

## RECONSIDERATION, REVIEWS AND APPEALS POLICY

### Approval and Commencement

This policy:

- a. has been approved by the Remote Vocational Training Scheme (RVTS) Board of Directors on the recommendation of the Chief Executive Officer (CEO)
- b. commences operation on the 13<sup>th</sup> day of April 2017
- c. is in addition to the *RVTS Complaints Policy*

### Purpose

The purpose of this policy is to provide an internal process for the reassessment of certain decisions made by the Remote Vocational Training Scheme (RVTS) and RVTS Body.

### Scope

This policy applies to any person:

- (a) whose interests are directly and adversely affected by an original decision (as detailed in clause 1 of this policy) that is inconsistent with an approved regulation or policy, and
- (b) who is dissatisfied with that original decision.

This person may, within the specified timeframe, apply to the Chief Executive Officer (CEO) of RVTS to have the original decision Reconsidered (clause 1), Reviewed (clause 2) and/or considered at a hearing of the Appeals committee (clause 3) where there is demonstrable evidence of one or more grounds of Appeal. The onus of establishing the relevant grounds of Appeal lies with the applicant.

- (c) Applications submitted under this policy will not be accepted where the applicant is seeking an exemption from an approved policy or regulation.

This policy operates in conjunction with the following policies (as might be amended from time to time), namely the:

- Performance and Progression Policy
- Withdrawal from Training Policy
- Registrar in Difficulty Policy
- Registrar Management System (RMS)
- RVTS Handbook
- RACGP Vocational Training Standards
- RACGP Vocational Training Pathway Examination Eligibility Policy
- RACGP Fellowship Exams Candidate Handbook
- <http://www.acrrm.org.au/training-towards-fellowship/overview-of-training-with-the-RVTS/policy>
- ACRRM Fellowship Assessment Handbook
- RVTS Applicant Guides

## DEFINITIONS

<b>Applicant</b>	a person who has made an application for Reconsideration, Review or Appeal
<b>Board</b>	the Board of Directors of the RVTS
<b>Chief Executive Officer / CEO</b>	the Chief Executive Officer of the RVTS
<b>Original decision</b>	means the decision of the RVTS entity which gave rise to the processes described in this policy.
<b>Original Decision-maker or Decision-making body</b>	means the RVTS entity that made the original decision
<b>RVTS</b>	The Remote Vocational Training Scheme (ACN 122 891 838), an incorporated body limited by guarantee
<b>RVTS Body</b>	means: <ul style="list-style-type: none"> <li>• Director of Training (DoT) / or Medical Educator (ME) group;</li> <li>• the Registrar Training Coordinator (RTC);</li> <li>• RVTS Board;</li> <li>• RVTS Committee, sub-committee, working group, expert advisory group or other sub-group formed under the auspices of RVTS</li> </ul>
<b>Reconsideration Body</b>	the RVTS Body which undertakes a Reconsideration of the original decision in accordance with clause 1
<b>Reconsideration Decision</b>	a Decision of an RVTS Body made about an application for Reconsideration made in accordance with clause 1
<b>Review Panel</b>	the RVTS Body which undertakes a Review in accordance with clause 2
<b>Review Decision</b>	a Decision of a RVTS Body made on an application for Review made in accordance with clause 2
<b>Appeal Decision</b>	means the decision of the Appeals Committee on Appeal of a Review or Reconsideration decision or original decision in accordance with clause 3
<b>Support person</b>	A support person supports a registrar and does not act as a spokesperson or advocate for the registrar

## **Appealable Decisions**

The following original decisions of the RVTS may be appealed:

- (a) ongoing assessment, supervision and progress of RVTS registrars, selection, withdrawal or recognition of training or prior learning (excluding the outcome or results of the assessment of either RACGP or ACRRM written or clinical examinations);
- (b) applications for special consideration in relation to the RVTS's training program and its processes;
- (c) requirements for remediation under the Registrar in Difficulty Policy;
- (d) accreditation of training sites, teaching centres or supervisors;
- (e) other decisions of the RVTS or its Board that may from time to time be permitted or determined as a Decision for the purposes of this policy.

