

Appeals Policy (2.6)

Policy:	Appeals Policy	Effective Date:	Feb, 2022
Last Review Date:	Oct 19, 2023	Next Review Date:	Nov/26
Review Frequency:	Every 3 years (November) Gov & HR Committee	Related Supporting Documents:	Bylaws Council Charter

Purpose

As part of its legislated responsibilities, Council shall conduct reinstatement and appeal hearings as required. These include reinstatement request proceedings, appeal of a Registrar decision, appeal of a decision of the Discipline Committee and appeal from a decision of the Nursing Education Program Approval Committee (NEPAC) regarding nursing education program approval in Saskatchewan.

A. Reinstatement Request

1. Upon receipt of a request for reinstatement, an ad hoc committee consisting of the President-Elect, another member of Council designated by the President-Elect, and the Executive Director shall be struck to initiate a review and investigate.
 - 1.1. During a reinstatement hearing, Procedure 1.1 related to the Reinstatement and Appeal Hearings Section of this Policy shall be used (APPENDIX 1).
 - 1.2. In its deliberations, Council shall determine if the facts that gave rise to the decision to expel the Applicant no longer exist and if the Applicant can be readmitted to the profession. Council must also consider what conditions, if any, should be placed on the Applicant's readmission. If Council is not persuaded that reinstatement is appropriate, it shall refuse the application. If Council determines that further investigation is required, it shall conduct that investigation or arrange for it to be conducted and, once the results of the further investigation are known, Council shall assess whether or not the hearing should be reconvened to permit the Applicant to respond to any new information.

Appeal Hearings

2. Upon receipt of an appeal regarding **a decision of the Registrar**, Council shall conduct an Appeal hearing.
 - 2.1. Procedure 2.1 related to the Reinstatement and Appeal Hearings Section of this Policy: Appeal of a Registrar Decision shall be used (APPENDIX 2).
 - 2.2. In its deliberations, Council shall identify precisely what is in dispute. If the issue is one addressed by the Act or bylaws, the Act or bylaws shall govern. If not, Council shall determine whether the Registrar's decision is appropriate. If it is, Council shall

dismiss the appeal. If it is not, Council shall allow the appeal and provide necessary direction to the Registrar.

3. Upon receipt of an appeal regarding **a decision of the Discipline Committee**, Council shall conduct an Appeal hearing.
 - 3.1. Procedure 3.1 related to the Reinstatement and Appeal Hearings Section of this Policy: Appeal of a Decision of the Discipline Committee shall be used (APPENDIX 3).
 - 3.2. In its deliberations, Council shall identify what is in dispute. If the issue is one addressed by the Act or bylaws, the Act or bylaws shall govern. If not, Council shall determine whether the Discipline Committee's decision is appropriate. If it is, Council shall dismiss the appeal. If it is not, Council shall allow the appeal and provide necessary direction to the Registrar.

B. Appeal to Council from NEPAC

Policy guiding an appeal to council from a decision of the Nursing Education Program Approval Committee (NEPAC) regarding nursing education program approval in Saskatchewan.

- As per Section 19 of The Registered Nurses Act, 1988, Council delegates to the NEPAC its powers and duties regarding the approval or recognition of registered nursing education programs.
- That power has been delegated to the NEPAC on the term and condition that council retains the right to hear an appeal from a decision of the NEPAC. It is on that basis that this policy has been adopted by council.
- There is no right of appeal from the decision of council.
- Refer to the procedure outlined in APPENDIX 4 to be used upon receipt of an Appeal to Council from a Decision of the NEPAC

Review

Every three years by Gov & HR Committee

APPENDIX 1 – Procedure 1.1 REINSTATEMENT PROCEEDINGS [RN Act, 1988 Sec 38(1)(2)(3)(4)(5)]

Reinstatement

- 38 (1) A person who has been expelled as a nurse may apply to the council for reinstatement.
- (2) Subject to the bylaws, on receipt of an application pursuant to subsection (1), the council shall:
- (a) Review the application; and
 - (b) Investigate the application by taking any steps it considers necessary.
- (3) On the completion of its investigation, the council may:
- (a) where it is satisfied that the person's subsequent conduct and any other facts warrant reinstatement, order that the person be reinstated as a nurse on any terms and conditions that the council considers appropriate; or
 - (b) refuse to reinstate the person.
- (4) A decision of the majority of the members of the council is a decision of the council.
- (5) Where, on an application pursuant to subsection (1), the council refuses to reinstate the person as a nurse, the appellant may, within 30 days after the date of the order, appeal the order of council to a judge of the court and the judge may allow or disallow the appeal.

