

SENATE APPEALS COMMITTEE PROCEDURES

(Revised April 7, 2016; effective July 1, 2016. Revised September 30, 2019.)

INTERPRETATION

These procedures shall be liberally construed to secure the just, most expeditious and cost-effective determination of every proceeding on its merits.

All references to “days” refer to calendar days unless explicitly stated to the contrary.

INITIATING AN APPEAL

Jurisdiction

Students may appeal to the Senate Appeals Committee (“the Committee”) against a Faculty Council decision relating to:

1. waiver of a Faculty's academic regulation or deadline,
2. findings of breach of academic integrity and/or the penalties levied in such cases, or
3. grade reappraisal.

An appeal may not be filed with the Committee until all procedures at the Faculty level have been exhausted. Students should consult the relevant student service office of their Faculty for regulations governing Faculty petition and appeals procedures.

Grounds for Appeal

An appeal may be initiated on one or more of the following grounds:

1. A denial of natural justice, such as (but not limited to) a reasonable apprehension of bias on the part of the original decision maker(s) or a fundamental procedural error, such as the consideration of information that ought not to have been considered or the failure to consider information or special circumstances that ought properly to have been considered;
2. New evidence has arisen that could not reasonably have been presented, and that would likely have affected the original decision. Generally speaking, events or performance subsequent to the relevant time does not constitute new evidence for the purposes of this provision.
3. The decision under appeal was made without jurisdiction; or
4. Inconsistent application of the relevant regulations.

Time to File Appeal

An appeal to the Committee shall, except in exceptional circumstances, be commenced by filing a Notice of Appeal form no later than 5:00 pm on the 30th day after receipt of the decision being appealed. Where the deadline falls on a day when the University is closed, the deadline shall be deemed to fall on the next regular business day of the University at 5:00 pm. (The Chair of the Committee may waive this deadline in special circumstances which must be established by the appellant.)

An appeal is filed either by submitting it in person or by post to the Senate Appeals Committee, c/o University Secretariat, 1050 Kaneff Tower, York University, 4700 Keele Street, Toronto, ON M3J 1P3, or by emailing it to appeals@yorku.ca.

For the purposes of computing time, receipt of a decision is deemed to have taken place five days after the decision was released unless there is evidence to the contrary.

Contents of Appeal

No application for appeal to the Committee shall be considered unless it includes a succinct statement of the following:

- a) the specific Faculty decision which is being appealed;
- b) the outcome being requested;
- c) the specific grounds on which the appeal is made, including a brief (1-2 sentence) synopsis of each grounds);
- d) a summary of the evidence in support of these grounds;
- e) an indication as to whether the appellant and/or representative wishes to attend a hearing, and
- f) if the grounds for appeal includes new evidence, the original documents that constitute or corroborate the new evidence, along with a brief (1-2 sentence) statement about each piece of new evidence, identifying its relevance and why it was not available prior to the original decision.

The Committee shall request from the Faculty all documents that were considered at the Faculty level including the text of the Faculty decision being appealed and any response to the appeal which the Faculty may wish to make. The Faculty shall also indicate if it wishes to be represented. Along with the appellant's submission, this will constitute the Committee file.

The appellant will be given 15 days to review the Committee file and to respond to the Faculty's submission. Any response will become part of the Committee file. The

appellant is not required to respond and can accelerate the process by indicating before the 15 days have elapsed if no response is to be expected.

Decision Not to Advance the Proceeding

The Committee Chair may decide not to advance the proceeding if:

- a) the Notice of Appeal is substantially incomplete, defective or inaccurate, or the documents provided are substantially incomplete;
- b) the documents are received after the deadline for commencing the proceeding has passed and a request to the Chair for an extension of time has not been filed;
- c) there is some other substantial technical defect in the proceeding as filed.

The Chair shall give the party who filed the documents relating to a proceeding notice of its decision not to advance the proceeding and shall set out in the notice the reasons for the decision and the requirements for re-advancing the proceeding. Only one such notice shall be given. A party who receives a notice from the Chair under subsection (b) must rectify the defect or deficiency within 15 days from the date of the notice or, with the consent of the Chair, within a reasonable time.

