



BY-LAW#6: APPEALS BOARD

29 November 2017

USC Council

DEFINITIONS

- 1.01 **"Affiliate"** includes King's University College, Huron University College and Brescia University College;
- 1.02 **"Appeal"** includes any proceeding to set aside or vary any Judgment of the decision making body appealed from;
- 1.03 **"Appeals Board"** means the Appeals Board of the University Students' Council as established by this By-Law;
- 1.04 **"Appeals Board Term"** means the annual term of the Appeals Board starting and ending on May 1st and April 30th respectively;
- 1.05 **"Appeals Board Chair"** is the member of the Appeals Board elected by the Board to serve in this role. The responsibilities of the Appeals Board Chair, in addition to her duties as a regular Appeals Board Member, include administrative duties, coordinating the other Appeals Board Members and making rulings on procedural issues. The Appeals Board Chair's vote on a Judgment is of equal weight to the votes of all other Appeals Board Members;
- 1.06 **"Appeals Board Member" or "ABM"** means a voting member of the Appeals Board and includes the Appeals Board Chair;
- 1.07 **"Case"** means any Appeal or any other proceeding before the Appeals Board. A Case shall be referred to by its style of cause, which includes the names of the Petitioner, Respondent, year, case number and subject matter;
- (1) For example where the USC is the Petitioner, John Smith is the Respondent, the year is 2014, it is the third decision in that calendar year and it is regarding elections:
- i. *University Students' Council v John Smith, 2014:3 Election;*
- 1.08 **"Confidential Information"** includes that which is referred to in By-Law #1;
- 1.09 **"Intervening Third-Party"** means a third party who is not a Petitioner or a Respondent. For an Intervening Third-Party to be considered to have standing to make submissions by a Panel they must demonstrate that they or their office would be materially affected by the outcome of the Case and therefore ought to be heard as part of the hearing;
- 1.10 **"Judgment"** when used in reference to the decision making body appealed from, includes any judgment, rule, order, decision, decree or sentence thereof, and when used with reference to the Appeals Board, includes any judgment or order from the Appeals Board;
- 1.11 **"Panel"** means the group of Appeals Board Members brought together for the purposes of adjudicating a Case. Panels shall consist of an odd number of ABMs;
- 1.12 **"Panel Chair"** means the Appeals Board Member in charge of a Panel. It is the Appeals Board Chair if she sits on the panel; otherwise each Panel shall elect from amongst themselves a Chair. The Chair ensures that rules and procedures are followed and deals with administrative issues that may arise during the Case;
- 1.13 **"Party"** means the Petitioner or Respondent;
- 1.14 **"Petitioner"** means the person or group who initiated the matter before the Appeals Board;



- 1.15 **“Respondent”** means the person or group whom the complaint was filed against in the matter before the Appeals Board;
- 1.16 **“Student”** means any individual undergraduate student of the University or an Affiliate, regardless of full, part time, or special status;
- 1.17 **“University”** means Western University;
- 1.18 **“Witness”** means an individual brought forth by a Party in order to testify in front of the Appeals Board.

2.00 GENERAL

- 2.01 The Appeals Board is the dispute resolution body of the USC empowered to hear Cases and try facts in accordance with its jurisdiction.
- 2.02 The Appeals Board follows the principles of natural justice, including fairness and good conscience.
- 2.03 Only Students, not paid for their services by the Party, shall act as advocates for Parties involved in actions before the Appeals Board. Parties are free to represent themselves.
- 2.04 All electronic submissions to the Appeals Board Chair referred to in this By-Law should be addressed to appeals@westernusc.ca.
- 2.05 Any and all questions pertaining to the Appeals Board and its procedures are to be addressed directly to the Appeals Board Chair at the above-mentioned email address or delivered to the USC Offices located at:

340 UCC Building
University of Western Ontario
London, Ontario
N6A 3K7

- 2.06 All forms mentioned in this By-Law are available on the USC’s website.

3.00 COMPOSITION

- 3.01 The Appeals Board shall be composed of nine (9) Students;
 - (1) At least three (3) of the Students shall be enrolled in the Faculty of Law but no more than 6;
 - (2) The remaining Students may be enrolled in any faculty.
- 3.02 Members of the Appeals Board shall not be voting members of Council, Directors, or members of any Committee from which, according to their By-Laws, policies, or procedures, Appeals are adjudicated by the Appeals Board. Members of the Appeals board shall not hold an executive position in a USC Ratified Club.
- 3.03 Hearings before the Appeals Board should typically occur before a Panel of three (3) Appeals Board Members. However the Appeals Board Chair, at her discretion, may decide to increase the amount of Appeals Board Members sitting on a Panel to a maximum of nine (9), so long as the number of Appeals Board Members sitting on each Panel is not even.