## **Grounds for Appeal**

There must be demonstrable evidence of one or more of the following grounds of Appeal:

- (a) that an error in due process or due process occurred in the formulation of the original decision;
- (b) that the relevant approved regulation or policy was not correctly applied;
- (c) that procedures required by approved RVTS policies or regulations to be observed in connection with the making of the original decision were not observed;
- (d) that relevant and significant information, whether available at the time of the original decision or which became available subsequently, was not considered or not properly considered in the making of the original decision;
- (e) that irrelevant information was considered by the original decision-maker in the making of the original decision;
- (f) that the original decision was made in accordance with a rule or policy without regard to the merits of the particular case;
- (g) that the original decision was clearly inconsistent with the evidence and arguments put before the body making the original decision;
- (h) that the original decision was made for a purpose other than a purpose for which the power was conferred, or by a body that was not empowered to make the decision.

## Acceptance of applications

The CEO of the RVTS

- (a) reserves the right not to accept an application for Reconsideration, Review or Appeal where the applicant is unable to produce any reasonable or relevant evidence in support of the stated grounds for Appeal.
- (b) On receipt of an application for Reconsideration, Review or Appeal as described below, the CEO shall not initiate the Reconsideration or Review processes, or convene and Appeals Committee, until he or she is satisfied that the relevant application establishes prima facie grounds for Appeal.

If the CEO is satisfied that a prima facie case does not exist, the applicant will be advised in writing, stating the reasons for not accepting the application. An applicant has 20 business days to provide a final submission addressing the deficiencies notified by the CEO. If in the opinion of the CEO a prima facie case is still not established, the right to Reconsideration/Review/Appeal in accordance with this policy will be denied.

The CEO has the discretion to allow the process to commence at the 'Review' stage or to proceed directly to the Appeals committee where he or she is satisfied that there are exceptional circumstances which make it justifiable and appropriate to do so.

The CEO may delegate his/her powers and duties set out in this policy as he/she determines.

## Policy statements

The three stages of RVTS's internal process for the reassessment of specified decisions are:

- (a) Reconsideration – by the same RVTS Body that made the Decision;
- (b) Review – by nominees of the RVTS Board or CEO that oversees the RVTS Body which made the original decision; and
- (c) Appeal – to an Appeals Committee appointed by the RVTS Board.

Each of these stages involves a Review 'on its merits'. This means that the relevant decision maker is required to reassess all of the facts and circumstances relating to the decision, including any additional material provided by the Applicant or otherwise obtained by the decision maker and make a new decision or further substantiate the original decision.

### 1. Reconsideration

1.1 A person:

- (a) whose interests are directly and adversely affected by a Decision; and
- (b) who is dissatisfied with the Decision

may apply for Reconsideration of the Decision in accordance with this clause.

Note: An Applicant must follow the 3-stage process as outlined above.

- 1.2 An application for Reconsideration must:
- (a) be lodged with the CEO
  - (b) specify the particular original decision that is being contested, including a brief outline of the matter in issue;
  - (c) provide documented and verifiable evidence in support of the ground(s) specified by the applicant; and
  - (d) be received by RVTS within 28 days of the Applicant being advised of the original Decision; and
- 1.3 Where an original decision is referred back to the original decision-maker by the CEO for Reconsideration, the original decision-maker and the RVTS Body must take into account:
- (a) any information, documents and materials provided to it in relation to the original Decision;
  - (b) the application for Reconsideration and any submissions or other additional documents provided by the Applicant with the application for Reconsideration; and
  - (c) any other information obtained by the RVTS Body which is relevant to the application for Reconsideration.
- 1.4 The RVTS Body undertaking a Reconsideration of a Decision may exercise all of the powers and discretions it was able to exercise when it made the original Decision.
- 1.5 If the RVTS Body intends to take into account information which has not been provided to the Applicant, unless the rules of procedural fairness do not require it, the information will be provided to the Applicant and the Applicant will be allowed a reasonable time to respond to that information before the RVTS Body makes a decision on the Reconsideration application.
- 1.6 Reconsideration of a Decision is conducted on the basis of the materials referred to above. An Applicant does not have a right to attend any meeting of the RVTS Body or to make oral submissions to the RVTS Body undertaking the Reconsideration.
- 1.7 The RVTS Body undertaking the Reconsideration of a Decision must not take into account evidence of further training and experience by the Applicant obtained during the period between the making of a Decision and the Reconsideration of that Decision.
- 1.8 The original decision-maker may make any one of the following reconsideration decisions:
- affirm its original decision
  - vary its original decision, or
  - set its original decision aside and make a new decision.

