

MANUAL FOR STUDENT APPEALS COMMITTEES
THE UNIVERSITY OF MANITOBA

TABLE OF CONTENTS

	<u>Section Topic</u>	<u>Page</u>
1.	Introduction	2
2.	Relationship between student appeals committees and the courts of law	4
3.	Confidentiality standards for committee members	5
4.	Preparing for the Hearing	6
5.	Conduct at the Hearing	7
6.	Deliberations and Decisions	12
7.	Evidence	14
8.	Procedure for your Committee	17

INTRODUCTION

Thank you for agreeing to accept an appointment as a member of one of the University's student appeals committees. Your position carries a heavy responsibility and tremendous challenges. The parties who appear before you, and the University itself, rely on you to make fair and informed decisions on the matters being heard by your committee. As a committee member, you provide an impartial forum for the hearing of appeals of academic and disciplinary decisions, and you contribute to good governance of the University.

Some committee members already have acted as decision-makers in various capacities, while other committee members will be acting as decision-makers on a student appeals committee for the first time. Regardless of the level of experience you bring to your appointment, you will gain satisfaction from conscientiously performing your role as a committee member. For those who are new to appeal committees, you will also gain invaluable experience in administrative law which will be applicable outside of the University in other aspects of your life.

Using this Manual

This manual has been developed for use by members of faculty appeal committees, and by members of other University appeal committees such as the Senate Committee on Academic Appeals, the Senate Committee on Admissions Appeals, and the University Discipline Committee. Student appeals committees play an important role in the governance of the University and it is essential that all committee members understand and properly carry out their committee responsibilities.

Section 2 deals with the relationship between student appeals committees and the courts of law.

Section 3 sets out confidentiality standards which are required of committee members under the by-laws or policies governing student appeals committees.

Section 4 through **7** provide you with general guidelines for hearing student appeals. Following these guidelines should result in a fair hearing of student appeals, and will make it unlikely that your decisions could be successfully

challenged in the courts of law on the basis of a denial of natural justice or a breach of the duty of fairness.

Section 8 contains the specific by-law or policy governing your committee. The contents of this section provide specific procedures for your committee to follow, as well as the types of appeals you may hear and the types of decisions you may make.

It is hoped that each committee Chair will meet with new committee members to discuss the contents of this manual, as well as specific expectations of committee members and specific procedures to be followed by your committee.

RELATIONSHIP BETWEEN STUDENT APPEALS COMMITTEES AND THE COURTS OF LAW

The University is empowered under legislation to hear appeals relating to academic decisions and disciplinary matters. In effect, the legislation gives the University the power to decide questions of a kind that would have otherwise come under the jurisdiction of the courts.

The final appeal decisions by the University are as binding on the parties as if they had been made by a court of law. However, the courts do retain some power to review the procedures and actions of committees within the University to ensure that these committees have acted fairly in making their decisions. The courts are predominately interested in whether the parties have had a fair opportunity to be heard before a decision is made, and whether the committee was impartial in considering the evidence before it. Rarely would the courts overturn a decision because the committee erred on the facts or erred in applying University regulations or policies.

In order to carry out its appeals powers under the legislation, the University has established various appeal avenues for individuals who are not satisfied with decisions made by academics and administrators within the University. Student appeals committees form a significant part of the appeal avenues available to individuals.

You do not need to be a lawyer to be a member of a student appeals committee. However, you do need to act impartially and fairly when hearing an appeal and when making your decision on the case before you. If you follow the procedures of your committee and the guidelines set out in this manual:

- (1) you will have provided the parties with a fair and full hearing;
- (2) you need not feel intimidated when lawyers appear at a hearing;
- (3) judicial review applications to the courts will likely be unsuccessful.

CONFIDENTIALITY STANDARDS

Under the by-law or policy governing your committee, you have a responsibility to keep information from appeal hearings (the “hearing”) confidential. You should adhere to the following guidelines:

1. Do not discuss the subject matter or status of cases dealt with in the hearing with anyone outside the hearing.
2. Do not discuss or show the academic or disciplinary record of a student with/to anyone outside the hearing.
3. Do not discuss or show any information revealed in the course of the hearing with/to anyone outside the hearing.

In addition, you should not discuss the committee’s deliberations with any of the parties to the hearing or with anyone outside of the hearing.

