



**FOR INFORMATION**

**PUBLIC**

**OPEN SESSION**

**TO:** University Affairs Board

**SPONSOR:** Ms. Sheree Drummond, Secretary of the Governing Council

**CONTACT INFO:** [sheree.drummond@utoronto.ca](mailto:sheree.drummond@utoronto.ca)

**PRESENTER:** See Sponsor

**CONTACT INFO:**

**DATE:** February 22, 2023 for March 1, 2023

**AGENDA ITEM:** 7

**ITEM IDENTIFICATION:**

*University of Toronto Discipline Appeals Board (Academic Board Side Only) Rules of Practice and Procedure*

**JURISDICTIONAL INFORMATION:**

Pursuant to section 5 of its *Terms of Reference*, the University Affairs Board has responsibility for matters within the area of non-academic discipline. The Discipline Appeals Board (“DAB”) is the body that hears appeals arising from the *Code of Behaviour on Academic Matters* (“Code”) and the *Code of Student Conduct* (Footnote 17, *Academic Board Terms of Reference*). The academic and non-academic appeals processes each have a separate pool of six individuals who would be chosen to sit on any specific appeal for their respective process.

Section 3(iv) of the *Discipline Appeals Board Terms of Reference* states that “[t]he 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.”

**GOVERNANCE PATH:**

- 1. University Affairs Board [for information] (March 1, 2023)**
- 2. Academic Board [for information] (March 9, 2023)**

## **PREVIOUS ACTION TAKEN:**

The University Tribunal first created the *Rules of Practice and Procedure* (the “Rules”) in 2012, and at that time they only applied to cases brought forward before the trial division. The Rules were created to recognize the additional complexity of academic discipline cases, and to provide clear process guidance. They have been updated twice since 2012, with the most recent update occurring on February 7, 2023. This update provided further clarity and process-improvements to assist with the increase in caseload and to support the parties engaging in this process, especially self-represented students. The Rules also contain a provision extending their application to the appeal division under the Code.

## **HIGHLIGHTS:**

The change that has been implemented is that the Rules now apply to academic discipline appeals.

In terms of the process that led to this, the first phase involved extensive consultations that were undertaken over a period of months and included Downtown Legal Services (the University of Toronto’s legal clinic that most often represents students in this quasi-judicial process), Assistant Discipline Counsel (who represent the Provost in the process), as well as internal legal counsel (who work with Assistant Discipline Counsel in these matters). Following this the membership of the Tribunal was consulted. Under the Code, the membership consists of the trial and appeal chairs, and it is the membership that determines its own practice and procedures. After these consultations were completed, 90% of the chairs responded, with 100% of those responding, approving the updated Rules.

Following the approval of the Tribunal membership, the members of the DAB who hear academic discipline appeals were consulted, as their approval was required to extend the application of the Rules to appeals under the Code. Although the Rules had never explicitly applied to these appeals, it was recommended that extending the Rules to these types of academic discipline appeals before the DAB would also provide clarity and assist self-represented students at that level of this quasi-judicial process.

All of the appeal chairs and as well as the six Academic Board-appointed members of the DAB unanimously approved the content of the Rules, including the explicit extension of said Rules to academic discipline appeals. Therefore, the required majority of the DAB membership approved the Rules. This is now being reported for information to this Board.

## **FINANCIAL IMPLICATIONS:**

There are no financial implications.

## **RECOMMENDATION:**

For Information.

---

**DOCUMENTATION PROVIDED:**

*The University Tribunal Rules of Practice and Procedure*



# UNIVERSITY OF TORONTO

## The University Tribunal Rules of Practice and Procedure

Updated: February 7, 2023

To request an official copy of these Rules, contact:

The Office of the Governing Council  
Room 106, Simcoe Hall  
27 King's College Circle  
University of Toronto  
M5S 1A1

Phone: 416-978-6576

Fax: 416-978-8182

E-mail: [governing.council@utoronto.ca](mailto:governing.council@utoronto.ca)

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

## Table of Contents

Part 1. Interpretation and Application.....	3
Part 2. Time.....	5
Part 3. Serving and Filing Documents .....	6
Part 4. Scheduling.....	8
Part 5. Proceedings Management .....	10
Part 6. Hearing cases together .....	11
Part 7. Motions.....	12
Part 8. Form of Hearing.....	15
Part 9. Access to hearing .....	17
Part 10. Conduct of hearing .....	19
Part 11. Communication with a Chair or Other Panel Members .....	22
Part 12. Decisions, orders and reasons .....	23
Part 13. Costs.....	24
Part 14. Record of proceeding .....	25
Part 15. Non-Compliance with Rules .....	26

