

PART VIII: APPEALS AND RIGHTS OF PRIVATE ACTION

31. Appeal against decision or direction

- 31.1 Section 34(1) of the PDPA provides that an organisation or individual aggrieved by a decision or direction (as the case may be) of the Commission under section 27(2), 28(2), 29(1) or (2) or 31(4)(b) of the PDPA may appeal to the Chairman of the Data Protection Appeal Panel against that decision or direction. An appeal shall be made within 28 days of the issuance of the decision or direction that is the subject of the appeal (the “appealed decision”).
- 31.2 Section 34(2) of the PDPA provides that where an application for reconsideration has been made under section 31 of the PDPA, every appeal in respect of the same decision or direction shall be deemed to be withdrawn. In such a situation, an appellant whose appeal is deemed to be withdrawn may make an application for reconsideration to the Commission, and the Commission shall consider such applications concurrently with other applications for reconsideration in respect of the same matter. Alternatively, the appellant may await the outcome of the Commission’s reconsideration of its decision or direction, and consider whether to make an appeal against the Commission’s decision upon reconsideration (under section 31(4)(b) of the PDPA).
- 31.3 Section 34(3) of the PDPA further provides that unless the Data Protection Appeal Committee hearing an appeal decides otherwise, the making of an appeal does not suspend the effect of the appealed decision, except in the case of a direction to pay a financial penalty.

32. Data Protection Appeal Committee’s decisions and directions

- 32.1 Section 34(4) of the PDPA provides that the Data Protection Appeal Committee hearing an appeal may, after hearing the appeal:
- 32.1.1 remit the matter to the Commission;
 - 32.1.2 impose or revoke, or vary the amount of, a financial penalty;
 - 32.1.3 give such other direction or take such other step as the Commission could itself have given or taken; or
 - 32.1.4 make any other direction or decision that the Commission could itself have made.
- 32.2 Any direction or decision of a Data Protection Appeal Committee under section 34(4) of the PDPA has the same effect, and may be enforced in the same manner, as a direction or decision of the Commission, except that there shall be no application for further reconsideration under section 31 of the PDPA and no further appeal under section 34 of the PDPA from any direction or decision of the Data Protection Appeal Committee. Please refer to the next section concerning appeals to the High Court and Court of Appeal.

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33. Appeals to High Court and Court of Appeal

33.1 Section 35(1) of the PDPA provides that an appeal against, or with respect to, a decision or direction of a Data Protection Appeal Committee may be made to the High Court:

33.1.1 on a point of law; or

33.1.2 as to the amount of a financial penalty.

33.2 An appeal under section 35(1) of the PDPA may be made by⁵¹:

33.2.1 an organisation aggrieved by the decision or direction of the Data Protection Appeal Committee;

33.2.2 where the decision relates to a complaint, the complainant; or

33.2.3 the Commission.

33.3 Under section 35(3) of the PDPA, the High Court shall hear and determine any such appeal and may:

33.3.1 confirm, modify or reverse the decision or direction of the Data Protection Appeal Committee; and

33.3.2 make such further or other order, including (without limitation) orders as to costs, as the Court may think fit.

33.4 A decision of the High Court under section 35(3) of the PDPA may be appealed to the Court of Appeal in accordance with the Rules of Court.

34. Rights of private action

34.1 Section 32(1) of the PDPA provides that any person who suffers loss or damage directly as a result of a contravention of any provision in Parts IV, V or VI of the PDPA by an organisation may commence civil proceedings in the courts against the organisation. Under section 32(3) of the PDPA, a court hearing an action under section 32(1) of the PDPA may grant any or all of the following:

34.1.1 an injunction or a declaration;

34.1.2 damages;

34.1.3 such other relief as the court thinks fit.

⁵¹ See PDPA, section 35(2).

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- 34.2 Where the Commission has made a decision under the PDPA in respect of a contravention of any provision in Parts IV, V or VI of the PDPA, no action may be brought under section 32(1) of the PDPA in respect of that contravention until the decision has become final as a result of there being no further right of appeal.⁵²
- 34.3 As the Commission is not empowered to award damages or other relief noted above to a complainant, persons who suffer loss or damage as a result of a contravention of the PDPA may commence civil proceedings directly. In general, such persons may wish to obtain legal advice in relation to their claim and possible civil proceedings.
- 34.4 Under the Rules of Court, where party (referred to as the plaintiff) commences civil proceedings for relief under section 32(1) of the PDPA, he is required to serve a copy of the writ or originating summons to the Commission not later than 7 days after service of the writ or originating summons on the defendant.⁵³ In addition, any person who is granted a judgment or order by a court pursuant to section 32 of the PDPA is required to transmit a copy of the judgment or order to the Commission within 3 days after the date of the judgment or order.⁵⁴

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⁵² See PDPA, section 32(2).

⁵³ See Rules of Court, Order 105, Rule 12.

⁵⁴ See Rules of Court, Order 105, Rule 12.