



## 2) The Absence of Bias

Decision-makers must not only be unbiased, but must ensure that they would not appear to be biased to the reasonable person. A reasonable apprehension of bias arises where an informed person, viewing a matter realistically and practically - and having thought the matter through – does not believe that a decision-maker capable of deciding the matter fairly.

Steps taken by decision-makers to remain unbiased include:

- Understanding what bias is (e.g., having a firmly held, favourable or negative opinion about a matter or an individual). If one cannot be objective about a matter that is within one's purview, then one should remove oneself from the decision-making process.
- In a committee of decision-makers, each member must feel free to make his or her own decision. Therefore, each member of the committee must be free of influence from other committee members, from outside third parties, or from the influence of those who have designated them as decision-makers.
- Sometimes bias is alleged because it is believed the decision-maker knows too much about the matter under scrutiny. A well-informed decision-maker is not biased if she or he has an open mind and is open to persuasion by the information provided through the decision-making process.

“Notice” means any notice to be sent by any party under this policy to another party. Any notice duly sent via email manner to a recipient's known email address shall be deemed delivered on the day next following the date of the sending of the email.

“Program” means any combination of courses and/or other study requirements that, upon successful completion, lead to the award of a formal qualification such as a university degree (MD or MMS) or health professional certification (CCFP, FRCPSC or RD).

“Respondent” a person or persons who respond or make a reply to a claim or allegation.

“Working Day” means a day in which the Northern Ontario School of Medicine (NOSM) offices are open for business from Monday to Friday, and excludes statutory holidays and any other day that NOSM remains closed.

## 2.0 Purpose

An Appeal Committee (“AC”) formed from among the membership of a NOSM Committee Panel in accordance with the Academic Council Appeal Committee Terms of Reference will hear any appeal based on an academic decision, rendered by any NOSM program or committee under the purview of the Academic Council.

A NOSM Learner may appeal to an AC if the matter relates directly to the course of study/training within the Program, and falls into one of the following categories:

### 1. Promotion and/or withdrawal from the Program

The Learner has formally requested a reappraisal of a decision made regarding promotion or withdrawal from the Program and is not accepting of the decision at the previous level.

### 2. Postgraduate Appeal

The Learner has formally requested a reappraisal of a decision made by the Postgraduate Medical Education Committee (PGEC) and is not accepting the decision at the previous level.

### 3. Professionalism

The Learner has formally requested a reappraisal of a decision made regarding Professionalism and is not accepting of the decision at the previous level.

#### **3.0 Process**

##### 3.1 Grounds for an Appeal

An appeal will be considered only where a Learner is able to establish:

- a) there is evidence of a factual error or procedural irregularity in the previous level of decision-making; or
- b) that the previous body did not adhere to the principles of Natural Justice.

##### 3.2 Written Appeal to an Appeal Committee

An appeal to an AC may be made only after a decision subject to the appellate jurisdiction of the Committee Panel has been made and communicated to the Learner. A record of the appealed decision must be included in any appeal to an AC.

A written submission requesting a hearing by an AC must be made by completing all required sections of a "Request for Appeal Form" and submitted to the Chair of the Committee Panel c/o the Secretary of the Academic Council within 10 working days of receipt of the notice at the previous level.

The Chair of the Committee Panel and/or the Secretary of the Academic Council will contact the appellant within five (5) working days of receiving the appeal to confirm receipt of the appeal and provide hearing dates and additional information.

##### 3.3 Time Limits

If written submissions to an AC are incomplete or not made within this period of 10 working days in the absence of reasonable cause, the appealed decision will become final and binding and no further appeals shall be considered.

A submission that is outside the established time limits must include written reasons for the delay.

Reasonable cause for delay of proceedings may be found by the Chair of the Committee Panel to exist if the delay resulted from incidents including but not limited to illness, accident, serious personal matters, or other circumstances which are beyond the control of a Learner, trainee or faculty member and which, in the opinion of the Chair of the Committee Panel, are a substantial contributing factor to the delay.

##### 3.4 Appeal Committee Hearing and Procedures

The determination of the composition of an AC is outlined in the Academic Council Appeal Committee Terms of Reference.

Upon receipt of an Appellant's request for appeal, a copy of the Appellant's written submissions shall be sent by the Chair of the Committee Panel to the Chair of the Program to which the appeal applies.

An oral hearing shall be held within 20 working days following the receipt of the Appellant's Request for Appeal form. The Chair of the Committee Panel shall notify the Appellant, the Respondent(s) and all other related bodies in writing of the location, date and time of the hearing.

The Appellant must confirm attendance to the oral hearing with the Chair of the Committee Panel within two (2) working days of receipt of confirmation of the date of the hearing.

The Chair of the Committee Panel must be notified of any issues with respect to the proposed date for the oral hearing, and the individuals must notify the Chair of the Committee Panel of such, by contacting the Secretary of the Academic Council as soon as possible. Every reasonable effort will be made to reschedule to a date with reasonable lead time. An AC may proceed with the hearing in the absence of either of the parties involved or if there is delay in the proceedings without reasonable cause.

Hearings shall be closed (i.e., conducted *in camera*) and can be accommodated by video and/or telecommunications. The appeal hearing may be recorded and minutes will be taken.