PREPARING FOR THE HEARING

As a committee member, you have an obligation to serve on hearing panels as requested, unless you have an unavoidable scheduling conflict or you are in the same faculty/school as the parties appearing at the hearing.

The following guidelines will assist you in preparing for the hearing:

1. Prepare for the hearing by carefully reading the appeal documents and the relevant regulations or policies.
2. Prepare a list of questions you have as a result of your review of the appeal document and relevant regulations or policies. Also note any discrepancies in the appeal documents and check the sequence of events.
3. Arrive at the hearing location early so that committee members may deal with preliminary business prior to conducting the hearing.
4. Ask the Chair of the hearing panel to clarify any questions you have concerning the relevant regulations or policies. This clarification should preferably be obtained when the hearing panel meets alone just prior to conducting the hearing.

CONDUCTING THE HEARING

Committee members who have agreed to serve on a hearing panel have the responsibility to attend and to fully participate in the hearing. Committee members should become familiar with the specific by-law or policy governing their respective committees, since the procedures set out in these documents will be followed during the hearing.

The Chair of the hearing panel has the responsibility of ensuring that the hearing progresses in an orderly and fair fashion. At the outset of the hearing, the Chair will explain to the parties the procedure that will be followed during the hearing and will satisfy himself/herself that the parties are familiar with the by-law or policy governing the student appeals committee.

Guidelines

The following guidelines will assist committee members during the hearing:

1. **Attend the Hearing in its entirety**

Depending on the number and complexity of the issues raised in the appeal documents, the hearing may only take a few hours or may continue over a number of days. Once you have made the commitment to sit on the hearing panel, it is important that you attend the full hearing.

The committee's governing by-law or policy sets out the quorum of committee members required in order to conduct the hearing. It is important that the quorum be maintained during the entire hearing -- otherwise, the hearing panel's decision can be overturned by the courts. You therefore must ensure that:

- (1) you attend the hearing when you have agreed to serve on the hearing panel --otherwise the quorum may be lost;
- (2) you attend all the sessions of a multi-day hearing -- otherwise you are disqualified from remaining on the hearing panel and the quorum may be lost;

- (3) you do not leave the room during the giving of any of the evidence at the hearing -- otherwise you are disqualified from remaining on the hearing panel and the quorum may be lost. If you must leave the room for any reason, request that the Chair call a recess for this period of time.

2. Be Impartial in dealing with the parties to the appeal

You must act in good faith and listen fairly to both parties.

The parties should be given a fair opportunity for correcting or contradicting any relevant statement or document prejudicial to their positions. The parties should be given the right to cross-examine witnesses – if cross-examination is prohibited or restricted, there is likely a denial of natural justice. Unless expressly or by necessary implication permitted under your governing by-law or policy, you must not hold private interviews with witnesses or hear evidence in the absence of the parties to the appeal.

Maintain an objective attitude throughout the entire hearing. If you cannot be objective in reaching a decision, you must disqualify yourself and refrain from all further discussion respecting the subject matter of the hearing.

If you have a conflict of interest or any of the following situations apply, you must disqualify yourself and refrain from all further discussion respecting the subject matter of the hearing:

- (1) if you are a faculty member or a student in the Department/School/Faculty (where there are no Departments) from which the appellant is registered;
- (2) if you (as an individual, or as a member of a committee or Board) were responsible for making the decision being appealed;
- (3) if there are circumstances from which it might be inferred that you have a bias (eg. Taking the same course which is the subject matter of an appeal).

Do not form conclusions respecting the subject matter of the appeal until all of the evidence has been heard.

3. Fully Participate in the hearing

Listen carefully to the testimony of witnesses and the arguments made by the parties. Ask questions where you require clarification.

Take notes of testimony and write down the names of the parties and witnesses. Your notes will help you later during the deliberations of the hearing panel.

Adhere to the following general rules of etiquette:

- (1) Do not whisper with other committee members, stare out the window, watch the clock, or work on other matters while testimony is being given.
- (2) Do not interrupt persons who are speaking.
- (3) Speak and ask questions through the Chair. This will contribute to a more orderly conduct of the hearing.
- (4) Treat the parties and witnesses with dignity. Accusations or statements which have no factual basis must be avoided.

