#### ANNUAL REPORT OF APPEALS AND COMPLIANCE OFFICER

#### 2012 - 2014

#### Scope

This report covers the period of July 1, 2012 to June 30, 2014. The included statistics specific to this period are broken into the two years of July 1, 2012 to June 30, 2013 and July 1, 2013 to June 30, 2014.

This report sets out information about discipline decisions and the appeal process under the Code of Student Behaviour (COSB) and the Code of Applicant Behaviour (COAB), with a focus on the university appeal level of the University Appeal Board (UAB). This report also sets out information for the other two university level appeal bodies, the General Faculties Council Academic Appeals Committee (GFC AAC) and the General Faculties Council Practice Review Board (GFC PRB), again focusing on the university appeal level.

## Role of the Appeals Coordinator

As Appeals and Compliance Officer, I carry out the role of the Appeals Coordinator under the COSB, COAB, University of Alberta Academic Appeals Policy and University of Alberta Practicum Intervention Policy for the UAB, GFC AAC and GFC PRB. In this role I am neutral and do not advocate for either party in an appeal. I facilitate or administer the appeal process steps from the time an appeal is received, through the hearing and decision made by an appeal panel, to distribution of the written decision. I also provide procedural information to the parties to an appeal and to the appeal panel throughout the appeal process.

Apart from individual appeals, I generally oversee the university level appeal system to ensure that the university continues to implement a fair process by which to address appeals. This includes helping to educate panel members as to the framework within which they work when hearing appeals and attempting to help the university community understand that framework. This report will hopefully aid in that understanding.

## **University Level Appeal Process**

The university level appeal system is made up of three main appeal bodies – the UAB, the GFC AAC and the GFC PRB.

Discipline decisions arise as a result of a student being charged with an offense (academic and/or non-academic) under the COSB or COAB. When the appropriate decision-maker has made a final decision as to offense and sanction, any parties to that decision have a final appeal to the UAB.

The UAB generally hears appeals from students charged under the COSB or COAB who disagree with the discipline decisions. UAB decisions are final and binding, within the University, subject to judicial review. Under the COSB the UAB has the broad authority to determine whether an offense was committed and to confirm, vary or quash sanctions imposed.

Under the Academic Appeals Policy, academic standing issues are heard by the GFC AAC. The GFC AAC hears appeals from students wishing to appeal faculty decisions on matters of academic standing, including matters such as a requirement to withdraw, denial of graduation or promotion. The GFC AAC hears appeals from students after they have exhausted all other avenues of appeal within a faculty. GFC AAC decisions are final and binding, within the University, subject to judicial review. The authority of the GFC AAC is to uphold (and award any remedy not inconsistent with faculty rules) or deny an appeal depending upon whether a miscarriage of justice, as defined by the Academic Appeals Policy, occurred within the faculty process.

Under the Practicum Intervention Policy, appeals concerning practicum interventions are heard by the GFC PRB. The GFC PRB's decisions are final and binding, within the University, subject to judicial review.

A fourth body, the Three Person Panel under section 30.5.2(8) of the COSB, currently deals with appeals of decisions not to proceed with complaints.

#### Principles of the Appeal Process

Appeals at the university level deal with complex issues affecting students, faculties and the university as a whole. Given this impact, and the fact that this is the final level of appeal so that the issues will be heard for the last time within the university, it is very important that the appeal process is fair and perceived to be fair. Coming to decisions through a fair process is also a means to promote confidence in those decisions by the parties and the appeal panels themselves. Being the final level of appeal, the decisions or process may also be subject to judicial scrutiny.

The authority of the appeal bodies (UAB/GFC AAC/GFC PRB) flows from the powers delegated under the *Post-Secondary Learning Act* and the appeal bodies carry out their authority as outlined in the applicable university appeal policy, and in keeping with the principles of administrative fairness. The principles of administrative fairness are the basis for our appeals policies, help us to interpret those policies and provide the framework within which our appeal panels make decisions.