Dismissal of Appeal Without Hearing

The Committee may, on its own motion, dismiss a case after a review of the documents filed and without hearing from the parties if:

- a) the Committee determines that it does not have jurisdiction; or
- b) the Committee meets *in camera* and determines that the appeal is clearly without merit or commenced in bad faith.

The Committee shall notify the parties in writing of its decision to dismiss the appeal without hearing from the parties, and it shall invite and consider a written request for reconsideration (see below).

PROCEDURES GOVERNING HEARINGS

Appointment of a Hearing Panel

Hearings are normally held before a panel of three members of which normally one member is a student. In the event of an absence, the panel may proceed with two members with the consent of the parties. In the case of a tie vote, the case will be referred to another panel for consideration. Cases involving Academic Honesty must be considered by a panel of three.

A member of the panel shall disqualify themselves if they are involved in the case as a party or a witness or has other substantial reason to believe that they could not be

impartial. A member may be challenged for cause by a party for the same reasons. A member shall be disqualified by a majority vote of the Committee. A member may not vote on their own disqualification, but may make a statement.

In cases where SAC has decided that there will be a new hearing of an academic honesty case, it shall be heard before a panel of five members of which two members are students.

Right to Attend Hearing

Both the appellant and the respondent and/or their representative(s) have the right to appear before the Committee to present argument and evidence and to examine and cross-examine witnesses. The Committee, on its own initiative, may request the parties to appear at the hearing.

Hearings to be Private

A hearing of the Committee deals with issues related to individual students and ordinarily is conducted in private. Exceptionally, a hearing may be held in public if the Chair is satisfied that confidentiality concerns can be adequately addressed, and if the parties consent.

Documentation provided in the course of an appeal is treated as confidential subject to the *Freedom of Information and Protection of Privacy Act*.

Notice of Hearing

A hearing shall be commenced as soon as possible following the appellant's response to the Committee file.

An attempt shall be made to schedule the hearing at a time and place convenient for the parties and for the panel. However, any party whose reasons for absence are not considered valid by the Panel Chair, or whose absence may cause unreasonable delay, shall be notified that the panel will proceed in that party's absence.

The parties shall be given reasonable, written notice of the hearing. In the case of the student, the notice shall be sent via electronic mail to an address provided by them for that purpose.

Representation at the Hearing

The parties are entitled to the assistance of an advisor or any other person, including a legal representative throughout the process. The cost of representation is born by the party and no costs will be awarded by the Committee against one party for representation of another party.

Order of the Hearing

The following indicates the order of an appeal where the parties are present. The Committee may alter the order of the hearing in the interest of fairness to any or all of the parties.

- a) The Chair shall commence the proceeding by addressing one or more of the following:
 - i. Identifying the parties and members of the committee;
 - ii. identifying the nature of the appeal;
 - iii. noting for the record the documentary information submitted by the parties, and
 - iv. addressing any preliminary issues raised by the parties or questions to clarify issues from the panel.
- b) The Appellant or representative shall be the first to present their position and any documentary evidence or testimony in support of their case.

Questioning of the Appellant and their witnesses, if any, by the Respondent and/or by the panel occurs at the close of each person's testimony except that the panel may seek clarification during the course of testimony.

- c) The Respondent or representative shall then provide their reply including the factual support of the case through documentary evidence or testimony of the respondent or witnesses.

Questioning of the Respondent and their witnesses by the Appellant and/or by the panel occurs at the close of each person's testimony except that the panel may seek clarification during the course of testimony.

The Appellant and their witnesses shall be allowed to offer testimony or other evidence in reply to new issues raised in the Respondent's presentation.

After the testimony of each witness, the committee may, in addition to asking questions of the witness as permitted above, request copies of such documents mentioned in testimony as the committee in its discretion sees fit. After this, no new arguments or evidence regarding the appeal may be introduced.

The parties are entitled to make closing arguments and to summarize briefly the main points in the following order:

- a) the Respondent
- b) the Appellant

Other Parties

If other persons, in addition to the Appellant and the Respondent, have been specified by the Panel as parties to the proceeding, the procedures described above shall be altered by the panel to provide an opportunity for such additional parties to be heard.

