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# Ontario Civilian Police Commission

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## Public Complainant's Guide to Disciplinary Appeals

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# A PUBLIC COMPLAINANT'S GUIDE TO DISCIPLINARY APPEALS

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## INTRODUCTION

The Ontario Civilian Police Commission is committed to the principle that the administration of justice must be accessible to all members of the public.

The information in this guide is meant to increase your understanding of the rules and procedures which apply to a disciplinary appeal, and to explain your role in this process. This guide provides information about the Commission's disciplinary appeal process, not legal advice.

The guide includes quick reference aids, a checklist and charts to assist you with basic procedural information, help with completion of forms, identification of legal issues to be considered and the steps leading to the hearing of the appeal.

## THE ONTARIO CIVILIAN POLICE COMMISSION

The Commission provides civilian oversight of policing throughout Ontario. Its duties and powers are set out in the *Police Services Act*. You can learn more about the Commission's mandate by visiting our website at [www.ocpc.ca](http://www.ocpc.ca)

One of our duties is to hear and decide appeals of decisions made at disciplinary hearings held under Part V of the *Act*.

This includes an appeal brought by a member of the public whose complaint was the subject of a disciplinary hearing. A police officer may also appeal the decision at a disciplinary hearing to the Commission.

There are two types of appeals which you, as the public complainant, may bring under the *Act*.

First, you have the automatic right to appeal an 'acquittal'; that is, a decision at a disciplinary hearing that the alleged misconduct or unsatisfactory work performance of a police officer was not proven. Second, you may appeal the 'penalty' imposed on a police officer following a conviction; however, to appeal a penalty decision, you must first obtain permission, or "leave", from the Commission.

The process for each type of appeal is different and will be discussed below.

## THE LEGAL FRAMEWORK

An appeal hearing is governed by law - the *Act* - and by the Commission's *Rules of Practice*. Please become familiar with both.

## POLICE SERVICES ACT

The *Police Services Act* provides the legislative framework governing policing throughout Ontario. There is a link to the *Act* on the Commission's website at [www.ocpc.ca](http://www.ocpc.ca)

Part V of the *Act* sets out the process for complaints about the conduct of police officers. Part V also establishes police disciplinary hearings and your right to appeal decisions made at those hearings.

It is VERY IMPORTANT for you to note that the *Act* was amended on October 19, 2009. This amendment changed the process for the filing and processing of public complaints.

As a result, there are now two versions of the *Act*: the version of the *Act* in force BEFORE October 19, 2009 (with the 'old Part V'), and the version of the *Act* in force SINCE October 19, 2009 (with the 'new Part V'). There are links to both versions of the *Act* on the Commission's website.

The changes to the process dealing with public complaints about police depend on whether the incident or incidents upon which your complaint is based, occurred BEFORE or AFTER October, 19, 2009.

The following is a summary of the changes.

If the incident your complaint relates to occurred BEFORE October 19, 2009:

- your complaint will be dealt with under the 'old Part V';
- the parties to your appeal include the police officer, the prosecutor at the disciplinary hearing and yourself as the public complainant; and,
- the Commission's decision may be appealed to the Divisional Court for Ontario.

If the incident your complaint relates to occurred ON OR AFTER October 19, 2009:

- your complaint will be dealt with under the ‘new Part V’;
- the parties to the appeal remain the same;
- the Solicitor General and the Independent Police Review Director (the ‘Director’) are entitled to be heard on the argument of your appeal; and,
- the Commission’s decision on your appeal may NOT be appealed to the Divisional Court for Ontario.

How the amendment of the *Act* on October 19, 2009 impacts the process of your appeal will be discussed in more detail below.

## **RULES OF PRACTICE**

The Commission’s *Rules of Practice* govern its hearings and approval processes under the *Act*. You will find a link to the Commission’s *Rules* on our website, or you may obtain a copy by attending at the Commission’s office.

The *Rules* for the Commission’s disciplinary appeal process are set out in Part II of our *Rules*. If you wish to appeal a decision from a disciplinary hearing, it is VERY IMPORTANT that you familiarize yourself with the Commission’s *Rules* and, most importantly, Part II.

## **RESOURCES**

You may benefit from looking over past decisions by the Commission. Decisions going back to 1962 are posted on the Commission’s website at [www.ocpc.ca](http://www.ocpc.ca). Also, you are encouraged to attend appeal hearings at the Commission’s office in Toronto to watch and learn first hand. With rare exceptions, Commission hearings are open to the public. The Commission Registrar can assist you.