While our appeals process may at times seem complicated and time-consuming, the formality of our process recognizes the impact and finality of these decisions and ensures the opportunity for the parties to an appeal to make their best cases and be heard. Our appeals process is not a court process,

but has been designed to allow for students and university decision-makers to be able to be heard by an objective panel coming from the university community. The system is flexible in that it is able to deal with a wide variety of appeals and circumstances (from students and university staff representing themselves or being helped by on-campus advisors, to appeals involving lawyers representing both parties) through consistently applying basic principles of administrative fairness. At its core, our appeals system involves the parties fully disclosing and knowing their cases before an appeal hearing, then appearing at a hearing where they are able to present and question arguments and information before an objective appeal panel. The appeal panel then considers and weighs all of the submissions of the parties and comes to a decision, which it fully explains in writing.

#### **Current Trends**

As the attached statistics show, there was a significant increase in the number of appeals to the university level appeal bodies in 2013-2014. The current year-to-date suggests we will again see a similar increased number. This may be due in part to the increase in the number of decisions being made by academic and non-academic decision-makers throughout the university. Although not statistically tracked, a significant number of appeals are received from international students.

The complexity of issues dealt with during the appeal process has also seemed to increase. This includes procedural requests and issues raised by the parties to appeals both before and during hearings. When such issues are raised, the appeal panel chair (and sometimes the full appeal panel) must decide how to address the issue, consider the arguments and circumstances, and then come to a decision to address the issue. The chair (and sometimes full panel) does this through consultation with the Appeals Coordinator, obtaining legal advice when necessary. Again, all such decisions are made consistently with the relevant appeals policy and principles of administrative fairness, with the aim of providing both parties a fair opportunity to be heard.

As a result, the timeframe for an appeal to be completed varies. Some appeals have more procedural issues to address due to the understanding of the parties, some appeals have more procedural issues to address due to the nature of the appeal itself.

In coming into my role in 2012 I found that some of the procedural issues that the appeal panels had to deal with were due to the understanding of the process by the parties. Working within my role, and with the help of the Office of General Counsel, I have tried to foster an understanding of the appeal process and the principles upon which it is based, through meeting with individual students, student advisory groups and faculty groups.

Two common procedural issues seen at the UAB over the two years of this report have been new evidence presented during hearings and the question of when witnesses are needed or not needed.

As noted above, the appeal procedure outlined in the COSB provides for a disclosure process so that both parties are able to prepare within a reasonable time before the appeal hearing. If evidence is

submitted with too little time before a hearing, this can lead to the possibility of postponing the hearing. If new evidence or an unnamed witness is attempted to be introduced at a hearing, the COSB contains a section that has as its starting point the fact that the UAB can refuse to accept introduction of the evidence, on the basis that it would be an unfair surprise to the other side and disadvantage them in being able to present their case. However, the COSB also allows the UAB to allow any evidence it deems appropriate. If the UAB decides, after hearing from both parties, that the information is needed, it may decide to remedy any potential unfairness by providing time for the other side to prepare, through an adjournment. The UAB is not an investigative body, but tries to make its decisions based upon the evidence presented by the parties. When issues such as this are raised, though, the UAB will consider how to address the matter based on the principles of fairly allowing both parties to present their cases and having available all the relevant information it needs to come to a decision.

When witnesses are involved, the COSB appeal process includes both parties providing a witness list by a time specified before the hearing. If a new witness is named at a hearing, the UAB will address the resulting issue in a similar manner as it does any proposed new evidence. Difficulties have arisen in some cases where no witnesses were called, yet were found at the hearing to be needed by the UAB to speak to and be questioned about an issue directly in dispute. If it deems it necessary, after hearing from both parties, the UAB can request that a party call a witness, after an adjournment for both parties to prepare. As with any evidence, the starting point is that it is up to the parties to decide how to best present their cases and who to call as a witness, if anyone. However, circumstances can arise whereby the UAB is asked to or decides it needs to address the issue. Whether a witness' attendance is needed or not depends on what is at issue and in dispute in the appeal, and what a witness may add.

