

FOR RECOMMENDATION**PUBLIC****OPEN SESSION**

TO: Academic Board

SPONSOR: Professor Cheryl Regehr, Vice-President and Provost

CONTACT INFO: provost@utoronto.ca

PRESENTER: See Sponsor

CONTACT INFO:

DATE: May 14, 2019 for May 23, 2019

AGENDA ITEM: 14

ITEM IDENTIFICATION:

Amendments to the *Terms of Reference* (“*Terms of Reference*”) of the Discipline Appeals Board

JURISDICTIONAL INFORMATION:

Pursuant to section 5.2.6 (a) of the *Terms of Reference* of the Academic Board “[w]ith the University Affairs Board, the Academic Board recommends amendments to the terms of reference of the Discipline Appeals Board.”

GOVERNANCE PATH:

1. University Affairs Board [for information] (May 23, 2019)
2. **Academic Board [for recommendation] (May 30, 2019)**
3. Executive Committee [for confirmation and forwarding] (June 10, 2019)
4. Governing Council [for approval] (June 25, 2019)

PREVIOUS ACTION TAKEN:

The Discipline Appeals Board *Terms of Reference* was approved June 1, 1995.

HIGHLIGHTS:

The Provost is bringing forward some proposed changes to the *Terms of Reference* following consultation with the Senior Chair of the University Tribunal, and the Director of Appeals, Discipline and Faculty Grievances (ADFG).

Academic discipline appeals cases are heard by members of Discipline Appeals Board. Those who chair the panels hearing these cases are practicing lawyers from the local community, all of

whom volunteer their time to serve the University in this manner. Those chairing the panels spend considerable time on these appeals, not only during the hearing, but in preparation and preparing the panel's reasons, and in consulting with the ADFG office on administrative matters.

In order to ensure that no one lawyer takes on an overly onerous service load in this capacity, the Provost, on the recommendation of the Chair of the University Tribunal and the Director of ADFG, is seeking to modify the *Terms of Reference* to increase the number of those available to chair appeals panels.

The Provost also proposes to make two further operational changes to the *Terms of Reference* to ensure fairness and clarity for students, and operational efficiency in the hearing of appeals.

The minor operational changes to the *Code* that are proposed are:

- an increase in the minimum number of Associate Chairs (i.e. appeal chairs) to allow ADFG to schedule more frequent hearings and to reduce the demands placed on each Associate Chair by spreading out caseload among these volunteer appeal chairs;
- a change in the number of members required to form a panel of the Discipline Appeals Board from 4 to 3, in order to avoid potential deadlock; and
- a clarification regarding the number of hearing transcripts required to be filed on appeal, and clarifying that the party responsible for bearing the cost is normally the appellant and not necessarily the student.

These proposed language changes will allow for more appeal hearing dates to be offered to the parties, will clarify transcript issues for students who file appeals, and will decrease some of the pressure being placed on the Associate Chairs, all of whom are volunteers.

The current language is listed below, followed immediately in each case, by the proposed revised language.

Current Language: (s. 2)

“The Discipline Appeals Board shall consist of the Senior Chair and the two Associate Chairs of the University Tribunal, and:

- i) six members or former members of the University Affairs Board or of Governing Council, of whom at least four shall be students; and
- ii) six members or former members of the Academic Board, of whom three shall be students and three faculty members.”

Proposed Revised Language:

“The Discipline Appeals Board shall consist of the Senior Chair and the ~~two~~ Associate Chairs of the University Tribunal, and:

- i) six members or former members of the University Affairs Board or of Governing Council, of whom at least four shall be students; and
- ii) six members or former members of the Academic Board, of whom three shall be students and three faculty members.”

Current Language: (s. 4(1))

“Appeals from decisions at trial shall be heard by a panel drawn from the Discipline Appeals Board consisting of the Senior Chair of the Tribunal, or an Associate Chair designated by him or her, and three members of the Discipline Appeals Board drawn preferably from the Academic Board nominees to the Board. The Academic Board's nominees shall be chosen from among its current or former members. At least one member of each panel shall be a faculty member who is not also a student and at least one shall be a student who is not also a faculty member.”

Proposed Revised Language:

“Appeals from decisions at trial shall be heard by a panel drawn from the Discipline Appeals Board consisting of the Senior Chair of the Tribunal, or an Associate Chair designated by him or her, and two ~~three~~ members of the Discipline Appeals Board drawn preferably from the Academic Board nominees to the Board. The Academic Board's nominees shall be chosen from among its current or former members. At least one member of each panel shall be a faculty member who is not also a student and at least one shall be a student who is not also a faculty member.”

