

# **Microbiology Graduation Students Association Appeal Policy**

**Effective date: October 1<sup>st</sup> 2019**



## Definitions

- I. The following terms have these meanings in this policy:
  - Appellant: The individual appealing a decision of the Association;
  - Association: Micro Graduate Student Association (MicroGSA), including any authorized individual, council member or committee acting on its behalf;
  - Case Manager: The most recent Chief Returning Officer (CRO) will serve as the Case Manager. In the case of a conflict of interest, the department head will nominate another member of the department as the Case Manager;
  - Conflict of Interest: a fact, circumstance or interest sufficient to create a material influence, or a reasonable (objective) perception of a material influence, on an individual's ability to perform their duties under this policy impartially (without bias);
  - Days: Refers to calendar days, including weekends and holidays;
  - Business Days: Refers to weekdays, excluding holidays;
  - Member(s): Any registered member(s) of the Association;
  - Parties: The Appellant, Respondent, and any other Individual(s) directly affected by the appeal and identified as Party(ies) to the proceeding by the Case Manager;
  - Respondent: The Association, or authorized individual or committee acting on its behalf, whose decision is under appeal.
  - Appeal Panel: A panel consisting of three (3) members of the department of Microbiology (deemed to have no conflict of interest) appointed by the executive council to hear, consider and determine the appeal if it was determined to have grounds as determined by the Case Manager.

## Purpose

- I. The purpose of this appeal policy is to enable disputes with Members to be dealt with and determined in a fair, expeditious, private and affordable manner, in lieu of any recourse to formal legal or court-like procedures.

## Application

- I. This Policy applies to all Members of the Association. Any Member who is directly affected by a decision of the Association may appeal that decision, in accordance with the terms of this policy. Only those appeals which satisfy the "Grounds for Appeal" set out below, will be referred to the Appeal Panel for determination.
- II. This Policy will apply to decisions made by the Association relating to:
  - a. Elections;
  - b. Conflict of Interest;
  - c. Breach of Conduct;
  - d. and Membership.
- III. This Policy will not apply to decisions relating to:
  - e. The rules of the Association;
  - f. Decisions made by entities other than the Association, such as the University of Manitoba Graduate Student Association or the University of Manitoba;
  - g. Budgeting and budget implementation;
  - h. The Association's operational structure and committee appointments;

- i. Decisions or discipline arising within the business, activities, or events organized by entities other than the Association (appeals of these decisions must be dealt with pursuant to the policies of those other entities, unless otherwise authorized by the Association at its sole discretion);
- j. Decisions made under this Policy.

### Submission of Appeal

- IV. Members who wish to appeal a decision of the Association have twenty-one (21) days, from the date on which they received notice of the decision, to submit, in writing to any member of the Association, the following:
- k. Notice of the intention to appeal;
  - l. Contact information (such as name and email) of the appellant;
  - m. Name of the respondent and any affected parties;
  - n. Date the decision being appealed was announced;  
A copy of the decision being appealed, or a detailed description of the decision if there is no documentation available;
  - o. Grounds for the appeal, as set out in section VII (seven) of this policy (below);
  - p. Fee of \$10, to be reimbursed should the appeal be deemed valid, as set out in section 13 of this policy (below);
  - q. All evidence relied upon by the appellant to support these grounds of appeal and requested remedy or remedies.
- V. Any appellant who wishes to initiate an appeal beyond the twenty-one (21) day period must provide a written request, as soon as possible, setting out the reasons for the delay and any grounds for requesting an extension of time to file the appeal. The decision to allow, or not allow, an appeal received by the Association beyond the twenty-one (21) day period will be at the sole discretion of the Case Manager and is final and binding and not subject to appeal or review.

