



## Institutional Appeal Tribunals

Procedure No.:	5104-PR3
Policy Reference:	5104
Category:	Education
Department Responsible:	Education
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## Objectives

This procedure applies directly to Policy 5104, Academic Integrity and Appeals. This document describes the processes for:

- Students, in requesting an Institutional appeal tribunal
- The Vice-President-Education, in appointing the tribunal
- Institutional Appeal Tribunal Chairs, in conducting a tribunal hearing

Such hearings examine grades-related decisions and decisions regarding academic misconduct.

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## Application

This procedure applies to BCIT students, instructors, and employees.

## Other Information

Other Procedures associated with Policy 5104:

- 5104-PR1 – Academic Decision Review Procedures
- 5104-PR2 – Decision Review Boards
- 5101-PR3 – Student Reports/Student Performance Contracts

## Introduction

Students who are unsatisfied with the results of a decision review board (DRB) hearing may request, by way of an application, a subsequent hearing by an Institute appeal tribunal. There are only three acceptable grounds for requesting an Institute appeal tribunal hearing:

1. The decision-making process used by the DRB was deemed to be unfair in that it violated the principles of natural justice.
2. There is new evidence which could have changed the DRB decision if available at the time of the hearing.
3. The penalty imposed by the DRB is unfair when compared to the penalties associated with similar previous incidents.

In the application, the student must indicate that one or more of these grounds is relevant to the student's case. The Vice-President, Education will determine whether reasonable grounds exist to support the student's claim. In the hearing, it will be the responsibility of the student to demonstrate that the indicated condition(s) occurred.

### The Appeal Tribunal's Mandate

The appeal tribunal is restricted to rendering one of the following decisions:

- (a) The student's appeal fails, and the decision being appealed stands unchanged.
- (b) The student's appeal succeeds.

The tribunal will award a remedy (remedies), if appropriate, as indicated in Appendix 2 of this procedure.

The appeal tribunal must consider the consequences of all its decisions, including such factors as:

- The severity of the incident(s)
- The issue of safety and associated risks of unsafe practices
- The level of student supervision that is or may be required
- The danger to the student and others
- The likelihood of repeat incidents

### Notes for the student appellant

**Conditions** – The student must complete and file an Application for an Appeal Tribunal Hearing with the office of the Vice-President, Education, only after all opportunities for appeal within the relevant school have been exhausted.

**Time limits** – The application and proof of payment of the appropriate fee must be filed within 35 business days of the student's notification of the DRB's decision. The vice-president, Education, will determine whether or not to allow the application to proceed.

**Limitations and scope of the appeal** – Once the student has established the grounds for an appeal, the student cannot change these grounds at this or any other hearing into the matter, and only evidence pertaining to those specified grounds will be admitted into the hearing.

Students should be careful to state clearly the basis for the appeal, the evidence to support their argument, and the desired outcome.

**Assistance** – Students are encouraged to obtain assistance from the Student Association Advocacy Office when filing the application. Students may also seek assistance from Counselling and Student Development to obtain information, feedback, and support. **Note:** Counsellors do not act as student advocates.

## Procedures

### Part 1 – Preparing for an Appeal Tribunal Hearing

#### Timeline of events

The Institutional appeal tribunal process and decision are guided by this timeline.

#### Initiating the process

##### *The student appellant:*

The student (hereinafter called the “appellant”) completes the Application for an Institute Appeal Tribunal Hearing, and takes it to Student Information and Enrolment Services (SIES) to pay the required fee.

- Copies of the appropriate form may be found next to this procedure on the BCIT web site: <http://www.bcit.ca/about/administration/policies.shtml>.
- Fees are indicated in the Schedule of Miscellaneous Fees at <http://www.bcit.ca/admission/fees/>. This fee will be returned to the appellant if the tribunal finds in favour of the appellant.

The appellant delivers the application form to the office of the Vice-President, Education.

##### *The Vice-President, Education*

The office of the Vice-President, Education provides administrative support and coordination for these proceedings.

The VP, Education decides on the validity of the request for a tribunal hearing, based on satisfaction of one or more of the three grounds noted on page 2.

##### *The Dean*

If the VP, Education accepts the application, the dean of the school in which the appellant is enrolled:

- Will normally permit the appellant to continue in any course of program which requires prior completion of the course under review, pending outcome of the appeal
- Will not permit the appellant to continue in the course or program if the dean believes that the safety of the appellant or of others might be compromised, or that the presence of the appellant would likely disrupt the learning environment
- Will advise the appellant in writing of this decision

##### *Within five days of receiving the application:*

The office of the VP, Education:

- Notifies the Registrar’s office of the pending appeal tribunal hearing, and forwards a copy of the application to the Registrar’s office, where a notation is made on the appellant’s student file
- Notifies the dean of the appropriate school of the pending Institute appeal tribunal hearing, and forwards a copy of the appellant’s application to the dean
- Notifies the Chair, Academic Appeals Standing Committee (hereinafter, the Standing Committee), of the pending appeal tribunal hearing, and forwards a copy of the completed student application to the Standing Committee Chair.