(1) The order of proceedings during a hearing is:

- a) Introduction of AC members, the Appellant, and Respondent(s), recital of the decision being appealed, the redress being sought, and summary review of documentation provided by both the appellant and the respondent.
- b) Where either party has failed to appear, the AC may proceed to consider the appeal on its merits.
- c) The AC shall hear and determine each case on the basis of the documentation and written argument submitted and, where one or both parties appear in person or with a representative, on the basis of oral submissions made at the hearing. Such oral presentation shall address only those matters raised in the parties' written submissions as previously filed with the AC.

(2) The following process shall apply at the hearing:

- a) Opening statements by the Appellant to establish the grounds for the appeal.
- b) Opening statements by the Respondent.
- c) Examination of the Appellant by the AC to clarify any points raised by his/her opening statement.
- d) Calling of witness(es), if any, by the Appellant, cross-examination, re-examination and examination of witness(es) by the AC to clarify any point raised in the evidence.
- e) Examination of the Respondent by the AC to clarify any points raised by his/her statement.
- f) Calling of witness(es), if any, by the Respondent, cross-examination, re-examination and examination of witness(es) by the AC to clarify any point raised in the evidence.

- g) Reply evidence, if any, on behalf of Appellant, including calling of witnesses by the Appellant, cross-examination, re-examination and examination of witnesses by the AC to clarify any point raised in their evidence. Such evidence in reply shall only be for the purpose of contradicting or qualifying new facts or issues raised in the Respondent's evidence.
- h) Summary remarks by the Appellant.
- i) Summary remarks by the Respondent.
- j) Reply, if any, by the Appellant to summary remarks by the Respondent(s), which shall be limited only to new points raised in the summary remarks by the Respondent(s).

The Chair of the AC shall have the right to alter this order and process where determined appropriate and in accordance with the principles of Natural Justice.

The Chair of the AC may consider and grant a recess or adjournment at any time during the hearing to ensure a fair hearing.

Persons appearing before the AC may be required to give evidence under affirmation or oath.

The Chair of the AC shall have the discretion to limit the testimony and questioning of witnesses to those matters it considers relevant to the disposition of the case.

The parties are responsible for producing their own witnesses and for paying the costs associated with their appearance before the AC.

The AC shall have the power to request written or documentary evidence by the parties or by any other source.

The Chair of the AC has the power to rule on the admissibility of evidence.

Appellants and Respondents shall have the right to the presence legal counsel during a hearing, but are responsible for presenting their own case to the AC, except to the extent otherwise determined by the Chair in accordance with the principles of Natural Justice. Appellants and Respondents are responsible for paying their own costs associated with any such representation or consultation. Also, the AC shall have the right to seek for the presence of legal counsel during the proceedings.

#### **4.0 Notice of Decision**

At the conclusion of the hearing, the AC will deliberate in closed session for the purpose of arriving at a decision. Within five (5) working days of the conclusion of the hearing, the Chair of the AC shall provide a written report of the AC's decision to the Appellant, the Respondent, the appropriate Associate Dean, the Dean of the Medical School and to other individuals as the AC deems appropriate and/or necessary.

The written report of the AC must include the following, except where otherwise determined by the Chair of the AC in accordance with the principles of Natural Justice:

- a. the membership of the AC
- b. a summary of the background to the appeal
- c. a summary of the submissions of the Appellant and the Respondent
- d. the AC's findings of fact
- e. the AC's decision, recommendations (if any) and reasons for its decision.

Any decision made by the AC with regards to an appeal related to a Program under the purview of the Academic Council shall be final and binding.

Before pursuing an application for judicial review with respect to any decisions made under this Policy or under any other related policies and procedures approved by the NOSM Academic Council or its subcommittees ("internal processes"), a Learner must first exhaust all adequate alternative remedies available under the internal processes.

### **5.0 Conflict of Interest**

The issue of impartiality during the Appeal process is considered crucial. Therefore, a member of the Committee Panel will be required to abstain from sitting on an AC or otherwise influencing any appeal hearing(s) in which that member is determined to have a conflict of interest. Examples of circumstances where a conflict of interest may arise include but are not limited to:

- (1) where a member has any emotional or financial interest in the outcome of the appeal hearing;
- (2) where a member has any affiliation with either party of such a nature or proximity as to give rise to a reasonable apprehension of bias; and
- (3) where a member has been privy to information about an appeal obtained by means other than through the presentation of evidence at the appeal hearing or in documents filed by the parties.

Should a Committee Panel member discover that he or she has a conflict of interest; the member must inform the Chair of the Committee Panel at the earliest opportunity. Should the Chair discover that he or she has a conflict of interest; the Chair must inform the other members of the Committee Panel at the earliest opportunity.

### **6.0 Related Policies/References**

- Request for Appeal Form
- Appeal Process Overview Chart

### **7.0 Getting Help**

Learners are encouraged to contact the Learner Affairs and/or Postgraduate Medical Education Office.

Queries regarding interpretations of this document should be directed to:

Governance Office – Office of the Dean  
Northern Ontario School of Medicine  
(705) 662-7206  
[governance@nosm.ca](mailto:governance@nosm.ca)

DO NOT REMOVE THIS VERSION RECORD FROM THIS DOCUMENT		
Version	Date	Authors/Comments
V1.0	October 25, 2013	Approval at Academic Council with effective date May 1, 2014
V2.0	April 15, 2014	Approved at Lakehead Senate on April 14, 2014 and Laurentian Senate on April 15, 2014
V3.0	May 14 & 15, 2018	Full legal opinion – Feb-March 2018 / April 5 – AC / April 26 @ JSC and May 14 & 15, 2018 Lakehead and Laurentian Senates