1.9 The RVTS aims to complete the relevant Reconsideration process as soon as practicable but within 6 weeks of acceptance of an application by the CEO. Minutes of the original decision-maker's reconsideration deliberations must be kept in accordance with the ordinary practices of that entity. The CEO will notify the applicant in writing of the Reconsideration decision as soon as practicable. Such notification should include the reasons for the Reconsideration decision and advice about the opportunity for Review, should the applicant remain dissatisfied with the original decision and Reconsideration decision.

1.10 On receipt of notification from the CEO of the Reconsideration decision, the applicant may:

- accept the original decision and the result of the Reconsideration; the reconsideration process is terminated and the matter closed; or
- within two (2) weeks, submit an application in writing that the CEO convene a hearing of a Review panel.

If no application is received from the applicant within two (2) weeks, they will be deemed to have accepted the Reconsideration decision.

1.11 Only one application for Reconsideration can made in respect of a Decision.

## **2. Review**

The activation of the Stage 2 Review process will only occur if one or more of the following events occur.

- New evidence supporting the case of the applicant is provided; and/or
- The applicant can provide evidence of a breach of RVTS policy in the processing of the initial complaint.

CEO will assess if there is sufficient evidence provided to substantiate the activation of the Stage 2 Review process. If not, the CEO/Board will advise the applicant of this fact and confirm:

- RVTS has addressed the issue at hand with due procedural fairness;
- All avenues open to the applicant have been exhausted; and
- No further communication will be entered into on this matter.

2.1 A person:

- (a) whose interests are directly and adversely affected by a Decision; and
- (b) who is dissatisfied with the Decision.

may apply for Review of the Decision in accordance with Section 2 of this Policy without first requesting Reconsideration.

2.2 A person:

- (a) whose interests are directly affected by a Reconsideration Decision; and
- (b) who is dissatisfied with the Reconsideration Decision, may apply for Review of the Reconsideration Decision in accordance with Section 2 of this Policy

A Review may only be sought in relation to the ground(s) of Appeal considered in the original application for Reconsideration. New or additional grounds may not be raised at this stage.

2.3 The request for Review must:

- (a) be addressed to the CEO and received within two (2) weeks of the date the notice of the Reconsideration decision was received by the applicant;
- (b) Include a properly constituted request for Review of a Reconsideration decision; and
- (c) provide documented and verifiable evidence in support of the ground(s) specified by the applicant.

2.4 Special circumstances where a review may be initiated

Where the CEO has exercised his or her discretion for a matter to proceed directly by way of Review (rather than by Reconsideration), the application for Review must:

- (a) include all the information and documentation required for the Reconsideration of an original decision, and
- (b) be received by the CEO at the RVTS office within the same timeframe as that applicable to an application for Reconsideration as soon as practicable but within 6 weeks of the date the original decision was made.

2.5 The CEO shall convene a Review panel, which shall comprise three people chosen by the CEO from a list of nominees of the Board or from a RVTS Body that oversees the original decision-maker.

2.6 The Review Panel must not include a member who participated in either the Decision or the Reconsideration Decision or otherwise has a conflict of interest.

2.7 The CEO may determine that an application for Review should proceed directly to an Appeal if:

- (a) it is not possible to convene a Review Panel that complies with this policy; or
- (b) the CEO is otherwise satisfied that there are exceptional circumstances which justify the matter proceeding by way of Appeal.

2.8 The Review Panel may:

- (a) exercise all of the powers and discretions of the RVTS Body that made the Decision.
- (b) refer the matter to the RVTS Body that made the Decision or Reconsideration Decision for further consideration in accordance with any directions or recommendation of the Review Panel.