## Part 1. Interpretation and Application

1. These Rules apply to proceedings before the University Tribunal, and, where applicable, to proceedings before the Discipline Appeals Board.
2. These Rules are enacted pursuant to section C.II.(a)(8) of the University's *Code of Behaviour on Academic Matters*.
3. Under these Rules, proceedings before the University Tribunal include hearings, proceeding management conferences, and motions.
4. A proceeding may be held in writing, virtually, in person, or a combination thereof, otherwise referred to as hybrid.
5. If a party to a proceeding is represented, any communication or document to be served, communicated, or delivered under these Rules need only be served, communicated, or delivered to the party's representative.
6. In these Rules, unless the context requires otherwise,
  - (a) "Act" means the *University of Toronto Act*;
  - (b) "chair" means Senior Chair, or an Associate Chair or co-chair of the University Tribunal;
  - (c) "document" includes a paper, book, record, account, sound recording, videotape, film, photograph, chart, graph, map, plan, survey and information recorded or stored by computer or by means of any other device;
  - (d) "file" means to submit a document to the Tribunal in accordance with rule 15;
  - (e) "holiday" means,
    - (i) any Saturday or Sunday,
    - (ii) Family Day,

## Rules of Practice and Procedure

- (iii) Good Friday,
  - (iv) Victoria Day,
  - (v) Canada Day, and where Canada Day falls on a Saturday or Sunday, the following Monday,
  - (vi) Civic Holiday,
  - (vii) Labour Day,
  - (viii) Thanksgiving Day,
  - (ix) any other holiday declared in the University's holiday schedule;
- (f) "in-person" in relation to a proceeding conducted under these Rules, means a proceeding where participants appear in person before the Tribunal;
  - (g) "moving party" means a person who makes a motion;
  - (h) "panel" means the members of the Tribunal assigned to a hearing;
  - (i) "proof of service" means an affidavit from a person who has served documents under Part 3 setting out the means and date of such service;
  - (j) "Secretary" means the Secretary of the Tribunal, including the assistants to the Secretary;
  - (k) "serve" means to provide documents to the other party or parties in accordance with rules 13 and 14;
  - (l) "virtual" in relation to a proceeding conducted under these Rules, means a proceeding held by videoconference or some other form of electronic means that permits participants to hear and see one another;
  - (m) "written" in relation to a proceeding conducted under these Rules, means a proceeding held by means of the exchange of documents, whether in paper or electronic form, and where all the parties are, unless otherwise ordered, entitled to receive every document that the panel receives in the hearing but no in-person

## Rules of Practice and Procedure

or virtual attendance is required.

7. A word or phrase used in these Rules that is defined in the Act bears the definition contained in the Act unless that word is defined in the *Code of Behaviour on Academic Matters*, in which case that definition shall take precedence.

8. These Rules shall be liberally construed to secure the just and expeditious determination of every proceeding on its merits.

9. Where matters are not provided for in these Rules, the practice shall be determined by analogy to them.



**Part 2. Time**

10. In computing time under these Rules, or under an order made under these Rules,
  - (a) where there is a reference to a number of days between two events, they shall be counted by excluding the day on which the first event happens and including the day on which the second event happens;
  - (b) where a period of less than seven days is prescribed, holidays shall not be counted;
  - (c) where the time for doing something expires on a holiday, the act may be done on the next day that is not a holiday; and
  - (d) where a document would be deemed to be received or service would be deemed to be effective on a day that is a holiday, the document shall be deemed to be received or service shall be deemed to be effective on the next day that is not a holiday.
11. An order extending or abridging any time prescribed by these Rules, or by an order made under these Rules, may be made where it is just.
12. A motion for an order extending time may be made before or after the expiration of the time prescribed.

### **Part 3. Serving and Filing Documents**

13. Charges, notices of hearing, disclosure material for use on motions or hearings, orders, and reasons for decision may be served on a student or sent to a student:

- (a) by personal service;
- (b) by sending a copy of the document by courier to the student's mailing address contained in ROSI, or to the student's representative, if such representative has confirmed its authority to accept service, and service shall be effective on the day the document is delivered by the courier;
- (c) by e-mailing a copy of the document to the student's e-mail address contained in ROSI, or to the students' representative, if such representative has confirmed its authority to accept service, and service shall be effective on the day the document is sent by e-mail; or
- (d) by any other means authorized under the University's Policy on Official Correspondence with Students.

