

HEARING BOARD

Terms of Reference

and

Rules of Procedure

May 2003

UNIVERSITY OF GUELPH -HEARING BOARD

I - TERMS OF REFERENCE

SECTION 1- FUNCTION

- (1) To hear appeals from any decision or order rendered by the Judicial Committee (the “Committee”), where the Committee was not hearing an appeal. For a student who attends at one of the Regional Colleges of the University of Guelph, please see the Terms of Reference and Rules of Procedure for the Regional Colleges.
- (2) To make appropriate recommendations to the Committee on Student Rights and Responsibilities where problems or weaknesses are identified in the existing non-academic regulations affecting students.

SECTION 2 - GROUNDS FOR APPEAL

The Hearing Board, (the “Board”) has jurisdiction to hear appeals from the Committee based on the following grounds:

- (a) that the decision is one which was inappropriate or unreasonable, in light of the evidence presented at the hearing before the Committee;
- (b) that the appellant has obtained new evidence that is credible, could not have been obtained by the exercise of reasonable diligence prior to the hearing, and will likely be conclusive of an issue on the appeal, and the Committee is unable or unwilling to exercise its power to review. (Rule 21 Judicial Rules of Procedure);
- (c) there has been an error of law or lack of procedural fairness in the hearing of the complaint by the Committee.
- (d) reasons of compassion.

SECTION 3 - MEMBERSHIP

The membership of the Board shall be appointed as follows subject to approval by the Committee on Student Rights and Responsibilities:

- (1) One student representative will be nominated by each of the following student organizations from their members for a term of one year:
 - (a) Each of the College Governments,
 - (b) InterHall Council,
 - (c) Graduate Students Association and
 - (d) Central Students Association
- (2) One faculty or staff representative will be nominated by each of the Colleges through the respective Deans. The term of appointment shall be two years. Retirement dates will be staggered.
- (3) The Chair will be selected by the Board and shall serve for a term of two years. The Chair's term shall be unlimited by any previous service on the Board.
- (4) The Vice-Chair will be selected by the Board to serve in the absence of the Chair or as otherwise

directed. The Vice-Chair shall serve for a term of one year, such term to be unlimited by any previous service on the Board.

- (5) Members may be reappointed for one additional term.
- (6) When deemed necessary by the Chair, in order to satisfy quorum for a Board hearing, current or past members of the Committee, Board or the Senate Committee on Student Petitions may be asked to participate in a specific hearing.

The Judicial Officer and/or designate will be an *ex officio* non-voting member of the Board and act as resource person for the Board.

SECTION 4 - QUORUM

Quorum shall be the Chair (or in the absence of the Chair, the Vice-Chair) and four members, consisting of a minimum of one faculty or staff representative and two student representatives. If quorum is lost at any time during the hearing, the hearing will be adjourned until the next appropriate date when the same persons comprising the original quorum are present.

SECTION 5 - VOTING

Decisions will be made by majority vote. The Chair has voting privileges. There will be no abstentions.

SECTION 6 - ADMINISTRATIVE SUPPORT

Administrative matters including the scheduling of hearings and administrative support throughout the hearing and deliberations will be the responsibility of the Judicial Office.

SECTION 7 - DECISION

Following the hearing, the Board may decide on one or more of the following courses of action:

- i) confirm a finding;
- ii) reverse or alter a finding;
- iii) confirm a penalty; or
- iv) assess a different penalty from those available to the Judicial Committee under Sections 6 and 7 of the Terms of Reference for the Committee.
- v) direct the matter to be reheard by the Committee.

SECTION 8 - RIGHT OF APPEAL

Decisions of the Board are final.

HEARING BOARD

II - RULES OF PROCEDURE

RULE 1 - DEFINITIONS

In these rules: -

a) Abuse of Process

< means to make unreasonable use of the hearing process. Examples would include but not be limited to commencing proceedings which are frivolous or vexatious; providing an advisor/agent or legal counsel who is not competent to represent any party or witness, or does not understand and comply during the proceedings with the duties and responsibilities of an advisor/agent or legal counsel.

b) Advisor/Agent

< means a person engaged to appear at a hearing on behalf of a party or as an advisor to a witness. The agent need not be a legally qualified practitioner.

c) Appellant

< means any party to the original complaint heard before the Committee who commences an appeal by issuing a Notice of Appeal before the Board.

d) Board

< means the University of Guelph Hearing Board.

e) Balance of Probabilities

< The standard of proof necessary to prove a charge before the Judicial Committee. The standard is met if at the end of the hearing, based on all the credible evidence, the Committee believes that the events alleged probably occurred.

