

Step by Step: Complaint Dismissal Appeal Process

1. THE APPEAL PANEL

A. The Appeal Panel: Complaint Dismissal Appeals are decided by a panel of three members of the Appeal Committee. These three members are called the Appeal Panel. One member of each Appeal Panel will be designated as the Chair of that panel. The members of the Appeal Committee are Benchers of the Law Society. Benchers are the directors of the Law Society and while some are lawyers who are elected, others are members of the public who are appointed by the Government.

B. Conflict of Interest: Appeal Committee members do not sit on Appeal Panels where they believe a reasonable apprehension of bias or conflict of interest may exist.

Once an Appeal Panel has been assigned to a Complaint Dismissal Appeal, the complainant and the lawyer against whom the complaint was made will be provided with the names of the Appeal Panel members and given an opportunity to raise any objections to the composition of the Appeal Panel. Reasons for the objection(s) must be made in writing within 7 days from the date of the Notice of Appointment and must include the following: (i) identification of whom the conflict is with; (ii) an explanation of the basis for the conflict; and (iii) any supporting documentation pertaining to the conflict.

The Appeal Panel will make rulings on objections before deciding the appeal.

Authority: The Appeal Panel will review the Law Society's complete file regarding your complaint and can:

- confirm the direction to dismiss your complaint; or
- refer the complaint to the Conduct Committee for further action.

The Appeal Panel cannot:

- review new complaints;
- conduct a further investigation of your complaint;
- make any findings against the lawyer you complained about; or
- authorize any disciplinary action against the lawyer your complaint is about.

2. THE APPEAL

A. Appeal Without Oral Submissions: Complaint Dismissal Appeals are in writing. There is no oral hearing and no oral submissions unless required by the Appeal Panel.

If an oral hearing or oral submissions are required by the Appeal Panel, then the complainant, the lawyer against whom the complaint was made and counsel for the Law Society will be invited to attend for an oral hearing or to make oral submissions.

B. Involvement of the Lawyer: The appeal is not an adversarial process between the complainant and the lawyer against whom the complaint was made. The lawyer does not need to participate in the appeal process and the Appeal Panel will not make an adverse inference against the lawyer if the lawyer chooses not to participate.

C. Standard of Review: The standard of review is reasonableness. This means that the Appeal Panel needs to decide if the Executive Director's/Delegate of the Executive Director's direction to dismiss the complaint

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was reasonable in all the circumstances. It is important to understand that the Appeal Panel is not reconsidering the complaint and applying its own judgment. **It is assessing whether the direction to dismiss was reasonable.** It is only when the Appeal Panel finds the direction to dismiss the complaint was not reasonable that the appeal will be granted.

D. New Evidence: If necessary, the Appeal Panel will review new evidence. In order for new evidence to be considered, it cannot have been available to the complainant before the complaint was dismissed. If you provide new evidence with your Complaint Dismissal Appeal Form, you must clearly identify it and explain how you meet the following requirements of the fresh evidence test:

1. The evidence must not have been reasonably available prior to the dismissal of your complaint;
2. The evidence must be relevant;
3. The evidence must be credible; and
4. The evidence could reasonably be expected to have affected the result.

If you do not follow the above directions or if Appeal Committee determines that the test has not been met, the Appeal Committee will **not** consider the new evidence.

Please attach submissions in PDF or Word formats only. In order to protect our secure servers, we will not open any links, including links to webpages or cloud storage, and any materials submitted in this manner will not be considered. If you need more information, please contact the Tribunal Office at Tribunal.Office@lawsociety.ab.ca.

3. RESOLUTION OF THE APPEAL

A. Possible Outcomes: There are only two possible outcomes for a Complaint Dismissal Appeal: (1) the Appeal Panel can either direct that the complaint be dismissed, or (2) the Appeal Panel can direct that the appeal be allowed. If the appeal is allowed, then the matter is referred to the Conduct Committee, which will review the complaint under Section 56 of the *Legal Profession Act*.

B. Appeal Panel Decision (written decision): Appeals are reviewed in the order they are received. It generally takes four to five months for an appeal to be decided. Your appeal may take more or less time depending on the number of appeals that were sent to the Law Society ahead of your appeal.

The Appeal Panel will deliver the written decision to the Executive Director or Delegate of the Executive Director. The Executive Director is responsible for ensuring that a copy of the written decision is provided to both the complainant and the lawyer against whom the complaint was made.

C. No Further Appeal: The decision of the Appeal Panel is final and there is no further appeal. Section 57 of the *Legal Profession Act* may allow for further re-examination in very rare circumstances where there is evidence that a significant factual or legal element was overlooked or unknown at the time the complaint was dismissed.

4. ADDITIONAL RESOURCES

The Law Society website (www.lawsociety.ab.ca) has links to the *Legal Profession Act*, *The Rules of the Law Society of Alberta* and the Law Society of Alberta's *Code of Conduct*. The website also has copies of all the forms, information sheets and guidelines the Law Society publishes.