4.00 ELECTION OF APPEALS BOARD MEMBERS

- 4.01 The Board & Appeals Nominating Committee, a committee of Council, shall oversee the process of recommending candidates to fill vacancies on the Appeals Board. It shall nominate a slate of Appeals Board Members to the



University Students' Council on an annual basis and shall nominate candidates to fill any vacancies that occur during the Appeals Board Term.

4.02 The Board and Appeals Nominating Committee shall be composed of:

- (1) the Chair of the Board;
- (2) two (2) additional Directors elected by the Board, and;
- (3) three (3) Ordinary Members elected by the Council.

4.03 The Board and Appeals Nominating Committee shall conduct its business as per its Terms of Reference.

5.00 APPEALS BOARD CHAIR

5.01 The Appeals Board Chair shall be elected by the members of the Appeals Board at the first meeting, which shall occur as soon as possible after the start of the Appeals Board Term.

5.02 Should the Appeals Board Chair resign her position, the Appeals Board shall meet as soon as possible to elect a new Appeals Board Chair.

5.03 The Appeals Board Chair shall appoint a Deputy Appeals Board Chair:

- (1) The Deputy Appeals Board Chair shall take on the responsibilities of the Appeals Board Chair if there is a vacancy in the office of Appeals Board Chair or if the Appeals Board Chair is unavailable.

6.00 TERMS OF OFFICE

6.01 Members of the Appeals Board shall serve a term of either one (1) or two (2) years.

- (1) No more than three (3) members of the Appeals Board shall be appointed for a two (2) year term in any given year.

6.02 If a member seeks re-election to the Appeals Board following their initial term they may do so by the regular election process outlined in this By-Law.

7.00 REMOVAL

7.01 A member of the Appeals Board may be removed from office for impropriety, violation of the provisions of the USC's By-Laws, delinquency of duties or misappropriation of USC's funds, by way of a motion adopted at a meeting of Council, by a two-thirds (2/3) vote of the members of Council present.

7.02 The Board of Directors may, upon resolution passed by two-thirds (2/3) of the Board of Directors, present a member of the Appeals Board for removal before Council in accordance with the previous provision. Immediately upon the Board of Directors' recommendation of the removal of the Appeals Board Member, said Appeals Board Member shall be suspended from hearing any cases or rendering any decisions until such time as Council is able to meet and decide on the proposed removal of said Appeals Board Member.

7.03 The member of the Appeals Board against whom a request for removal from office is directed shall be notified of the place, the date, and the time of the meeting of Council called to remove her within the same time frame as that provided by By-Law #1 for the calling of such meeting. Such member of the Appeals Board shall have the right to attend and to speak at the meeting or, in a written statement and read by the Speaker, to put forth the reasons why such member of the Appeals Board opposes the proposed removal from office.

8.00 QUORUM



- 8.01 Quorum of the Appeals Board is met with three (3), five (5), seven (7) or nine (9):
- (1) The Appeals Board shall decide which Appeals Board Members shall sit on the Panel once a Case application has been accepted for hearing by the Appeals Board;
 - i. At least one (1) of the Appeals Board Members on the Panel shall be enrolled in the Faculty of Law;
 - a. If no Appeals Board Member enrolled in the Faculty of Law is available to sit on a Panel either in person or as otherwise provided for in this By-Law, this requirement may be waived by the Appeals Board;
 - ii. Those Appeals Board Members who have conflicts of interest in regards to the Case shall not be selected for the Panel nor shall they decide on whether the application is to be accepted by the Appeals Board;
 - iii. The Appeals Board Chair may assign Appeals Board Members to sit on a Panel if the Appeals Board is unable to meet in time to decide or are unable to reach a consensus;
 - (2) Appeals Board Members sitting on the Panel shall be present throughout the entire oral hearing;
 - (3) The absence of any of the Appeals Board Members during a significant part of oral proceedings shall render the absent Appeals Board Member unable to vote on the Judgment;
 - (4) In the event that an Appeals Board Member must depart the hearing after the commencement but before the end of an oral hearing, the remaining Appeals Board Members, in consultation with the Parties, may decide that:
 - i. The hearing be recessed until all Parties and Appeals Board Members are able to re-convene; or
 - ii. If time is of the essence, the hearing continue and if the remaining Appeals Board Members are split on their decision, the decision of the decision making body from which the Case was appealed shall be upheld.
- 8.02 If Quorum is not reached on the date of an oral hearing, additional Appeals Board Members may be added by Panel, unless an objection is made by either petitioner or respondent, before the commencement of oral arguments by means of video or telephone conference in order to meet Quorum.
- 8.03 In extraordinary circumstances requiring expediency as decided by the Appeals Board Members who are present (or if no Appeals Board Members are present, by the Appeals Board Chair) and where a Quorum would otherwise be unattainable, additional Appeals Board Members may be added to the Panel prior to the commencement of oral arguments by way of video or telephone conference.
- 9.00 RECORDS**
- 9.01 The Panel shall make available written, reasoned Judgments within a reasonable amount of time after the hearing.
- 9.02 A record of all written Judgments by the Appeals Board shall be kept by the USC and be made available to the public.
- 10.00 CONFIDENTIALITY**
- 10.01 If a Party or Witness to a case wishes to remain anonymous, they may apply to the Panel Chair adjudicating their Case with reasons for such status before the commencement of the oral hearing.