f) Chair

< means the person who is the Chair of the Board.

g) Committee

< means the University of Guelph Judicial Committee.

h) Complaint

< means any proceeding which originates before the Committee.

i)Hearing

< is the proceeding before the Board for which a Notice of Hearing has been given.

j) Judicial Office

< means the Judicial Office of the University of Guelph.

k) Legal Counsel

< means a barrister or solicitor qualified to practice in Ontario and engaged to appear as an agent on behalf of a party or as an advisor to a witness at the hearing .

l) Party

< means an appellant or respondent, as the case may be.

m) Respondent

< means any party to the original complaint heard before the Committee who is responding to the appeal of the appellant.

n) Student

< means any person registered in an undergraduate or graduate program at the University of Guelph, or otherwise taking credit or non-credit courses offered by the University or through Open Learning or any person who was a student at the time the alleged offence occurred. This definition does not include a person registered as a student in the University of Guelph-Humber program.

o) University

< means the University of Guelph.

RULE 2 - AMENDMENT AND COMPUTATION OF TIME

- (1) Where any time or time limitation is mentioned in these Terms of Reference and these rules, the Board may, on its own initiative, or at the request of a party, extend or abridge the time requirements prescribed as necessary.
- (2) The Board's discretion under (1) may be exercised before or after the expiration of the time prescribed.
- (3) Where there is a reference to a number of days between two events, the calculation shall not include the day on which the first event occurs, but shall include the day on which the second event occurs. Furthermore, where the time period described is greater than seven days, holidays and weekends will be included in the computation of time.

RULE 3 - INSTITUTION OF AN APPEAL

- (1) Any party to a complaint heard before the Committee who wishes to institute an appeal of a decision under Section 1(1) of the Terms of Reference for the Board shall do so by submitting a Notice of Appeal to the Judicial Office. The Notice of Appeal shall be in Form 1. The Notice of Appeal must be submitted within twenty-one (21) calendar days of the Committee's final decision and order having

been delivered either orally at the hearing, or if the decision is reserved, delivered to the student in accordance with Rule 4(3).

The Notice must contain all relevant information about the original decision, stating facts and the reasons for the appeal. Witnesses' names should be supplied, unless otherwise ordered by the Board.

- (2) The Respondent shall be served with a copy of the Notice of Appeal within 7 days from the date of submission of the Notice of Appeal. The Respondent shall deliver a written response to the Judicial Office within 14 days of service of the Notice of Appeal. The response shall include a summary of the submissions and argument made in response to the appeal.
- (3) The Appellant shall be served with a copy of the response within 7 days of receipt of the response by the Judicial Office. The Appellant has 14 days from the date of service of the response in which to ask for a hearing date. If no request for a hearing date is made, the appeal is automatically withdrawn.

RULE 4 - SERVICE OF NOTICE OF APPEAL, RESPONSE, NOTICE OF HEARING, AND DECISION AND ORDER OF THE BOARD

- (1) A Notice of Hearing shall be in Form 2.
- (2) All parties to an appeal shall be served with a Notice of Hearing at least fourteen (14) days prior to the date of the hearing.
- (3) Service of a notice of appeal, response, notice of hearing, and decision and order of the Board shall be by personal delivery, delivery to the University P.O. Box, regular mail, courier, fax or email. If the above documents are sent by regular mail, service will be deemed effective on the fifth day after the documents are mailed. These documents will be mailed to the address received and recorded by the University from the plaintiffs/appellant or defendant/respondent. If the above documents are sent by delivery to the University P.O.Box, courier, fax or email, the date of notification shall be one day after the date of delivery or transmission.

RULE 5 - MOTIONS

A specific request for action (“motion”) may be heard at the commencement of a hearing. The motion is to be in writing and delivered to the Judicial Officer no later than 7 days before the scheduled hearing date. The motion must state the relief sought, the documentary evidence to be used and the grounds to be argued. Any motion not delivered to the Judicial Office within 7 days can proceed only with leave of the Board and leave may be granted by the Board under extraordinary circumstances. Any response to the motion must be made in writing and delivered to the Judicial Office at least two days before the hearing date.