Also, the legal resources listed below may be of assistance to you in preparing your appeal:

**Lawyer Referral Service** (Law Society of Upper Canada) provides a free, half-hour consultation with a legal counsel at 416-947-3330 or 1-800-268-8326  
[Lawsociety@lsuc.on.ca](mailto:Lawsociety@lsuc.on.ca)

**Law Help Ontario** provides information and resources about *pro bono* (free) legal services to persons of limited means who cannot afford to hire a lawyer and are unrepresented in legal matters. Sponsored by Pro Bono Law Ontario, Law

Help Ontario operates self-help centres. There are financial and other criteria that must be met.

[www.LawHelpOntario.org](http://www.LawHelpOntario.org)

**Justice Ontario** is a central source for questions about Ontario's legal system, and provides legal information in more than 170 languages.

416-326-2220 or 1-800-518-7901

[www.JusticeOntario.org](http://www.JusticeOntario.org)

**Legal Aid Ontario** is available to low-income individuals who may qualify for a Legal Aid Certificate to help pay their legal fees. Legal Aid Ontario also operates Community Legal Clinics that provide legal representation to low-income individuals. 416-979-1446 or 1-800-668-8258

[www.legalaid.on.ca](http://www.legalaid.on.ca)

## **DECIDING WHETHER TO APPEAL**

Let's consider the "usual" case. You complained about the conduct of a police officer or officers in an incident or a series of incidents. Your complaint was investigated. As a result of the information obtained during the investigation, a disciplinary hearing was held. It is likely that you attended the hearing and testified before a hearing officer.

Police disciplinary hearings proceed in two stages: first, to determine whether the conduct you complained about amounts to 'misconduct' or 'unsatisfactory work performance'; and, second, if misconduct is found, to determine the appropriate 'penalty'.

If the hearing officer at the disciplinary hearing decides that the conduct in question DOES NOT amount to misconduct, the hearing will end with a written decision setting out the reasons for the acquittal.

However, If the hearing officer finds that the conduct in question DOES amount to misconduct, the hearing will continue to the penalty phase where the hearing officer will impose a penalty and provide another written decision setting out the reasons for the penalty imposed.

## **IMPORTANT TIME LIMITS**

Your right to appeal begins immediately after you receive written notice of the hearing officer's decision either acquitting the officer, or finding misconduct and imposing a penalty.

The *Act* provides that you **MUST** file your notice of appeal with the Commission within 30 days after receiving written notice of the decision made at a disciplinary

hearing. You MUST comply with this time limit. The Commission does not have the legal authority to extend it.

In addition, Part II of the Commission's *Rules* contains specific time limits for the different steps which you must take to have your appeal heard. Again, these time limits MUST be complied with and will be discussed below.

If you decide to appeal a decision that there was no misconduct – an acquittal - you must file with the Commission and serve on the other parties to the appeal a notice of appeal (Form 4) within 30 days of receiving written notice of that decision.

If you decide to appeal the penalty imposed, you must file with the Commission and serve on the other parties to the proposed appeal a request for leave to appeal a disciplinary penalty (Form 3) within 30 days after receiving written notice of the penalty decision.

If your request to appeal a penalty decision is granted, you must then follow the procedure for an appeal set out in *Rules* 28 and 30.

## **WHO IS YOUR CONTACT AT THE COMMISSION?**

The Registrar of the Commission oversees the Commission's disciplinary appeal process. The Registrar seeks to ensure that all required documentation is properly served and filed, and that the record of the appeal is complete when oral argument proceeds.

After the parties have served and filed all of their appeal documents the Registrar will contact you and the other parties to set a date for oral argument of the appeal.

You may contact the Registrar about the status of an appeal, or about dates for the argument of a motion related to the appeal or the appeal itself, etc.

The Registrar's contact information is:

**Ontario Civilian Police Commission**  
**Office of the Registrar**  
250 Dundas Street West  
6<sup>th</sup> Floor, Suite 605  
Toronto ON M7A 2T3  
416-314-3004 Toll-Free: 1-888-515-5005  
[www.ocpc.ca](http://www.ocpc.ca)

Hours of Business are 8:30 a.m. to 5 p.m.

## **WHO ARE THE PARTIES TO AN APPEAL?**

Commission Rule 25.1 provides that the parties to a disciplinary appeal include:

- the police officer;
- the prosecutor at the disciplinary hearing; and
- the public complainant.

If you are appealing the decision that there was no misconduct or if the Commission has granted your request to appeal a penalty decision, you will be called the 'Appellant', and the police officer and prosecutor will be called the 'Respondents'.

If it is the police officer who is appealing a decision of misconduct as well as the penalty imposed, then the roles will be reversed - the officer will be the 'Appellant', and you and the prosecutor will be the 'Respondents'.

## **THE SOLICITOR GENERAL AND THE INDEPENDENT POLICE REVIEW DIRECTOR**

Under the *Act*, both the Solicitor General and the Director are entitled to be heard on the oral argument of disciplinary appeals where the events in question occurred on or after October 19, 2009.

