

Appeals Policy

G-03

LONG TITLE	A Policy Respecting Appeals within the Association	DATE OF ENACTMENT	January 2023
		LAST AMENDED	July 2 2024
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CATEGORY	Governance	COMPETENT CHAMBER	Bicameral

MANDATE

This Policy shall govern the free and independent judicial institutions of the Association, their composition, rules of order, and authority. This Policy shall be reviewed every two years by Council and the Board.

INTERPRETATION

1 This Policy may be called the *Appeals Policy*.

2 In this Policy, the following definitions shall apply, and any other unclear terms shall have the same meaning as in *Black's Law Dictionary*:

“**appeal**” includes any proceeding to set aside or vary any judgement of the initial decision-making body appealed from;

“**appellant**” means the person or group who initiated the matter before the Appeals Committee;

“**Board**” means the Board of Directors of the Carleton University Students' Association (CUSA) Inc.

“**case**” means any proceeding before the Appeals Committee.

“**Appeals Committee Member**” means a voting member of the Appeals Committee, including the Appeals Committee Chair;

“**chair**” means the Chair of the Appeals Committee;

“**Chief Returning Officer**” means the person appointed to manage and administer all aspects of CUSA elections;

“**Council**” means the elected students' Council of the Carleton University Students' Association.

“**day**” means a calendar day;

“**decision**” means the resolution or ruling of an Appeals Committee, and the reasons given for such a decision;

“**Intervenor**” means a third party who is not an Appellant or a Respondent;

“**judgement**”, means any judgement, rule, order, decision, decree, or sentence from the Appeals Committee or a lower body;

“**party**” means the Appellant or Respondent, or an Intervenor;

“Respondent” means the person or group whom the complaint was filed against in the matter before the Appeals Committee;

“the Appeals Committee” means the highest judicial body of the Carleton University Students Association;

“Appeals Committee Member” means a voting member of the Appeals Committee;

“witness” means an individual brought forth by a Party in order to testify in front of the Appeals Committee.

GENERAL PRINCIPLES

3 The Appeals Committee shall operate according to the principles of natural justice, including procedural fairness, proportionality, past precedent, and the purposive school of interpretation.

4 The Appeals Committee shall operate, wherever reasonable and applicable to the case considered, according to the principles and decisions of Canadian administrative law.

5 No one can be a party or advocate for a party before an Appeals Committee who is not an undergraduate student at Carleton University. A party may represent themselves.

6.1 The Appeals Committee shall be responsible for assessing whether the matter of a case is within their jurisdiction as set out in this policy.

6.2 A case shall cease to be heard by the Appeals Committee and referred to the appropriate body if, at any point, the Appeals Committee becomes aware that the matter falls outside of its jurisdiction.

AUTHORITY

7 The Appeals Committee shall exist as the body of final appeal for the Association, except where otherwise provided by this policy

8 By virtue of engaging in the process of a case heard before the Appeals Committee, all parties to disputes within this Association agree that this Appeals Committee has the right to arbitrate, and as such, submit to the decision of the Appeals Committee.

JURISDICTION

9 Valid appeals include but are not limited to, those from

- (a) Chief Returning Officer;
- (b) Council;
- (c) the Board;
- (d) The Executive Committee; and
- (e) the Clubs Oversight Commission;

10 Appeals are limited to where the body of first instance:

- (a) makes a mistake of fact;
- (b) renders a decision that is unreasonable or disproportionate;
- (c) makes a mistake of law; or
- (d) makes a mistake of both law and fact.

11 No appeal is valid that fails to identify an error in judgement or decision of the lower body and merely engages in forum-shopping or dissatisfaction with the decision.

12 The Appeals Committee shall be the court of first instance for violations of the Association's bylaws, policies, or procedures, except where concerning clubs or elections.

