

Appeals at HRPA

There are two levels of appeals at HRPA. The first level of appeal is an internal appeal to the HRPA Appeals Committee. The second level of appeal is an external (or independent) appeal to the Divisional Court as provided for by the *Human Resources Association of Ontario Act, 1990*.

Section 6(1) of the *Human Resources Professionals Association of Ontario Act, 1990* states:

6.—(1) A person who is qualified for membership in the Association and who has been refused membership or a person who has been subject to a disciplinary sanction under the by-laws may appeal to the Divisional Court from the refusal to grant membership or from the sanction.

Although available, appeal to the courts can be an expensive undertaking. In order ensure fairness in registration practices and to mediate problems prior to Divisional Court, HRPA established an Appeals Committee under By-law 11.3(c). The purpose of HRPA's internal appeal process is to provide for the opportunity of a second look at decisions made by HRPA's regulatory committees. Internal appeal processes are an important aspect of HRPA's regulatory framework. HRPA is committed to full, fair, transparent, and effective internal processes which includes access to an internal appeal.

The importance of internal appeals was underlined in the Thomson Report (Thomson, G. M. *Review of Appeal Processes from Registration Decisions in Ontario's Regulated Professions*. Ontario Ministry of Citizenship and Immigration, 2005):

“The Appeals Review believes that the best system is one that does not generate a large volume of [external or independent] appeals. It became evident during the review that registration and internal appeal or review processes are of vital importance as the “front end” of an independent appeal system. Fair registration practices, including access to internal review or appeal, will help to ensure that the independent appeal process is not overused. Further, certain elements of internal processes within the regulatory body can help to facilitate effective independent appeals when they are necessary.”

This document describes the internal appeal process at HRPA.

Who may appeal?

The Appeals Committee will respond to written appeals from any parties affected by decisions rendered by any of the Certification Committee, the Academic Standards Committee, the Recertification Committee, the Complaints, Investigations, and Discipline Committee, decisions made by the Registrar relating to registration or certification, or decisions arising out of the Board Nomination Procedure.

The decisions that can be appealed to HRPAs Appeals Committee

For the present purposes, certification is understood as a subset of membership, and thus decisions pertaining to certification are included under appealable decisions.

With respect to registration with and certification by HRPAs, the specific decisions that can be appealed are:

- Denial of membership (registration),
- Denial of certification including the decision not to renew certification as a result of the recertification requirement
- Refusal to issue an authorization to write an examination letter
- Any determination that a candidate has failed to meet a requirement for registration or certification
- Suspension of a certificate of registration
- Revocation of a certificate of registration
- Imposition of terms, conditions, and limitations on a certificate of registration
- Imposition of disciplinary sanctions
- Refusal to reinstate a certificate of registration pursuant to suspension or revocation of a certificate of registration
- Refusal to reinstate certification

With respect to the process of nomination and election to the Board of Directors of HRPAs, decisions that can be appealed are:

- The decision by the Board Nominating Committee not to approve a nomination from a member to run for the Board of Directors.

Grounds for internal appeal to the Appeals Committee

HRPAs allows appeals on two grounds:

1. A denial of natural Justice and/or
2. A deficiency in the decision of the Committee or Registrar

Implicit in the above are:

1. That simply 'not liking the decision' are not sufficient grounds for an appeal
2. That there is a test that is applied by the Appeals Committee whereby the Committee decides whether the grounds upon which an appeal is requested are sufficient for an appeal to proceed
3. That there is a process by means of which the Appeals Committee makes the decision as to whether a request for appeal meets the required test

The issue identified is that HRPAs documentation does not provide specific advice to those who would consider an appeal as to what are appropriate grounds for requesting an appeal. What does 'denial of natural justice' or 'a deficiency in the decision of the Committee or Registrar' look like?

It should be noted that HRPAs provides for 're-assessments' on any decision that involves an assessment.

Denial of natural justice

There are two sub-categories of denial of natural justice (or denial of due process as our American counterparts would have it):

1. HRPAs failed to follow its own established process (of course, the onus is on us to publish our processes)
 - a. Steps in the process were skipped or omitted
 - b. Individuals who were in conflicts of interest failed to exclude themselves from the proceedings
 - c. Failure to give proper notice of a proceeding
 - d. Procedural problems with the proceeding
 - e. Failure to disclose material information pursuant to a proceeding
 - f. Denial of the right of representation
 - g. Failure to inform participants in a proceeding of their rights in the proceeding
 - h. Other failure to follow established process or procedure