If you are appealing an acquittal, you must also serve the Solicitor General and the Director with copies of your notice of appeal and of the decision being appealed.

If the Commission has granted your request to appeal a penalty decision you must serve them with your notice of appeal, a copy of the decision being appealed and of the Commission's order granting your request to appeal a penalty. See *Rule 28*.

If the Solicitor General and the Director wish to be heard on the argument of your appeal, they will serve you and the other parties with a notice of intent to be heard on appeal (Form 5).

If you receive a Form 5 from one or both of the Solicitor General and the Director, you must serve them with copies of your 'appeal documents' which include your factum and brief of authorities. The Solicitor General and Director will then serve copies of their factums and briefs of authorities on you. Their counsel will participate in the oral argument of the appeal.

See Section 87 of the *Act*, Commission *Rules* 26.1, 28, 30, 31 and Form 5. See also Chart “A” in the appendices.

## **HOW DO YOU APPEAL AN ACQUITTAL?**

The *Act* provides that you may appeal a finding of no misconduct (i.e., an ‘acquittal’). You have the automatic right to do so.

As the ‘Appellant’, you are required under the Commission’s *Rules* to take the following steps:

- within 30 days of receiving written notice of the decision, you **MUST** file with the Commission and serve on the police officer and the prosecutor at the hearing your notice of appeal (Form 4) and a copy of the decision being appealed; you must also file with the Commission proof of your service on the parties, either by an affidavit of service or a supporting letter (see *Rules* 8, 9, 28.1 and Form 4);
- if your complaint relates to an incident which occurred on or after October 19, 2009, you must also serve copies of your notice of appeal and the decision you are appealing on the Solicitor General and the Director; and then file with the Commission proof of service on them by your affidavit of service or supporting letter (see *Rules* 8, 9, 28.2, 28.3 and Form 4);
- you must also file with the Commission proof that you have ordered from the chief of police of the police service involved in the disciplinary hearing the transcript of the oral evidence from the hearing upon which you intend to rely (see *Rule* 28.4);
- the cost of preparing the transcript which you order from the chief of police will be paid by the police service involved in the hearing;
- when the transcript which you have ordered is ready, the chief of police will provide copies to you, the other parties to the appeal, the Commission and, (if necessary), to the Solicitor General and the Director if they have given notice of their wish to be heard on the appeal (see *Rules* 28.4 and 29.3);
- you **MUST** then prepare a factum and a brief of authorities. Within 30 days after receiving a copy of the transcript from the chief of police, you **MUST** serve copies of your factum and brief of authorities on the parties to your appeal and, if they have given notice that they wish to be heard, the Solicitor General and the Director. You **MUST** then file with the Commission proof of service by affidavit or supporting letter **AND** three copies of your factum and brief of authorities (see *Rules* 29.3, 30.1, 30.3 and 31.1);

- your factum is your written argument of fact and law; it MUST be organized in consecutively numbered paragraphs containing:

**Part I** – Summary of the Facts

**Part II** – Statement of the Issues

**Part III** – Statement of Order Sought, and

**Part IV** – Authorities being Relied On

(see *Rules* 30.1, 30.2 and 30.4);

- your brief of authorities MUST contain legible copies of the legal authorities on which you rely, with a tab for each authority organized in the order that the authorities appear in your factum (see *Rules* 30.1, 30.2 and 30.4);
- as the appellant your factum and brief of authorities MUST be cerlox-bound with a blue cover (see *Rule* 30.2);
- all persons responding to your appeal MUST also prepare their factums and briefs of authorities, which must be served on you within 30 days after they receive your appeal documents and filed with the Commission (see *Rule* 30.2 and 30.3)
- once all those participating in the appeal have served and filed their appeal documents, the Commission Registrar will be in contact to arrange a mutually convenient date for oral argument at the Commission's office;
- if you wish to bring a motion for permission to introduce new or additional evidence under section 87 (5) of the *Act*, or for any other procedural reason related to your appeal (for instance, additional time to prepare your factum), you must bring a motion before the Commission (see *Rule* 10 and Chart "D" in the appendices for the process regarding motions);
- if you require an interpreter or have any special needs arising from a disability, please contact the Commission Registrar well in advance of the date for oral argument and every reasonable effort will be made to accommodate you (see *Rule* 21); and,
- all those participating in the appeal, including you, will receive a copy of the Commission's written reasons for decision once it is available.

See Commission *Rules* 8, 9, 28, 29.3, 30, 31, Form 4 and Chart "A" in the appendices.

## HOW DO YOU APPEAL A PENALTY?

The *Act* provides that the Commission MAY hear an appeal from a public complainant regarding the penalty imposed at a police disciplinary hearing. However, if you wish to appeal a penalty, you must first obtain permission, or, 'leave', from the Commission.