### Grounds for Appeal

- VI. A decision of the Association cannot be appealed on its merits alone. An appeal will only be considered and determined by the Appeal Panel if there are sufficient grounds for appeal.
- VII. Sufficient grounds for appeal are limited to assertions that the Respondent:
- r. Made a decision that it did not have authority or jurisdiction (as set out in the relevant governing documents) to make;  
Failed to follow its own procedures (as set out in the relevant governing documents);  
Made a decision that was materially influenced by a conflict of interest or bias; or
  - s. Failed to consider important objective information advanced by a Party prior to the decision.
- VIII. The Appellant bears the onus of proof and must demonstrate, on a balance of probabilities, the occurrence of one or more grounds of the same appeal as set out in Section VII (seven) of this Policy and that such circumstances had, or may reasonably have had, a material effect on the decision of the Respondent.

### Initial Response to the Appeal

- I. Within seven (7) business days of receiving a notice of appeal under section 6 of this policy, the Association will contact the Case Manager and respond, in writing, to the appeal. The Association's response will be sent to the Parties of the appeal and must set out:
  - II. The name(s) of the individual council member(s) or committee(s) who rendered the decision being appealed, if different than as set out in the notice of appeal;  
The date the Appellant and/or affected Member was advised of the decision being appealed, if different than as set out in the notice of appeal;  
A copy of the decision under appeal, or a detailed description of the decision if different than as set out in the notice of appeal;  
The Respondent's response to the grounds advanced in the notice of appeal;  
All evidence relied upon by the Respondent(s) to support the decision under appeal; and  
Any other information relevant to the appeal.

### Screening of Appeal

- I. Within fourteen (14) business days of being appointed, the Case Manager will:
  - t. Determine if the appeal falls under the scope of this policy;
  - u. Determine if the appeal was submitted in a timely manner, or whether the time limitations for appeal should be exempted or extended;
  - v. Determine if any person(s) are directly affected by the appeal, such that they should be added as Party(ies) to the appeal;
  - w. Determine if there are proper and sufficient grounds for the appeal, as set out in section VII (seven) of this policy.
- II. The Case Manager will advise the Parties of the determinations made under section 11 of this policy, in writing. The decision of the Case Manager with respect to any issue under section 11 of this policy is final and binding and is not subject to review or appeal.
- III. Where a notice of appeal has met the requirements of this policy, as determined by the Case Manager under section 11, the Case Manager will request the executive council to appoint an Appeal Panel to hear, consider and determine the appeal. The Appeal Panel will consist of a panel of three (3) individuals. The executive council will appoint one of the Panel members to serve as the Chair. The Case Manager will also refund the original appeal fee to the appellant.
- IV. Every Appeal Panel member must, as a condition to sitting on the Appeal Panel, provide to the Case Manager written confirmation that they:
  - x. Have no significant relationship with any of the affected parties;
  - y. Have no involvement with the matters under appeal;
  - z. Are not aware of any fact or circumstance that would create an actual or perceived conflict of interest, and/or detailing any such fact or circumstance.

## Procedure for Appeal Hearing

- I. The Case Manager will notify the Parties of the names of the individuals selected to the Appeal Panel, and schedule a date for an initial conference call.
- II. During the initial conference call, the Appeal Panel will consider and determine the following issues:
  - aa. The format of appeal;
  - bb. The date and location for the hearing, if applicable;
  - cc. Timelines for the exchange of documents;
  - dd. Clarification of issues in dispute;
  - ee. Clarification of evidence to be presented to the Appeal Panel;
  - ff. Order and procedure of hearing;
  - gg. Any procedural matter raised by the parties;
  - hh. Clarification of remedies sought;
  - ii. Or any other matter that may assist in expediting the appeal proceedings.
- III. The Appeal Panel will consult with the Case Manager and determine the format to be used for the appeal, which may involve an (oral) in-person hearing, an oral hearing by telephone, a hearing based on a review of documentary evidence submitted in advance of the hearing, or a combination of these methods. The decision with respect to the format of appeal is final and binding and not subject to appeal or review.
- IV. The Case Manager will advise the Parties of any preliminary determinations made by the Appeal Panel under section 16 of this policy, following the initial conference call.
- V. The Case Manager must be copied with, or included in, all communications between the Appeal Panel and the Parties to the appeal. The Appeal Panel must not communicate with one Party in regards to an appeal without the knowledge of all other Parties to the appeal.
- VI. The appeal hearing will be governed by the procedures established by the Appeal Panel, provided that:
  - jj. The appeal will be determined within the timelines directed by the Case Manager;
  - kk. The Parties will be given reasonable notice of the hearing;
  - ll. Copies of any written documents which the Parties wish to have the Panel consider will be provided to all Parties in advance of the hearing;
  - mm. The Parties may be accompanied by a representative, advisor, or legal counsel, at their own expense;
  - nn. The Appeal Panel may request that any other individual participate and give evidence at the hearing and may draw adverse inferences against a Party for not calling witnesses or introducing evidence that was available;
  - oo. The Appeal Panel may refuse to allow any evidence that is irrelevant, inherently unreliable, or prejudicial;
  - pp. The decision to uphold or reject the appeal will be by a majority vote of Panel members; and

