


RECONSIDERATION, REVIEW & APPEALS POLICY

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Approved by:	Title: CEO	Name: Adrian Cosenza	Signature/date  4 May 2020
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OUTCOME:

This policy sets out the mechanism for appeal by any Member adversely affected by a decision of the Association, except any decision to expel a Member pursuant to clause 10 of the Constitution or any or training related decisions. Reconsideration, review and/or appeals pertaining to training decisions will be dealt with according to the relevant Education and Training policies and not this policy.

Any Member adversely affected by such a decision may, within 28 days of receipt of notice of such a decision, apply to the Secretary of the Board to have the decision reviewed by the Appeals Committee.

DEFINITIONS:

- **Dispute** - a dispute exists when one or more people disagree about something and matters remain unresolved. A fair and balanced dispute resolution process is important for the effective operation of any business.
- **Reconsideration** – the opportunity for the original decision maker to reconsider the matter at the request of a Member.
- **Review** – the process of reviewing the original and reconsidered decision by a committee comprised of Members not involved with the original decision before an appeals process can progress.
- **Appeal** – In law, an appeal is a process for requesting a formal change to an official decision. Very broadly speaking there are appeals on the record and de novo appeals. AOA Appeals Committee will not, except in exceptional circumstances, consider a matter de novo.

POLICY

- Decisions of the Association are to be made following the proper consideration of all relevant information.
- Decisions are not to be made on the basis of material assumed to be in existence but not available to the relevant decision-maker or decision-makers at the time the decision is made.

- All decisions of the Association are to be reduced to writing.
- Written reasons must be provided to the Member adversely affected by a decision.
- The Member adversely affected by a decision must be provided with written advice regarding his or her rights of reconsideration, review and appeal.
- Association staff are to assist a Member lodge a reconsideration, review and appeal and refer him or her to the appropriate procedures to be followed.
- The Appeals Process is a three-step process and Members must undergo the reconsideration and review mechanisms before an appeal can be lodged.
- The appellant will bear the onus of proof to establish the grounds of the reconsideration/review/appeal upon application. If AOA determines in its absolute discretion that grounds have not been established, or that information provided in order to establish grounds is not relevant to the decision or policy, the reconsideration/review/appeal will not proceed.

STRATEGIES:

1. Reconsideration of a Decision
2. Process for Reconsideration of a Decision
3. Review of a Decision
4. Process for Review of a Decision
5. Grounds of Appeal
6. Composition of the Appeals Committee
7. Appeal Process
8. Decisions of the Appeals Committee
9. Appeals Procedures

1. Reconsideration of a Decision

- 1.1 A reconsideration of a decision may be made in relation to decisions of the Association, its Board or Committees as the Board may determine from time to time.
- 1.2 A reconsideration of a decision may be made on the same grounds as an appeal (outlined in detail in Section 5).

2. Process for Reconsideration of a Decision

The process for requesting a reconsideration of a decision is:

- 2.1 Any Member adversely affected by a decision of the Association may, within 28 days, of receipt of notice of the decision, apply to the Secretary of the Board to have the decision reconsidered by the original decision makers.

- 2.2 All applications for reconsideration are to be made in writing and accompanied by all relevant information or grounds upon which the Member seeks to rely in respect of the reconsideration.
- 2.3 The affected Member will bear the onus of proof to establish the grounds of the reconsideration application.
- 2.4 The affected Member may request a copy of the written reasons for the original decision. If such a request is made, written reasons are to be provided within 14 days of receipt of the affected Member's request.
- 2.5 The original decision makers will form a Reconsideration Panel and will reconvene to review the original decision and material associated with that decision
- 2.6 The Reconsideration Panel will also consider information the affected Member provides to establish the grounds upon which the affected Member seeks to rely.
- 2.7 The reconsideration will be conducted with as little formality as possible, but otherwise the Reconsideration Panel shall have full power to regulate its conduct and operation.
- 2.8 The reconsideration of the decision by the Reconsideration Panel must be undertaken in accordance with the rules of natural justice and each reconsideration will be reviewed on its merits.
- 2.9 Minutes of the meeting shall only record the decision, the reasons for the decision, and any recommendations made.
- 2.10 The Board may delegate its powers and duties in respect of any reconsideration as it determines.