To obtain 'leave' from the Commission, you must take the following steps:

- within 30 days of receiving written notice of the penalty decision you wish to appeal, you MUST file with the Commission and serve on the other parties your request for leave to appeal (Form 3). You must also file with the Commission proof of your service on the other parties, either by an affidavit of service or a supporting letter (see *Rules* 8, 9, 27.1 and Form 3);
- within 30 days after you serve and file your request for leave to appeal (Form 3), you MUST serve on the other parties and file with the Commission your factum and brief of authorities; again, you must file proof of your service on the other parties (see *Rules* 8, 9 and 27.2);
- within 30 days after you serve and file your factum and brief of authorities, the other parties MUST serve on you and file with the Commission their factums and briefs of authorities (see *Rules* 8, 9 and 27.3);
- if all parties agree, your motion requesting permission to appeal a penalty may be heard in writing with no need for the parties to appear before the Commission for oral argument. If a party serves and files a written objection to having the request for leave heard in writing, the Commission Registrar will arrange a date for the parties to appear before the Commission to make oral argument (see *Rule* 27.4); and,
- if the Commission grants your request for leave to appeal, within seven days of receiving notice of the Commission's order you MUST commence your appeal by taking the steps required by *Rules* 28.1 to 28.4 inclusive, which are described in detail above and in the Appeals Chart included in the appendices.

See Commission *Rules* 8, 9, 27, 28, 29.3, 30, 31, Forms 3 and 4, and Chart "B" in the appendices.

## HOW DO YOU RESPOND TO AN APPEAL BY THE OFFICER?

The police officer, who was the subject of your complaint, may appeal a hearing officer's finding of misconduct and/or from the penalty imposed.

Typically, the police officer will appeal both the finding of misconduct and the penalty imposed. He or she will be called the "Appellant" during the appeal.

Since your complaint was the subject of the disciplinary hearing, you have the right to respond to the officer's appeal. If you decide you want to respond to support the decision by the hearing officer finding misconduct and imposing a penalty, you will be called a 'Respondent' during the appeal.

As a respondent:

- you will receive the officer's notice of appeal and a copy of the decision being appealed (see *Rule 28.1*);
- you will receive a copy of those portions of the transcript and other evidence from the disciplinary hearing on which the officer intends to rely;
- you may receive notice that the Solicitor General and/or the Director wish to be heard on the argument of the appeal if your complaint related to an incident which occurred on or after October 19, 2009 (see *Rule 28.5*);
- you will receive the officer's factum and brief of authorities within 30 days after he or she receives the transcript of the oral evidence from the hearing (see *Rule 30.3*);
- within 30 days after receiving the officer's appeal documents, you must prepare your responding factum and a brief of authorities in the required form, serve them on the officer, and on the Solicitor General and the Director if they have given notice that they wish to be heard on the argument for the appeal, and file 3 copies of your documents with the Commission with proof of service (see *Rules 8, 9, 30.2, 30.3 and 30.4*);
- you will be contacted by the Commission Registrar to set a date for oral argument of the appeal at the Commission's office after all those participating in the argument of an appeal have filed their appeal documents; and,
- if the officer decides to bring a motion you will receive a notice of motion (Form 2), factum and brief of authorities. If you wish to respond to the motion, you must prepare your responding motion materials, serve and file them as required by *Rules 10.5 and 10.6*.

As mentioned previously if for the hearing of the appeal you require an interpreter or have any special needs related to a disability contact the Commission Registrar and every reasonable effort will be made to accommodate your needs (see *Rule 21*).

See Commission *Rules 8, 9, 10, 28, 30, 31* and Chart “C” in the appendices.

## **MOTIONS**

Under *Rule 10* a party to an appeal (you, the police officer, or the prosecutor at the disciplinary hearing) may bring a motion before or at the appeal hearing. Motions brought during appeals often result from the wish of a party to introduce new or additional evidence or concern procedural issues such as an extension of the time for serving and filing a factum and brief of authorities.

If you wish to bring a motion you must take the following steps:

- after obtaining a date on which the motion will be heard from the Registrar, you must prepare a notice of motion (Form 2), factum and brief of authorities (see *Rule 10.3*);
- your notice of motion (Form 2) must set out the grounds for the motion and the order you wish the Commission to make and must be accompanied by the evidence you rely on for the motion, including an affidavit setting out the facts (see *Rule 10.4*);
- you must serve your notice of motion (Form 2), factum and brief of authorities on the other parties to the appeal at least 14 days before the motion is scheduled to be heard and then file one copy of your motion materials and your affidavit of service or supporting letter with the Commission (see *Rules 10.3* and *10.6*);
- if the Solicitor General and the Director have advised that they wish to be heard you must also serve them with your motion materials (see *Rule 10.7*);
- if the other parties to the appeal wish to respond to your motion, at least 7 days before the motion is scheduled to be heard they must serve you with their responding evidence, factum and brief of authorities and then file a copy and proof of service with the Commission (see *Rule 10.5* and *10.6*); and
- while most motions are heard orally, the Commission may direct that the motion be dealt with in writing (i.e., without oral argument) (see *Rule 10.2*).