When questioning the parties or witnesses, use the following guidelines:

- (1) Use open-ended questions as much as possible. Open-ended questions require more than a yes or no answer; they require explanations.
- (2) Do not tie three or four questions into one. You will forget what you asked, and the student or staff member will forget too!
- (3) **“What”** questions ask for facts and specific information. eg. What were you doing when Professor X came into the classroom? What is your understanding of the policy?
- (4) **“How”** questions ask about the process or sequence of an incident and focus on feelings and emotions.
eg. How do you think this incident affected others in the classroom? How can you account for the discrepancies between your statement and the staff member’s statement?

- (5) **“Could”** questions are usually open questions, although sometimes they may be closed questions.
eg. Could you explain why you acted this way? Could you tell us more about the incident?
 - (6) **“Why”** questions put participants on the spot because they don't always know why.
 - (7) Explore one topic thoroughly before moving on with questions on the next topic. Ask additional questions if you are not satisfied with the response you have received. Have a purpose in asking each question.
 - (8) In cases involving several students, it is good practice to ask the same questions of all involved.
- * Points (1) through (8) have been synthesized from the Illinois State University Manual for Discipline Hearings.

4. Conflicts of Testimony

Try to resolve all conflicts of testimony. Call witnesses back individually or collectively so that additional questions may be asked in order to clarify the various stories or to resolve conflicting stories.

5. If you are not clear about an issue raised during the appeal, you should seek clarification.

If clarification requires bringing more witnesses or waiting for additional information, the hearing should be recessed until the witnesses or information can be presented at the hearing.

6. When lawyers represent either of the parties

Lawyers are normally only permitted to attend faculty appeal committee hearings as observers; but they are permitted to represent the parties at the final appeal levels such as the Senate Committee on Academic Appeals and the University Discipline Committee.

Do not be intimidated when lawyers present the case for either of the parties. If necessary, lawyers should be reminded by the Chair that the normal rules

of courts of law do not apply to the hearing panel and that the hearing panel governs itself in accordance with its governing by-law/policy and the duty of fairness/rules of natural justice.

The Charter of Rights and Freedoms does not apply to the University's appeal avenues. Therefore, do not get caught up in any Charter arguments which may be raised by lawyers representing either of the parties.

7. When closing arguments have been made by the parties, the Chair should advise them as follows:

- (1) Whether the parties should wait for a decision to be made by the hearing panel or whether a decision will be forwarded at some future date. [All deliberations of the hearing panel are conducted in camera.]
- (2) The Hearing Panel may request the parties to appear or provide additional information before the committee reaches a decision. [In such case, both parties should have the opportunity to hear/see and respond to the testimony or additional information.]

DELIBERATIONS AND DECISIONS

Make sure you are familiar with your committee's written procedures, since these will take precedence where they differ from the general guidelines suggested in this Section.

Guidelines

1. When the parties and any observers have left the hearing room, the committee members constituting the hearing panel will begin their deliberations.
2. The Chair should first summarize the issues before the hearing panel and the written and oral information presented at the hearing. You should seek clarification of any issues which you still feel are unclear. You should also identify any information which you feel is still required before a decision can be reached.
3. If the committee members agree that there is additional information or witnesses required, arrangements should be made to obtain such information and the hearing should be reconvened to hear such additional information or witnesses.
4. If there is no additional information or witnesses required, the Chair should give the committee members time to consider the evidence individually before the case is discussed by the group. At this time, each committee member should review the evidence presented to the hearing panel, and identify the reasons for coming to his/her preliminary conclusion.
5. The Chair should then ask each committee member what he/she feels should be the proper disposition of the appeal and the reasons therefore. The Chair may wish to question each committee member in order to encourage an in-depth discussion of the facts of the case.
6. The Chair may state his/her own opinion and invite questioning or other comments by the committee members.
7. The committee members should continue to discuss the issues and the evidence until they have collectively come to a decision. However, there

may be times when the committee members will not unanimously decide on the disposition of an appeal, in which case the majority decision will prevail.

8. When making your decision, you should keep in mind the following points:
 - (a) Your decision should only be based on matters brought out during the hearing.
 - (b) No decision should be based on an outside influence. A committee member who is approached by any person attempting to influence the deliberation should report the incident to the Chair of the hearing panel and/or such other person as designated by the Chair.
 - (c) You must maintain an objective attitude towards the parties and the evidence presented to you.
 - (d) Your committee's policy document lists the types of actions you may take. For example: the Senate Committee on Appeals may vary an academic decision or grant an appeal subject to conditions; the University Discipline Committee may vary disciplinary actions and may substitute a more severe discipline.
9. Once a decision is reached, the Chair of the hearing panel will announce the decision to the parties if they are immediately available, and will provide the parties with written notification of the decision.