MEMBERS OF THE APPEALS COMMITTEE

13 The Appeals Committee shall consist of exactly two non-*ex officio* CUSA Board Directors, two CUSA Councillors, and the Chair as described in section 14

13.1 An individual should be deemed ineligible to serve as a member of the Appeals Committee if they are:

- (a) a CUSA staff member;
- (b) an executive within a CUSA-certified club;
- (c) an executive within a levy-carrying body at Carleton University; or
- (d) expected to become ineligible under the foregoing criteria.

14 The Chair shall be a lawyer appointed by an external law firm, in consultation with the Board of Directors, and shall preside over meetings of the Appeals Committee and provide sound legal advice on all cases.

15 Members of this Appeals Committee shall serve one-year terms beginning as soon as feasible after the Annual Members Meeting and ending at the following Annual Members Meeting

16 The Councillors and Board Directors on the Appeals Committee shall be appointed through a vote of their respective bodies.

16.1 Potential candidates shall have the right to make a five-minute verbal address to their respective body prior to a vote.

16.2 Should the Board or Council be unable to fill their positions on the Appeals Committee, the respective body may appoint any undergraduate student at Carleton University, should they not be deemed ineligible under section 13.1.

17 Any Member of the Appeals Committee may be removed by a motion passed in the same form by the Board and Council.

18 Following the removal of a Member pursuant to section 17, the vacancy shall be filled through the process outlined in section 14 or sections 16 and 16.2 as soon as is practicable.

QUORUM

- 19** Quorum is met when the Chair is present with at least three other members
- 20** Notwithstanding minimum quorum requirements, if the absence of a member results in a decision ending in a tie vote, the Chair shall postpone the hearing until all members of the Committee can be present.
- 21** Members shall be present throughout the entire oral arguments, and no member who is absent for a significant part of the hearing may take part in the decision.

PARTIES AND ADVOCATES

- 22** The Appellant and Respondent may each designate another student-at-large to represent them as their advocate.
- 23** No advocate may be paid for their service, nor may they hold a Juris Doctor (J.D.) or be licenced in any jurisdiction to practice law or provide any legal services.
- 24** The Association itself shall be the Appellant in a case when an individual is alleged to have committed a s. 12 (a) violation
- 25** The Association itself shall be, as appropriate, the Appellant or Respondent in a case when an appeal is made from any lower judicial body.

CASES

Record

- 26** Every case shall be recorded as follows: the name of the Appellant, then *versus*, followed by the name of the Respondent, closing with the year in simple brackets.
- 27** Every reference case shall be recorded as follows: the word "Reference," then *re*, followed by the nature of the reference, closing with the year in simple brackets.

Application for First-Instance Hearing

- 28** There shall be a publicly available application form for a request that the Students' Appeals Committee hear any case, that specifies an alleged individual responsible for an offence within the jurisdiction-of the Association.

Application for Appeal

- 29** There shall be a publicly available application form for an appeal to the Students' Appeals Committee from any inferior or lower body, and any Parties at a lower body shall be made aware of this form at the time the lower decision is rendered. The application form for appeal must be submitted within two weeks of the lower decision being rendered

Exception

30 On matters related to the Electoral Code, and subsequent decisions made by the Chief Returning Officer or designate, the application form for appeal shall be submitted within seventy-two hours.

31 Every hearing shall be publicly accessible to all Carleton University undergraduate students, where the Chair reserves the right to expel or bar any individual who is disruptive to the proceedings of the Appeals Committee.

32 Proceedings shall be initiated when the appropriate appeal form is filed to the Appeals Committee Chair by the Appellant;

(a) Petitions may be brought by a member of the Association Executive initiating a matter in conjunction with the President of the Association, or by a majority vote of Council, or a majority vote by the Board

(b) The Appeals Committee shall decide within forty-eight (48) hours after receiving the Appellant's application whether it has jurisdiction to hear an action brought before it;

(c) The Appeals Committee shall then either:

(i) Refuse to hear the appeal, thus informing the Appellant of the failure of the application; or

(ii) Give leave to hear the appeal, thus informing the Appellant of the success of the application, informing the Respondent of the existence of a pending Case against them and its basis.