If you wish to respond to a motion brought by another party to the appeal:

- you will be served with a notice of motion, the evidence to be relied on for the motion, a factum and a brief of authorities at least 14 days before the Commission is to deal with the motion (see *Rule 10.3*); and
- you must serve and file the evidence you rely on for the motion, a factum and a brief of authorities at least 7 days before the motion is scheduled to be heard (see *Rules 10.5 and 10.6*).

See Commission *Rules 8, 9, 10* and Chart “D” in the appendices.

## **SERVING DOCUMENTS**

It is very important to ensure that at every stage of the appeal all parties receive copies of the required appeal documents, and that the required number of copies of these documents are filed with the Commission with proof of service. This is essential to ensure fairness and to avoid unnecessary and costly delays.

If the Solicitor General and Director advise that they wish to be heard on the argument of the appeal, they **MUST** also be served with the parties’ appeal documents.

Service is carried out:

- by **personal delivery** before 4:00 p.m., on the day of delivery, and after that time, on the next day;
- by regular, registered or certified **mail**, on the fifth day after the day of mailing;
- by **fax**, on the day after it was sent but only if the document, including cover sheet, does not exceed 16 pages, or longer with consent of the party;
- by **Priority Post** or **courier**, on the second day after the document was given to the courier;
- by **email** on a party who consents to be served by email, on the day after the email is sent; or
- by any means authorized or directed by the Commission, on the date specified by the Commission in its direction.

If it is not possible to serve the necessary documents in a way described above, the Commission may direct a different method of service as it considers appropriate or, where necessary, it may dispense with service altogether.

After serving your appeal documents on the other parties, and on the Solicitor General and Director if they have given you the required notice, you **MUST** prepare proof of the service and then file three copies of your appeal documents, together with proof of service, with the Commission Registrar.

Your proof of service may be set out in an affidavit of service, or in a supporting letter. In your affidavit of service you must set out the details of who you served,

how and when you served them, and with what appeal document(s). In your supporting letter you must describe who was served and when, what documents were served, and by what method of service.

See Commission *Rules* 8, 9, 30.1 and 31.1.

## **THE APPEAL HEARING**

There are four types of hearings: an 'oral' hearing in which all parties appear in person before the Commission; a 'written' hearing in which the Commission renders its decision after reviewing your written submission and the written submissions of the other parties involved; a hearing via 'teleconference'; and, in special circumstances, a hearing via 'video conference'. The vast majority of appeals are heard orally.

Oral argument of a disciplinary appeal is heard in the hearing room located in the Commission's office at 250 Dundas Street West, 6<sup>th</sup> Floor, Suite 605, Toronto.

If you wish all or part of the oral argument to take place in French, require an interpreter or have special needs arising from a disability, contact the Registrar's office for assistance in making the required arrangements at least 15 days prior to the date set for the oral argument.

The appeal is not a "re-hearing". The Commission reviews the decision made at the disciplinary hearing to make sure it is based on evidence presented during the hearing and that the relevant decisions from previous cases were applied properly.

See Commission *Rules* 6.1, 14, 20 and 21, and the Appeals Chart.

## **WHO HEARS A DISCIPLINARY APPEAL?**

The Commission is composed of a Chair and seven members. You can find background information about the members on the Commission's website at [www.ocpc.ca](http://www.ocpc.ca).

Three Commission members (called a "panel") will hear and decide an appeal if it involves both a finding of misconduct and a penalty of dismissal. Otherwise, a panel of two Commission members will hear and decide the appeal.

## **TIPS FOR THE HEARING**

- The hearing of an appeal is similar to a court proceeding. Dress appropriately.
- You should stand when the panel enters or leaves the hearing room, and stand whenever you are speaking to a panel member or a panel member is speaking to you.

- You should direct all comments to the panel members only.
- Do not interrupt when another party is speaking to the panel unless called upon by a panel member or to make a valid objection.
- Do not attempt communication with any of the panel members outside the hearing room.

## **HOW DOES THE ORAL ARGUMENT PROCEED?**

Remember: prior to the proceeding, the hearing panel will already have read all of the documents filed by the parties for the appeal (this is the “record” of the appeal). The panel members will be familiar with your appeal and the legal issues which are raised.