These are simply two examples of where procedural issues can arise, leading to arguments by the parties and extra steps in the appeal process. However, in understanding the authority of the appeal panels, the appeal process as outlined in the appeal policy and the framework within which the appeal panels will address issues, parties can more effectively present their cases and provide the appeal panels with the information they need to make reasonable decisions. Although sometimes these and other similar procedural issues are unavoidable depending on the nature of an appeal (and having to address arising issues will probably always be part of the nature of the appeal business), I believe these last years have seen a receptivity to an increased understanding of the framework and principles of our appeal system by members of the university community that has helped to ensure that the appeal process best serves all those involved in it.

During the period of this report, the fairness of the UAB's appeal process was affirmed in a judicial review decision of the Court of Appeal of Alberta (September 2013), with the related Court of Queen's Bench judicial review decision affirming previously in April 2012.

#### Appeal Panel Membership

All of our university level appeal panels are made up of volunteers. While the exact makeup of a panel depends on the applicable appeal policy, generally the panels are a combination of students and academic staff selected from our appeal panel membership lists. Members serve on approximately six

appeal panels within a calendar year, but this number varies depending on the number of appeals received and the faculties involved. Appeal panel members come from the greatest variety of faculties possible. For objectivity, no appeal panel member may sit on an appeal involving a party from his or her faculty. Appeal hearings are scheduled throughout the academic year, including summer, mostly in evenings around academic schedules. Student panel members usually serve for two year terms, while academic staff panel members usually serve for three year terms.

The service of our panel members is a significant commitment, including considering and addressing procedural issues arising before and during hearings, conducting hearings, deliberating and drafting written reasons for decisions. All of our panel members recognize the need to objectively hear submissions from parties to an appeal, analyze and weigh evidence, then come to a reasonable decision based on that evidence. I thank them all for being willing to serve our university community in this way, often addressing difficult issues involving student careers, faculty standards and the integrity and values of the university. Our appeal panels uphold the values of fair decision-making, of a fair appeal process and of the university as a whole, for both students and faculty.

Michael Peterson

Appeals and Compliance Officer

University Governance, University of Alberta

January 15, 2015

Attachments: Statistics for Discipline Decisions and the University Level Appeal Process

[All appeal statistics based upon year of appeal deadline.]

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Table 1

Number of Appeals Received by University Governance  Judiciary/Academic Year: July 1 through June 30.								
	July 1, 2009 - June 30, 2010	July 1, 2010 - June 30, 2011	July 1, 2011 - June 30, 2012	July 1, 2012 - June 30, 2013	July 1, 2013 - June 30, 2014			
University Appeal Board	14	14	17	12	22			
GFC Academic Appeals Committee	9	2	4	5	9			
GFC Practice Review Board	3	1	0	1	0			
Three Person Panel	0	0	0	1	0			
TOTAL NUMBER OF APPEALS	26	17	21	19	31			

- these numbers reflect number of appeal cases
- a student can be charged with more than one offense and can appeal the charge(s), sanction(s) or both the charge(s) and sanction(s) in an appeal case

Table 2

UAB Disposition of Appeals							
	July 1, 2012 to June 30, 2013	July 1, 2013 to June 30, 2014					
Appeal Upheld	5	3					
Appeal Denied	5	12					
Sanction Increased	0	1					
Sanction Decreased	4	2					
Sanction Timing Varied	0	1					
Appeal in Progress	0	2					
(Undetermined)							
Appeal Withdrawn	4	5					
Total Appeal Cases	12	22					
concern the charge(: appeals upheld/deni increased/decreased	harged with and appeal more than one of s), sanction(s) or both, the total number ied/in progress/withdrawn (by charge) a dytiming varied will not necessarily mate tincreased/decreased/timing varied, the	of appeal cases and the number of and/or sanctions th					