10.02 The Panel Chair may grant anonymous status if she decides the Party or Witness applying for said status requires protection from slander, libel or personal attack, or to prevent the public disclosure of medical information or extenuating personal circumstances.

10.03 In Cases where anonymity to a Party or Witness has been granted, the oral hearing shall be closed to the public and press and the Party or Witness shall only be referred to by their initials in the written Judgment.

(1) The written judgment shall still be published publically but with the private information redacted.

10.04 In cases where Confidential Information of the USC is required, the hearing shall be held *in camera* and the Judgment shall not be made publically available if the information cannot be redacted.

(1) The Judgment shall remain available to current and future Appeals Board members for consultation.

11.00 JURISDICTION

11.01 The Appeals Board has the authority to adjudicate all matters referred to the Board by Council or the By-Laws;

(1) In deciding on sanctions or awards for either Party in a Case on Appeal, the Appeals Board shall be limited to any such sanctions or awards that were available to the initial decision making body regardless of whether the initial decision making body decided to enact such sanctions or awards.

11.02 Parties to an appeal are the student against whom the decision has been made (Petitioner) and the Election Governance Committee (Respondent).

11.03 By filing a petition, the Petitioner agrees to submit the dispute to the sole jurisdiction of the Appeals Board and agrees to be bound by its Judgment.

11.04 The Appeals Board shall decide, within forty-eight (48) hours after receiving the Petitioner's application whether it has jurisdiction to hear an action brought before it.

(1) The Appeals Board shall not entertain petitions which are frivolous, vexatious, of inconsequential merit, or otherwise outside its jurisdiction.

11.05 All Judgments of the Appeals Board are final, binding and conclusive and are not open to question or appeal in a court on any grounds.

(1) Excepting in the case of Senate or Board of Governors elections, which may be appealed to the University Secretariat as per their policies.

12.00 PROCEDURE

12.01 *Commencing Proceedings:*

(1) Proceedings shall be initiated when the appropriate appeal form is filed to the Appeals Board Chair by the Petitioner;

i. Petitions on behalf of the USC as a whole may be brought by the member of the USC Executive initiating a matter in conjunction with the President of the USC, or by a majority vote of council;

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

(3) The Appeals Board shall then either:



- i. Inform the Petitioner of the failure of the application; or
- ii. Inform the Petitioner of the success of the application, inform the Respondent of the existence of a pending Case against them and the basis of the Case and consult both Parties on available dates for an oral hearing, keeping in mind the time it takes for written submissions to be drafted and submitted prior to the oral hearing.

12.02 *Submissions of Parties*

- (1) Both the Petitioner and Respondent shall be granted the opportunity to submit their written submissions prior to the oral hearing;
- (2) Written submissions shall be drafted according to a template which shall be made available to the Parties.

12.03 *Intervenors*

- (1) The Appeals Board Chair shall inform the President of the USC and the Chairman of the Board of Directors of the impending Case upon deciding to grant a Petitioner's application, both of whom may apply to intervene by completing an application for Intervention within three (3) days of receiving such notice;
- (2) Following the acceptance of the Case by the Appeals Board, an invitation may be extended by the Appeals Board through the USC website to anyone wishing to intervene in the dispute by duly completing an application for intervention and submitting an electronic copy to the Appeals Board Chair no more than three (3) days following the final publication of the notice; The Appeals Board may, at their discretion, recognize intervening parties where those parties may be necessary for a fair and complete resolution of the Case. Intervenors shall be notified by the Appeals Board Chair if they have been accepted as Intervenors within a reasonable amount time;
- (3) Intervenors may elect to make oral submissions at the hearing, written submissions in advance, or both. In the case of written submissions, they must be submitted to the Appeals Board Chair no later than three (3) days before the hearing.

12.04 *Preliminary Conference*

- (1) The Parties to the dispute and members of the Panel may, time permitting, then meet in a preliminary conference and discuss a number of issues informally, including but not limited to:
 - i. agreement on non-contentious facts of the dispute;
 - ii. explanation of hearing procedures, and;
 - iii. setting a date for the hearing.

12.05 *Independent Arbitrator*

- (1) Where, at any point, the Appeals Board comes to the conclusion that the case at hand would be better served by the appointment of an independent arbitrator, it may do so by a vote of the Appeals Board.
 - i. The Appeals Board Chair shall be responsible for finding persons capable of acting as an arbitrator, and should be prepared to do so on short notice.
 - ii. The Board of Directors, on the recommendation of the Appeals Board 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 Board Chair.