Generally speaking, if you are the appellant, you will present your argument first, followed by the respondent(s) in the order they are listed in the notice of appeal. If the Solicitor General and Director have given notice of their wish to be heard they will make their arguments after the parties.

It is common for the panel members to ask questions during oral argument of an appeal. Do your best to answer any questions asked by the panel during your oral argument.

After the respondents have completed their arguments, as the appellant you are entitled to make a brief “reply” to what they have said. In your “reply argument” you may respond to new issues raised by the respondents in their arguments. Do not use your reply argument to repeat your argument on the appeal.

Often the panel members will have questions for you during your reply argument as a result of hearing the respondents’ oral arguments. Again, if panel members ask you questions while you are making your argument do your best to answer them directly.

## **WHAT MIGHT THE COMMISSION DECIDE?**

The Commission may confirm the decision of the hearing officer (ie., dismiss the appeal), or it may set aside the hearing officer’s decision (ie., grant the appeal). If the Commission grants the appeal it may substitute its own decision, or if the appeal is under the “new Part V” it may order a new disciplinary hearing.

The Commission does not have authority to award “costs”.

## **WHEN CAN YOU EXPECT A DECISION?**

Usually after hearing oral argument, the panel members will ‘reserve’ their decision; that is, instead of making their decision immediately, the panel will take time to prepare a formal written document setting out the reasons for their

decision. This may take a month or more depending on the complexity of the appeal, the number of issues raised, the number of parties involved on the appeal, etc.

When the panel's decision has been prepared, copies will be sent to those participating in the appeal, including you, and the decision will be posted on the Commission's website.

### **CAN YOU APPEAL THE COMMISSION'S DECISION?**

If your appeal relates to an incident which took place BEFORE October 19, 2009 each party to the appeal has the right to appeal the Commission's decision to the Divisional Court for Ontario (section 71 of the *Act*).

If you decide to appeal to Divisional Court, WITHIN 30 DAYS of receiving written notice of the Commission's decision you MUST serve the other parties with your notice of appeal in the form required by the rules of that Court

If your appeal relates to an incident which took place ON OR AFTER October 19, 2009, there is no right to appeal to the Divisional Court. The Commission's decision on the appeal is final.

For more information about the Divisional Court see its website at [www.ontariocourts.ca](http://www.ontariocourts.ca).

## CHECK LIST

Have you remembered to:

- ✓ Review the sections of the *Police Services Act* and the Commission's *Rules of Practice* which apply to your role on a disciplinary appeal?
- ✓ Check whether your appeal will proceed under the "old Part V" or the "new Part V" of the *Police Services Act*?
- ✓ File your notice of appeal with the Commission and serve it on the other parties to the appeal within 30 days of receiving notice of the decision you are appealing?
- ✓ Make sure all parties receive copies of your documents at every stage of the appeal, and that the proper copies are filed with the Commission with proof of service?
- ✓ Contact the Commission Registrar (if necessary) to arrange a date for a motion related to the appeal (say, to obtain an extension of the time to prepare your factum), and then take the other steps set out above to have your motion heard?
- ✓ Inform the Commission Registrar at least 15 days before the appeal is scheduled to be argued about the need for an interpreter, or with regard to any special needs of persons with disabilities?
- ✓ Review all the documents and the arguments you intend to make in support of your appeal?
- ✓ Make a list of the points you need to make during your oral argument?
- ✓ Dress appropriately since the hearing of the appeal is similar to a formal court proceeding?
- ✓ Give yourself sufficient time to arrive at the Commission's office before the oral argument is scheduled to commence?

