

About Internal Appeals at HRPA

September 2018

There are two possible levels of reexamination for regulatory decisions made at HRP. The first level of review is an internal appeal to the HRP. Appeal Committee. The second level of review is an external application for judicial review to the Divisional Court.

In order to ensure fairness in its regulatory practices, HRP established an Appeal Committee in accordance with the *Registered Human Resources Professionals Act, 2013* (“the Act”) and section 22 of the By-laws. The purpose of HRP’s internal appeal process is to provide for the opportunity of a reexamination of decisions made by HRP’s regulatory committees or by the Registrar.

Grounds for an appeal are limited to a denial of natural justice or an error on the record of the decision, unless otherwise stated in the Act or the By-laws.

The internal appeals process is an important aspect of HRP’s regulatory framework. HRP is committed to full, fair, transparent, and effective regulatory processes which includes access to an internal appeals process.

Please note: The purpose of an appeal is not to retry or re-decide the case. Individuals wishing to get a ‘second opinion’ should submit a new application or request for consideration.

Difference between hearings and reviews

HRP has two types of appeals: hearings and reviews. Hearings shall only be held when the decision or order being appealed was made pursuant to a hearing, which applies only to decisions of the Discipline Committee, the Capacity Committee and the Review Committee. Appeals of decisions made by any other committee or the Registrar shall be conducted via a review.

Reviews still afford procedural fairness in that both sides have an opportunity to make their case and to comment on the arguments made by the other side.

The standard of review for both hearings and reviews is reasonableness.

Who may appeal?

The Appeal Committee will respond to written request for an appeal from any party in the original proceeding. Individuals who were not a party to the original proceeding cannot appeal decisions of a regulatory committee or of the Registrar.

What decisions may be appealed?

Most orders or decisions of the Registrar as well as committees may be appealed to the Appeal Committee, including but not limited to decisions by the Experience Assessment Committee, the CHRE Review Committee, the Discipline Committee and the Complaints Committee. For a comprehensive list of appealable decisions please review s. 22.02 of the By-laws.

Parties

The parties to the appeal are the person requesting the appeal and HRP. The Registrar or a delegate represents the Association at the review or the hearing.

Grounds for an appeal

An individual may wish to challenge a regulatory decision for a variety of reasons, which are referred to as the "grounds" for appeal. The By-laws establish that, unless otherwise stated, the grounds of appeal are limited to a denial of natural justice or an error on the record of the decision of the committee or the Registrar.

The first ground for appeal is a when the original committee or the Registrar denied the appellant natural justice. There are two basic requirements of natural justice: (1) that the individual had a fair opportunity to present their case, and (2) that the panel or individual making the decision was impartial.

Examples of denial of natural justice would include:

- Steps in the process were skipped or omitted without the consent of both parties
- Panel members who might have a conflict of interest failed to bring the potential conflict to the attention of the parties, or failed to take appropriate action based on the potential conflict of interest
- Proper notice of a proceeding was not given
- Evidence that should have been disclosed was not disclosed
- There was a denial of the right of representation
- There was a failure to inform participants of their rights where it was important to do so
- There was failure to follow established process or procedure
- Someone involved in the decision acted in bad faith

Other grounds for appeal include the committee or Registrar failing to consider the correct facts, or failing to apply the correct rule or policy in making their decision.

- The committee or Registrar failed to consider relevant facts (e.g., information submitted for a Validation of Experience application was not considered by the panel making the original decision)
- The committee applied a policy or rule incorrectly (e.g., the reasons included in the original decision make it clear that a rule was being applied that is not relevant to the decision being made)

The Appeal Committee

The Appeal Committee is a standing committee of HRPAs and is independent of the Board of Directors. The HRPAs Board has no authority to review or reverse decisions of the Appeal Committee except in extraordinary circumstances.

Membership of the Appeal Committees is as follows as set out in the Appeal Committee Terms of Reference:

- No HRPAs member may sit on the Appeal Committee who is a member of the Experience Assessment Committee, the Continuing Professional Development Committee, the Complaints Committee, the Discipline Committee, the Academic Standards Committee, the Capacity Committee, the Board Nominating Committee, the Review Committee or the Certified Human Resources Executive Review Committee.
- Committee membership should include the following: a minimum of three CHRPs, CHRLs or CHREs, two to three public representatives who are non-HRPAs members and two to three lawyers.

Panels

The Appeal Committee sits in panels of three. A decision of a panel of the Appeal Committee constitutes the decision of the Appeal Committee. Panel members are appointed by the Chair of the Appeal Committee from among the members of the Appeal Committee.