Pre-Hearing Considerations

33 The Appellant and Respondent may submit written submissions prior to the oral hearing.

34 Written submissions from the Appellant, Respondent, and any Intervenors shall be submitted to the Chair of the Appeals Committee not less than three days before a hearing.

35 A list of witnesses shall be submitted to the Chair of the Appeals Committee not less than three days before a hearing, and distributed to the parties not less than one day before the Hearing.

36 No hearing may be called to order without seven days' notice to the parties.

37 A hearing shall commence with a call to order from the Chair following a good-faith effort to schedule the time for the Hearing with both parties.

ORDER OF PROCEEDINGS

38 Every hearing shall deal with a separate case, though hearings may be held successively.

39 Opening statements from the appellant and respondent will be heard, in that order. They may be limited to a certain time at the discretion of the Appeals Committee, but not less than five minutes.

40 There shall be a time for the parties to submit evidence to the Appeals Committee, according to the general principles of evidence acceptance.

41 Thereafter, the Appellant and Respondent may each have the opportunity to call witnesses and ask questions of them, according to the general principles of witness questioning.

42 Closing statements from the Appellant and Respondent will be heard, in that order. They may be limited to a certain time at the discretion of the Appeals Committee, but not less than five minutes.

ADDITIONAL PROCEDURAL CONSIDERATIONS

Intervenors

43 The Chair of the Appeals Committee, or a majority of its members, may accept intervening parties to offer a written and/or oral statement before the Appeals Committee at any hearing.

44 Notwithstanding the above, the President of the Association, the Speaker of Council, the Chair of the Board and the University Ombudsperson shall retain the right to offer intervening statements, subject to the same limits for time and form as the above.

45 Any parties wishing to intervene may submit an application to intervene within three days of receiving notice of a hearing and shall be approved not less than three days before the hearing shall be held.

46 Applications to intervene shall be made available on the Association website at the same time as a hearing is approved and announced by the Appeals Committee.

Preliminary Conference

47 The Parties to the dispute and members of the Panel may, time permitting, meet in a preliminary conference and discuss informally, including but not limited to:

- (a) arranging an agreement on non-contentious facts of the dispute;
- (b) explanation of hearing procedures; and
- (c) setting a date for the hearing.

Independent Arbitrator

48 Where, at any point, the Appeals Committee believes that the case at hand would be better served by the appointment of an independent arbitrator, it may, by majority, resolve so.

49 The Appeals Committee Chair shall be responsible for finding persons capable of acting as an arbitrator and should be prepared to do so on short notice.

50 The Board of Directors, on the recommendation of the Appeals Committee Chair, shall hire an independent arbitrator agreed upon by the parties to the appeal or, if the parties are unable to agree, as selected by the Appeals Committee Chair.

51 The arbitrator shall provide directions for the conduct and determination of the appeal according to their discretion, including the submission of written materials and the convening of an oral hearing, if deemed necessary, and shall establish the applicable time limits for such steps

52 The arbitrator's decision shall be released to the interested parties, the Committee, and the Executive, where possible, within 10 (ten) days of the arbitrator's appointment.

CONFIDENTIALITY

53 If a party or witness to a case wishes to remain anonymous, they may apply to the-Chair adjudicating their case with reasons for such status before the commencement of the oral Hearing.

54 Anonymity may be granted if the Chair decides the individual requires protection from slander, libel, personal attack, or extenuating personal circumstances.

55 In cases where anonymity has been granted, the oral hearing shall be closed to the public and press and the anonymous individual shall only be referred to by a pseudonym, in the written decision.

56 The written judgement shall still be published publicly but with the private information redacted.

57 The Hearing may otherwise be held *in camera* in cases where confidential information of the Association is disclosed.