- 2.9 The Review panel shall make an initial assessment of the application to determine if there are grounds for a formal review to proceed. If there is no new evidence to support a Review, the Review Panel Chair shall advise the CEO or their delegate that the Review shall not proceed in accordance with Clause 2.3 (c). If new evidence is available, the Review Panel Chair shall advise the CEO or their delegate that the Review shall proceed
- 2.10 The Review Panel may not make a Review Decision which could not have been made by the RVTS Body which made the original decision. It may however, refer the matter back to this body, as set out in 2.7(b).
- 2.11 In determining an application for Review, the Review Panel must have regard for:
- (a) any information, documents and materials provided to the RVTS Body which made the Decision and the Reconsideration Decision;
  - (b) the application for Review may include submissions or other additional documents provided by the Applicant with the application for Review; and
  - (c) any other information obtained by the RVTS Body which is relevant to the application for Review.
- 2.12 If the Review Panel intends to take into account information which has not been provided to the Applicant, unless the rules of procedural fairness do require it, the information will be provided to the Applicant and the Applicant will be allowed a reasonable time to respond to that information before the Reviewing Body makes a decision on the application for Review.
- 2.13 The Review Panel shall consider, and conduct the Review on the basis of:
- (a) all the original material and documentation considered by the original decision-maker
  - (b) all additional material and documentation supplied by the applicant for the purposes of the Review (if any)
  - (c) any additional material and documentation considered relevant by the chair of the Review panel
  - (d) whether the principles of procedural fairness were followed when the original decision was made and (if relevant) when it was reconsidered, and
  - (e) any RVTS regulations, policies and procedures relevant to the decision.
- 2.14 Where applicable, the Review panel must not take into account evidence of further training, supervised practice or experience the applicant obtained during the period between the making of the original decision and the Review of that decision.
- 2.15 The applicant does not have the right to attend any meetings of the Review panel or to make any oral submissions to it, either personally or through any other party.
- 2.16 The Review panel may exercise all of the powers and discretions that the original decision-maker was able to exercise, and is not subject to the rules of evidence.



- 2.17 The Review panel may make any one of the following Review decisions:
- affirm the original decision or Reconsideration decision
  - vary the original decision or the Reconsideration decision
  - set aside the original decision or Reconsideration decision and refer the matter to the original decision-maker for further consideration in accordance with any directions or recommendations it may make, or
  - set aside the original decision or Reconsideration decision and make any further decision it thinks appropriate.
- 2.18 Minutes of the hearing of the Review panel shall be confined to a list of all persons present, a report listing the documentation presented and a report of the Review decision to the original decision-maker.
- 2.19 The Review panel must notify the CEO in writing of the decision, including reasons for the decision.
- 2.20 The RVTS aims to complete the Review process as soon as practicable but within 6 weeks of receipt of an application received pursuant to clauses 2.2 and 2.3 of this policy.
- 2.21 The CEO will notify the applicant and the original decision-maker in writing of the Review decision as soon as practicable. Such notification should include reasons for the Review decision.
- 2.22 The applicant should also be advised of the opportunity to apply to formally Appeal the original decision, should he or she remain dissatisfied with the original decision following the Reconsideration and Review processes.
- 2.23 On receipt of notification from the CEO of the Review decision, the applicant may:
- accept the original decision and the result of the Reconsideration; the reconsideration process is terminated and the matter closed; or
  - within two (2) weeks, notify the CEO in writing that the applicant intends to submit an application to convene a hearing of an Appeals committee.
- If no correspondence is received from the applicant within two (2) weeks, they will be deemed to have accepted the Review decision.
- 2.24 Only one application for Review can made in respect of each Decision or Reconsideration Decision.

### **3. Appeal**

The activation of the Stage 3 Appeal process will only occur if one or more of the following events occur.

- New evidence supporting the case of the applicant is provided; and/or
- The applicant can provide evidence of a breach of RVTS policy in the processing of the initial complaint.

CEO will assess if there is sufficient evidence provided to substantiate the activation of the Stage 3 Appeals process. If not, the CEO/Board will advise the applicant of this fact and confirm:

- RVTS has addressed the issue at hand with due procedural fairness;
- All avenues open to the applicant have been exhausted; and
- No further communication will be entered into on this matter.

