



RULES OF ORDER – ARTICLE 15 APPEALS

HSA 2024 Annual Convention

Appeals Procedures

1. The matter is put on the Convention Agenda on the first day as the first order of business following the Credentials Report, HSA Guiding Principles of Solidarity, Adoption of Rules of Order, and Adoption of Agenda.
2. The Union may appoint a neutral chair, the “Appeals Chair”, from outside the Union to chair the appeals proceedings section of the Convention, as well as a court reporter to record the appeal proceedings.
3. The Appeals Chair will have the authority to determine procedural issues and conduct the hearing in accordance with the rules of natural justice and in a manner that is fair and reasonable. The rulings of the Appeals Chair will be final and conclusive.
4. If there is more than one appeal to process, they will be heard in the order in which the Union received the Notice of Appeal, from earliest to most recent.

Commencement of Appeal Hearing

5. All appeal participants will receive 60 days notice of the appeal hearing and will be asked to confirm whether they will attend in person themselves or be represented by another person at the hearing. Notice to each party will be sent by both registered mail and receipt-read emails.
6. Upon receipt of the notice of appeal hearing and process rules, each party will have two weeks (10 business days) to respond to the notice (as per instructions to be set out in the notice) regarding their intention to attend. Each party will also be provided the option to attend virtually. The option to attend virtually shall be extended to the party’s representative should a party request so.
7. Should the appellant not complete the notice to attend form as set out in the appeal hearing and process rules in 6 above, the appeal will be considered abandoned and will not be heard at convention.
8. At the commencement of each appeal hearing, the Appeals Chair will ask each party to stand and identify themselves. If virtual attendance has been requested and arrangements made for such, the virtually attending party can acknowledge attendance from the remote platform.

9. The Appeals Chair will ask three times if the appellant (s) or their representative(s) are present (either in person or virtually). If the appellant(s) or their representatives are not in attendance either in person or virtually, the appeal will be declared abandoned and the next matter on the agenda will proceed.
10. If the appellant(s) or their representative(s) are in attendance either in person or virtually, and have identified and been recognized by the Appeal Chair as such, the hearing will proceed as set out below.

Seeking Leave to Appeal - Submissions and Delegate Voting

11. Copies of the decision under appeal, redacted to remove names and identifying information of witnesses other than the parties to the matter, will be distributed to the delegates as part of the convention package prior to convention through a secure virtual portal. Delegates will be informed that hard printed copies will not be provided at convention. Access to the secure portal shall require delegates to confirm they understand that the document they are accessing relates to an internal union matter that is not to be discussed outside of the convention hall, except as required by law or by order of a court of competent jurisdiction. The delegates will also confirm that they will not take “screen-shots” or otherwise photograph, copy or replicate the decision they are accessing and further agree not to share or discuss the information with anyone outside of convention hall.
12. At convention, the Appeals Chair will remind delegates that they have been provided the decisions under appeal in advance and as such, the hearing will commence without further delay.
13. The Appeals Chair will provide directions and instructions to the delegates regarding their role as adjudicators and their obligation to maintain confidentiality.
14. In the course of providing directions and instructions to the delegates with respect to the appeal process and their roles, the Appeals Chair will advise the delegates that the appeal rules are as follows:
 - (a) the first step of the appeals procedure is for the delegates to decide if the member(s) seeking to appeal an Article 15 decision (the “Appellant(s)”) should be granted leave to appeal. That is to say, do the delegates want to allow the Appellant(s) to have an opportunity to speak to the merits of the appeal, or not;
 - (b) a request for leave to appeal is not a hearing *de novo*, rather it is an opportunity for the Appellant(s) to explain briefly why and on what grounds they are seeking leave, and for the Hearing Panel to either consent to the application for leave to appeal or, if opposed, provide reasons;
 - (c) to obtain leave for appeal, the Appellant(s) must demonstrate a good arguable case of sufficient merit that it may succeed on one of the following grounds:
 - i) the original decision is inconsistent with the principles expressed or implied in the Union Constitution or any legislation dealing with labour relations;
 - ii) a party was denied natural justice: or

- iii) new evidence, not known or could not reasonably have been known to the Appellant(s) at the time of the original decision, has emerged that is likely to have a material and determinative effect on the original decision.

(d) in deciding whether or not to grant leave, delegates must consider, among other things,

- (i) whether the point(s) on appeal is of significant importance to the Union and its members;
- (ii) the Appellant(s)'s reasons and/or explanation for seeking leave to appeal; and
- (iii) whether on its face, the appeal is meritorious, frivolous or an abuse of process;

(e) Only if a majority of the delegates voting, vote in favour of granting leave to appeal, will the appeal proceed.