Introductions

1. Chair (President or designate) calls Council to order for the purpose of hearing the application of (name of Appellant) in respect of their application to be reinstated to the Association after having been expelled by a decision of the Discipline Committee made on (date) that (concise description of the reasons for the decision to expel).

2. Chair introduces themselves and invites other members of Council to introduce themselves.

After Council members are introduced, staff persons and advisors present to assist the Council should be introduced by the Chair and their role described as being to assist the Council in its meeting, although not in its deliberations.

The Chair explains that members of the Ad Hoc Committee consisting of the President-Elect, the Executive Director and designated Council members are not present.

3. The Appellant should be asked to introduce themselves and any persons accompanying them. The Chair should clarify who will be speaking on the Appellant's behalf.

Purpose

4. The Chair explains the purpose of the meeting in the context of the CRNS's responsibility:

- One of the primary responsibilities of the CRNS is to ensure the provision of safe nursing care for the people of Saskatchewan. One of the mechanisms by which this responsibility is fulfilled is through the process of discipline by which unprofessional conduct and incompetence are identified and addressed. From time to time, the sanction that results is expulsion. This has the effect of depriving an individual of their ability to work as a nurse in the province. Given the severity of this consequence, the *Registered Nurses Act* provides for reinstatement of individuals who are successful in making the necessary changes in their lives so that they may be permitted to work as nurses again. The CRNS Council has the responsibility under the Act to ensure reinstatement is appropriate and that necessary terms and conditions are put in place. This hearing is a part of the investigation that Council is required by the Act to undertake to make that determination pursuant to Section 38 of the Act. (*RN Act, 1988 Sec 38(1)(2)(3)(4)(5)*)

Due Process

5. The Chair explains that the meeting will be recorded, and the meeting is open to the public unless there is a compelling reason why it should not be. The Chair should invite representations to be made.
6. The Chair should then invite any questions or concerns in relation to the outline of the Council's intended procedure in respect of the hearing. If there are questions or concerns, they should be appropriately addressed before proceeding to deal with the substantive issues.
7. The Chair should then invite the Appellant to make any representations and call any witnesses that they wish to make.
8. The Chair should then invite the Registrar to respond.
9. The Appellant has the right to rebuttal.
10. At the conclusion of the presentations, the Chair should ask Council if they have any questions for clarification.
11. Once all questions are answered, the Chair thanks the Appellant for their presence and submissions and indicates Council will deliberate privately to reach its decision.

The Chair also asks the Appellant to remain available for two hours in case it is necessary to reconvene to clarify any of the evidence.

The Chair advises the Appellant that in the course of its deliberations Council may determine that further investigation is required, and Council will conduct that investigation before coming to its final decision.

Once determined, Council's decision will be communicated to the Appellant in writing within three (3) months.

12. Once the Council has heard all representations, The Chair then declares the hearing to be adjourned and the Council should retire from the room to deliberate.

Council may request that the hearing be reconvened if, after its preliminary deliberations, it determines that it requires clarification of any of the evidence or argument that was presented to it.

Council may also, at any time during the hearing, decide to meet in-camera to receive legal advice from its independent legal advisor.

As a part of its deliberations, Council may also find it necessary to undertake further or other investigation steps.

Council's decision will be communicated to the Appellant in writing within three (3) months.

APPENDIX 2 – Procedure 2.1 APPEAL OF A REGISTRAR DECISION (*RN Act, 1988* Section 21(3)(b); 4(a)(b); 5

Delegation and appeal

21(1) The council may delegate to the registrar the power to:

- (a) admit persons as members;
- (b) register persons as nurses;
- (c) grant licences to nurses;
- (c.1) place conditions or restrictions on licences; or
- (d) all or any combination of the things mentioned in clauses (a) to (c.1);

and, when a power has been delegated, the exercise of that power by the registrar is deemed to be an exercise by the council.

(2) The council may impose any terms and conditions that it considers appropriate on a delegation pursuant to subsection (1).

(3) Where:

- (b) a person is aggrieved by a decision of the registrar made in accordance with a delegated power;

The person may appeal to the council from the decision of the registrar.

(4) On an appeal pursuant to subsection (3), the council shall hear the appeal and may:

- (a) grant the appeal and direct the registrar to exercise the power in a manner that the council considers appropriate; or
- (b) dismiss the appeal.

(5) The council shall cause the appellant to be informed in writing of its decision.

Introductions

1. Chair calls Council to order for the purpose of hearing the appeal of (name of Appellant) in respect of their appeal from a decision of the Registrar made on (date) that (concise description of the nature of the Registrar's decision that is being appealed).

