



ELCIC Court of Appeal Rules of Procedure

(Adopted Feb. 17, 2022)

ELCIC Court of Appeal Rules of Procedure

TABLE OF CONTENTS

1.	Background.....	3
1.1.	Purpose and Authority.....	3
1.2.	Application and Interpretation of Rules.....	3
1.3.	Appeals That Can Be Heard by Court.....	4
2.	Legal Representation and Costs.....	4
3.	Deadlines for Appeals and Other Procedural Steps.....	5
4.	Correspondence With Court.....	5
5.	How to Initiate an Appeal.....	5
5.1.	Process.....	5
5.2.	Format of Notice of Appeal.....	5
5.3.	Content of Notice of Appeal.....	5
5.4.	Grounds for Appeal.....	6
5.5.	Request for Additional Evidence.....	7
6.	Pre-Hearing Court Process.....	7
6.1.	Review of Notice of Appeal.....	7
6.2.	Establishing Parties to the Appeal.....	8
6.3.	Establishing the Record on Appeal.....	8
6.3.1.	Definition.....	8
6.3.2.	Responsibility.....	9
6.3.3.	Format of Record.....	9
6.3.4.	Review of Record by Parties.....	9
6.4.	Pre-Hearing Conference.....	10
6.5.	Summary of Conference.....	10
6.6.	Response to Notice of Appeal.....	10
6.7.	Court Review of Record and Submissions.....	11
6.8.	Ruling on Additional Evidence.....	11
6.9.	Hearing Order.....	12
7.	Hearing.....	12
7.1.	Process.....	12
7.2.	Rules of Evidence.....	12
8.	Court Decision.....	13

1. Background

1.1. Purpose and Authority

These Rules of Procedure are intended to assist persons with the process involved in taking an issue to the ELCIC Court of Appeal (Court). The Court is created under the ELCIC Constitution¹, and its purposes, duties and procedures are defined by the administrative bylaws of the ELCIC (Bylaws)². The Bylaws allow the Court to conduct two general types of proceedings: (i) recall or dismissal of an officer of the ELCIC or a synod³; and (ii) appeals of various decisions made by a Synod Council. While the Bylaws outline some procedural requirements for these proceedings, the Court is authorized to make additional rules of procedure, provided they are consistent with the Constitution and the Bylaws. These Rules of Procedure are made under that authority.

1.2. Application and Interpretation of Rules

1.2.1. General Application

These Rules of Procedure (Rules) will normally apply to the hearing of an appeal. For ease of reference, these Rules also incorporate specific procedural rules required by the Bylaws. Proceedings to recall or dismiss an officer of the ELCIC or a synod are not an appeal, in the Court's view, and will be governed by Part XI of the Bylaws.

1.2.2. Exceptions to Rules

The Court may make such exceptions to these Rules that it considers appropriate unless the Bylaws do not permit that exception. Parties to an appeal (see s. 1.2.4) may request in writing that the Court consider making an exception to these Rules, or the Court may make an exception on its own, based on the circumstances of the case.

1.2.3. General Interpretation

The terminology used in these Rules should be interpreted consistently with the definitions and meanings outlined in the Bylaws for the same terminology, unless defined differently in these Rules.

1.2.4. Meaning of "Party", "Appellant", "Respondent"

In a proceeding conducted by a Canadian court of law or administrative tribunal (such as the ELCIC Court of Appeal), the persons who have the right to participate in the process are called "Parties". In the context of an appeal to the Court, the Parties are called the Appellant and Respondent(s). The Appellant is the person (including a body such as a congregation or synodically-recognized ministry) who is requesting an appeal of a decision. A Respondent defends the decision being appealed. See s. 6.2 of the Rules regarding the establishment of Parties.

1 ELCIC Constitution, July 2019, Article XVII, s. 1.

2 ELCIC Constitution, Article XVII, s. 2.

3 Bylaws Part XI, s. 2-6.

1.2.5. Procedural Requests

A Party may submit a request to the Court concerning any procedural issue incidental to the hearing of an appeal and the Court will provide the other Party with an opportunity to respond. If the Parties disagree, the Court may hear them in person or may rule on the basis of written submissions.

