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STATUTORY INSTRUMENTS

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**2000 No. 2372**

**The Summary Appeal Court (Air Force) Rules 2000**

**PART XI**

**APPLICATION TO SUMMARY APPEAL COURT TO STATE CASE**

**Application for case to be stated**

**65.**—(1) An application under section 83ZH(2) of the Act to the court to have a case stated for the opinion of the High Court shall be made in writing and shall be served on the applicant's commanding officer within 21 days after the date of the decision in respect of which the application is made.

(2) The application shall state the grounds on which the decision of the court is questioned.

(3) Where an application under section 83ZH(2) of the Act is served on the applicant's commanding officer under paragraph (1), he shall as soon as practicable serve it on the court administration officer.

(4) After making the application in accordance with paragraph (1), the applicant shall as soon as practicable serve a copy of it on the prosecuting authority.

(5) On receipt of the application, the court administration officer shall as soon as practicable send it to the judge advocate who sat as a member of the court at the hearing to which the application relates.

(6) On receipt of the application, the judge advocate shall inform the court administration officer as to whether or not he has decided to state a case and that officer shall give notice in writing to the applicant of the judge advocate's decision.

(7) If the judge advocate considers that the application is frivolous, he may refuse to state a case and shall in that case, if the applicant so requires, cause a certificate stating the reasons for the refusal to be given to him.

**Procedure on stating a case**

**66.**—(1) If the judge advocate decides to state a case the procedure to be followed shall, unless the judge advocate directs otherwise, be the procedure set out in the following provisions of this rule.

(2) The applicant shall, within 21 days of receiving the notice referred to in rule 65(6), draft a case and serve a copy of it on the court administration officer and the prosecuting authority.

(3) The prosecuting authority shall, within 21 days of receiving a copy of the draft case under paragraph (2), either—

- (a) give notice in writing to the applicant and the court administration officer that he does not intend to take part in the proceedings before the High Court; or
- (b) indicate in writing on the copy of the draft case that he agrees with it and send the copy to the court administration officer; or

- (c) draft an alternative case and serve it, together with a copy of the applicant’s case, on the court administration officer.
- (4) The judge advocate shall consider the applicant’s draft case and any alternative draft case served on the court administration officer in accordance with paragraph (3)(c).
- (5) The function of the court in stating a case under section 83ZH(2) of the Act shall be exercised by the judge advocate sitting alone.
- (6) The judge advocate shall state and sign a case within 14 days after either—
  - (a) the date on which he receives all the documents required to be served on the court administration officer under paragraph (3); or
  - (b) the expiration of the period of 21 days referred to in that paragraph,whichever is the sooner.

**Supplementary provisions relating to stating a case**

**67.**—(1) A case stated by the court shall state the facts found by the court, the submissions of the parties (including any authorities relied on by the parties during the course of those submissions), the decision of the court in respect of which the application is made and the question on which the opinion of the High Court is sought.

(2) Any time limit referred to in rules 65 and 66 may be extended by the judge advocate either before or after it expires.

(3) If the judge advocate decides not to state a case but the stating of a case is subsequently required by the High Court by order of mandamus, rule 66 shall apply to the stating of the case save that—

- (a) in paragraph (1), the words “If the judge advocate decides to state a case” shall be omitted; and
- (b) in paragraph (2) for the words “receiving the notice referred to in rule 65(6)” there shall be substituted the words “the day on which the order of mandamus was made”.