3.1 A person:

- (a) whose interests are directly and adversely affected by a Decision; and
- (b) who is dissatisfied with a Decision, Reconsideration or Review of a Decision may apply to Appeal the Decision under Section 3 of this Policy

3.2 The request for Appeal must:

- (a) be addressed to the CEO and received within two (2) weeks of the date the notice of the Review decision was received by the applicant;
- (b) include payment of the prescribed fee (if any). The RVTS may require that the Applicant pay an application fee before an Appeals Committee is convened the amount of which is determined by the Board from time to time The RVTS must refund any application fee paid by the Applicant where the Applicant's appeal is successful. Regardless of the outcome of the appeal, the applicant shall meet all the costs which he or she incurs, including but not limited to travel and accommodation
- (c) Include a properly constituted request for Appeal of a Review decision; and
- (d) provide documented and verifiable evidence in support of the ground(s) specified by the applicant.

3.3 Special circumstances where the appeal may be initiated

Where the CEO has exercised his or her discretion for a matter to proceed directly by way of Appeal (rather than by Review or Reconsideration), the application for Appeal must:

- (a) include all the information and documentation required for the Review and Reconsideration of an original decision, and
- (b) be received by the CEO at the RVTS office within the same timeframe as that applicable to an application for Reconsideration as soon as practicable but within 6 weeks of the date the original decision was made.

3.4 The Appeals committee is an ad hoc committee of the Board, convened by the CEO as required to hear Appeals in accordance with the terms of this policy.

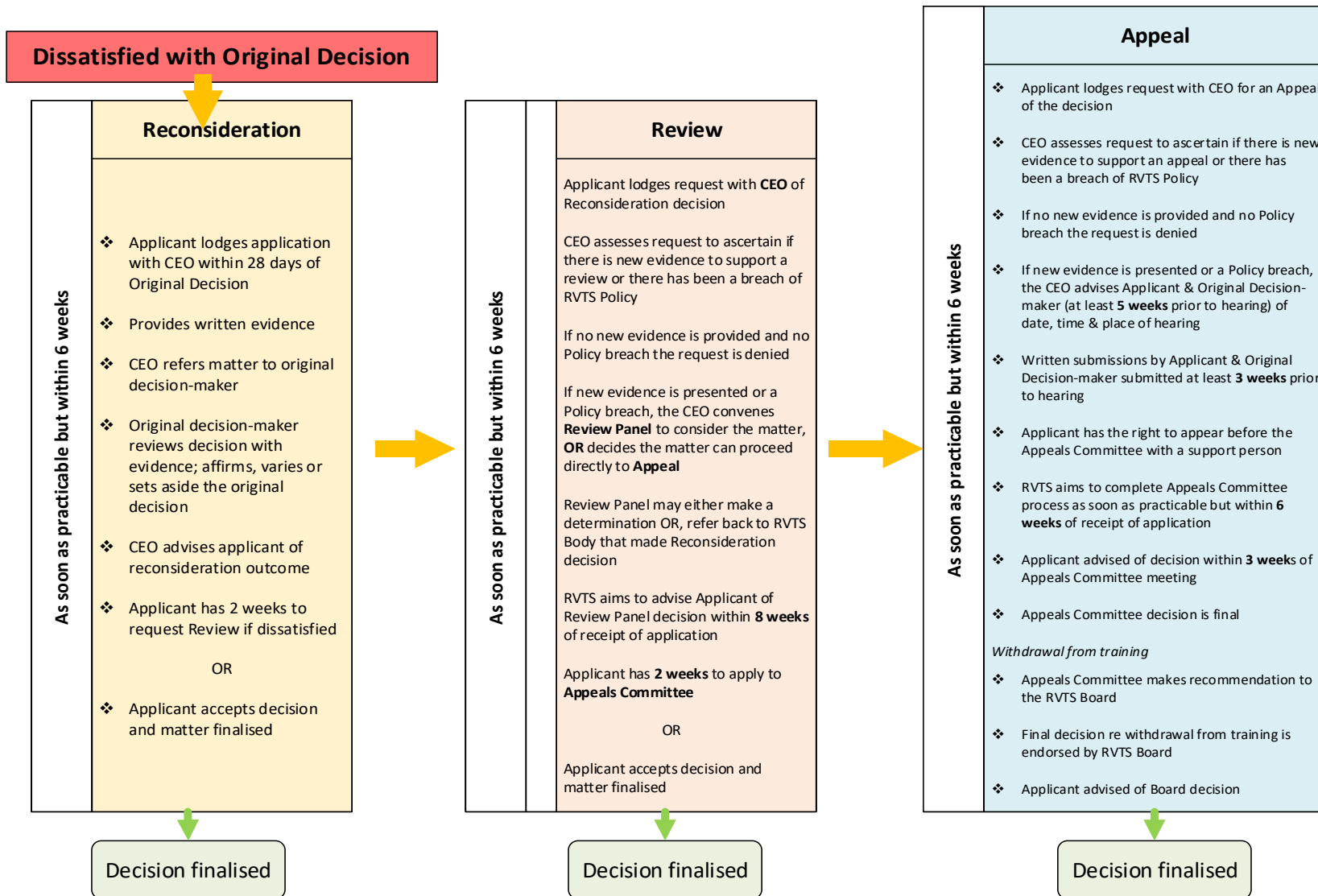
- 3.5 An Appeals Committee shall consist of:
- (a) the Chair of the RVTS Board (as chair of the Appeals Committee) or a Board Member appointed by the Board to chair the Appeals Committee;
  - (b) an RVTS Supervisor;
  - (c) a member of the legal profession; and
  - (d) an independent person (who has no material interest in the Appeal).
- 3.6 The CEO may determine to expand the membership of the Appeals Committee to include additional members, as the circumstances of the Appeal may warrant.
- 3.7 The CEO or his/her delegate shall be the Secretary of the Appeals Committee, but not a member of the committee.
- 3.8 Except for the Chair, members of the Appeals Committee shall be selected by the CEO, the Chair of the RVTS Board, or their delegate.
- 3.9 The Appeals Committee must not include a member who participated in the Decision, the Reconsideration Decision, and the Review Decision or who otherwise has a conflict of interest.
- 3.10 All members shall be entitled to vote on decisions, with decisions of the Committee being decided by a simple majority of those members' present. In the event that the number of votes is tied, the Chair may exercise a casting vote.
- 3.11 The Chair of the Appeals Committee may request that a representative of the original decision-maker attend and address the Appeals committee on matters relevant to the Appeal. The representative will be given opportunity to comment on submissions of the applicant and the original decision-maker.
- 3.12 At least five (5) weeks prior to a hearing of the Appeals committee, the CEO will notify the applicant and the original decision-maker in writing of:
- (a) the date, time and place of the hearing
  - (b) the right of the applicant to appear before the Appeals committee
  - (c) the right of the applicant to have a support person present
  - (d) the right of the applicant to submit a request that they be accompanied by a legal representative to act as an advisor, and the timeframe for submitting such a request, and
  - (e) all relevant documentation held by the RVTS.