Table 3

	GFC AAC Disposition of Appe	eals
	July 1, 2012 to June 30, 2013	July 1, 2013 to June 30, 201
Appeal Upheld	1	1
Appeal Denied	2	5
Returned to Faculty	0	2
Taken Back by Faculty	1	0
Appeal Withdrawn	1	1
Total Appeals	5	9
	the GFC AAC decided at the appeal heam mmittee for re-hearing, based upon ne	

the GFC AAC hearing, the Faculty chose to reconsider the matter at the Faculty level.

# Table 4

	GFC PRB Disposition of Appeals									
	July 1, 2012 to June 30, 2013	July 1, 2013 to June 30, 2014								
Appeal Upheld	0	0								
Appeal Denied	1	0								
Total Appeals	1	0								
	Three Person Panel Disposition of A	Appeals								
	July 1, 2012 to June 30, 2013	July 1, 2013 to June 30, 2014								
Appeal Upheld	0	0								
Appeal Denied	1	0								
Total Appeals	1	0								

Table 5 (July 2012-June 2013)

Category Of Sanction By Decision Maker under COSB  July 1, 2012 – June 30, 2013								
Sanction Type Description Count Final Decision By								
DO dismissed charges	2	Discipline Officer						
Exclusion	2	Discipline Officer						
Less Than Suspension or Expulsion	303	Dean						
Less Than Suspension or Expulsion	28	Discipline Officer						
Less Than Suspension or Expulsion	5	UAB						
Less Than Suspension or Expulsion	1	Unit Director						
Refuse Application up to 5 years	1	Dean						
Suspension or Expulsion	15	Discipline Officer						
Suspension or Expulsion	3	UAB						
UAB dismissed charge	1	UAB						

Table 6 (July 2013-June 2014)

Category Of Sanction By Decision Maker under COSB July 1, 2013 – June 30, 2014						
Sanction Type Description Count Final Decision By						
Exclusion	2	Discipline Officer				
Less Than Suspension or Expulsion	347	Dean				
Less Than Suspension or Expulsion	24	Discipline Officer				
Less Than Suspension or Expulsion	9	UAB				
Refuse Application up to 5 years	1	Dean				
Student Group Activity	1	Discipline Officer				
Suspension or Expulsion	5	Discipline Officer				
Suspension or Expulsion	3	UAB				
UAB Appeal in progress - undetermined	2	UAB				
UAB dismissed charge	1	UAB				

# Table 7 (July 2012 – June 2013)

Code of Student Behaviour Discipline Decisions								
July 1, 2012 to June 30, 2013	1							
Charge Description	1	2	3	4	5	GS N/A	N/A	N/A Applicant
Cheating	26	22	17	25	1	4	3	
Misrepresentation of Facts	5	4	1			-	1	1
Participation in an Offence	4	7	4	4			1	
Plagiarism	80	52	33	42	1	19	12	
Misuse of Confidential Materials				2			1	
Breach of Rules External to the Code	2							
Bribery				1				
Damage to Property	1	5	3	2			1	
Disruption		1					1	
Unauthorized Use of Facilities, Equipment, Materials, Services or Resources	3	1	2	2				
Violations of Safety or Dignity	3	6	4	2		2	1	

Year # refers to year of program of student when offense occurred.

GS NA refers to graduate student not applicable (i.e. no program year).

N/A students are students in Open Studies, Visiting Students, Previous Students and Special Students.

 $N/A\ applicant\ refers\ to\ students\ reapplying\ who\ have\ been\ charged\ with\ offense\ re\ application;\ do\ not\ have\ a\ year\ of\ program.$ 

A student can be charged with more than one offense, so charges and case numbers will differ.