2. Chair introduces themselves and invites other members of Council to introduce themselves.

The Executive Director introduces themselves as a non-voting member of Council.

After Council members are introduced, staff persons and advisors present to assist the Council should be introduced by the Chair and their role described as being to assist the Council in its meeting, although not in its deliberations.

3. The Appellant is asked to introduce themselves and any persons accompanying them. The Chair clarifies who will be speaking on the Appellant's behalf.

Purpose

4. The Chair explains the purpose of the meeting and the procedure in the context of the CRNS's responsibility:
 - Purpose: One of the primary responsibilities of the CRNS is to ensure the provision of safe nursing care for the people of Saskatchewan. One of the mechanisms by which this responsibility is fulfilled is the registration and licensure of nurses, thus ensuring that anyone who is permitted to work as a nurse in Saskatchewan has met the necessary criteria for eligibility and competence. Council delegates this function to the Registrar, as permitted by the *Registered Nurses Act* and Bylaws. The Registrar is required to comply with the Act, the Bylaws, and the policies of the Association in exercising this delegated power. Any person who is aggrieved by a decision of the Registrar has a right to appeal to Council to review that decision. This right is pursuant to Section 21(1)(2)(3)(4)(5) of the *Registered Nurses Act, 1988*.

The particular decision that we are concerned with today is a decision made by the Registrar on (date) with respect to ... (describe nature of decision, e.g., Denying registration to the Appellant for the reason that ...). Registrar provides synopsis of events.

Due Process

5. The Chair explains that the meeting is open to the public and will be recorded unless there is a compelling reason why it should not be. The Chair should then invite any representations to be made in respect of the open meeting.

The Appellant or their representative will be asked to present their argument as to why Council should intervene and alter the Registrar's decision.

6. The Appellant will be provided with a full opportunity to present any facts and arguments, including the calling of witnesses that they consider necessary.

The Registrar will be asked to provide any necessary clarification related to the applicable criteria or the Registrar's reasons for their decision.

The Appellant will have an opportunity to respond.

7. The Chair should then invite any questions or concerns in relation to the outline of the Council's intended procedure in respect of the hearing and if there are any, they should be appropriately addressed before proceeding to deal with the substantive issues.

8. The Chair should then invite the Appellant to make any representations that they wish to make.

9. The Chair should then invite the Registrar to respond.
10. After the Registrar responds, the Appellant has a right to rebuttal.
11. At the conclusion of the presentations, the Chair asks Council if they have any questions for clarification.
12. Once all questions are answered, the Chair should thank the Appellant for their presence and submissions and remind them that Council will deliberate privately to reach its decision.

The Chair asks the Appellant to remain available for two hours in case it is necessary to reconvene to clarify any of the evidence.

The Chair advises that the decision will be communicated to the Appellant in writing within three (3) months.

13. The Chair then declares the hearing to be adjourned and the Council should retire from the room to deliberate. and reach a decision in relation to the appeal.

Council may request that the hearing be reconvened if, after its preliminary deliberations, it determines that it requires clarification of any of the evidence or argument that was presented to it.

Council may also, at any time during the hearing, decide to meet in camera to receive legal advice from its independent legal advisor.

Council's decision, accompanied by reasons, will be communicated to the Appellant in writing within three (3) months.

APPENDIX 3 – Procedure 3.1 APPEAL OF A DECISION OF THE DISCIPLINE COMMITTEE (RN Act, 1988 Section 34)

Appeal

34(1) A nurse who has been found guilty by the discipline committee or who has been expelled pursuant to section 33 may appeal the decision or any order of the discipline committee within 30 days of the decision or order to:

- (a) The council by serving the executive director with a copy of the notice of appeal; or
 - (b) a judge of the court by serving the executive director with a copy of the notice of appeal and filing it with a local registrar of the court.
- (2) An appellant shall set out the grounds of appeal in a notice of appeal mentioned in subsection (1).
- (3) On receipt of an appeal, the executive director shall file with the council or local registrar, as the case may be, a true copy of:
- (a) the notice of hearing;
 - (b) the transcript of the evidence presented to the discipline committee; and
 - (c) the decision and order of the discipline committee.
- (4) The appellant or the appellant's solicitor or agent may obtain from the executive director a copy of any of the documents filed pursuant to subsection (3) on payment of the costs to the association of producing them.
- (5) In hearing an appeal, the council or the judge, as the case may be, shall:
- (a) dismiss the appeal;
 - (b) quash the finding of guilty;
 - (c) direct a new hearing or further inquiries by the discipline committee;
 - (d) vary the order of the discipline committee; or
 - (e) substitute its own decision for the decision of the discipline committee;
- and may make any order as to costs that it or he considers appropriate.
- (6) A decision of the majority of the council pursuant to subsection (5) is a decision of the council.