- 3.13 At least three (3) weeks prior to the hearing of the Appeal, the original decision-maker and the applicant will provide the CEO with written submissions and copies of any documents and records relevant to the original decision, being the subject of the Appeal and upon which he/she wishes to rely. Additional information provided after the submission date will only be considered if the Chair of the Appeals Committee considers that the material is of significance to the matter. A copy of these submissions will be made available to the applicant and any representative of the original decision maker who has been nominated to attend the meeting of the Appeals Committee.
- 3.14 The applicant's submissions and the original decision-maker's submissions will be provided to the Appeals Committee.
- 3.15 Should the applicant have late documentation that he/she wishes to present to the Appeals Committee but is prohibited by 3.13, the request will be considered by the Chair of the Appeals Committee, whose decision will be final.
- 3.16 The applicant has the right to appear before the Appeals Committee and to advocate the merits of the Appeal himself/herself as set out in his/her written submissions. The applicant does not have a right to call witnesses or to cross examine other parties who have provided information to the Appeals Committee.
- 3.17 The applicant has a right to be accompanied by a support person, who may not act as an advocate for the applicant.
- 3.18 The applicant is not entitled to be accompanied by a legal representative (or any other person who shall act as an advocate) before the Appeals committee unless the Committee Chair has given prior consent or where it is felt that an applicant could not present, or would be disadvantaged in his/her Appeal if required to present in person. Any request for such representation:
- must be made by the applicant
  - specify the reasons upon which the request is made, and
  - be received by the CEO at least seven (7) working days prior to the date of the relevant Appeals committee hearing.
- 3.19 In those cases where an applicant has been given leave to be accompanied by an advocate, the Appeals Committee may appoint a person to act as counsel assisting in the hearing of the Appeal.
- 3.20 The Appeals Committee must decide each Appeal on its merits.
- 3.21 The Appeals Committee shall conduct its affairs with as little formality as possible. It is not bound by the rules of evidence and, subject to this policy and the rules of procedural fairness, may regulate its conduct and operation as it thinks fit. In particular, the Appeals Committee may:
- (a) inform itself on any matter and in such manner as it thinks fit
  - (b) consider all relevant information which it thinks fit, and
  - (c) invite any person to appear before it or to provide information.