3. Review of a Decision

- 3.1 A review of a decision may be made in relation to decisions of the Association, its Board or Committees as the Board may determine from time to time.
- 3.2 A review of a decision may be made on the same grounds as an appeal (outlined in detail in Section 5) once a reconsideration process has been undertaken and the affected Member is not satisfied with the outcome.
- 3.3 A review of a decision can only be sought following the completion of the reconsideration process and the Reconsideration Panel recommendations being provided to the affected Member.

4. Process for the Review of a Decision

The process for requesting a review of a decision is:

- 4.1 Any Member adversely affected by a decision of the Association and having had the decision reconsidered by the original decision makers by the process outlined in this policy may, within 28 days, of receipt of notice of the decision, apply to the

Secretary of the Board to have the decision reviewed by an AOA internal independent review panel (Review Panel).

- 4.2 All applications for review are to be made in writing and accompanied by all relevant information or grounds upon which the Member seeks to rely in respect of the review.
- 4.3 The affected Member will bear the onus of proof to establish the grounds of the review application.
- 4.4 The affected Member may request a copy of the written reasons for the reconsideration decision. If such a request is made, written reasons are to be provided within 14 days of receipt of the affected Member's request.
- 4.5 An independent review panel will be established. The Review Panel will be made up of at least three (3) Fellows of the Association and will convene to review the original decision and material associated with that decision. The Secretary of the Board will provide administrative and procedural assistance
- 4.6 The Review Panel will also consider information the affected Member provides to establish the grounds upon which the affected Member seeks to rely
- 4.7 The review will be conducted with as little formality as possible, but otherwise the Review Panel shall have full power to regulate its conduct and operation.
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- 4.8 The review of the decision must be undertaken in accordance with the rules of natural justice and each review will be considered on its merits.
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- 4.9 Minutes of the meeting shall only record the Review Panel's decision, the reasons for the decision, and any recommendations made.
- 4.10 The Member must pay a fee, which shall be the current fee as determined by the Board at that time.
- 4.11 The Board may delegate its powers and duties in respect of any review as it determines.

5. Grounds of Appeal

An appeal may be made in relation to decisions of the Association, its Boards or Committees as the Board may determine from time to time.

An appeal may only be made on one or more of the following grounds:

- 5.1 The original decision was the result of an error of law or an error in due process.
- 5.2 That relevant and significant information, whether available at the time of the original decision or which subsequently became available, was not considered or not properly considered in the making of the original decision.

- 5.3 That the original decision was clearly inconsistent with the evidence and arguments put before the body making the original decision.
- 5.4 That irrelevant information was considered in the making of the original decision.
- 5.5 That procedures that were required by the Association to be observed in connection with the making of the decision were not observed.
- 5.6 That the original decision was made in accordance with a rule or policy without regard to the merits of the particular case.
- 5.7 That the original decision was made for an improper purpose.

6. Composition of the Appeals Committee

The Appeals Committee is to be convened by the President or the President's delegate and shall be comprised of:

- One Fellow of the Association:
 - One Member of the Association, who may be a Fellow or any other category of Member; and
 - Up to two appropriately qualified or interested persons who are not required to be Fellows of the Association, and one of whom shall be an appropriately qualified legal practitioner.
- 6.1 A member of the Appeals Committee, who is not a Member of the Association, shall be appointed by the Chair of the Appeals Committee.
 - 6.2 The Appeals Committee will not comprise any person who was a party to the decision of the Association to which the appeal relates.
 - 6.3 A quorum of the Appeals Committee will be the Chair and two other members.
 - 6.4 Each member of the Appeals Committee shall be entitled to one vote. In the event of an equality of votes, the Chair may exercise a casting vote, whether or not the Chair has previously voted.

7. Appeals Process

- 7.1 Any Member adversely affected by a decision of the Association may, within 28 days, of receipt of notice of the review decision, apply to the Secretary of the Board to have the decision reviewed by the Appeals Committee (appellant).
- 7.2 All applications for appeal are to be made in writing and accompanied by all relevant information or grounds upon which the Member seeks to rely in respect of the appeal.
- 7.3 Before convening an Appeals Committee, the Secretary of the Board will advise the appellant to seek a reconsideration and review of the original decision in accordance

with the processes approved by the Association from time to time. Such reconsideration and review shall not, and does not, constitute an appeal under these rules.

