

Complaint Dismissal Appeals Guideline

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Amending November 29, 2018 Guideline

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Complaint Dismissal Appeals Guideline

Introduction

1. In accordance with section 53 of the *Legal Profession Act* (the “Act”), the Executive Director reviews complaints and may, under section 53(4), refer the matter to the Conduct Committee or direct that the complaint be dismissed.
2. If the Executive Director directs a dismissal of a complaint, complainants may appeal the direction to dismiss pursuant to section 54 of the Act.
3. The Complaint Dismissal Appeals Guideline provides guidance to the Appeal Committee members assigned to hear the complainant’s appeal.
4. References to the Executive Director in this Guideline include the Executive Director’s delegates.
5. Nothing in this Guideline supersedes or replaces any provisions of the Act or the *Rules of the Law Society of Alberta* (the “Rules”).

Background Information and Preliminary Issues

Extension of Time

6. Rule 86 provides complainants with the right to appeal the Executive Director’s direction to dismiss the complaint. The complainant must appeal within 30 calendar days of the date the notice of the dismissal is deemed to have been received by the complainant. If the complainant’s notification to appeal is not received within the 30-day period, an application may be brought by the complainant to waive or vary the time requirement.
7. Rule 86(2) provides authority to the Chair of the Appeal Committee to extend the time under Rule 86(1)(b). The Chair has discretion to do what is appropriate in the circumstances. However, in considering whether special circumstances exist, the Chair should consider the following:
 - a. Has the complainant shown that they had a bona fide intention to appeal while the right to appeal existed and that the failure to appeal was by reason of circumstances, which serve to excuse or justify such failure?
 - b. Has the complainant accounted for the delay?
 - c. Would the extension of time result in prejudice to the lawyer that would be unjust?

- d. Are there reasonably arguable grounds for appeal?

The Appeal Committee

8. The Appeal Committee consists of the lay Benchers and at least three other Benchers (section 51(1)(c)). The Appeal Committee may sit in panels of three members for the purpose of deciding appeals (Rule 86(4)).

Quorum

9. All three members of the Appeal Committee Panel constitute a quorum at a meeting or hearing of the panel (Rule 86(5)).

Objection to a Member of the Appeal Committee Panel

10. Once an Appeal Committee Panel has been assigned, the complainant and the lawyer against whom the complaint was made may be provided with the names of the panel members and given an opportunity to raise any objections to the composition of the panel. Great care is taken to avoid any perceived conflict of interest or apprehension of bias when appointing Appeal Committee Panels.
11. The Appeal Committee Panel will be notified if objections are raised and will make rulings on objections before deciding the appeal. As part of its written decision under Rule 86(7), the Appeal Committee Panel will include its ruling and reasons regarding any objections.

Submissions and Evidence

Materials Provided to the Appeal Committee Panel

12. The Tribunal Office will provide the Appeal Committee Panel with the relevant information considered by the Executive Director relating to the complaint, the written dismissal decision under appeal, the Complaint Dismissal Appeal Form and any Complaint Dismissal Appeal Reply Form that has been received.
13. The complainant makes submissions through the Complaint Dismissal Appeal Form and submissions, including any new evidence, are limited to 15 pages. This will be the complainant's only opportunity for submissions, and no further materials will be accepted, other than the complainant's limited response as provided for in paragraph 16.

14. The complainant is owed a duty of fairness as part of the Complaint Dismissal Appeal Process. The duty of fairness is limited and the Appeal Committee Panel meets that duty by considering the relevant information and materials referenced in paragraphs 12 and 13.
15. The lawyer makes submissions through the Complaint Dismissal Appeal Reply Form. It is important to note that this may be the lawyer's first chance to respond fully to the complaint. The duty of fairness to the lawyer will be met by considering the relevant information and materials referenced in paragraphs 12 and 13 and, where applicable, evidence provided by the lawyer as part of their reply to the appeal.
16. The complainant may be given the opportunity to respond to any substantive reply provided by the lawyer in the Complaint Dismissal Appeal Reply Form. The complainant's response, which is limited to five pages, must be provided within 14 calendar days of receiving the lawyer's reply form.

Appeal on the Written Record

17. The appeal is an appeal based on the written record of the relevant information considered by the Executive Director, the written dismissal decision, and the written submissions within the Complaint Dismissal Appeal Forms. The Appeal Committee Panel should not normally request or require oral evidence under oath.
18. The Appeal Committee Panel has the sole discretion to allow oral argument if it determines there are exceptional circumstances that warrant it. If oral argument is required by the Appeal Committee Panel, the complainant, the lawyer against whom the complaint was made and counsel for the Law Society will be invited to attend and make submissions.

New Evidence

19. New evidence on appeal shall be considered if the evidence:
 - a. was not reasonably available prior to the dismissal of the complaint; and
 - b. is relevant and material.

Deliberation, Decision and Matters Arising

Decision

20. After hearing the appeal, the Appeal Committee Panel can only direct the complaint be dismissed (which confirms the direction of the Executive Director) or allow the appeal and refer the matter to the Conduct Committee, which will then review the complaint under section 56 of the Act.

Threshold Test

21. Prior to dismissing a complaint, the Executive Director reviews the conduct giving rise to the complaint and, on the basis of all the material provided to the Executive Director, applies the Threshold Test as set out in the *Threshold Test Guideline*.

Standard of Review

22. The standard of review is reasonableness. If the Appeal Committee Panel determines that the Executive Director's direction to dismiss the complaint was not reasonable, it must allow the appeal and refer the matter to the Conduct Committee.

Reasons

23. The Appeal Committee Panel shall give brief, plain language written reasons for its decision and will state the standard of review it used.

No Further Appeal

24. Neither the complainant nor the lawyer may appeal the Appeal Committee Panel's decision to allow or deny the appeal. However, if an Appeal Committee Panel dismisses an appeal, a complainant may request a re-examination of the complaint as contemplated by section 57 of the Act.