1.3. Appeals That Can Be Heard by Court

The following types of decisions may be appealed to the Court:

- a. A Synod Council decision to suspend or exclude a congregation or a synodically-recognized ministry from the ELCIC;⁴
- b. A Synod Council decision to cancel the status of a pastor or deacon as “on leave from call”;⁵
- c. A refusal by a Synod Council to restore a pastor or deacon to good standing after being disciplined;⁶
- d. A Synod Council decision to discipline a pastor or deacon by: (i) private censure and admonition; (ii) censure and admonition by a synod bishop before Synod Council; (iii) suspension from rostered ministry; or (iv) removal from the ELCIC roster of ministers.⁷

The Court does not interpret proceedings to recall or dismiss an officer of the ELCIC or a synod as being an appeal.

2. Legal Representation and Costs

2.1. Representation

Each Party to an appeal may be represented by no more than two persons. Decisions under appeal may have serious consequences, therefore the Court recommends that legal counsel be retained early in the process of an appeal, especially to prepare the Notice of Appeal.

2.2. Costs of Appeal

The Court does not have the authority to require a Party to pay the legal or other costs incurred by another Party involved in an appeal. Each Party involved in an appeal is responsible for their own costs.

4 ELCIC Constitution Article VI, s. 7; Bylaws, Part II, s.3; Part III, s.3.

5 Bylaws Part IV, s. 11; Part V, s. 9.

6 Bylaws Part IV, s. 13.c; Part V, s. 11.

7 Bylaws Part XVII, s. 6; ELCIC Manual Re: Discipline of Rostered Ministers s. 62.

3. Deadlines for Appeals and Other Procedural Steps

3.1. Requesting an Appeal

Section 7 of Part VII of the Bylaws requires that an appeal be filed within forty-five (45) days from the date of the decision being appealed. For consistency with other sections of the Bylaws and ELCIC documents,⁸ the Court interprets this as being 45 days from the date the affected person or body received notification of the decision.

3.2. Other Deadlines

Deadlines imposed by these Rules or the Court for taking other procedural steps may be extended if the Court considers the request appropriate. Requests to extend a deadline must be in writing, indicate the requested time-period for taking the applicable procedural step, and state the reasons for the request. All requests must also be submitted in compliance with Section 4 of these Rules. While the Court expects such requests to be filed as soon as possible, they may be heard and granted even after the deadline has expired.

4. Correspondence With Court

All correspondence with the Court should be directed to the secretary of the Court unless the secretary of the Court has not been identified, in which case the correspondence should be directed to the National Bishop. All correspondence with the Court should be simultaneously copied to the other Party(ies) to the appeal (see s. 1.2.4 and s.6.2 regarding Parties to the appeal.)

5. How to Initiate an Appeal

5.1. Process

A person wishing to appeal a decision referenced in section 1.3 (Appellant) must send a Notice of Appeal to the secretary of the Court (or to the National Bishop for forwarding to the secretary) and the chairperson of the Synod Council that issued the decision within 45 days of receiving notice of the decision, in accordance with section 3 of these Rules.⁹

5.2. Format of Notice of Appeal

The Notice of Appeal must be typed, include page numbers and the paragraphs should be consecutively numbered.

5.3. Content of Notice of Appeal

A Notice of Appeal must contain:

- a. a description of the decision that is being appealed;

⁸ Bylaws Part II, s. 3; Part III, s. 3; Part IV, s.11; Part V, s.9; ELCIC Manual Re: Discipline of Rostered Ministers, s. 65.

⁹ See Bylaws, Part XVII, s. 7.

- b. the name of the regional Synod Council that issued the decision;
- c. the name and contact information for the chairperson of the Synod Council;
- d. the date that the Appellant was notified of the decision;
- e. the full personal or corporate name of the Appellant;
- f. the phone number, street address and email address of the Appellant;
- g. the name and contact information of any person(s) representing the Appellant;
- h. the reasons (grounds) for appealing the decision (see s. 5.4);
- i. the action that the Appellant wants the Court to take (ex., set aside the decision or order a new hearing);
- j. a request to submit additional evidence, if applicable (see section 5.5);
- k. a statement confirming that the Notice of Appeal has been sent to the chairperson of the Synod Council that issued the decision being appealed.