- iii. The arbitrator shall provide directions for the conduct and determination of the appeal according to his/her 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. The arbitrator's decision shall be released to the interested parties, the Committee and the Executive, where possible, within 15 days of the arbitrator's appointment.

13.00 HEARING RIGHTS AND PROCEDURES

- 13.01 Hearings shall be open to the public, limited only by space restrictions in the designated hearing room or the discretion of the Appeals Board;
- 13.02 At the discretion of the Panel, oral submissions may be dispensed with where they are not possible or are clearly unnecessary.
- 13.03 The Panel may remove anyone from a hearing if the Panel decides that they are being disruptive, threatening or offensive.
- 13.04 No audio-visual recordings shall be taken during the hearing, although Parties may take notes as necessary.
- 13.05 Each Panel that does not include the Appeals Board Chair of the Appeals Board shall elect amongst themselves a Panel Chair to preside over the Case;
 - (1) If the Appeals Board Chair is a member of the Panel she shall be considered the Panel Chair unless she chooses to have the Panel elect a Panel Chair.
- 13.06 The Panel may, at their discretion, modify the general oral hearing procedure as they see fit.
 - (1) A copy of the procedures shall be provided to the participants no less than three (3) days prior to the hearing.
 - (2) A sample procedure for the oral hearing shall be found in Appendix 1.

14.00 DISPOSITION

- 14.01 At the end of an oral hearing the Panel may recess the proceedings to determine if they shall render an oral decision immediately.
- 14.02 Judgments by the Appeals Board may be rendered orally at the end of a hearing or may be reserved.
- 14.03 All Judgments, even if rendered orally, shall be accompanied by written reasons which are to be made available to the Parties and public within a reasonable amount of time after the oral hearing.
- 14.04 If Judgment is reserved, the Panel shall make its decision available within a reasonable amount of time;
 - (1) Written reasoned Judgments should be provided to the parties and the public within two (2) weeks of the oral hearing.

15.00 EMERGENCY PROCEEDINGS

- 15.01 At the discretion of the Appeals Board Members assigned to the Case, the timing and notice requirements in this By-Law may be waived in order to expedite the adjudicative process so long as doing so shall not materially disadvantage a Party.
- 15.02 If time is of the essence, Appeals Board Members shall communicate a Judgment to the Parties as soon as they reach a decision after the hearing and should deliberate in private until they have come to such decision.

16.00 ABSENCE



16.01 If at any time the Appeals Board lacks enough Appeals Board Members to meet the Quorum requirements, but the By-Laws or Council call upon the Appeals Board to adjudicate a Case, the Board of Directors (or at least three (3) Directors) shall sit as a Panel and adjudicate the dispute in a manner otherwise consistent with this By-Law.

17.00 ELECTIONS DISPUTES

17.01 During the Election Period, Appeals Board Members shall be on notice that Appeals of Elections Committee Judgments may require rapid adjudication;

(1) Applications for a hearing of Elections disputes shall be approved or rejected as soon as possible by the Appeals Board so as to not prejudice any candidate;

i. Due to the short time period of Elections disputes, as soon as an application is received by the Appeals Board, notice shall be given to the Respondent named in the application that there is a pending application against her. Details of the application shall only be released to the Respondent if the application for a hearing is granted;

(2) Notice of an approval or rejection of an Application shall be given forthwith to the Petitioner.

17.02 The Appeals Board should be prepared to hear expedited hearings during the Election Period within fifteen (15) hours of the Application.



APPENDIX 1

Sample Procedures for Oral Hearings

- (1) The Panel Chair shall introduce the members of the Appeals Board sitting on that Panel and shall outline the rules and procedure of the hearing;
- (2) The Petitioner, followed by the Respondent, may make an opening statement to introduce the nature of the application and the facts of the Case for no more than five (5) minutes;
- (3) The Petitioner shall present and question her witnesses and shall tender evidence;
- (4) The Petitioner shall have an additional twenty (20) minutes of time for oral arguments following the examination of their witnesses;
- (5) The Respondent shall then present and question her witnesses and shall tender evidence;
- (6) The Respondent shall have an additional twenty (20) minutes of time for oral arguments following the examination of their witnesses;
- (7) If applicable, the Intervenor(s) shall also present and question their witnesses and shall tender evidence;
- (8) The Respondent/Petitioner may cross-examine the other parties' witnesses immediately following the examination in chief of the witness;
- (9) The Intervenor(s) shall not be allowed to cross-examine witnesses;
- (10) The members of the Panel may, at any time, ask questions of a Party;
- (11) The Petitioner, followed by the Respondent, may make a closing statement for no more than ten (10) minutes. No new evidence may be introduced during the closing statement.