RULE 6 - DISCLOSURE

- (1) Any party to an appeal shall be entitled to make an appointment to visit, at any time during normal business operating hours, the Judicial Office, in order to examine any written statements, documents, and any other material filed with the Judicial Office pertaining to the appeal (“Documentation”). It is the responsibility of the parties to review the Documentation no later than 7 days before the date scheduled for the hearing.
- (2) If no objections to the Documentation are raised by the parties, the Documentation will be forwarded to the Board members for review prior to the hearing. If any party objects to part or all of the

Documentation, the objection together with reasons must be delivered to the Judicial Officer in writing no later than 7 days before the date scheduled for the hearing. The admissibility of the Documentation which is identified in the written objection will be decided by the Committee as a preliminary matter and will not be forwarded to the Committee prior to the hearing.

- (3) At any stage of the proceeding, the Board may make orders for:
 - (a) the exchange of documents;
 - (b) the exchange of witness statements and reports of any expert witnesses;
 - (c) the provision of particulars;
 - (d) any other form of disclosure.

This section does not authorize the making of an order requiring disclosure of privileged information.

RULE 7 - WRITTEN HEARINGS

- (1) The Board may hold written hearings, either on its own initiative, or at the request of a party.
- (2) The Board shall not hold a written hearing if a party presents a reasonable objection.
- (3) In a written hearing, all the parties are entitled to receive every document that the Board receives in the proceeding.

RULE 8 - OPEN HEARINGS

- (1) Subject to Rule 8 (2), all hearings before the Board shall be open to the public.
- (2) On the request of any party, or on its own initiative, the Board may hold a hearing in camera. Such a hearing may be held where the Board is of the opinion that:
 - (a) the matters to be discussed will involve intimate financial, or personal matters, or other matters that may be disclosed at the hearing of such a nature, having regard to the circumstance that the desirability of avoiding disclosure thereof in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that the hearing be open to the public; or
 - (b) the matters involve public security.

In such a case, the Board may hold the hearing in the absence of the public.

RULE 9 - SUMMONS TO WITNESSES

- (1) The Board, or any party in an appeal, upon providing the Judicial Officer with the name, address and telephone number of a witness, shall be entitled to summon before the Board any person as a witness for the hearing of the appeal and to require that person to produce, in evidence at the hearing, documents and items/objects specified in the Summons and relevant to the appeal and admissible at the hearing.
- (1) Service of a Summons shall be by personal delivery.
- (2) A Summons shall be in Form 3 and shall be signed by the Chair of the Board.

- (3) Failure of a student to attend before the Board when properly served with a summons is a breach of *Student Rights and Responsibilities*.

RULE 10 - EXCLUSION OF WITNESSES

At any time during the hearing of an appeal, the Board may make an order, at the request of any party or on its own initiative, requiring any persons who are witnesses, other than a party, to be excluded from the hearing until called to give evidence. It is customary that this type of request and order would be made at the outset of a hearing.

RULE 11 - MAINTENANCE OF ORDER AT HEARINGS

The Board may make such orders or give such directions during the proceedings as it considers necessary for the maintenance of order at the hearing, or to prevent abuse of the process.

RULE 12 - NON-APPEARANCE AT A HEARING

- (1) Subject to (3), if the respondent fails to appear before the Board on the appointed day and time, the Board may proceed in such absence, without further notice in the proceedings.
- (2) Subject to (3), if the appellant fails to appear before the Board on the appointed day and time, the appeal may be dismissed in such absence without further notice in the proceedings.
- (3) If the party who failed to appear wishes to ask the Board to rehear the matter so as to allow them the opportunity to appear and present evidence, that request must be made in writing within 7 days of service of Notice of the Decision and Order. The Board will grant such a request if it believes there are acceptable medical and/or compassionate reasons for the non-appearance.

RULE 13 - REPRESENTATION OF PARTIES AND WITNESSES

- (1) Any party in an appeal shall be entitled at the hearing of the appeal to be represented by legal counsel or by an advisor/agent.
- (2) Any witness shall be entitled at the hearing of the appeal to be advised by legal counsel or by an advisor/agent but such legal counsel or advisor/agent may take no other part in the hearing without the leave of the Board.
- (3) Where a hearing (or part thereof) before the Board is held *in camera*, a legal counsel or advisor/agent for a witness shall not be entitled to be present except when that witness is giving evidence.
- (4) Where any party desires to appear before the Board in the hearing without legal counsel or an advisor/agent such party shall be entitled to do so.
- (5) Any party may call and examine witnesses and present evidence and submissions. Any party shall be entitled to cross-examine any witness presented by another party adverse in interest.
- (6) The Board may reasonably limit further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the hearing.

RULE 14 - PARTIES ENTITLED TO BE AT THE HEARING

All parties to an appeal are entitled to be present throughout the hearing provided that the Board may exclude from the hearing any party whose conduct is, in the opinion of the Board, so disruptive of the hearing process as to frustrate it. Any party so excluded may be represented by an advisor/agent or legal counsel provided by such party.