- 7.4 The appellant will bear the onus of proof to establish the grounds of the appeal.
- 7.5 The appellant may request a copy of the written reasons for the original decision. If such a request is made, written reasons are to be provided within 14 days of receipt of the appellant's request.
- 7.6 At least 28 days before convening the Appeals Committee hearing, the Secretary of the Board will advise the appellant in writing of:

The time, date and place of the hearing; and

- 7.7 The right of the appellant to appear before the Appeals Committee and the right of the appellant to seek leave of the Appeals Committee to have legal representation at the hearing.
- 7.8 The appellant will be asked to provide written submissions to the Appeals Committee not less than 14 days before the hearing date of the appeal. The Appeals Committee may, at its discretion, receive written and/or oral submissions at any time during the course of a hearing.
- 7.9 The Appeals Committee is not bound by the rules of evidence and it may inform itself of any matter and in such manner as it thinks fit.
- 7.10 The Appeals Committee shall conduct its affairs with as little formality as possible, but otherwise shall have full power to regulate its conduct and operation.
- 7.11 The Appeals Committee must act in accordance with the rules of natural justice and decide each appeal on its merits.
- 7.12 The proceedings of the Appeals Committee will be recorded and the proceedings transcribed.
- 7.13 The transcript of proceedings shall be kept confidential (except as required by law).
- 7.14 Minutes of the hearing shall only record the Appeals Committee's decision, the reasons for the decision, and any recommendations made.
- 7.15 All information made available to the Appeals Committee is to be made available to the appellant.
- 7.16 An appellant shall have the right to appear and address the Appeals Committee in relation to his or her written submissions. The appellant shall be entitled to have a support person attend the hearing with him or her. That support person may be the appellant's legal representative. The support person may, with leave of the Appeals Committee, act as an advocate.
- 7.17 The appellant must pay a fee, which shall be the current fee as determined by the Board at that time.

7.18 The Board may delegate its powers and duties in respect of any appeal as it determines.

8. Decisions of the Appeals Committee

8.1 An Appeals Committee may, having considered all submissions:

- a) Confirm the decision which is the subject matter of the appeal.
 - a. Revoke the decision which is the subject matter of the appeal.
 - b. Revoke the decisions and refer the decision to the Board or General Meeting for further consideration (upon such terms and conditions as the Appeals Committee may determine).
 - c. Revoke the decision and make recommendations to the Board on an alternative decision.
 - d. Make a recommendation to the Board as to whether any or all, of the fee paid by the appellant should be reimbursed by the Association.
 - e. Make a recommendation to the Board as to whether any or all of the appellant's legal costs should be reimbursed by the Association.

8.2 The Appeals Committee will reach a determination within 3 weeks of the hearing, or receipt of final written submissions, whichever is the latter. A copy of the Appeals Committee's written decision with reasons is to be provided to all parties no later than 7 days after the decision has been made.

9. Appeals Procedures

9.1 The Association shall convene the Appeals Committee within 3 months of an appeal having been lodged, and shall hear the appeal as soon as practicable.

9.2 The Appeals Committee will not, except in exceptional circumstances and with AOA Board approval,, consider a matter de novo.

9.3 The Appeals Committee will meet for up to one hour at the commencement of each hearing to consider the matter before it.

9.3 The hearing is to be conducted with all parties present, however, the Appeals Committee may, in its absolute discretion, hear the parties separately.

9.4 All questions must be directed to the Chair.

9.6 The Chair may invite the appellant, then any other party appearing before the Appeals Committee, to summarise his or her position.

9.7 The Chair will then invite the appellant to present his or her submission and may direct the appellant, at any time, to any point of that submission or invite questions on any point of that submission.

- 9.8 The Chair will then invite members of the Appeals Committee to seek clarification from the appellant of any matters raised.
- 9.9 The Chair will then invite any person attending to provide information to the Appeals Committee.
- 9.10 The appellant will then be asked to respond or make submissions in relation to the material presented by the other parties or participants.
- 9.11 The appellant and other parties will then be asked to withdraw from the meeting while the Appeals Committee discusses the matter. The appellant and other parties will be asked to remain available to clarify any further matters if required.
- 9.12 If further clarification is sought, all of the parties will reconvene before the Appeals Committee and clarify those further matters. The appellant will then be asked to make any final submissions.
- 9.12 If the Appeals Committee decides, in its absolute discretion, that the appellant ought to be given an opportunity to provide further written submissions, leave will be granted in relation to same.
- 9.13 The Appeals Committee will reach a determination within 3 weeks of the hearing, or receipt of final written submissions, whichever is the latter. That determination will be conveyed to all participants in writing by the Secretary of the Board. A copy of the Appeals Committee's written decision with reasons is to be provided to all parties no later than 7 days after the decision has been made.
- 9.14 The decision of the Appeals Committee will be final.