## CHART A: HOW DO YOU APPEAL AN ACQUITTAL?

WHO DOES IT	WHAT TO DO	WHEN
Public Complainant	<ul style="list-style-type: none"> <li>• File with the Commission and serve the police officer and the prosecutor at the disciplinary hearing with your notice of appeal (Form 4) along with a copy of the decision being appealed</li> <li>• Where applicable, provide a copy of the Commission’s order granting your request to appeal a penalty decision</li> <li>• File proof of services on the parties with the Commission</li> <li>• <i>Rules 8, 9 and 28.1</i></li> </ul>	<ul style="list-style-type: none"> <li>• Within 7 days after receiving notice of the Commission’s decision to grant your request for leave to appeal, OR within 30 days after receiving notice of the hearing officer’s finding of “no misconduct” which you are appealing</li> <li>• <i>Rules 8, 9, 27, 28 and Form 4</i></li> </ul>
Public Complainant	<ul style="list-style-type: none"> <li>• If your appeal relates to an incident which occurred on or after October 19, 2009, you must also serve the Solicitor General and the Independent Police Review Director (Director) with the same documents, and file proof of service on them with the Commission</li> <li>• <i>Rules 8, 9, 28.2, 28.3 and Form 4</i></li> </ul>	<ul style="list-style-type: none"> <li>• Same timing as immediately above</li> </ul>
All Parties	<ul style="list-style-type: none"> <li>• If you are bringing a motion related to the appeal, serve and file your notice of motion, factum and brief of authorities for use on the motion</li> <li>• If you are responding to a motion related to the appeal, serve and file your responding factum and brief of authorities for the motion</li> <li>• <i>Rules 8, 9 and 10.5</i></li> </ul>	<ul style="list-style-type: none"> <li>• If you are bringing the motion, within 15 days of the date the motion is to be heard</li> <li>• If you are responding, within 7 days before the motion is heard</li> </ul>
Public Complainant	<ul style="list-style-type: none"> <li>• File proof with the Commission that you have ordered from the chief of police of the police service involved in the disciplinary hearing a copy of the transcript of all oral evidence and copies of any documents marked as exhibits (from the disciplinary hearing) upon which you rely for your appeal</li> <li>• <i>Rule 28.4</i></li> </ul>	n/a
Public Complainant	<ul style="list-style-type: none"> <li>• Receives notice that the Solicitor General and/or the Director wish to be heard on the argument of the appeal</li> <li>• <i>Rule: 28.4</i></li> </ul>	<ul style="list-style-type: none"> <li>• Within 30 days after being served by you with your notice of appeal and a copy of the decision you are appealing</li> </ul>
Public Complainant and All Parties	<ul style="list-style-type: none"> <li>• If the Solicitor General and the Director do serve notice of their wish to be heard on the argument of the appeal, they must be served with ALL appeal documents by ALL parties to the appeal</li> <li>• The Solicitor General and Director must prepare and serve their own appeal documents for the appeal</li> </ul>	<ul style="list-style-type: none"> <li>• n/a</li> </ul>

WHO DOES IT	WHAT TO DO	WHEN
	<ul style="list-style-type: none"> <li>• If they do NOT serve such notice, they will play no part in the appeal and need NOT be served with any additional appeal documents</li> <li>• <i>Rules 28.5 and 30.1</i></li> </ul>	
Public Complainant	<ul style="list-style-type: none"> <li>• When the transcript of the oral evidence from the hearing is prepared, the chief of police will provide you, the other parties to the appeal, the Commission and, if they have given notice, the Solicitor General and the Director, with copies</li> </ul>	n/a
Public Complainant	<ul style="list-style-type: none"> <li>• Prepare, serve on the other parties to the appeal and, on the Solicitor General and Director (if they service notice), a copy of your factum and brief of authorities, and file 3 copies of them with the Commission together with your affidavit of service or supporting letter</li> <li>• <i>Rules 8, 9, 29.3, 30.1 30.3 and 31.1</i></li> </ul>	Within 30 days after receiving a copy of the transcript of the oral evidence and the exhibits from the chief of police
All Parties, Solicitor General and Director	<ul style="list-style-type: none"> <li>• Anyone wishing to respond to your appeal, must serve their responding factum and brief of authorities, and they must file 3 copies with the Commission</li> <li>• After all parties have served and filed their appeal documents, the Commission Registrar will arrange a date for oral argument of the appeal to take place at the Commission’s office</li> <li>• <i>Rules 30.2 and 30.3</i></li> </ul>	Within 30 days after receiving your appeal documents
Public Complainant	<ul style="list-style-type: none"> <li>• If you require an interpreter or have any special needs related to a disability, contact the Registrar, and every reasonable effort will be made to accommodate you</li> <li>• <i>Rule 21</i></li> </ul>	Long before the date set for oral argument
(If necessary) All Parties	<ul style="list-style-type: none"> <li>• Bring a motion for permission to introduce new or additional evidence for the appeal, or regarding other procedural issues related to the appeal</li> <li>• Serve and file notice of motion, factum and brief of authorities</li> <li>• <i>Rules 8, 9 and 10</i></li> </ul>	<ul style="list-style-type: none"> <li>• Bring your motion as soon as possible</li> <li>• File your motion documents at least 14 days before the motion is to be heard</li> <li>• If responding to a motion on appeal, serve and file your motion materials at least 7 days before the motion is to be heard</li> </ul>