2. The process itself is flawed, unfair, unreasonable, capricious, vexatious, or otherwise established in bad faith. Here the process itself is challenged rather than the specific application of the process, although there needs to be a case at hand in order to challenge the process.
 - a. Challenges to membership or certification requirements as being irrelevant, invalid, or biased, or as having a disproportionate impact on a minority group (validity of assessment instruments, validity of cut-scores, validity of minimum scores, validity of eligibility criteria, etc.)
 - b. Claims that the established process fails to allow for accommodation where there is a duty to accommodate;
 - c. Challenges to administrative requirements as being unreasonable (deadlines, documentation requirements, specified timeframes, that requirements are 'hidden' or unpublished, insufficient notice of change in requirements)
 - d. Claims that the established process is contrary to the principles of natural justice (established process does not allow individuals to challenge evidence that is presented against them, established process does not allow individuals the opportunity to present their case, that the process itself is prejudicial in its rules)

Deficiency in the decision

1. Deficiency in the decision refers to the situation where the committee, sub-committee, panel or Registrar failed to consider the correct facts or failed to draw the right conclusion from a set of facts. This is established from the 'reasons' that are given for a decision. A deficiency in the decision can be argued when the 'reasons' suggest that facts were not considered.

It is the Appeals Committee role to assess the information presented in relation to the grounds for appeal not to retry the initial decision. The Appeals Committee will not consider new information that was not presented at the time the original decision was made. The Appeals Committee will consider new information that pertains to the grounds of the appeal (i.e., evidence to support the claim that there has been a denial of natural justice, or evidence to support the claim that there has been a deficiency in the decision).

Filing an internal appeal with the Appeals Committee

To file an appeal, an individual must complete a "Notice of Appeal" form, which sets forth the grounds for appeal and the relief sought. The Notice of Appeal must be signed and filed with the Office of the Registrar of the Association within 30 calendar days from the date of notification of the decision. It may be delivered by mail, in-person, or by fax.

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

Access to records

HRPA will provide all parties to the decision with access to records held by HRPA that are related to the decision being appealed, with the following limitations:

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; or
- (d) granting the 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.

HRPA may charge the Appellant a fee for making records available, however:

- (a) HRPA will give the Appellant an estimate of the fee,
- (b) The amount of the fee shall not exceed the amount prescribed by the regulations or the amount of reasonable cost recovery, if no amount is prescribed, and
- (c) HRPA may waive the payment of all or any part of the fee that an Appellant is required to pay if, in HRPA's opinion, it is fair and equitable to do so.

HRPA will inform an applicant of any rights the applicant may have to request a further review of, or appeal from, the decision.

The Appeals Committee

The Appeals Committee is a standing committee of HRPA. The Chair of the Appeals Committee reports to the Board through the Chair of the Board.

Membership of the Appeals Committees is as follows:

- Chair is current Board member.
- At least three CHRP members. All three members and Chair must be present for a panel to sit.
- At least one public representative appointed by the Board.
- The member of the committee chairing the meeting can vote only in case of a tie.
- The Committee shall sit and act in Hearings panels of at least five members, including at least one public representative.
- No member can sit on this Committee and on either the Certification Committee, Recertification Committee, Complaints, Investigations and Discipline Committee or the Board Nomination Committee.
- The Chair of the Professional Standards Committee and the Registrar shall not be members of the Appeals Committee.
- The term of service on the Committee shall be three years with a maximum of two consecutive terms. Terms of Committee membership shall be staggered to ensure continuity with approximately one-third of the members being replaced annually. Initial Committee members may have shortened terms of service to accommodate the appointment of new members

Appeals Hearing Process

1. Upon receipt of the application made pursuant to the by-laws, the Registrar shall give notice to the parties to the proceedings of the date, time, and place appointed for hearing the application.
2. The Appellant shall be notified in writing of the date, place, and time that the member's appeal will be heard.
3. The Appellant is entitled to appear before the Appeals Committee at that time and to make representation to the Appeals Committee when it hears the appeal. The Appellant is entitled to be assisted by a personal advisor at the appeal hearing if he or she wishes to have such assistance. If the Appellant does not wish to appear in person before the Appeals Committee, the Appellant may appear via conference call or make written submissions, provided the Registrar receives the submissions at least 7 business days before the date and time of the scheduled hearing. The hearing may be conducted in person, via conference call or evaluated strictly on the basis of written submission.
4. The Appellant may submit written information to clarify what was submitted previously to the Certification, Complaints & Investigations or Discipline Committees, and/or present arguments, challenging the decision of the Certification, Complaints & Investigation and Discipline Committee, decision of the Registrar relating to the application for membership, or decision of the Board Nomination Committee relating to Nomination Procedures, as to why the information presented in their application should meet the requirements. However, during the appeal the Appellant may not present new information, which was not previously reviewed by the Committee as part of the initial decision unless that new evidence is material to the claim that there has been a denial of natural justice or that there was an error in the decision.
5. The Registrar shall send all parties (appellant, party that made the decision that is being appealed and the Appeals Committee), the relevant documents regarding the appeal, in advance of the hearing.
6. A quorum of five, including at least three members with C.H.R.P. designation and one public representative, must be present at the time the appeal is heard.
7. The Chairperson of the Committee, from which decision the Appeal resulted, or his or her designate, will present the case (in verbal or written format, or both) to all parties. If written, the rationale must be received a minimum of 7 business days prior to the hearing.
8. The Appellant will present his position.
9. The members of the Appeals Committee may ask questions of the parties as necessary to clarify information.
10. The hearing will be adjourned and the Appellant will be advised that the decision will be communicated, in writing, at a later date.
11. The Appeals Committee shall send a copy of its final decision to each party to the appeal.