14. Documents may be served on Discipline Counsel by e-mailing or couriering a copy to Discipline Counsel at the appropriate address, which may be obtained from the Secretary. Service shall be effective on the day the document is delivered by courier, registered mail or e-mail.

15. Unless otherwise authorized, any document a party submits for the purpose of a proceeding shall be filed in electronic format with the Secretary by e-mail.

16. An order may be made permitting substituted service or dispensing with service where it appears that it is impractical for any reason to effect service as required under this rule or where it is necessary in the interests of justice.

#### **Part 4. Scheduling**

17. The Secretary shall provide the University with reasonable notice of a hearing and shall deliver such notice to the student's last known ROSI email address. Discipline Counsel shall establish that reasonable notice of the hearing has been provided to the student.
18. A notice of a virtual hearing shall include,
- (a) the date, time, place and purpose of the hearing;
  - (b) a reference to the statutory authority under which the hearing will be held;
  - (c) information about the manner in which the hearing will be held including information about how to access and attend the virtual hearing;
  - (d) a statement that the only purpose of the hearing is to deal with procedural matters, if that is the case;
  - (e) a statement that the hearing shall be held virtually unless any party satisfies the tribunal that there is good reason for not holding a virtual hearing (in which case the tribunal shall determine whether to hold an in-person or hybrid hearing and if so, to provide directions for that purpose); and
  - (f) a statement that if a party with reasonable notice neither acts under clause (e), if applicable, nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding.
19. A notice of an in-person hearing shall include,
- (a) the date, time, place and purpose of the hearing;
  - (b) a reference to the statutory authority under which the hearing will be held; and
  - (c) a statement that if a party with reasonable notice does not attend at the hearing, the panel may proceed in the party's absence and the party will not be entitled to any further notice in the proceeding.
20. A notice of written hearing shall include,

## Rules of Practice and Procedure

- (a) the date, time, place and purpose of the hearing;
- (b) a reference to the statutory authority under which the hearing will be held;
- (c) information about the manner in which the hearing will be held;
- (d) a statement that the hearing shall be held in writing unless any party satisfies the tribunal that there is good reason for not holding a written hearing (in which case the tribunal shall determine whether to hold it as an in-person, virtual, or hybrid hearing and if so, to provide directions for that purpose);
- (e) a statement that if a party with reasonable notice neither acts under clause (d) nor participates in the hearing in accordance with the notice, the tribunal may proceed without the party's participation and the party will not be entitled to any further notice in the proceeding.

21. Where notice of a virtual hearing, an in-person hearing, a hybrid hearing, or a written hearing has been given to a party in accordance with this Part, and the party does not attend at or does not participate in the hearing, the panel may proceed in the absence of the party or without the party's participation and the party is not entitled to any further notice in the proceeding.

22. A motion may be scheduled for hearing on,

- (a) any day on which the merits of the proceeding to which the motion relates is scheduled to be heard; or
- (b) a day obtained from the Secretary.

## **Part 5. Proceedings Management**

23. A party to a proceeding may, at any time, request to attend before a chair, if any, that has been assigned to preside over the proceeding, or, failing that, to a chair as designated by the Secretary.

24. A request to attend before a chair for a proceeding management conference shall be made to the Secretary who shall forward to the Senior Chair, an Associate Chair, or a designated co-chair who will decide whether or not to convene a proceeding management conference.

25. Where a request to attend before a chair for a proceeding management conference has been made and a chair has been designated, the Secretary shall send to all parties a notice of the date and time of any resulting proceeding management conference.

26. A proceeding management conference shall be held virtually, unless otherwise directed by the chair conducting the proceeding management conference.

27. Unless otherwise directed by the chair conducting the proceeding management conference, or the parties consent, all the parties to the proceeding, or their representatives, are required to attend at or participate in the proceeding management conference.

28. Where a person who is required to attend at or participate in a proceeding management conference does not attend at or participate in the proceeding management conference, the chair conducting the proceeding management conference may proceed in the absence of the person or without the person's participation.

29. At a proceeding management conference, a chair may,

- (a) schedule a further proceeding management conference;
- (b) schedule or adjourn a hearing; and
- (c) give directions.

## **Part 6. Hearing cases together**

30. An order may be made that the merits of two or more proceedings, in whole or in part, be heard at the same time or one immediately after the other if,

- (a) the proceedings have a question of fact, law or mixed fact and law in common;
- (b) the proceedings involve the same parties;
- (c) the proceedings arise out of the same transaction or occurrence or series of transactions or occurrences; or
- (d) for any other reason an order ought to be made.