Current Language: (s. 6)

“If the appellant wishes to refer in the argument of the appeal to the transcript of oral proceedings recorded at the trial, five copies of such transcript certified by the reporter or recorder thereof shall be ordered by and normally at the expense of the student. A transcript of the entire proceedings shall be produced unless the parties can agree to dispense with certain portions.”

Proposed Revised Language:

“If the appellant wishes to refer in the argument of the appeal to the transcript of oral proceedings recorded at the trial, five copies of such transcript, plus an original, all certified by the reporter or recorder thereof shall be ordered by and normally at the expense of the appellant student. A transcript of the entire proceedings shall be produced unless the parties can agree to dispense with certain portions.”

FINANCIAL IMPLICATIONS:

There are no financial implications.

RECOMMENDATION:

Be it Recommended:

THAT the proposed amendments to the Discipline Appeals Board *Terms of Reference*, 1995, as outlined in the Memorandum dated May 14, 2019, be approved, effective July 1, 2019.

DOCUMENTATION PROVIDED:

Appendix A – CURRENT (Track Changes)

Discipline Appeals Board Terms of Reference (track changes)

Appendix B – FINAL PROPOSED

Discipline Appeals Board Terms of Reference (clean copy)



UNIVERSITY OF TORONTO

University of Toronto
Governing Council

Discipline Appeals Board Terms of Reference

Approved June 25, 2019

Effective July 1, 2019

~~June 1, 1995~~

To request an official copy of this policy, contact:
The Office of the Governing Council
Room 106, Simcoe Hall
27 King's College Circle
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Toronto, Ontario
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Phone: 416-978-6576

Fax: 416-978-8182

E-mail: governing.council@utoronto.ca

Website: <http://www.governingcouncil.utoronto.ca/>

1. Duties

a) To hear and consider appeals against decisions:

i) made by a Hearing Officer acting under the Hearing Procedures of the Code of Student Conduct

ii) made by the Trial Division of the University Tribunal acting under the Code of Behaviour on Academic Matters.

b) To report its decisions to the Vice-President and Provost. The Vice-President and Provost will report for information to the University Affairs Board cases adjudicated under the Code of Student Council and to the Academic Board those adjudicated under the Code of Behaviour on Academic Matters.

2. Membership

The Discipline Appeals Board shall consist of the Senior Chair and the ~~two~~ Associate Chairs of the University Tribunal, and:

i) six members or former members of the University Affairs Board or of Governing Council, of whom at least four shall be students; and

ii) six members or former members of the Academic Board, of whom three shall be students and three faculty members.

3. Appeal Process and Procedures

i) Procedures for appeals under the Code of Behaviour on Academic Matters are outlined in Appendix A.

ii) Procedures for appeals under the Code of Student Council are outlined in Appendix B.

iii) Where panels for individual hearings cannot reasonably be composed or entirely composed of members drawn from the group, 2(i) or 2(ii) above, as specified in Appendices A and B, appropriate substitutes may be selected from the other one of group 2(i) and 2(ii).

iv) The board may, from time to time, by a majority of its members, make, adopt and modify rules governing its procedures which are not inconsistent with these terms of

reference including Appendices A and B hereto. All such rules and modifications shall be reported to the University Affairs Board and the Academic Board for information.

4. Secretariat

The Secretary of the Board and his or her assistants shall be appointed by the Governing Council on the recommendation of the Secretary of Governing Council. The duties of the Secretary of the Board and his or assistants shall be determined by the chair and members of the Board and reported to the University Affairs Board and the Academic Board for Information.

June 1, 1995.

Appendix A
Appeals

Discipline Appeals Board-panel membership

1. Appeals from decisions at trial shall be heard by a panel drawn from the Discipline Appeals Board consisting of the Senior Chair of the Tribunal, or an Associate Chair designated by him or her, and ~~three~~two members of the Discipline Appeals Board drawn preferably from the Academic Board nominees to the Board. The Academic Board's nominees shall be chosen from among its current or former members. At least one member of each panel shall be a faculty member who is not also a student and at least one shall be a student who is not also a faculty member.