Recess or Adjournment

The panel may consider and grant a recess or an adjournment at the request of either party or on its own initiative to allow review of written or documentary evidence submitted at the hearing.

The panel may grant an adjournment at any time during the hearing to ensure a fair hearing.

Deliberation and Panel Decision

Panels will deliberate *in camera* and shall reach a decision. Normally, the decision shall be communicated to the parties in writing. However, where both parties appeared at the hearing, the Panel may choose to communicate the reasons for their decision orally. In such cases, written reasons will be provided only on request within 15 days of the hearing. If only one party is in attendance, an oral decision may be issued and written reasons will be supplied.

If the Panel chooses to provide an oral decision, it will be given to the parties, along with reasons, after the *in camera* deliberations, and confirmed in writing. In the case of an oral decision, written reasons will be provided only at the request of either party.

The Committee may decide to deny the appeal, to refer the matter back to the Faculty with instructions for reconsideration on the basis of new evidence or reconsideration using proper procedure, or to grant immediate relief. In cases involving allegations of breach of academic honesty or the penalty for such breach, the Committee may direct a hearing *de novo* either at the Faculty level or before the Senate Appeals Committee according to the procedures for hearing allegations of breach of academic honesty set out in Section 4 of the *Senate Policy on Academic Honesty*.

Where a new hearing is ordered in the case of breach of academic honesty, the matter proceeds as if the charge had just been laid, and can be heard either at the Faculty level or before a panel of the Committee.

Where a matter is referred back to a Faculty for reconsideration, any subsequent appeal to the Committee will only be allowed on the same grounds as those set out under Grounds for Appeal above.

Written decisions and confirmations of oral decisions shall be transmitted to the parties electronically except where a specific request has been made to communicate the decision in some other form.

RECONSIDERATION BY THE COMMITTEE

The Committee is the final body of appeal in respect of academic matters at York University and its decisions are final. The appellant may ask the Committee to reconsider a final decision by making written application to the Committee within 20 days of receipt of the decision. The Committee may also reconsider a decision on its own initiative where it considers it appropriate.

A request for reconsideration will not be granted unless the Committee is satisfied that one or more of the following occurred and had a material impact on the Committee's decision:

- a) there has been improper notification to parties;

- b) an individual with interest in the proceedings was not notified or otherwise afforded an opportunity to participate;
- c) relevant material evidence was withheld by a party;
- d) relevant material information was not disclosed to a party;
- e) there has been a significant defect in the proceedings or content of the decision which, if corrected, would probably change the result of the original decision, or
- f) where it appears there is new evidence that could potentially be determinative of the case and, for reasons beyond the party's control, the evidence was not obtainable at the time of the hearing.

Reconsideration is discretionary. It is not an appeal or an opportunity for a party to change the way it presented its case. The Committee will not entertain requests to reconsider a matter that has already been reconsidered, and decisions on a reconsideration are not appealable.

Requests for reconsideration of a Committee decision will be considered by a panel of three members who did not serve on the panel first hearing the matter. If the panel concludes that the matter should be reconsidered, the Committee, at its sole discretion and acting within the scope of natural justice, will identify the scope of reconsideration, which may be a full hearing on the merits or may be limited to factors identified in the appeal or request for reconsideration. The Committee, at its sole discretion, may elect to proceed with the reconsideration with or without an attendance by the parties, or based on written submissions only. A reconsideration will be heard only by panel members who were not involved in the original decision.

File Disposition

All documentation accompanying an appeal remains in the appellant's file within the University Secretariat and is not used for any purpose beyond the appeal. In accordance with the University's Common Records Schedule, the request to appeal and the committee's decision letter are kept permanently and all other records held by the University Secretariat will be destroyed 10 years after the decision.

Committee Membership

Membership to the Committee occurs according to the rules of Senate. The committee consists of nine faculty members and three students.

The Committee will meet as a full committee from time to time to consider the general business of the Committee and to constitute panels.