RULE 15 - RECORD OF THE COMMITTEE

Prior to the commencement of the hearing of the appeal, the Judicial Office shall deliver to the Board a complete copy of the Record of the hearing of the complaint before the Committee (See Rule 22 of the Terms of Reference for the Committee).

RULE 16 - OATHS AND AFFIRMATIONS

- (1) Any party or witness called before the Board to give evidence may be required before giving any evidence to take an oath or make an affirmation, such oath or affirmation to be administered by the Chair.
- (2) The oath shall follow the wording of Form 4.
- (3) The Affirmation shall follow the wording of Form 5.

RULE 17 - ADMISSIBILITY OF EVIDENCE

- (1) Subject to Rule 17(2) and 17(3), the Board may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a Court:
 - (a) any oral testimony; and
 - (b) any document or other thing, relevant to the subject matter of the proceedings.The Board may act on such evidence, but may exclude anything unduly repetitious.
- (2) Nothing is admissible in evidence at a hearing that would be inadmissible in a Court by reason of any privilege under the law of evidence or by statute.
- (3) Where the Board is satisfied as to its authenticity, a copy of a document or other such material may be admitted as evidence at a hearing.
- (4) Where a document has been filed in evidence at a hearing, the Board may, or the party producing it or entitled to it may, with the leave of the Board, cause the document to be photocopied and the Board may authorize the photocopy to be filed in evidence in the place of the document filed and release the document filed, or may furnish to the person producing it or the person entitled to it, a photocopy of the document filed, certified by the Judicial Officer.
- (5) A document purporting to be a copy of a document filed in evidence at an appeal, certified to be a true copy thereof by the Judicial Officer, is admissible as evidence in proceedings in which the document is admissible as evidence of the document.

RULE 18 - NOTICE OF FACTS/OPINIONS

The Board may, in making its decision:

- (a) take notice of facts that may be judicially noticed, and
- (b) take notice of any generally recognized scientific or technical facts in formation or opinions within its scientific or specialized knowledge.

RULE 19 - DECISION OF THE BOARD

- (1) The decision of the Hearing Board will be made using the balance of probabilities as the standard of proof.
- (2) Whenever practicable, the Board shall give its final decision and order, if any, orally upon the completion of the hearing.
- (3) As soon as is practicable after the completion of the hearing, the Judicial Office shall send to all parties the Board's final decision and order and/or invoice for fines if any, in writing and signed by the Judicial Officer.
- (4) The Board shall give reasons for its decision and, where appropriate, shall state its findings of fact.

RULE 20 - ADJOURNMENTS

- (1) Prior to the commencement of a hearing, a hearing may be adjourned from time to time by the Judicial Office. Once a hearing has commenced, the Board may by motion of one of the parties, or on its own initiative, order an adjournment where it is satisfied that the adjournment is required to permit an adequate hearing to be held.
- (2) The parties in an appeal shall be served with a copy of the written order of any such adjournment if the parties were not present at the time the adjournment order was made.

RULE 21 - AMENDMENTS

- (1) A proceeding shall not be defeated by any formal objection of a technical nature. All reasonable and necessary amendments to Notices of Appeals, Notices of Hearing and Summonses shall be made by a motion of the Board in order to secure the advancement of justice and determine the real matter on appeal.

RULE 22 - POWER TO REVIEW

- (1) The Board may, if it considers it advisable, review all or part of its own decision or order, and may confirm, vary, suspend, or cancel the decision or order. Such review shall be by written submissions unless otherwise ordered by the Board.
- (2) The review shall take place within a reasonable time after the decision or order is made.

RULE 23 - RECORD OF HEARING

- (1) The Board shall compile a record for each hearing which shall include a copy of:
 - (a) the Notice of Appeal;
 - (b) the Notice of Hearing;
 - (c) all Summonses;
 - (d) any order granting adjournments made by the Board;

- (e) all documentary evidence filed with the Board, subject to any limitation expressly imposed by any Act other than the Statutory Powers Procedure Act on the extent to which or the purposes for which any such documents may be used in evidence in any proceedings;
- (f) all minutes of the hearing;
- (g) the Notice of Decision and Order.

(2) All records of hearing shall be kept by the Judicial Office.

(3) All records of hearing excluding the Notice of Decision and Order, shall be automatically expunged five years following the hearing except those for which the penalty was suspension or expulsion. At the time the record is expunged, the Decision and Order will be altered to remove the student's identity.