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**After notification by the Vice-President, Education**

***Within five business days***

The Chair of the Standing Committee selects a five-person appeal tribunal from the members of the Standing Committee, and from that group of five, selects a non-voting Chair. This appeal tribunal will conduct the appeal hearing and render a decision.

***Within ten business days***

The appropriate school dean submits to the Chair of the tribunal:

- All relevant evidentiary material that the school intends to bring to a hearing
- A list of witnesses the school intends to call, a report of the topics the witnesses will address, and an estimate of the time they each require
- A statement of the reasons for which the school administration believes the appellant will not succeed in the appeal
- The name of the program spokesperson who will present the school's argument at the tribunal hearing

***Within five business days of the receipt of the information provided by the school***

The Chair of the Standing Committee provides the appellant:

- A copy of all documents to be used in the hearing
- A statement of any other materials to be used in the hearing
- The names of the witnesses to be heard
- Notification of the date, time and place of the tribunal hearing

***Within four business days of the tribunal membership selection***

- The Office of the VP, Academic will notify the appellant and the school of the tribunal membership
- Both the school administration and the appellant may challenge the eligibility of any of the members.
  - The challenge must be supported by substantive reasons arguing bias on the part of the member(s) challenged
  - If the chair of the Standing Committee determines that a reasonable person could discern bias on the part of the challenged member(s), the Chair will replace the member(s).

***Fourteen days prior to the start of the hearing***

The Chair of the Standing Committee prepares a binder which contains all documents filed by the school and by the appellant and provides a copy of the binder to each member of the appeal tribunal.

***Within 15 days after the appeal tribunal membership is agreed upon:***

The tribunal hearing will commence. This should take place as soon as possible following agreement on the composition of the tribunal.

**Independent of timing**

The tribunal reserves the right to accept late additional relevant documents into evidence.

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**Part 2 – Conducting an Appeal Tribunal**

**Order of formal proceedings**

1. Opening remarks (Chair)
2. Clarification of grounds of appeal and objective sought by the appellant(s) (Chair)
3. Review of time limits and format of hearing (Chair)
4. Introduction of the hearing participants and clarification of roles of each participant (Chair)
5. The appellant's (appellants') oral statement(s) followed by questions directed to the appellant(s) in the following order, as directed by the Chair:
  1. From panel members
  2. From the Program representative(s)
  3. Additional questions from the panel members
6. Witnesses identified by the appellant are questioned as directed by the Chair:
  1. By the appellant(s)
  2. By panel members
  3. By the program representative(s)
  4. Any additional questions of the appellant witnesses that are requested by panel members, the appellant(s) and/or the Program representative(s)
7. The program spokesperson's statement followed by questions to him/her as directed by the Chair:
  1. By panel members
  2. By the appellant(s)
  3. Any additional questions from panel members
8. Witnesses provided by the Program are questioned as directed by the Chair:
  1. By the program representative(s)
  2. By panel members
  3. By the appellant(s) as directed by the Chair
  4. Any additional questions by panel members, the program representative(s) and/or the appellant
9. Concise summary statement from the appellant(s) and the program spokesperson(s)
10. Final questions from panel members to the program representative(s) and to the appellant for clarification and/or additional information
11. Summary Statement (Chair)
12. All binders of information provided to the appellant and the program representative should be returned to the Chair at this time.
13. Hearing adjourned (Chair)
14. The tribunal re-convenes following the adjournment, to decide on the award.
15. Once the decision has been reached regarding the award, the Chair retrieves the binders from each of the panel members.
16. The tribunal produces a report which documents its findings. If the tribunal decision varies from the original decision, the reasons for the variance must be clearly outlined in the written decision.
17. Following completion of the hearing and submission of the award to the dean, the tribunal Chair should amalgamate all meeting notes made by the panel members, evidence, and backup materials, eliminating redundant material, and forward them to the Registrar for retention, as required by BCIT's Directory of Records.