# Table 8 (July 2013 - June 2014)

Code of Student Behaviour Discipline Decisions									
July 1, 2013 to June 30, 2014									
Charge Description	1	2	3	4	5	GS N/A	N/A	N/A Applicant	Student Groups
Cheating	42	34	49	15		12	9		
Hazing									2
Misrepresentation of Facts	8	1	2			1			
Participation in an Offence	10	3	6	2	1	1			
Plagiarism	88	38	39	32		24	18		
Misuse of Confidential Materials	1								
Damage to Property		1	1			1	7		
Disruption	2	1	3				1		
Identification		1		1					
Unauthorized Use of Facilities, Equipment, Materials, Services or Resources	1		1			2			
Violations of Safety or Dignity	2	3	6	1		3	2		

Year # refers to year of program of student when offense occurred.

GS NA refers to graduate student not applicable (i.e. no program year).

N/A students are students in Open Studies, Visiting Students, Previous Students and Special Students.

N/A applicant refers to students reapplying who have been charged with offense re application; do not have a year of program.

A student can be charged with more than one offense, so charges and case numbers will differ.

### Table 9 (July 2012 - June 2013)

# Code of Applicant Behaviour Discipline Decisions From July 1, 2012 to June 30, 2013

Charge Description	COAB Applicant
COAB Misrepresentation of Facts	4

# Table 10 (July 2013 - June 2014)

# Code of Applicant Behaviour Discipline Decisions From July 1, 2013 to June 30, 2014

Charge Description	COAB Applicant
COAB Misrepresentation of Facts	3

Table 11 (July 2012 - June 2013)

# Cases Reviewed by Deans, University of Alberta Protective Services, Unit Directors and Discipline Officers Under the Code of Student Behaviour July 1, 2012 to June 30, 2013

Decision Maker	Forwarded By	Count	
Dean	Not Applicable	304	
Discipline Officer	Unit Director	1	
	Dean	14	
	UAPS	32	
UAB		9	
Unit Director	Not Applicable	1	

In all cases where a sanction of suspension or expulsion has been recommended by a Dean the case goes to the Discipline Officer for review and adjudication.

#### Table 12 (July 2013 - June 2014)

# Cases Reviewed by Deans, University of Alberta Protective Services, Unit Directors and Discipline Officers Under the Code of Student Behaviour July 1, 2013 to June 30, 2014

Decision Maker	Forwarded By	Count
Dean	Not Applicable	347
Discipline Officer	Dean	8
	UAPS	24
UAB		15

In all cases where a sanction of suspension or expulsion has been recommended by a Dean the case goes to the Discipline Officer for review and adjudication.

### Table 13 (July 2012 - June 2013)

# Cases Reviewed Under the Code of Applicant Behaviour July 1, 2012 to June 30, 2013

Forwarded By	Count	
Not Applicable	1	
Not Applicable	4	
	Not Applicable	Not Applicable 1

## Table 14 (July 2013 - June 2014)

# Cases Reviewed Under the Code of Applicant Behaviour July 1, 2013 to June 30, 2014

Decision Maker	Forwarded By	Count
Registrar	Not Applicable	2
UAB		1

Table 15 (July 2012 – June 2013)

July 1, 2012 to June 30, 2013							
Decision Maker	DO dismissed charges	Exclusion	Less Than Suspension or Expulsion	Refuse Application up to 5 years	Suspension or Expulsion	UAB dismissed charge	
Agricultural, Life and Environmental Sciences			12		1		
Arts			94		1		
Augustana			26				
Business			13		1		
Dean (Registrar Delegate)				1			
Education			3		1		
Engineering			69				
Extension			9				
Faculte Saint-Jean			1		1		
Graduate Studies and Research			1		2		
Medicine and Dentistry			1				
Native Studies			1				
Not Applicable			1				
Nursing			3				
Pharmacy and Pharmaceutical Sciences			6		1		
Physical Education and Recreation			7		1		
Rehabilitation Medicine			1				
Science	1		102		6		
UAPS	2	2	35		4		
Unit Director		1	1				