If the hearing panel is a faculty appeals committee, the written notification of the decision should also include information on further levels of appeal available to the student.

EVIDENCE

Evidence can be broadly defined as the types of proof presented at the appeal, which are offered by the parties to prove the existence or nonexistence of a fact that is of consequence to the determination of the appeal (ie. a “fact in issue”). Evidence can be given by the parties in the form of documents, material objects, exhibits, and the testimony of witnesses.

Student appeals committees are not fettered by strict rules of evidence and other court rules. It is sufficient that a hearing panel has heard the case “in a judicial spirit and in accordance with the principles of substantial justice”. The practical effect of the foregoing statements causes some problems for hearing panels.

On the one hand: Hearing panels may admit and use hearsay evidence; even though this limits a party’s right of cross-examination. In addition, a hearing panel may use its special knowledge and accumulated expertise to reach its decision; but it should disclose to the parties and give them an opportunity to attempt to rebut any such evidence upon which the hearing panel may rely.

On the other hand: A hearing panel must base its decision only on relevant evidence, since the courts will treat decisions based on irrelevant evidence or no evidence as a reviewable error. Consequently, the Chair should not allow the giving of opinions (unless they are based on expert knowledge) or information of which the information-giver has no personal knowledge.

Definitions

Relevant Evidence is evidence which proves or disproves a fact in issue (and may include evidence relating to the credibility of a witness or the credibility of hearsay statements). Examples of relevant matters in a discipline case include: motive; ability, opportunity and means to commit the infraction; threats or expressions of intent to commit the infraction; fabrication and/or destruction of evidence. Relevant matters in an academic case will vary depending on the type of academic decision being appealed.

Irrelevant Evidence is evidence which is not related to the facts in issue and has no logical tendency to prove a fact in issue.

Hearsay Evidence is testimony by a witness who relates, not what he/she knows personally, but what others have told him/her, or what he/she has heard said by others. It is always a good practice, where reasonably possible, to call the persons alleged to have made the hearsay statements to give personal testimony at the hearing.

A principal fact in issue may be established by inference drawn from other relevant facts which are known or proved at the hearing. This is commonly referred to as **Circumstantial Evidence**.

- * The above four definitions have been synthesized from Black's Law Dictionary (6th ed.).

Weighing Testimony of Witnesses

There will be times when you are faced with testimony which appears to be conflicting, biased or unbelievable. Some situations where you may be required to weigh testimony are:

- (1) **One person's word against another person's word.** You may be able to resolve this problem by looking at other evidence which was presented at the hearing and by making inferences based on circumstantial evidence. However, if there is no other evidence or you cannot make logical inferences, the testimony of the unbiased witness is given more weight. For example: the testimony of a uninvolved bystander or a person acting in the performance of assigned duties would normally be given more weight than the testimony of an interested party; the testimony of an expert would be given more weight if the expert was applying his/her expertise to a fact in issue.
- (2) **Claimed lack of knowledge of a rule or regulation.** You should be cautious in allowing this type of testimony to influence your decision, since it is frequently offered by an individual so that you will accept his/her failure to assume responsibility or accountability for his/her acts.
- (3) **Supporting or corroborative witnesses.** Such witnesses must support or establish a fact in issue. The number of witnesses who are merely attesting to the same fact may be limited by the Chair in the interest of expediting the hearing, since the

Testimony of a single unbiased and disinterested witness is worth any number of biased testimonies. The number of witnesses alone will not normally be a factor in helping you decide on a contested fact.

(4) **Witness is accused of harbouring malice.**

This type of testimony should be acceptable only when proven by the person who alleges that another harbours malice toward him/her. Further, this contention must be proven by either direct evidence (such as by reference to documents or other specific evidence supporting the allegation) or a reasonable weight of circumstantial evidence. In addition the harbouring of malice must have some direct affect on the contested facts of the case.

- * Points (1) through (4) have been synthesized from the 1991-1992 Undergraduate Judicial System Training Manual of the University of Delaware.