2. The senior Chair or an Associate Chair shall preside at all appeal hearings.

3. Where the Discipline Appeal Board hears and appeal,

a) no Tribunal member who participated in the decision appealed from shall participate in the appeal; and

b) the decision of the majority of the members hearing the appeal shall govern, and the presiding Chair shall be a voting member.

Cases for Appeal

4. An appeal to the Discipline Appeals Board may be taken in the following cases, only:

- a) by the accused, from a conviction at trial, upon a question which is not one of fact alone;
- b) by the Provost, from an acquittal at trial, upon a question which is not one of the fact alone;
- c) by the accused or the Provost, from a sanction imposed at trial.

Filing of appeal

5. An appeal shall be made by filing with the Secretary, within 21 days after the giving of notice of the decision of the Tribunal, a notice of appeal stating briefly the relief sought and the grounds upon which the appeal is taken; provided that in exceptional circumstances, the Senior Chair shall have the power to enlarge the time for appeal upon application made either before or after the expiry of that time.

Appellant bears cost of transcription

6. If the appellant wishes to refer in the argument of the appeal to the transcript of oral proceedings recorded at the trial, five copies of such transcript, plus an original, all certified by the reporter or recorder thereof shall be ordered by and normally at the expense of the ~~student~~ appellant. A transcript of the entire proceedings shall be produced unless the parties can agree to dispense with certain portions.

Powers of Board

7. The Discipline Appeals Board shall have power,

- a) to dismiss an appeal summarily and without formal hearing if it determines that the appeal is frivolous, vexatious or without foundation;
- b) in circumstances which the Tribunal members hearing the appeal consider to be exceptional, to order a new hearing; and
- c) in any other case, to affirm, reverse, quash, vary or modify the verdict, penalty or sanction appealed from and substitute any verdict penalty or sanction that could have been given or imposed at trial.

Appeal not trial de novo

8. An appeal shall not be a trial de novo, but in circumstances which it considers to be exceptional, the Discipline Appeals Board may allow the introduction of further evidence on appeal which was not available or was not adduced at trial, in such manner and upon such terms as the members of the Board hearing the appeal may direct.

Award of costs

9. Where it is considered to be warranted by the circumstance, the Board may in its discretion, award costs of any proceedings on appeal, and may make orders as to the party or parties to and by whom and the amounts and manner in which such costs are to be paid.

Stay unless otherwise ordered

10. An appeal operates as a stay of the decision appealed from unless the Senior Chair of the Tribunal, on behalf of the Discipline Appeals Board, otherwise orders upon application by the accused or the Provost.

Appendix B

Code of Student Conduct: Appeals Procedures

1. Nature of Appeals

a) An appeal to the Discipline Appeals Board may be taken from a decision in the following cases only:

- i) by the accused from a conviction, upon a question which is not one of fact alone;
- ii) by the accused from a penalty imposed.

b) An appeal shall be made by filing with the Secretariat, within 21 days after giving of notice of the decision reached under clause 1(a), a notice of appeal stating briefly the relief sought and the grounds upon which the appeal is taken.

2. Hearings

An appeal shall be heard by a panel drawn from the Discipline Appeals Board consisting of the Senior Chair or an Associate Chair, who shall be a voting member, and three other members designated by the Senior Chair or Associate Chair. Each panel will include at least two student members, and will be drawn preferably from members as appointed under section 2(i) of the Terms of Reference of the Discipline Appeals Board.

3. Powers

a) The panel shall have the power

i) to dismiss an appeal summarily and without formal hearing if it determines that the appeal is frivolous, vexatious or without foundation;

ii) in circumstances which the panel consider to be exceptional, to order a new trial; and

iii) in any other case, to affirm, reverse, quash, vary or modify the verdict, penalty or sanction appealed from and substitute any verdict, penalty or sanction that could have been given or imposed at the trial.

b) An appeal shall not be a trial *de novo*, but in circumstances which it considered to be exceptional, the Discipline Appeals Board may allow the introduction of further evidence on appeal which was not available or was not adduced at the trial, in such manner and upon such terms as the members of the Board hearing the appeal may direct.

c) Any penalty of remedy shall be stayed pending the outcome of any appeal to the Discipline Appeals Board.

4.

The procedures of the Board shall conform to the requirements of the *Statutory Powers Procedure Act*, Revised Statutes of Ontario, 1980, Chapter 484, as amended from time to time.



UNIVERSITY OF TORONTO

University of Toronto
Governing Council

Discipline Appeals Board Terms of Reference

Approved June 25, 2019

Effective July 1, 2019

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