## CHART B: HOW DO YOU APPEAL A PENALTY?

WHO DOES IT	WHAT TO DO	WHEN
Public Complainant	<ul style="list-style-type: none"> <li>• Prepare a request to appeal a disciplinary penalty (Form 3), file it with the Commission and serve it on the police officer and prosecutor at the disciplinary hearing</li> <li>• <i>Rules 8, 9, 27.1</i> and Form 3</li> </ul>	Within 30 days after receiving notice of the penalty decision
Public Complainant	<ul style="list-style-type: none"> <li>• Serve police officer and prosecutor at the disciplinary hearing with your factum and brief of authorities, and file 3 copies with the Commission</li> <li>• <i>Rules 8, 9</i> and 27.2</li> </ul>	Within 30 days after you serve and file your request for leave to appeal
Police Officer and Prosecutor from Disciplinary Hearing	<ul style="list-style-type: none"> <li>• Serve you with and file their responding factums and briefs of authorities</li> <li>• <i>Rules 8, 9</i> and 27.3</li> </ul>	Within 30 days after you serve them with your request for leave to appeal (Form 3)
Parties	<ul style="list-style-type: none"> <li>• Agree that your request for leave to appeal will be decided in writing with no attendance before the Commission for oral argument</li> <li>• <i>Rule 27.4</i></li> </ul>	n/a
Parties	<ul style="list-style-type: none"> <li>• File a written objection to your request being decided in writing</li> <li>• Commission Registrar will arrange a date for the parties to appear before the Commission for oral argument</li> <li>• <i>Rule 27.4</i></li> </ul>	When filing factum and brief of authorities
Public Complainant	<ul style="list-style-type: none"> <li>• If the Commission grants your request to appeal, you must prepare your notice of appeal (Form 4), file it with the Commission and serve it on the parties to the appeal</li> <li>• Follow all of the steps required of an appellant as described in the Commission's Guide and in the chart for appellants below</li> <li>• <i>Rules 8, 9, 27.5, 28, 30, 31</i> and Form 4</li> </ul>	Within 7 days after receiving notice of the Commission's order granting your request to appeal the penalty decision

## CHART C: HOW DO YOU RESPOND TO AN APPEAL BY THE OFFICER?

WHO DOES IT	WHAT TO DO	WHEN
Police Officer or Prosecutor from the Disciplinary Hearing (Appellant)	<ul style="list-style-type: none"> <li>• You will be served with a notice of appeal and a copy of the decision being appealed, which must be filed with Commission</li> <li>• <i>Rule 28.1</i></li> </ul>	Within 30 days after the appellant receives notice of the decision being appealed
Appellant	<ul style="list-style-type: none"> <li>• You will be provided with a copy of the portions of the transcript and copies of other evidence from the hearing that are being relied on for the appeal, which must be filed with Commission</li> </ul>	When received from chief of police
Solicitor General and Director	<ul style="list-style-type: none"> <li>• You will receive notice from the Solicitor General or the Director that they wish to be heard on the argument of the appeal</li> <li>• <i>Rule 28.5</i></li> </ul>	Within 30 days after receiving appellant's notice of appeal and a copy of the decision being appealed
Appellant	<ul style="list-style-type: none"> <li>• You will receive the appellant's appeal documents including evidence relied on, factum and brief of authorities</li> <li>• <i>Rule 30.3</i></li> </ul>	Within 30 days after the appellant receives the hearing evidence
Respondent	<ul style="list-style-type: none"> <li>• You must prepare your responding factum and brief of the authorities</li> <li>• You must serve them on the parties to the appeal and on the Solicitor General and Director (if they have given notice of their wish to be heard on the appeal argument), and file three copies with the Commission</li> <li>• Commission Registrar will arrange a date for the oral argument of the appeal to take place at the Commission office after all those participating in the appeal argument have filed their appeal documents</li> <li>• <i>Rules 8, 9, 30.2, 30.3 and 30.4</i></li> </ul>	Within 30 days after receiving the appellant's appeal documents
Respondent	<ul style="list-style-type: none"> <li>• If you require an interpreter or have any special requirements related to a disability, please contact the Commission Registrar; every effort will be made to accommodate you</li> <li>• <i>Rule 21</i></li> </ul>	As long before the date set for oral arguments as possible

## CHART D: MOTIONS

WHO DOES IT	WHAT TO DO	WHEN
Appellant	<ul style="list-style-type: none"> <li>• Serves those participating in the appeal (likely the police officer and the prosecutor from the disciplinary hearing) with a notice of motion, factum and a brief of authorities seeking permission to introduce new or additional evidence on the appeal (under s. 87(5) of the <i>Police Services Act</i>), or dealing with the process of the appeal, and file with the Commission</li> <li>• <i>Rule 10</i>; Form 2</li> </ul>	As soon as possible after either receiving permission to appeal a penalty decision or after serving your notice of appeal, and at least 14 days before the motion is to be argued
Respondent	<ul style="list-style-type: none"> <li>• Serves responding factum and brief of authorities on those participating in the appeal, and file with Commission</li> <li>• <i>Rule 10.5</i></li> </ul>	At least 7 days before date on which the motion will be argued
All Parties	<ul style="list-style-type: none"> <li>• Attend at Commission office in Toronto to argue motion</li> </ul>	On date set by the Commission Registrar