. 上訴通知

任何人行使第 44 條所賦予的上訴權利，須以訂明方式向上訴審裁小組秘書發出上訴通知，就有關決定提出上訴，上訴審裁小組秘書須於關於該項決定的通知送交該人之日後不遲於 21 天收到上訴通知。

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- (4) A member of the Appeal Tribunal Panel may resign his office by giving notice in writing to the Chief Executive.
- (5) A person who ceases to be a member of the Appeal Tribunal Panel shall be eligible for reappointment to that panel.
- (6) A notice of any appointment under this section shall be published in the Gazette.
- (7) The Chief Executive may by notice in writing remove from office any member of the Appeal Tribunal Panel whom he considers to be unsuitable to hold office as such member.

(Amended 62 of 2000 s. 3)

#### 46. Secretary to the Appeal Tribunal

- (1) There shall be a Secretary to the Appeal Tribunal for the purpose of providing administrative services to an Appeal Tribunal.
- (2) The Secretary to the Appeal Tribunal shall be—
- (a) appointed by the Secretary; (Amended L.N. 330 of 1999; L.N. 106 of 2002; L.N. 130 of 2007; 16 of 2011 s. 29)
- (b) a public officer; and
- (c) a person other than a member of the Appeal Tribunal Panel.

#### 47. Notice of appeal

A person exercising the right of appeal conferred by section 44 shall give notice of appeal in the prescribed manner, appealing from the relevant decision, to the Secretary to the Appeal Tribunal, to be received by him not later than 21 days after the date notification of the decision is sent to him.

**48. 上訴審裁小組**

- (1) 凡有上訴通知根據第 47 條發出，行政長官須從上訴審裁團委出一個審裁小組，由一名主席及不少於 2 名成員組成，以便就該通知所關乎的上訴進行聆訊和作出裁定。  
(由 2000 年第 62 號第 3 條修訂)
- (2) 主席須為根據《區域法院條例》(第 336 章) 第 5 條有資格獲委任為區域法院法官的人。  
(由 1998 年第 25 號第 2 條修訂)
- (3) 組成上訴審裁小組的人，須有過半數為公職人員以外的人。
- (4) 為免生疑問，現宣布凡公職人員出任上訴審裁小組主席或成員，就執行該主席或成員的職能而言，他——
  - (a) 只以個人身分行事；及
  - (b) 不接受他以公職人員身分而可能接受的任何指示。
- (5) 上訴審裁小組的主席或任何成員，如非公職人員，則須獲發酬金，酬金數額由行政長官釐定。  
(由 2000 年第 62 號第 3 條修訂)

**49. 初步聆訊**

- (1) 上訴審裁小組可在其認為適當的情況下進行初步聆訊，以裁定是否有應進行全面聆訊的好的因由提出。
- (2) 上訴審裁小組如裁定並無應進行全面聆訊的好的因由提出，則須作出命令，駁回上訴，否則須進行全面聆訊。

**48. Appeal Tribunal**

- (1) Where a notice of appeal is given under section 47, the Chief Executive shall appoint, from the Appeal Tribunal Panel, a tribunal consisting of a Chairman and not less than 2 members, for the purpose of hearing and determining the appeal to which the notice relates. *(Amended 62 of 2000 s. 3)*
- (2) The Chairman shall be a person who is qualified for appointment as a District Judge under section 5 of the District Court Ordinance (Cap. 336).
- (3) The majority of the persons constituting the Appeal Tribunal shall be persons other than public officers.
- (4) For the avoidance of doubt it is declared that where a public officer is a Chairman or a member of the Appeal Tribunal he shall, as regards the performance of his functions as such Chairman or member—
  - (a) act in his personal capacity only; and
  - (b) not be subject to any direction to which he might be subject in his capacity as a public officer.
- (5) The Chairman or any member of the Appeal Tribunal, who is not a public officer shall be paid such remuneration at such rate as the Chief Executive may determine. *(Amended 62 of 2000 s. 3)*

**49. Preliminary hearing**

- (1) The Appeal Tribunal may, in any case where it considers it appropriate to do so, hold a preliminary hearing to determine whether good cause has been shown for holding a full hearing.

**50. 上訴的裁定**

- (1) 以下條文適用於上訴的聆訊與裁定，或根據第 49 條進行的初步聆訊——
- (a) 每項問題按上訴審裁小組過半數成員的意見作出裁定；
  - (b) 如票數均等，主席可投決定票；
  - (c) 上訴審裁小組可——
    - (i) 收取和考慮任何口頭證據、文件證據或其他證據（包括任何書面陳述），不論該等證據是經宗教式宣誓、非宗教式宣誓或沒有宣誓而提供的，亦不論該等證據會否在法院進行的法律程序中獲接納為證據；
    - (ii) 藉按訂明方式發出的傳票，規定任何人到審裁小組席前出席任何聆訊，以提供證據或出示任何文件；
    - (iii) 監誓；
    - (iv) 在任何到其席前的人經宗教式宣誓、非宗教式宣誓後或沒有宣誓的情況下向該人訊問，並規定該人回答審裁小組所提出或在審裁處同意下提出的任何問題。
- (2) 上訴審裁小組就上訴作出裁定時，可作出命令，確認、更改或推翻上訴所針對的決定，或以其認為適合的其他決定取代該決定，或作出其認為適合的其他命令。

- (2) If the Appeal Tribunal determines that good cause has not been shown for holding a full hearing it shall make an order dismissing the appeal but shall otherwise hold a full hearing.