Introduction

1. Chair calls Council to order for the purpose of hearing the appeal of (name of Appellant) in respect of their appeal from a decision of the Discipline Committee.

The Chair acknowledges receipt of the Notice of Appeal from a Decision of the Discipline Committee of the Appellant, the notice of hearing, the transcript of the evidence presented to the Discipline Committee and the decision and order of the Discipline Committee of (date) for (name of Appellant) pursuant to Section 34(3) of the *Registered Nurses Act, 1988*. (*RN Act, 1988 Sec. 34(3)(a)(b)(c)*)

2. Chair introduces themselves and invites other members of Council to introduce themselves.

The Executive Director should introduce themselves as a non-voting member of Council.

After Council members are introduced, staff persons and advisors present to assist Council should be introduced by the Chair and their role described as being to assist Council in its meeting, although not in its deliberations.

3. The Appellant is asked to introduce themselves and any persons accompanying them. The Chair should clarify who will be speaking on the Appellant's behalf.

Purpose

4. The Chair explains the purpose of the meeting and the procedure in the context of the CRNS's responsibility:
 - Purpose: One of the primary responsibilities of the CRNS is to ensure the provision of safe nursing care for the people of Saskatchewan. One of the mechanisms by which this responsibility is fulfilled is through the process of discipline by which unprofessional conduct and incompetence are identified and addressed. Council delegates this function to the Discipline Committee, as permitted by the *Registered Nurses Act* and Bylaws. The Discipline Committee is required to comply with the Act, the Bylaws, and the policies of the Association in exercising this delegated power. Any person who is aggrieved by a decision of the Discipline Committee has a right to appeal to Council to review that decision. This right is pursuant to Section 34 of the *Registered Nurses Act, 1988*.

The particular decision that we are concerned with today is a decision made by the Discipline Committee on (date) with respect to ... (describe nature of decision, e.g. incompetence (Section 25), unbecoming conduct (Section 26) or expulsion (Section 33) of (name of Appellant) ...).

Due Process

5. The Chair explains that the meeting will be recorded and is an open meeting unless there is a compelling reason why it should not be. The Chair should then invite any representations in respect of the open meeting.
6. The Appellant will be provided with a full opportunity to present any facts and arguments as to why Council should intervene and alter the decision of the Discipline Committee, including the calling of witnesses, that they consider necessary.
7. The Chair should then invite any questions or concerns in relation to the outline of the Council's intended procedure in respect of the hearing and if there are any, they should be appropriately addressed before proceeding to deal with the substantive issues.
8. The Chair should invite the Appellant to make any representations that they wish to make.
9. The Chair should invite the Registrar to respond as the Respondent.

10. The Appellant has the right to rebuttal.
11. At the conclusion of the presentations, the Chair should ask Council if they have any questions for clarification.
12. Once all questions are answered, the Chair should thank the Appellant for their presence and submissions and remind them that Council will deliberate privately to reach its decision.

The Chair should also ask the Appellant to remain available for two hours in case it is necessary to reconvene to clarify any of the evidence.

The Chair should also advise that the decision will be communicated to the Appellant in writing within three (3) months.

13. The Chair then declares the hearing to be adjourned and the Council should retire from the room to deliberate. and reach a decision in relation to the appeal.

Council may request that the hearing be reconvened if, after its preliminary deliberations, it determines that it requires clarification of any of the evidence or argument that was presented to it.

Council may also, at any time during the hearing, decide to meet in-camera to receive legal advice from its independent legal advisor.

Council's decision, accompanied by reasons, will be communicated to the Appellant in writing within three (3) months.

APPENDIX 4 - Procedure to be Used on an Appeal to Council from a Decision of the NEPAC

(i) Pre-Appeal Hearing Procedures

Within 30 calendar days of having received the NEPAC decision, the nursing education program who disagrees with the decision shall file a Notice of Appeal. The appellant nursing education program shall set out the grounds of appeal in a Notice of Appeal.

The NEPAC must provide Council its written decision regarding a program approval decision under appeal. The document must outline the evidence regarding the particular nursing education program and any deficiencies that have motivated the NEPAC to either deny approval or limit approval to a specific number of years or to make it conditional or to add other terms and conditions.

