

FAIRNESS FACTS

FAIR APPEAL PROCESSES

It is important for public bodies to have clear, accessible and fair appeal processes available for decisions that have a significant impact on the people they serve.

When a person believes a decision is unfair, unreasonable, or incorrect, they may want to appeal it. Whether they can depends on several factors, including the impact of the decision and whether an appeal is permissible by law.

Why have an appeal process?

- helps to make sure administrative decisions are fair, reasonable and consistent with the guiding legislation
- instills public confidence in the decision-making process
- ensures transparency
- enhances the opportunity to be heard

In general, the greater the impact of the decision, the more important it is to have an appeal process.

Appeal Process Essentials

An **accessible** appeal process is easily found, written in plain language and easy to follow. It should not deter potential appellants.

Those who appeal an administrative decision are often referred to as “appellants”.

A **clear** and **fair** appeal process should include the following information in a format that is easy to understand:

- ☐ who can request an appeal
- ☐ what types of administrative decisions can be appealed, including any specific grounds (or reasons for appeal)
- ☐ whether an appeal should automatically be available as a right or whether specific conditions must be met
- ☐ who has the authority to consider an appeal under the relevant legislation or policy, including the person or committee who will conduct it
- ☐ how to request an appeal and the specific steps involved, including how to submit information to the person overseeing the appeal
- ☐ how the appeal will be conducted, such as via an in-person hearing or written submission
It is also important to inform the individual that they will have an opportunity to be heard in the process
- ☐ relevant information about confidentiality and information sharing during the appeal process
- ☐ possible outcomes
For example, will the person overseeing the appeal be able to confirm, reverse or change the original decision, or will it be sent to the original decision-maker
- ☐ any time limits associated with the process, such as when the appeal must be requested by and when evidence must be submitted to be considered by the decision-maker

Appeal Process Essentials

The decision-maker on appeal must be impartial to the parties and the issue being decided. The decision-maker should not have been involved in the original decision and should not pre-judge the matter. They should come into the appeal process with an open mind.

Adequate reasons that explain how and why the final decision was made should be communicated. Providing meaningful and clear reasons for a decision will help those impacted to understand and accept it.

Additional levels of appeal should be communicated. If, after an appeal, the individual continues to be dissatisfied with the decision, they should be provided with information about further review options available. This could be at a higher level of the organization, an option for external review, and/or a referral to the Office of the Ombudsperson or other oversight body.

What is a judicial review?

Judicial review is when an individual asks the courts to review a decision made by government decision-makers. Canadian courts will generally only review whether the decision-maker followed a procedurally fair process or whether there was a substantive error within the decision. Examples of substantive errors include an error in legal interpretation or a finding of fact, and whether the decision-maker had the jurisdiction to make the decision (jurisdictional error).

What is an administrative decision?

“Administrative decisions” are decisions made by public sector employees, on behalf of government or other public bodies, under specific authority granted through legislation or public policy.

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