Table 16 (July 2013 – June 2014)

Charge Count By Category Of Sanction And Decision Maker Under COSB  July 1, 2013 to June 30, 2014							
Decision Maker	Exclusion	Less Than Suspension or Expulsion	Refuse Application up to 5 years	Student Group Activity	Suspension or Expulsion	UAB Appeal in progress - undetermined	UAB dismissed charge
Agricultural, Life and Environmental Sciences		12					
Arts		125			4		
Augustana		10					
Business		22			1		
Education		6					
Engineering		109			1		
Extension		37					
Graduate Studies and Research		5			1		
Medicine and Dentistry		2					
Nursing		2					
Pharmacy and Pharmaceutical Sciences		1					
Physical Education and Recreation		3					
Rehabilitation Medicine		1					
Science		87	1		2		
UAPS	3	35		1		3	

Table 17 (July 2012 – June 2013)

Charge Count	By Category Of Sanction And Decision N July 1, 2012 – June 30, 2013	Maker Under COAB
Decision Maker	COAB - Refuse Application up to 5 years	Less Than Suspension or Expulsion
Graduate Studies and Research		
Registrar's Office	4	

# Table 18 (July 2013 – June 2014)

Charge Count By Category Of Sanction And Decision Maker Under COAB  July 1, 2013 to June 30, 2014				
Decision Maker	COAB - Refuse Application up to 5 years	UAB dismissed charge		
Dean (Registrar Delegate)		1		
Registrar's Office	2			

Table 19 (July 2012 – June 2013)

Case Count By Category Of Sanction And Decision Maker Under COSB  July 1, 2012 – June 30, 2013						
Decision Maker	DO dismissed charges	Exclusion		Refuse Application up to 5 years	Suspension or Expulsion	UAB dismissed charge
Agricultural, Life and Environmental Sciences			12		1	
Arts			91		1	
Augustana			25			
Business			13		1	
Dean (Registrar Delegate)				1		
Education			3		1	
Engineering			42			
Extension			9			
Faculte Saint-Jean			1		1	
Graduate Studies and Research			1		2	
Medicine and Dentistry			1			
Native Studies			1			_
Not Applicable			1			
Nursing			2			
Pharmacy and Pharmaceutical Sciences			2		1	
Physical Education and Recreation			7		1	
Rehabilitation Medicine			1			
Science	1		96		6	1
UAPS	1	1	28		3	
Unit Director		1	1			

Table 20 (July 2013 – June 2014)

Case Count By Category Of Sanction And Decision Maker under COSB  July 1, 2013 – June 30, 2014							
Decision Maker	Exclusion	Less Than Suspension or Expulsion	Refuse Application up to 5 years	Student Group Activity	Suspension or Expulsion	UAB Appeal in progress - undetermined	UAB dismissed charge
Agricultural, Life and Environmental Sciences		12					
Arts		114			3		_
Augustana		10					
Business		22			1		
Education		6					
Engineering		66			1		_
Extension		35					
Graduate Studies and Research		5			1		
Medicine and Dentistry		1					_
Nursing		2					
Pharmacy and Pharmaceutical Sciences		1					
Physical Education and Recreation		3					
Rehabilitation Medicine		1					
Science		79	1		2		
UAPS	2	23		1		2	

Table 21 (July 2012 – June 2013)

Case Count B	ly Category Of Sanction And Decision M July 1, 2012 – June 30, 2013	aker Under COAB
Decision Maker	COAB - Refuse Application up to 5 years	Less Than Suspension or Expulsion
Graduate Studies and Research		1
Registrar's Office	4	

# Table 22 (July 2013 – June 2014)

Case Count By Category Of Sanction And Decision Maker Under COAB  July 1, 2013 – June 30, 2014					
Decision Maker	COAB - Refuse Application up to 5 years UAB dismissed char				
Dean (Registrar Delegate)		1			
Registrar's Office	2				