- 3.22 The applicant's support person and, if the applicant has approval, legal advisor may not act as an advocate for the applicant, but the legal advisor (if any) may be invited to address the Appeals Committee regarding any particular legal issue that the Appeals Committee believes cannot adequately be addressed by the applicant. In such cases the RVTS solicitor may be invited to attend meetings of the Appeals Committee to assist the committee in the hearing of the Appeal.
- 3.23 In all cases, the decision of the Appeals Committee is final.
- 3.24 The Appeals Committee may, upon considering all submissions and subject to the restrictions of clause 3.25:
- (a) confirm the original decision which is the subject of the Appeal
  - (b) revoke the original decision and refer the original decision to an appropriate RVTS body for further consideration (upon such terms or conditions as the Appeals Committee may determine, and otherwise in accordance with clause 1)
  - (c) revoke the original decision and refer the original decision to an appropriate external body or authority; or
  - (d) revoke the original decision and make an alternative decision, subject to clause 3.25 below.
- 3.25 An Appeals Committee may not:
- (a) make any decision that the original decision maker could not have made, or was not empowered to make
  - (b) revoke any assessment result of any applicant and replace the assessment with an assessment of its own
  - (c) recommend a pathway to fellowship for a registrar without reference to an appropriate external body or authority; or
  - (e) elevate an applicant above others in a competitive assessment or selection process
- 3.26 The RVTS aims to complete the Appeals Committee process as soon as practicable but within 6 weeks of acceptance of an application pursuant to clause 3.1 and 3.2 of this policy.
- 3.27 The Appeals Committee shall issue a written decision, with reasons for the decision, as soon as practicable after the completion of the Appeal hearing to enable communication of the decision to the applicant and to other relevant parties within three (3) weeks of the meeting of the Appeals Committee. The decision, with a summary of the reasons for the decision shall be submitted to the next meeting of the RVTS Board scheduled to occur after communication of the decision to the applicant.

- 3.28 Except where otherwise required by law, or otherwise determined by the Appeals Committee, any transcript of the hearing of the Appeals Committee and other information provided to the Appeals Committee shall be kept confidential (save that information may be released with the consent of the applicant).
- 3.29 Minutes of hearings of the Appeals Committee shall be confined to a report of the decision forwarded to the Board pursuant to clause 3.28 of this policy.
- 3.30 In respect of an Appeal from a Withdrawal from RVTS Training Program Decision, the Appeals Committee will hear the Appeal and make a recommendation to the Board. The Appeals Committee's recommendation is not binding on the Board and the Appeals Committee has no power to make any decision in relation to the Appeal other than to make recommendations to the Board.
- 3.31 On receiving a recommendation from the Appeals Committee pursuant to clause 3.30 in relation to Withdrawal from RVTS Training Program Decision, the Board may accept and act upon all or part of a recommendation of the Appeals Committee as it sees fit, subject to the provisions of the RVTS Constitution.
- 3.32 The decision of the Board following a recommendation of the Appeals Committee will be provided to the Applicant.

## Appendix 1. Reconsiderations, Review and Appeal process flowchart



## Document control

**Warning – Uncontrolled when printed! The current version of this document is kept on the RVTS server.**

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Authorised by: RVTS Board of Directors

Current Version Date: March 2019

Original Issue Date: 13 April 2017 | Previous Version: 17 May 2017 | Last Review Dates: December 2018

Next Scheduled Review: March 2021

Maintained by: CEO

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