5.4. Grounds for Appeal

Applicable sections of the Bylaws and ELCIC Manuals should be reviewed by an Appellant to determine whether there are any restrictions on the basis for an appeal. The Court notes that disciplinary decisions can only be appealed based on a failure of the Committee on Discipline to follow due process (as defined in the ELCIC Manual Re: Discipline of Rostered Ministers) or on the basis of new evidence which was not available prior to the conclusion of the hearing conducted by the Committee on Discipline.¹⁰ Where the governing ELCIC document does not restrict the reasons for an appeal, the Appellant must specify an error of fact or error of law that was made in reaching the decision. Appellants are encouraged to show how the error, if corrected, would have led to a different result.

5.5. Request for Additional Evidence

The Bylaws state that the appeal should be determined on the evidence upon which the original decision was based, but that the Court may receive additional evidence in such manner and form as it may determine, in its sole discretion.¹¹

If the Appellant wants the Court to receive any evidence that was not considered during the original decision-making process, the Appellant should include such a request with the Notice of Appeal, but the Court will consider requests made after the Notice of Appeal is filed if the Appellant provides reasons for the delay.

A request to file additional evidence should include: the reasons why the evidence, if it had been considered by Synod Council, might have led to a different result. The evidence to be added should also be produced with the request but it will not form part of the Record on Appeal unless the Court grants the request.

¹⁰ ELCIC Manual Re: Discipline of Rostered Ministers, s. 65

¹¹ Bylaws, Part XVII, s. 7.

6. Pre-Hearing Court Process

6.1. Review of Notice of Appeal

Within 14 days of receiving the Notice of Appeal, the Court will review the Notice of Appeal to determine whether the Notice meets the requirements of the Bylaws and these Rules. If the Court determines that the Notice does not (i) pertain to a decision that can be appealed to the Court under the Bylaws or (ii) was not filed within forty-five (45) days from the date that the Appellant received notice of the decision being appealed, the Court will notify the Appellant and the applicable Synod council chairperson that the Court will not hear the appeal.

If the Court is of the view that the appeal meets the other requirements of the Bylaws but that the Notice fails to indicate valid grounds for appeal or fails to include all the information listed in section 5.3 of these Rules, the Court will allow the Appellant a period of time to submit a revised Notice. Unless an extension of time is granted, if the Appellant fails to submit a revised Notice of Appeal to correct all deficiencies within the specified period, the Court will not hear the appeal.

6.2. Establishing Parties to the Appeal

As indicated in section 1.2.4, the Appellant is the person (including a body such as a congregation or synodically-recognized ministry) who is requesting an appeal of a decision. The Court will normally consider the regional Synod Council that issued the decision to be the only Respondent, unless the decision or the Record on Appeal suggests that another party will be directly affected by the Court's decision.

The Court's preliminary ruling on the appropriate Respondent(s) will be sent to the Appellant and regional Synod Council prior to the pre-hearing conference. A written request to substitute or include other Respondents must be sent by a party to the Court at least 14 days before the pre-hearing conference, unless an extension is granted pursuant to section 3.2.

6.3. Establishing the Record on Appeal

6.3.1. Definition

To make its decision regarding an appeal, the Court must review the "Record on Appeal" (Record). This includes all the evidence and submissions that were made available to Synod Council when reaching its decision, including the record that was before the Committee on Discipline if it heard the case.

6.3.2. Responsibility

For appeals from disciplinary decisions, the Chairperson of the Committee on Discipline must provide the Record to the Court within the time- period requested by the Court.¹² For appeals of other Synod Council decisions, the chairperson of Synod Council will be asked by the Court to provide the Record. At the time of providing the Record, the person providing the Record must confirm in writing that the Record is accurate and complete.

¹² ELCIC Manual Re: Discipline of Rostered Ministers, s. 66.

6.3.3. Format of Record

The description of the documents or other evidence listed in the Record must:

- i. be in chronological order of their submission to Synod Council or another body/person;
- ii. include the date of the document;
- iii. include the sender/maker of the document and recipient.