- qq. The Appeal Panel shall only have the authority necessary to determine the specific issues raised on appeal. As soon as the Appeal Panel has issued a written decision, as contemplated below, it is functus officio and shall only have jurisdiction to clarify the decision, as and when requested by a Party to the appeal, or by the Case Manager.

### **Appeal Decision**

- I. The Appeal Panel must consider and render a written decision on the appeal, which shall be issued to the Case Manager, within seven (7) business days of the conclusion of the hearing. The Case Manager will review the decision to ensure that the Appeal Panel has met the requirements of this policy. Once approved, the Case Manager will communicate the decision to the Parties, concurrently and in writing, within fourteen (14) business days of the conclusion of the hearing. In cases of urgency, the Case Manager may direct that the Appeal Panel render a decision within such shorter time as may be required.
- II. On determining an appeal, the Appeal Panel may decide to:
  - rr. Reject the appeal and confirm the decision being appealed;
  - Uphold the appeal and refer the matter back to the initial decision-maker for a new decision; or
  - Uphold the appeal and vary the decision.
- III. The Appeal Panel shall have no authority or jurisdiction over the Association or the Parties, other than as expressly set out in this policy.
- IV. The decision of the Appeal Panel is final and binding and is not subject to further appeal, judicial review or any other form of review. No action or legal proceeding will be commenced against the Association with respect to any matter covered under this policy.

### **Confidentiality**

- I. The appeal process set out in this policy is intended to be private and confidential. The Parties to an appeal undertake not to use or rely upon any information or records disclosed during the appeal, for any purpose other than for the purposes of the appeal.
- II. All information received by the initial recipient of the appeal and the Appeal Panel shall be considered confidential and shall not be relied upon, used or disclosed to anyone, other than as expressly required to determine the appeal in accordance with this policy. Upon conclusion of an appeal, the Appeal Panel shall promptly return to the Case Manager any and all information and/or records received by the Panel with respect to the appeal.

### **Amendments to the Appeal Policy**

- I. Any amendments to the constitution must be documented as a new version of the document and the old version archived.

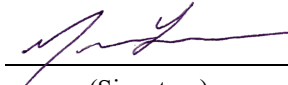
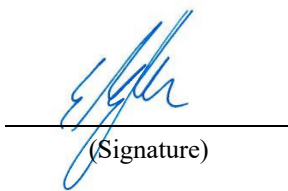
- II. It then must be approved by a formal vote of the entire council. The amendments must then be distributed to the membership at least two weeks prior to and must be presented at the AGM for a vote from the membership. The proposed amendments will not take effect until the AGM vote.
- III. After approval by the membership, the president and one other member of the council must sign off that the changes were accepted and assign a new effective date.

**Document History and Approval:**

I. Version 1:

ss. Signatories below were those involved in the creation of the appeals policy and therefore were members of the voluntary council prior to elected officials.

Effective Date: 10, 01, 2019  
(mm, dd, yyyy)

<u>Tasia Lightly</u> (Name)	 (Signature)	<u>Acting President</u> (Position)
<u>Ellen Sykes</u> (Name)	 (Signature)	<u>Acting Secretary</u> (Position)