On receipt of a Notice of Appeal, the CRNS Staff Liaison will file with the Chair of Council (President or designate) a copy of the Notice of Hearing, a compendium of the evidence presented to/compiled by the NEPAC and the decision or order of the NEPAC.

The appellant nursing education program or its solicitor or agent may obtain from Council a copy of any of the documents filed with Council on payment of the costs to the association of producing them.

Council may decide to delegate to a committee of Council its powers and duties to hear the appeal and make a decision. Council retains the option to hear the appeal itself rather than delegate responsibility to a committee of Council. Council has the right to make that decision on a case-by-case basis, depending on the complexity of the appeal.

Council or the Council committee retains the right to retain the service of a nursing education program approval expert to assist it with an appeal.

Council may call the parties at a pre-appeal hearing to define the scope of the appeal and set any procedure or process that would help advance the appeal more efficiently. At a pre-appeal hearing, Council or a committee of Council will set the date, time, and place for the appeal.

The date, time and place of the appeal will be published on the CRNS website.

(ii) Procedure at the Appeal Hearing

(a) Introductions

The Chair calls Council or the committee of Council to order for the purpose of hearing the appeal from a decision of the NEPAC in respect of the nursing program.

The Chair acknowledges receipt of the Notice of Appeal from a decision of the NEPAC, the compendium of evidence and exhibits presented to the NEPAC and the decision and order of the NEPAC.

The Chair introduces themselves and invites the other Members of Council or the committee to introduce themselves. The Executive Director should introduce themselves as a non-voting member of Council. After Council Members are introduced, staff persons and advisors present to assist with the appeal should be introduced by the Chair and their role described as being to assist the council in its appeal meeting although not in its decision making. This should include introduction of the court reporter and any CRNS support staff.

The appellant is asked to introduce themselves and any persons accompanying them.

The respondent at the appeal will be the NEPAC as represented by legal counsel for the CRNS. The role of the NEPAC as respondent on the appeal will simply be to provide facts and answer any questions that may arise. The role of legal counsel for the NEPAC will not be to defend the decision of the NEPAC or to present arguments to maintain the decision.

(b) Purpose of the Appeal Hearing

The Chair explains that the purpose of the meeting is to hear the appeal from the decision of the NEPAC.

The Chair explains the general responsibility of the CRNS as follows:

One of the primary responsibilities of the CRNS is to ensure the provision of safe nursing care for the people of Saskatchewan. One of the mechanisms by which this responsibility is fulfilled is through the process of approving registered nursing education programs. *The Registered Nurses Act, 1988* gives this function to Council who delegated it to the NEPAC. However, Council has retained a right of appeal from any decision from the NEPAC. The Council is required to comply with the Act, the Bylaws and the policies of the association in exercising its statutory power. Any person who has been aggrieved by a decision of the NEPAC has a right of appeal to Council within 30 days of that decision. This right of appeal exists pursuant to this council policy.

The decision from the NEPAC that we are concerned with today is a decision made by the NEPAC on _____ date with respect to _____ nursing education program.

(c) Commencement of Appeal Hearing

The Chair will read the following procedure to the participants:

- The appeal hearing will be recorded and is an open meeting unless there is a compelling reason why a portion of it should not be.
- The Chair should inquire if there is any privacy concern with respect to the appeal meeting being open to the public.
- The appellant will be provided with a full opportunity to present all arguments as to why Council should alter the decision of the NEPAC.

- If the appellant asks to present fresh evidence on appeal, it must meet the same test as required in an appellate court.
- Council may at any time during the appeal hearing meet in-camera to receive legal advice from its independent legal advisor.
- The Chair should then invite the parties to raise any concerns in relation to Council's proposed appeal procedure and, if there are any, they should be appropriately addressed before proceeding to deal with substantive appeal issues.
- The Chair should invite the appellant to make the representations they wish to make in support of the appeal.
- The Chair may invite legal counsel for the CRNS appearing for the respondent the NEPAC to respond to any questions that council may have.
- The appellant has the right to present a final reply argument if necessary.
- At the conclusion of the presentations, the Chair should ask Members of Council if they have any questions of clarification from either party.

Once all questions are answered, the Chair should thank the appellant for their presence and submissions as well as legal counsel for the respondent, the NEPAC and remind them Council will deliberate privately to reach its decision.

The Chair then declares the appeal hearing closed and Council retires from the room to deliberate.

Council must communicate a reasoned decision. Council's written appeal decision including reasons will be communicated to the appellant to the extent possible within three months of the appeal hearing.

There is no right of appeal from the decision of Council.