Requesting an appeal

To request an appeal, an individual must complete a 'Request for Appeal' form which sets forth the grounds for the appeal. The Request for Appeal must be signed and filed with the Office of the Registrar within 30 calendar days from the date of notification of the decision being appealed.

There are no fees associated with the filing of a Request for Appeal.

Upon receipt of the Request for Appeal, the Office of the Registrar sends the appellant a confirmation of receipt and refers the matter to the Chair of the Appeal Committee. The Chair appoints a panel to consider the matter.

Insufficient Grounds and Jurisdiction

If, upon receipt of the Request for Appeal, the Chair of the Appeal Committee believes there may be no merit to the request, he or she may strike a panel to determine if there are sufficient grounds to proceed with the appeal.

If it is determined that there are insufficient grounds for the appeal to proceed or the appeal is outside of the jurisdiction of the Appeal Committee, notice of the intent to dismiss the appeal will be sent to the appellant. The appellant is given 30 days to respond to the notice of the intent to dismiss, and provide additional information and/or evidence as to why the appeal should proceed. Once this 30-day period has passed, the panel will reconvene to consider any submission from the appellant and make a final decision as to whether the appeal shall be dismissed or if it is to proceed.

It's fairly unusual that a Request for Appeal will be deemed to be without merit or to be outside of the jurisdiction of the committee. Most of the time, the chair of the Appeals Committee will strike a panel to conduct a full appeal or review.

Reviews

Reviews are based on written documentation only. Once a Request for Appeal has been filed for a review, the Registrar has 30 calendar days to submit a written response. The Registrar's response is provided to the appellant, and the appellant has 10 calendar days to make any additional submissions in relation to the Registrar's response but is not permitted to raise new grounds of appeal.

As part of their written submissions, both parties must provide any supporting documentation they want the Appeal Panel to consider during the review.

The submissions are provided to a panel of the Appeal Committee for review. If the panel requires further documentation or information from the appellant or the Registrar, the appellant or the Registrar shall provide the required documentation or information within the time and manner specified by the panel. Any and all submissions made by one party are shared with the other party.

Hearings

Where a hearing is required, the Appeal Committee shall conduct such a hearing in accordance with the *Statutory Powers Procedures Act, 1990* and the Appeal Committee Rules of Procedure.

In accordance with the *Statutory Powers Procedures Act, 1990*, hearings can be held in person, in writing or electronically. The difference between a 'written hearing' as defined by the SPPA and a review is that the review is not conducted in public, there is no notice of hearing, and the outcomes of a review is not published. Most hearings will be held in person or electronically, with written hearings being the exception. If the Appeal Committee decides to hold a written hearing, detailed instructions regarding the process for written hearings will be provided to the appellant at that time.

For in person and electronic hearings, the order of proceedings at the hearing will be as follows:

1. Opening remarks by the panel Chair (welcomes the parties to the appeal and introduces those present; may provide a brief overview of the order of proceedings)
2. Brief opening statements by the Parties (first the appellant and then the Association provide a brief summary of the main points of their case)
3. Appellant's case (the party seeking the change)
4. Respondent's case (HRPA)
5. Final argument by appellant and HRP
6. Closing remarks by the panel Chair

Documents brought forward at the Hearing

Any party wishing to rely on documents at the hearing must serve the document or documents to the other party as well as the panel at least 14 days before the hearing. Neither party may bring documents to the hearing for consideration by the Appeal panel without previously having provided them to the other party. The essential issue is one of fairness—the other party would not have had the opportunity to review the document beforehand. It would also be unreasonable to expect the other party to review, consider, and reply to a document presented unexpectedly at the hearing.

However, parties are not required to serve and file their submissions in advance of the hearing, unless the Appeal Committee orders otherwise.

Timing

HRPA strives to ensure that any appeal is considered in a timely manner. Keeping in mind that the Appeal Committee is comprised of volunteers, the Office of the Registrar endeavours to schedule the hearing or the review as quickly as it is feasible to do so. For hearings, the Office of the Registrar gives notice to the parties and to HRPAs' witnesses, if any, as to the date, time, and place appointed for the hearing.

Representation

The appellant may be assisted by a personal advisor or representative during the review or at the hearing if he or she wishes.

Evidence

Because an appeal is not a retrial of the original proceeding, the parties are typically not allowed to present new evidence that was not before the original decision-maker. There are exceptions, however, including if the evidence is about the decision-making process and is being presented to advance an argument that there was a denial of natural justice. The Appeal Committee may also accept new evidence if:

- a) it is credible;
- b) if admitted, it would probably have an important influence on the result; and
- c) it could not have been obtained by reasonable diligence at the time of the original decision.