**50. Determination of appeal**

- (1) The following shall apply in relation to the hearing and determination of an appeal or a preliminary hearing held under section 49—
- (a) every question shall be determined by the opinion of the majority of the members of the Appeal Tribunal;
  - (b) where there is an equality of votes, the Chairman shall have a casting vote;
  - (c) the Appeal Tribunal may—
    - (i) receive and consider any oral, documentary or other evidence, (including any written statement), whether on oath, affirmation or otherwise, and whether or not it would be admissible in evidence in proceedings in a court;
    - (ii) by summons issued in the prescribed manner, require any person to attend before it at any hearing to give evidence or to produce any document;
    - (iii) administer oaths or affirmations;
    - (iv) examine on oath, affirmation or otherwise any person attending before it and require such person to answer any question put by or with the consent of the Tribunal.
- (2) In determining an appeal, the Appeal Tribunal may make an order confirming, varying or reversing the decision that is appealed against or substituting therefor such other decision or make such other order as it thinks fit.

**51. 判給訟費的權力**

- (1) 上訴審裁小組根據第 49(2) 或 50(2) 條作出命令時，可就訟費作出其認為適合的命令。
- (2) 凡上訴人多於一名，上訴審裁小組可規定已命令他們繳付的訟費（如有的話）如何由各人分攤。
- (3) 上訴審裁小組不得判給任何補償或作出繳付任何費用的命令，但第 (1) 款提述的繳付訟費命令除外。
- (4) 凡有繳付訟費命令針對上訴人作出，建築事務監督可追討訟費的款額，建築事務監督並須安排將該命令的文本送達上訴人。
- (5) 第 33 條（該條第 (1)、(2)、(3)、(5) 及 (8) 款除外）適用於任何上述繳付訟費命令，猶如其內提述建築事務監督發出的證明書及建築事務監督證明的費用，即分別提述第 (1) 款所提述的繳付訟費命令及根據該命令須付的訟費款額一樣。
- (6) 任何根據本條判建築事務監督須繳付的訟費，須由政府一般收入支付。

**52. 申述**

就出席上訴審裁小組席前的上訴聆訊（包括根據第 49 條進行的初步聆訊），以下條文須予適用——

- (a) 上訴一方（不論是建築事務監督或任何其他一方）可——
  - (i) 出席並作出申述；

**51. Power to award costs**

- (1) Upon making an order under section 49(2) or 50(2) the Appeal Tribunal may make such order as to costs as it thinks fit.
- (2) Where there is more than one appellant, the Appeal Tribunal may apportion among them, the costs (if any) ordered against them.
- (3) The Appeal Tribunal shall not award any compensation or make an order for any other payment, other than an order for costs referred to in subsection (1).
- (4) Where an order for costs is made against the appellant the amount of the costs may be recovered by the Building Authority and the Building Authority shall cause a copy of the order to be served on the appellant.
- (5) Section 33 (except subsections (1), (2), (3), (5) and (8) thereof) shall apply as regards any such order for costs as if the references therein to a certificate of the Building Authority and costs certified by the Building Authority were references to an order for costs referred to in subsection (1) and the amount of the costs payable under such order, respectively.
- (6) Any costs awarded against the Building Authority under this section shall be paid out of the general revenue.

**52. Representation**

The following shall apply as regards appearance before the Appeal Tribunal at a hearing of an appeal (including a preliminary hearing held under section 49)—

- (a) a party (whether the Building Authority or any other party) may—
  - (i) be present and make representations;

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- (ii) 由大律師或律師代表，或在主席批准下由任何獲有關一方為此書面授權的其他人代表；
- (b) 建築事務監督可由《律政人員條例》(第 87 章)所指的律政人員代表。

### 53. 檢查

- (1) 為就上訴作出裁定，上訴審裁小組可於任何合理時間——
- (a) 進入並檢查其認為就上訴而言屬有關的任何土地或處所；及
- (b) 在該土地或處所弄開缺口，或取走其認為需要的樣本。
- (2) 上訴審裁小組可就任何上訴，指示公職人員作出上訴審裁小組根據第 (1) 款可作出的任何事情。
- (3) 根據第 (2) 款受指示的公職人員，可進入上訴審裁小組認為就某上訴而言屬有關的任何土地或處所，以及移走——
- (a) 任何阻礙他通往或檢查該土地或處所的物件，並弄開上訴審裁小組認為就該上訴而言需要弄開的缺口或取走上訴審裁小組認為就該上訴而言需要的樣本；或
- (b) 任何阻礙上訴審裁小組為施行第 (1) 款而通往該土地或處所的物件。

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- (ii) be represented either by counsel or a solicitor, or with the approval of the Chairman, by any other person authorized for the purpose by the party concerned in writing;
- (b) the Building Authority may be represented by a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87).