15. The Appeals Chair asks each Appellant to declare which type of leave to appeal they are seeking from the following options:

- Option (A) - Leave to appeal *only* the finding of guilt
- Option (B) - Leave to appeal *only* the discipline imposed by the Hearing Panel
- Option (C) - Leave to appeal the Hearing Panel's finding of guilt AND leave to appeal the Hearing Panel's imposition of discipline

16. The Appellant(s) makes their declaration (only one option is to be declared), and the Appeals Chair then follows the procedure for the declared process.

17. A member of the Hearing Panel, or a representative, is given a maximum of 10 minutes to advise delegates of the:

- (a) Article 15 Complaint(s) that were referred to the Hearing Panel;
- (b) Hearing process;
- (c) Hearing Panel's decision;
- (d) Discipline imposed; and
- (e) Hearing Panel's reasons for its decisions and the discipline.

18. The Appellant(s), or their representative(s), are each given a maximum of 15 minutes to make oral submissions to the delegates explaining why and on what grounds they are seeking leave to appeal.

19. The Hearing Panel, or a representative, may provide a brief reply.

20. The floor will then be open for a delegate question period, for a maximum of 10 minutes. The Appeals Chair will advise delegates to proceed to the microphones with questions, not statements of support or censure.
21. Once the question period has concluded, the Appellant(s) will each be allowed to make a final statement lasting no more than 5 minutes.
22. The Appeals Chair will advise delegates that they will have reasonable time to reflect and deliberate on the question of leave to appeal, meaning: do the delegates find that the Appellant(s) should be allowed to have an opportunity to speak to the merits of the appeal. The Appeals Chair will ask the Appellant(s), Complainant(s), and members of the Hearing Panel to remain seated and caution them not to speak to the delegates as this is not a time to campaign or persuade delegates, but allow them their own time to consider the question of leave.
23. The Appeals Chair will then ask the delegates to vote on a question which resembles one of the following based on the option declared by the Appellant(s):
- Option (A): “Those in favour of granting leave to appeal the Hearing Panel’s finding of guilt; Those opposed”.
 - Option (B): “Those in favour of granting leave to appeal the Hearing Panel’s imposition of discipline; Those opposed”.
 - Option (C): “Those in favour of granting leave to appeal the Hearing Panel’s finding of guilt and, in the alternative, leave to appeal the Hearing Panel’s imposition of discipline; Those opposed”.
24. If a majority of the delegates voting, vote in favour of granting leave to appeal, the appeal will be heard as follows:
- Option (A): Convention as a whole will hear the appeal.
 - Option (B): A Discipline Appeal Committee will be appointed to hear the appeal in accordance with Article 15, and the procedures set out in Paragraphs 31-37 below.
 - Option (C): Convention as a whole will hear the appeal on the finding of guilt. If the finding of guilt is overturned, that is the end of the matter. The decision of the Hearing Panel is overturned.
- If the finding of guilt is upheld, the matter will then be referred to a Discipline Appeal Committee to hear the appeal of the discipline imposed.
25. If the motion for leave to appeal does not pass, then the Hearing Panel’s decision stands and the appeal does not proceed. That is the end of the matter.

Appeal Hearing - Submissions and delegate voting

26. Where leave to appeal has been granted by delegates, the appeal itself will be heard in accordance with the declared Option.

Appeal Hearing before the Convention as a Whole

27. If the Appellant(s) has selected **Option A** or **Option C**, the Convention as a whole will hear the Appellant's appeal of the Hearing Panel's finding of guilt.

28. The Appeals Chair will advise the delegates that the rules of the appeal are as follows:

- (a) the appeal hearing is not a hearing *de novo* (i.e. not a re-trial); rather, it is an appeal based on the record.
- (b) the appeal hearing is not an opportunity for the Appellant (or any other party) to argue or reargue the matter that was before the Hearing Panel;
- (c) the Appellant(s) must explain based on the record, why they think the Hearing Panel made a mistake, and why the Convention should overturn the Hearing Panel's finding.
- (d) the Appellant(s) (or any other party) will not be permitted to present any new additional evidence and/or arguments at the appeal hearing that could have been made available to the Hearing Panel;

29. The Appellant(s) are each given a maximum of 15 minutes to make an oral submission to the delegates, explaining among other things, why and on what basis they think the Hearing Panel made a mistake, and why the Convention should overturn the Hearing Panel's finding.