57.1 The written decision shall remain available to current and future Appeals Committee members for consultation.

58 No Appeals Committee Member or party to a case may disclose information known to the Appeals Committee as confidential, or make clear and permanent recording of such information except as otherwise approved by the Appeals Committee.

DECISIONS

Written and Oral Decisions

59 Judgements by the Appeals Committee may be rendered orally at the end of a hearing or reserved for release at a time not more than five days after the hearing, with written cause.

60 Before the rendering of an oral decision, the Appeals Committee may recess for *in camera* discussion between its members.

61 Every decision must follow a vote by the members of the Committee.

61.1 The Committee may vote to allow an appeal or dismiss an appeal.

62 All Judgements, even if rendered orally, shall be accompanied by a written decision.

63 The Appeals Committee shall make available to the parties and the public their written decision and reasons not more than five days after the hearing.

63.1 This decision shall clearly express the Appeal Committee's judgement, reasons, and subsequent awards, sanctions, orders and recommendations, in a manner and format consistent with Canadian court decisions generally.

63.2 Sanctions and awards decided by the Student's Appeals Committee shall include anything that may be legally ordered by this Association, except where the sanctions and awards of the lower body are so limited.

EMERGENCY PROCEEDINGS

64 A two-thirds resolution of the Appeals Committee may waive the timing and notice requirements in this Policy in order to expedite the adjudicative process, given that doing so does not materially disadvantage any party or obscure the process from public scrutiny.

65 During the election period, Appeals Committee Members shall be on notice that appeals regarding election penalties may require rapid adjudication.

66 Applications for a hearing of Elections disputes shall be approved or rejected as soon as possible by the Appeals Committee so as to not prejudice any candidate.

67 The Appeals Committee should be prepared to hear expedited hearings during the Election Period within fifteen hours of the Application made on those disputes.

LEGISLATIVE OVERRIDE

68 Council may overturn any decision of the Appeals Committee through a two-thirds vote of Council.

69 Any party seeking to reverse a decision of the Appeals Committee shall not be permitted to make a delegation, presentation, or otherwise bring the matter to the attention of Council.

70 Council may reinstate the Committee's decision after an override through a two-thirds vote of Council

71 No legislative override or action of any individual may obstruct the proceedings of a case under review by any Appeals Committee, nor may they prevent the Appeals Committee in any way from engaging with their work.

ADMINISTRATION

Records and Precedent

72 A record of all written decisions from the Appeals Committee shall be kept and be made available, with expedience, to the public.

73 Decisions of the Appeals Committee shall be referenced by the Appeals Committee in order to adhere to the principle that like cases ought to be treated alike, and different cases, differently.

QUASI-JUDICIAL BODIES

Clubs Oversight Commission - Lower Court for Clubs

74 The Clubs Oversight Commission is to be considered a lower judicial board clubs and societies certification and decertification, from which appeals to the Students' Appeals Committee are valid.

75 The Clubs Oversight Commission shall exist as the body of first instance for student group matters of the Association, except where otherwise provided by this Policy. All parties to disputes within this Association agree that this Commission has the right to arbitrate on those disputes.

76 The Clubs Oversight Commission shall be empowered to issue any awards, orders, or sanctions relating to the student group's administration, certification, and funding.

Council - Lower Court for Councillor and Executive Discipline

77 Council is to be considered a lower judicial board for the discipline of Councillors and Executive members under its policy, from which appeals to the Students' Appeals Committee are valid.

78 Appeals from Discipline Committees of Council or the Board are not valid.

Board of Directors- Lower Court for Director and Executive Discipline

79 The Board of Directors of the Carleton University Students' Association is to be considered a lower judicial board for the discipline of Directors and Executive members under its policy, from which appeals to the Appeals Committee are valid.

PARAMOUNTCY

80 In the event of conflict between any provision of this policy and any provision of any other policy, the provision of this policy prevails, excepting the *Conflict of Interest Policy*.