6.3.4. Review of Record by Parties

Once the Record has been provided to the Court, the secretary of the Court will grant each Party electronic viewing access to the Record. The Parties must submit a request to the Court to add any documents or other evidence to the Record on Appeal within the time-period specified by the Court unless an extension is requested and granted. A request must be based on an assertion that the evidence was submitted to Synod Council before it made the decision that is being appealed. If such a request is made, the other Party(ies) will be given an opportunity to provide its position on the request.

6.4. Pre-Hearing Conference

After the Court has determined the validity of the Notice of Appeal, made a preliminary determination of the Parties to the appeal and received the Record on Appeal, the Court will convene a pre-hearing conference with the Parties to discuss:

- a. the appropriate Parties to the appeal;
- b. whether the Parties will be represented by legal counsel;
- c. a suitable time-period for the Respondent(s) to provide a written response to the Notice of Appeal;
- d. procedural options for the hearing of the appeal (see section 7) and the Parties' preferences for procedures and scheduling;
- e. whether the Parties would be willing to participate in mediation .

6.5. Summary of Conference

After the pre-hearing conference the Court will send the Parties a written summary confirming matters decided at the conference.

6.6. Response to Notice of Appeal

The Respondent(s) must provide the Court with a Response to the Notice of Appeal within the time-period required by the Court unless an extension is granted. The Response must be typed, paginated and sent via email to both the secretary of the Court and the Appellant; the paragraphs should be consecutively numbered.

The Response should contain:

- a. any issue of fact or law alleged in the Notice of Appeal with which the Respondent disagrees and the reasons;
- b. a statement regarding whether the Respondent believes that the appeal should be dismissed and if so, the reasons why the appeal should be dismissed;
- c. a response to the Appellant's request for additional evidence, if applicable;
- d. a statement confirming that the Response has been sent to the Appellant.

6.7. Court Review of Record and Submissions

The Court will review the Notice of Appeal, Response to Notice of Appeal and the Record on Appeal to determine the issues in dispute, whether additional clarification of the evidence or additional evidence is needed to assess the appeal, and the appropriate hearing procedures.

6.8. Ruling on Additional Evidence

If a Party files a request to include additional evidence pursuant to section 5.5, the Court will provide the other Party with an opportunity to respond. If the Parties disagree, the Court may hear them in person or may rule on the basis of written submissions; if the Parties agree, the Court is not bound by their agreement and may determine the admissibility of the proposed additional evidence.

The Court will notify the Parties if it determines that the submission of additional evidence is warranted and the details regarding how and when the evidence should be provided.

6.9. Hearing Order

Once the Court has determined the issues in dispute and the hearing process, the Court will issue a hearing order to the Parties outlining the issues in dispute, the procedural steps of the hearing and the hearing date(s). The Court reserves the right to issue supplementary hearing orders if the need arises as the appeal unfolds.

7. Hearing

7.1. Process

The hearing process for the appeal on the merits may consist of only a review by the Court of the Record on Appeal, the Notice of Appeal and the Response to Notice of Appeal. The Court may also order that the hearing process include any of the following:

- a. questions from the Court to be answered in writing by either or both Parties or at a hearing;
- b. written submissions outlining either the general position of each Party or a position on specific issues;

- c. the opportunity to orally examine and/or cross-examine witnesses;
- d. the opportunity to provide oral argument.

7.2. Rules of Evidence

When determining whether to receive additional evidence and in deliberating over the evidence submitted in the hearing and/or previous proceedings leading to the decision under appeal, the Court will take into consideration the credibility or trustworthiness of the evidence in the circumstances.

8. Court Decision

The Court will reach its decision on the appeal within 60 days of the close of the hearing, unless it notifies the Parties that additional time is required. The Bylaws state that the Court's decisions are final.¹³ Once the Court has made its decision, the Court must provide its decision in writing to the Parties and the ELCIC bishop.¹⁴ The decision must also be posted on the ELCIC website and in the Bulletin of Reports. However the chair of the Court has the discretion to post either the full decision or a summary of the decision.¹⁵

¹³ Bylaws, Part XVII, s. 6.

¹⁴ Bylaws, Part XVII, s. 6

¹⁵ Bylaws, Part XVII, s. 8