

## NOTICE OF MOTIONS

A party to an appeal may raise a preliminary issue by serving and filing a Notice of Motion.

Such issues typically include:

- the Commission's jurisdiction;
- a stay of proceedings;
- constitutional issues;
- the disclosure of information;
- the status of a party or legal standing; or
- other significant legal issues.

The issue raised in a party's Notice of Motion may be dealt with before or at the hearing of the appeal.

The Notice of Motion must set out the grounds for the motion and specify the decision that is requested of the Commission. The Notice of Motion must be accompanied by the supporting evidence.

The Notice of Motion must be filed with the Commission 14 days before the motion is scheduled to be argued.

When responding to a motion, a party must serve and file a Factum and all supporting evidence at least seven days prior to the date on which the Commission will hear the motion.

## TRANSLATION, INTERPRETATION AND SPECIAL NEEDS

The Commission may conduct proceedings in English or French, or partly in both languages.

If a party requires English-to-French or French-to-English translation, or requires an interpreter in any other language, the Commission must be notified at least 15 days before the date the appeal is scheduled to be argued.

## ACCESSIBILITY

If you or anyone in your party has accessibility needs, please contact the Commission Registrar at least 15 days prior to the argument of the appeal.

### CHECK LIST

#### Have I remembered to:

- Serve all parties with my Notice of Appeal and file it with the Commission within 30 days of receiving notice of the decision of the disciplinary hearing.
- (If necessary) Notify the Commission, in writing, with reasons to ask for more time to prepare my Appeal Factum.
- Make sure all parties receive copies of necessary documents at every stage of the appeal.
- (If necessary) File my Notice of Motion with the Commission at least 14 days before the appeal is scheduled to be argued, including the evidence supporting the motion.
- Inform the Commission at least 15 days before the appeal is scheduled to be argued about the need for translation or interpretation services, and with regard to individuals with disabilities who may require special accommodation.

More information on the Commission's appeal process, sample forms and the Rules of Practice governing an appeal are available on the Commission's website: [www.ocpc.ca](http://www.ocpc.ca).

The information contained in this pamphlet is provided for your information and is not intended as legal advice or direction. Specific questions about your appeal should be referred to your lawyer.



© **Mixed Sources**

Product group from well-managed forests, controlled sources and recycled wood or fiber

www.fsc.org Cert no. SW-COC-003084  
© 1996 Forest Stewardship Council

# BRINGING AN APPEAL



## ONTARIO CIVILIAN POLICE COMMISSION

OFFICE OF THE REGISTRAR  
6TH FLOOR, SUITE 605  
250 DUNDAS STREET WEST  
TORONTO ON M7A 2T3

416-314-3004  
TOLL FREE: 1-888-515-5005  
WEBSITE: [WWW.OCPC.CA](http://WWW.OCPC.CA)

## OVERVIEW

The Ontario Civilian Police Commission is an independent oversight agency. It is the appeal body for decisions made at police disciplinary proceedings.

A disciplinary hearing arises from a complaint by a member of the public or a chief of police about a police officer's conduct or work performance.

A disciplinary hearing is presided over by a hearings officer who is normally a senior police officer, a former police officer, a judge or former judge chosen by the chief of police.

### Who can appeal?

The complainant and the police officer both have the right to appeal to the Commission within 30 days of receiving notice of a decision of a disciplinary hearing.

### Can the 30-day deadline for filing an appeal be extended?

No. The Commission does not have the authority to extend the time period for filing a Notice of Appeal.

### Who are the 'parties' to the appeal?

The 'parties' to the appeal may include the complainant, the police officer and the police service which prosecuted the disciplinary offence.

The Ministry of Community Safety and Correctional Services and the Office of the Independent Police Review Director may also be heard at an appeal.

### What can be appealed?

There are two types of appeals – conviction and penalty. A complainant may appeal a decision that there was no misconduct; however, appealing the penalty imposed requires permission (or "leave") from the Commission.

The disciplined police officer may appeal both the conviction (finding of misconduct) and the penalty imposed.

### How will the Commission deal with the appeal?

An appeal is not a re-hearing. The Commission reviews the decision to make sure it is based on evidence presented during the hearing and that the relevant legal precedents were applied.

### How long will it take before the appeal is heard?

There is no set timeline. The transcript of the disciplinary hearing must be prepared, written argument must be served and filed, and the availability of the parties must be taken into account.

### How will a hearing date for the appeal be scheduled?

The Registrar will contact all parties and their legal counsel or representative to set a date once all the necessary materials have been filed with the Commission.

### How long will the appeal hearing take?

The time will depend on the number of documents filed, as well as the complexity of the legal issues brought before the Commission.

### What can the Commission do? It can:

- confirm the hearing officer's decision;
- revoke the hearing officer's decision;
- substitute its own decision; or
- order a new disciplinary hearing.

The Commission will send copies of its written reasons to the parties and their representatives. Copies of all of the Commission's appeal decisions are posted on its website.

### Can the Commission award costs at the conclusion of an appeal hearing?

No. The Commission does not have the authority to award costs.

### Can a Commission decision be appealed?

No. There is no appeal; however, parties may apply to Divisional Court for judicial review.

## BEFORE THE APPEAL BEGINS

Your contact throughout the appeal process will be the Commission Registrar. A complainant or police officer must prepare a Notice of Appeal, serve it on the other parties and file it with the Commission within 30 days of being notified of the written decision at the disciplinary hearing.

The transcript of the disciplinary hearing must be ordered from the police service that prosecuted the officer. One copy of the transcript must be provided to each party to the appeal, and three copies must be filed with the Commission.

The Notice of Appeal must:

- identify the appellant and his or her counsel or agent by name, telephone number, address and postal code;
- identify the other parties to the proceeding;
- set out the reasons (grounds) for appeal, the evidence to be relied upon and type of appeal

- (conviction and/or penalty);
- be accompanied by proof that all parties have been served;
- confirm that the transcript of oral evidence required for the appeal has been ordered; and
- include a copy of the decision being appealed.

## FACTUMS

Each party must prepare a Factum, which is a written argument that sets out the evidence and the legal arguments upon which that party bases their appeal.

A Factum must contain the following sections in numbered paragraphs:

**Part 1** – Summary of Facts

**Part 2** – Statement of Issues

**Part 3** – Statement of Order Being Sought

**Part 4** – Legal Authorities Being Relied Upon

Factums must be cerlox-bound with covers colour-coded as follows: appellant – **blue**; respondent – **green**; and complainant – **red**.

If more time is needed to prepare a Factum, a party must send a written request to the Commission. The request must set out the reasons why the extension should be granted, and specify how much extra time is needed.

The appellant's Factum must be served on the other parties to the appeal and be filed with the Commission within 30 days of the date he or she received a copy of the transcript of the hearing. All other parties must deliver their Factums within 30 days after receiving the appellant's Factum.

## DOCUMENTS

It is mandatory that the parties "serve" each other with copies of their documents at each stage of the appeal, including all correspondence with the Commission. This is essential to ensure fairness and to avoid unnecessary and costly delays.

### Documents may be served by:

- personal delivery;
- registered or certified mail;
- facsimile; or
- Priority Post or courier.