Should the Appellant bring forward previously unexamined written information during the hearing, the following process applies:

1. The written information is to be handed to the Committee Representative who will first review the material and will then advise the Appeals Committee as to whether or not the information is deemed to be new or for purposes of clarification of the original information submitted to the Committee.
2. If the information is deemed to be for clarification, and the Appellant wishes all members to have a copy, copies will be distributed.
3. If the information is deemed to be new information copies will NOT be distributed to all members of the Appeals Committee and the hearing will proceed based on the originally submitted information.

Decisions of the Appeals Committee

Decisions of the Appeals Committee may take one of three formats: The decision may be:

- Upheld – If a decision is upheld the Committee determines that there is neither a denial of natural justice nor deficiency in the decision dependent, upon the grounds for appeal. Therefore the initial decision remains unchanged.
- Overturned – The Appeals committee finds that there is either a denial of natural justice or deficiency in the decision, dependent upon the grounds for appeal. The initial decision is reversed.
- Referred back to the relevant committee or Registrar—In an effort to reconcile the issue, the Appeals Committee may direct the original committee or the Registrar, as the case may be, to review their original decision under directions given by the Appeals Committee.

Important Timelines

1. Any parties affected by decisions rendered by any of the Certification Committee, the Academic Standards Committee, the Recertification Committee, the Complaints, Investigations, and Discipline Committee, decisions made by the Registrar relating to registration or certification, or decisions arising out of the Board Nomination Procedure have 30 calendar days period, from the date of notification of the decision to appeal the decision.
2. Scheduling of the hearing—The Appeals Committee is comprised of volunteers. HRPAs strives to ensure that the Appeal is heard in a timely manner.
3. Communication of Appeal Committee decision— Once the hearing has concluded the appellant will be advised, in writing, within 3 to 4 weeks regarding the decision of the Appeals Committee.

Appellant Instructions for Submission of Appeal

1. To appeal a decision of any of the following, you are required to complete the “Notice of Appeal”, setting forth the grounds for appeal and the relief sought;
 - The HRP A Certification Sub-committee
 - The HRP A Educational Standards Sub-committee
 - The HRP A Recertification Sub-committee
 - The HRP A Complaints, Investigations, and Discipline Committee
 - The HRP A Registrar relating to registration or certification
 - Decisions arising out of the Board Nomination Procedure
2. The Notice of Appeal must be signed and filed with the Office of the Registrar of the HRP A. It may be delivered by mail, in-person, or by fax at:

Office of the Registrar HRP A 1902-2 Bloor St. W. Toronto, ON M4W 3E2 Fax: (416) 923-8956
3. A copy of the Notice of Appeal form can be made available electronically to the appellant.
4. The appellant may not present new information or documentation that was not previously presented to the committee or Registrar, whose decision is being appealed.

Once the Appeal is Received:

1. Once the completed application is received the Office of the Registrar will send the appellant a confirmation of receipt, and forward the appeal to the Chair of the Appeals Committee.
2. There will be a review of the appeal to determine whether there are sufficient grounds for the appeal to proceed.
3. If there are sufficient grounds for an appeal to proceed, and a hearing is scheduled, the appellant shall be sent notice of the date, time and place for the hearing. If it is determined that there is not sufficient grounds for the appeal to proceed, a notice of this will be sent to the appellant.
4. After the hearing, the Appeals Committee will send a copy of its final decision to each party. The decision of the Appeals Committee shall be final, binding and conclusive for all purposes.

HRPA Notice of Appeal Form

The HRPAs Appeals Committee is established under the bylaws of the Human Resources Professionals Association (HRPA), By-law 11.3(c). This form is used to request an appeal of a decision of one of the following: (indicate as appropriate)

- The HRPAs Certification Sub-committee
- The HRPAs Educational Standards Sub-committee
- The HRPAs Recertification Sub-committee
- The HRPAs Complaints, Investigations, and Discipline Committee
- The HRPAs Registrar relating to registration or certification
- Decisions arising out of the Board Nomination Procedure

To: The Appeals Committee of the Human Resources Professionals Association (HRPA):

1. I, _____ being
(Full Name)

effected by the decision of the above noted Committee or Registrar as indicated above, hereby file this notice of appeal with the Office of the Registrar.

2. The Notice of Appeal is being made under the following grounds:
(select the grounds for appeal)

A denial of natural Justice

and/or

A deficiency in the decision of the Committee or Registrar as indicated above

List the specific grounds for the appeal: (A separate sheet may be used)

A denial of natural Justice

A deficiency in the decision of the committee selected above