Not all information is admissible as evidence, and not all evidence is fact. In deciding whether to admit evidence, the Appeal Committee will consider the following factors:

- Is the evidence **relevant**? (Does it relate to the process by which the original decision was made?)
- Is the evidence reliable? (Can it be trusted?)
- Is the evidence necessary? (Is the evidence needed or does it simply repeat other evidence already given that is not in dispute?)
- Would it be fair to admit it? (Is the value of the evidence greater than any harm that may be caused by admitting it?)

Evidence is relevant if it tends to prove or disprove a matter the panel must decide. Evidence is reliable if it comes from a credible, preferably first-hand, source. The more relevant and reliable the evidence, the greater the weight it can be given. Evidence that is unnecessary should not be admitted. Evidence that may cause more harm than the value it will provide should also not be admitted.

It is for this reason that 'new' evidence related to the original decision that was not available to the panel that made that decision is usually not admissible; a committee or the Registrar cannot be faulted for not considering information that was not presented for consideration in making the original decision. For example, a member who is appealing a decision of the Experience Assessment Committee regarding their Validation of Experience application will not be permitted to present information explaining their experience (e.g., a letter from their employer) that was not presented to the panel that made the original decision.

Expert evidence

Expert evidence is admissible only when such evidence is relevant to an assumption or determination made by the original decision-maker. Expert evidence that was not available to the original decision-makers must meet the same admissibility standards as all other fresh evidence.

Experts are individuals who have comprehensive knowledge of a particular area or matter due to education, training, skill or experience. Expert evidence can be given through testimony or a written report.

If one of the parties wants to present expert evidence, the other party must be given sufficient time to review the expert evidence and seek out their own expert advice if they wish to do so. The introduction of expert evidence by either or both parties will lengthen the proceedings. Any party wishing to introduce expert evidence must notify the Chair of the panel at least 10 days before the scheduled appeal or review to allow for sufficient time to reschedule the appeal or review. As part of the notification, the party must also inform the Chair of the date on which the expert report is to be received. This date must be within 30 days of the notice that expert evidence is to be submitted. The party obtaining an expert opinion must forward the report to the Chair of the panel and to the other party. The other party has 30 days from receipt of the expert report to obtain their own expert opinion.

Access to records

Staff support for the Appeal Committee shall prepare, at the expense of the appellant, sufficient quantities of the record of the decision under appeal. Information about an examination that would undermine the security of the examination may be withheld.

HRPA may refuse access to a record if:

- a. The record or any information in the record is subject to a legal privilege that restricts disclosure of the record or the information, as the case may be.
- b. Another Act, an Act of Canada or a court order prohibits disclosure of the record or any information in the record in the circumstances.

- c. Granting the access could reasonably be expected to lead to the identification of a person who provided information in the record to the regulated profession explicitly or implicitly in confidence, and the regulated profession considers it appropriate in the circumstances that the identity of the person be kept confidential.
- d. Granting access could negatively affect public safety or could undermine the integrity of the registration process.

Despite the above, an appellant has a right of access to that part of a record that can reasonably be severed from the part to which the applicant does not have a right of access for one of the reasons given above.

Potential outcomes following a review or a hearing

Following a review or a hearing, the Appeal Committee may, unless otherwise stated in the Act or the By-laws:

- Make any decision or order that could have been made by the original committee or Registrar;
- Order a new proceeding before a new panel of the original committee or Registrar; or
- Dismiss the appeal.

On the other hand, the panel may not:

- Make any decision or order that would contravene the *RHRPA Act 2013*, any By-law of the Association or any approved policy of the Board;
- Make a decision that is beyond the scope of authority of the original committee or the Registrar;
- Order that an individual be deemed to have passed the exam when the individual has not;
- Waive non-exemptible requirements such as the degree requirement; or
- Grant any designation.

In most cases, the Appeal Panel will release its written decision within thirty to forty-five days after the review or hearing.

Finality of decisions of the panel

Any decision of the Appeal Committee takes effect on the day the decision is released to the parties unless otherwise ordered by the Appeal Committee as part of the decision.

In almost every case, a decision or order of the panel is final. However, if a decision of the panel to suspend or revoke a member's membership or a firm's registration has become effective, the Board may by special resolution rescind or alter the order. Also, all Appeal Committee panel decisions may be subject to judicial review by Divisional Court.

Internal Appeals