30. A member of the Hearing Panel or a representative is given a maximum of 10 minutes to make an oral submission to the delegates in response to the Appellant(s)'s submissions.

31. A Complainant(s), or their representative (s), are each given a maximum of 10 minutes to make oral submissions to the delegates in response to the Appellant(s)'s submissions and setting out their position on the Appellant(s)'s appeal.

32. The floor will then be open for a delegate question period, for a maximum of 10 minutes.

33. Once the question period has concluded, the Appellant(s) or their representative(s) will each be allowed to make a final statement lasting no more than 5 minutes.

34. The Appeals Chair will advise delegates that they will have 10 minutes to reflect and deliberate on the matter under appeal. The Appeals Chair will ask the Appellant(s), Complainant(s), and members of the Hearing Panel to remain seated and caution them not to speak to the delegates as this is not a time to campaign or persuade delegates, but to allow them their own time to consider the appeal.

35. The Appeals Chair will then ask the delegates to vote on a question which resembles the following:

“Those in favour of upholding the Hearing Panel’s finding of guilt; those opposed, meaning you are in favour of overturning the Hearing Panel’s finding of guilt”.

36. If a majority of the delegates voting, vote in favour of upholding the Hearing Panel’s finding of guilt, the Hearing Panel’s decision is upheld and, if the Appellant(s) selected

- Option (A): then that is the end of the matter and the appeal is over.
- Option (C): then the Appeals Chair will ask the Appellant(s) to confirm whether or not they wish to proceed with the appeal of the discipline imposed, and if the Appellant(s) so wishes, then the discipline imposed will be reviewed by the Discipline Appeal Committee (as set out in more detail below).

If the Appellant(s) does/do not wish to proceed with the appeal of the discipline imposed, then that is the end of the matter and the appeal is over.

37. If a majority of the delegates voting vote “opposed”, meaning they are in favour of overturning the Hearing Panel’s finding of guilt, the Hearing Panel’s decision is overturned and that is the end of the matter.

Discipline Appeal Committee

38. If the Appellant(s) selected Option B, or selected Option C (and the Convention as a whole upheld the Hearing Panel’s finding of guilt), then a Discipline Appeal Committee will hear the appeal of the discipline imposed by the Hearing Panel and decide whether the discipline imposed by the Hearing Panel was reasonable. If so, the discipline will be upheld. If not, and the Discipline Appeal Committee finds that the discipline was unreasonable, it may modify the discipline as it sees fit. The decision on the Discipline Appeal Committee on any modification of discipline is final and conclusive.

39. Pursuant to Article 15(9)(b), five members at Convention shall be selected by lot to serve on the Discipline Appeal Committee. Members of the Board of Directors, the Appellant(s), Complainant(s), and members of the Hearing Panel and any witnesses will be excluded from the Discipline Appeal Committee

40. Names will be drawn, by the Appeals Chair, one by one, who will ask each person if they are prepared to sit on the Discipline Appeals Committee, whether they have a conflict of interest and whether there is any impediment to them serving on the Committee.

41. In the absence of a compelling reason, conflict or perceived conflict, delegates selected to serve on the Discipline Appeal Committee must do so.

42. The Discipline Appeal Committee shall assume its responsibilities, consistent with the Constitution’s Article 15(9)(b) provisions, immediately upon selection.

43. Any party to the original complaint will have the opportunity to speak to the Disciplinary Appeal Committee. Other than that, the meetings and deliberations of the Discipline Appeal Committee will be closed to everyone else, including other delegates at Convention, and confidential.
44. The Appellant(s) are each given a maximum of 15 minutes to make an oral submission to the Discipline Appeal Committee as to why and on what basis they think the Hearing Panel's determination with respect to discipline was unreasonable and why the Discipline Appeal Committee should overturn the Hearing Panel's discipline and substitute its own discipline. Should the Complainant(s) or members of the Hearing Panel wish to make a submission, they will each have 10 minutes to speak. Upon conclusion of the submissions, the deliberations of the Discipline Appeal Committee are closed to everyone including the parties.
45. The Discipline Appeal Committee shall keep its deliberations confidential and report its determination no later than the last matter of business on the Convention agenda before adjournment, after which the Committee members shall be discharged from their duties.

Concluding the Appeals Process

46. The Appeals Chair announces that the Appeals Procedures have concluded.