### 53. Inspection

- (1) The Appeal Tribunal may, for the purpose of determining an appeal at any reasonable time—
- (a) enter and inspect any land or premises it considers relevant for the purposes of the appeal; and
- (b) make any opening on such land or premises or take such samples as it considers necessary.
- (2) The Appeal Tribunal may, as regards any appeal, direct a public officer to do anything which the Appeal Tribunal may do under subsection (1).
- (3) A public officer directed under subsection (2) may enter any land or premises which the Appeal Tribunal considers relevant for the purposes of an appeal and remove anything obstructing—
- (a) his access to or inspection of the land or premises and make such openings or take such samples as the Appeal Tribunal considers necessary for the purposes of the appeal; or
- (b) the access of the Appeal Tribunal to such land or premises for the purposes of subsection (1).

#### 53A. Immunity

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- (1) 上訴審裁小組主席或成員根據或依據本部執行任何職能時，其所享有的特權及豁免權，與原訟法庭法官就在該法庭進行的民事法律程序所享有的相同。(由 2000 年第 62 號第 3 條修訂)
- (2) 上訴聆訊(包括根據第 49 條進行的初步聆訊)的一方或到上訴審裁小組席前的任何證人、大律師、律師或律政人員所享有的豁免權或特權，與該上訴一方、證人、大律師、律師或律政人員就在原訟法庭進行的民事法律程序所會享有的相同。

(由 1998 年第 25 號第 2 條修訂)

### 53B. 與上訴審裁小組有關的罪行

任何人如——

- (a) 無合理辯解而拒絕遵從或沒有遵從上訴審裁小組或主席所作出或給予的任何合法命令、規定或指示；或
  - (b) 擾亂或以其他方式干擾上訴審裁小組的程序，
- 即屬犯罪，可處第 3 級罰款及監禁 6 個月。

(由 2008 年第 20 號第 30 條修訂)

### 53C. 案件呈述

- (1) 聆訊任何上訴的上訴審裁小組可用案件呈述的方式，將任何關乎該上訴的法律問題轉呈上訴法庭決定。
- (2) 根據第 (1) 款作出的案件呈述，須於上訴審裁小組就上訴作出裁定前呈述，並由主席簽署，而審裁小組不得在上訴法庭作出決定前就有關上訴作出裁定。

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- (1) The Chairman or a member of an Appeal Tribunal performing any function under or pursuant to this Part shall have the same privileges and immunities a judge of the Court of First Instance has in relation to civil proceedings in that court.
- (2) A party to any hearing of an appeal (including a preliminary hearing held under section 49) or any witness, counsel, solicitor or legal officer appearing before an Appeal Tribunal shall have the same immunities or privileges such a party, witness, counsel, solicitor or legal officer respectively would have had in relation to civil proceedings in the Court of First Instance.

(Amended 25 of 1998 s. 2)

### 53B. Offences in respect of Appeal Tribunal

Any person who—

- (a) refuses or fails without reasonable excuse to comply with any lawful order, requirement or direction made or given by the Appeal Tribunal or the Chairman; or
- (b) disturbs or otherwise interferes with the proceedings of the Appeal Tribunal,

commits an offence and is liable to a fine at level 3 and to imprisonment for 6 months.

(Amended 20 of 2008 s. 30)

### 53C. Case stated

- (1) The Appeal Tribunal hearing an appeal may by way of a case stated refer to the Court of Appeal for its decision any question of law relating to the appeal.
- (2) A case stated under subsection (1) shall be so stated before the Appeal Tribunal determines the appeal and be signed



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- (3) 上訴法庭如就根據本條呈述的案件作出決定，須安排將案件呈述書連同上訴法庭決定書，送交主席，而主席須(如適當)重新召集有關的上訴審裁小組，該審裁小組在重新召集後，須就有關上訴作出裁定。

(由 1998 年第 25 號第 2 條修訂)

**53D. 主席決定程序的權力**

如在本部或根據第 38(1B) 條訂立的規例中並無就某事宜的程序訂定條文，則主席可就個別聆訊決定關於該事宜的程序。

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by the Chairman and the Tribunal shall not determine the relevant appeal until the decision of the Court of Appeal has been given.

- (3) Where the Court of Appeal decides a case stated under this section it shall cause a copy of the case together with a copy of its decision, to be sent to the Chairman and the Chairman shall, where appropriate, reconvene the relevant Appeal Tribunal which when reconvened shall determine the relevant appeal.

**53D. Chairman's power to determine procedure**

The Chairman may, as regards a particular hearing, determine the procedure in relation to a matter if provision has not been made in this Part or regulations under section 38(1B) for the procedure in respect thereof.

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