### **Part 3 – After the Appeal Tribunal Hearing**

1. The decision report is due seven business days after the final day of hearings.
2. Following the appeal tribunal hearing, the Chair of the Standing Committee receives the award from the Chair of the tribunal and, in turn, advises the office of the VP, Education, of the outcome.
3. The VP, Education, advises the appellant, the office of the Registrar, and the school of the appeal tribunal's decision. The appellant is notified of the decision within seven business days of the decision.
4. The decision of the appeal tribunal will be final in that there are no further appeal opportunities within the Institute available to the appellant.

### **Appendix 1: Appeal Tribunal Hearing Protocol**

All of the following practices and procedures are consistent with the principles of natural justice, and are to assist in guiding the conduct of a tribunal hearing.

#### **Etiquette**

1. Tribunal hearings are to be conducted in a manner that accords a high level of courtesy, respect and consideration to all participants.

#### **Venue**

2. The location of the hearing room should:
  - Comfortably accommodate all those to be present throughout the hearing
  - Provide for separation of the appellant and program representatives and witnesses while they are waiting to appear

#### **Recording the proceedings**

3. Hearings are to be conducted in-camera with no electronic recording devices permitted. Manual transcription or a computer for note-taking purposes is permitted.

#### **Time frames**

4. Hearings should be conducted during normal school business hours, (e.g., 8:30 AM – 4:30 PM, with appropriate breaks. If more time is needed, then the hearing is to continue on the following business day.
5. Time frames for witnesses to give evidence should be established.
  - Off-campus witnesses should be given priority and not be made to wait unnecessarily.
  - On-campus witnesses could be paged, called at their office, or otherwise contacted when it is time for them to appear.

#### **No proxy**

6. The appellant is expected to be his or her own spokesperson. If the appellant is unable to do so, then a written request for an alternative spokesperson may be made to the Chair of the appeal tribunal, who will rule on the request.

#### **Supporters**

7. The appellant may be accompanied to the hearing by a supporter who is a BCIT employee or student. The supporter will not address the tribunal panel nor otherwise participate in the hearing. However, the supporter and the appellant may confer during the hearing—provided, in the opinion of the Chair, it does not disrupt the proceedings.

**Witnesses**

8. Witnesses will be brought into the hearing room only for their testimony, and are to leave the hearing area immediately after. They should be cautioned not to discuss what was said in the room.
9. Witnesses should have the option to make a statement in addition to answering questions.
10. Witnesses should speak to matters of fact and to matters of which they have firsthand knowledge.
11. All witnesses will be accorded the same treatment.

**Permitted Evidence**

12. All evidence (except witness testimony) to be entered during the hearing must be provided to all parties prior to the hearing.

**Appendix 2 – Table: Grounds for Appeal / Remedies**

<b>The three possible grounds for appeal</b>			
	<b>Procedural Unfairness</b>	<b>Penalty Unfair</b>	<b>New Evidence</b>
In order for the appellant to succeed, the appeal tribunal must find:	That the conduct of the DRB resulted in the appellant being denied natural justice in the hearing of his/her complaint.	That the appellant has been treated differently to his/her detriment from other students in similar circumstances.	That there is new evidence that could not reasonably have been made available at the time of the DRB hearing, and which in the Appeal Tribunal's view could have altered the School administration's decision, i.e., it is significant new evidence. (N.B. In this case, the dean will be requested to reconvene the DRB to hear the new evidence.)
<b>Remedies</b>			
The remedy that the Appeal Tribunal can order:	<p><b>A)</b> If the complaint is about some aspect of the overall process which occurred prior to the DRB hearing, then the Appeal Tribunal can:</p> <ol style="list-style-type: none"> <li>1) Decide that, in spite of the error, the appellant was not seriously damaged, in that the final outcome would have remained the same, in which case the appeal fails.</li> <li>2) Decide that the error was significant enough that it might have changed the School administration's decision, and it can order the original school committee to reconvene to factor in the error in its new deliberations.</li> </ol> <p><b>B)</b> Can order a new hearing with a new DRB, if the procedural unfairness has to do with the way the final school hearing was conducted. The Appeal Tribunal can decide, based on the specifics of the complaint, whether any witnesses have to be recalled, as opposed to their evidence being read.</p>	<p>That the appellant be granted the remedy sought in the application for the hearing, provided that remedy is consistent with the evidence provided and that it is fair.</p> <p><i>Note:</i> Grade decisions themselves cannot be appealed outside the School. However, academic consequences of a grade can be appealed outside the School on grounds - of unfair penalty.</p>	The original DRB be reconstituted to hear the new evidence.



**Forms Associated With This Procedure**

5104-F2, Application for an Appeal Tribunal Hearing

**Amendment History**

Policy 5002 was retired January 2009, and this procedure 5104-PR3 is one of a series of policies and procedures created to replace it.

1. Created                      2009 Jan 27