31. A motion under this Part shall be made,

- (a) prior to the hearing on the merits of any affected proceeding; or
- (b) at any time, with leave of the panel.

32. In making an order under this Part, the panel shall consider the effects of hearing the merits of the proceedings together or one immediately after the other and may give such directions as it deems appropriate.

33. In making an order under this Part, if hearing the merits of the proceedings together or one immediately after the other would unduly complicate or delay the proceedings or causes prejudice to a party, the panel may order separate hearings for all or any part of the proceedings.

34. A panel may order that a proceeding be divided into two or more proceedings.

35. In making an order under this Part, the panel shall consider how the merits of the separate proceedings shall be heard, and may give such directions as it deems just with respect to the division of the proceeding.

## **Part 7. Motions**

36. Unless a chair or a panel grants leave to proceed otherwise, motions shall be brought in accordance with this Part.

37. Motions that involve procedural or interlocutory matters may be heard by a chair alone.

38. A motion shall be made by notice of motion. The notice of motion shall be served on every responding party and a copy shall be filed with the Secretary.

39. The moving party shall serve a motion record on every responding party at least ten days before the hearing of the motion.

40. The moving party's motion record shall have consecutively numbered pages and shall contain,

- (a) a table of contents listing each document contained in the motion record, including each exhibit, and describing each document by its nature and date and, in the case of an exhibit, by its nature, date and exhibit number or letter;
- (b) the notice of motion; and
- (c) all affidavits and other material upon which the moving party intends to rely.

41. For matters of complexity or if directed by a chair, the moving party shall serve on every responding party at least seven days before the hearing of the motion a factum and a book of authorities, if any.

42. The moving party shall file with the Secretary at least seven days before the hearing of the motion any documents served on a responding party under this rule.

43. A responding party shall serve on the moving party and every person served with the moving party's motion record, at least three days before the hearing of the motion, its motion record, if any and for matters of complexity or if directed by a chair, its factum and book of authorities, if any.

## Rules of Practice and Procedure

44. The responding party's motion record shall have consecutively numbered pages and shall contain,

- (a) a table of contents listing each document contained in the motion record, including each exhibit, and describing each document by its nature and date and, in the case of an exhibit, by its nature, date and exhibit number or letter; and
- (b) any materials upon which the responding party intends to rely that are not contained in the moving party's motion record.

45. A responding party shall file with the Secretary, with proof of service, at least three days before the hearing of the motion any document served on a person under this Part.

46. When filing a document with the Secretary under this Part, a party shall file the document in accordance with rule 15.

47. Where a motion is on consent, when filing the motion record with the Secretary, the moving party shall also file the consent of every person served with the motion record and a draft of the formal order.

48. A motion shall be held virtually, unless otherwise ordered.

49. Upon request of a party, or at the discretion of a chair, an order may be made that a motion be held in person, in writing, or in a hybrid format.

50. The following motions may, without a notice of motion and motion record, be heard in writing, virtually or by telephone conference:

- (a) a motion on consent; or
- (b) a motion for an adjournment.

51. After hearing a motion, a chair or panel may make such order as they consider appropriate, including:

- (a) making the order sought;



## Rules of Practice and Procedure

- (b) dismissing the motion, in whole or in part;
- (c) adjourning the hearing of the motion, in whole or in part; or
- (d) if the motion is heard prior to the hearing on the merits of the proceeding in which the motion is made or to which the motion relates, adjourning the hearing of the motion to the panel presiding at the hearing on the merits of the proceeding.

## **Part 8. Form of Hearing**

52. A hearing shall be held virtually, unless otherwise ordered.

53. An order may be made that a hearing, or a part of a hearing, be held in person, in writing, virtually, or in a hybrid format. Such order, if any, will originally be made by the chair prior to the hearing, but is subject to the subsequent variation by the panel.

54. In deciding whether to order that a hearing be held as an in-person hearing, a written hearing, a virtual hearing, or as a hybrid hearing, a chair or panel may consider,

- (a) the suitability of an in-person hearing or written hearing to the subject matter of the hearing;
- (b) the desirability of hearing or examining the evidence in person;
- (c) the nature of the evidence to be called at the hearing, including whether credibility is in issue;
- (d) the convenience of the parties;
- (e) the cost, efficiency and timeliness of the proceeding in which the hearing is being held;
- (f) the avoidance of delay;
- (g) the fairness of the process;
- (h) public accessibility to the hearing;
- (i) issues related to health and safety; and
- (j) any other matter relevant in order to secure the just and expeditious determination of the merits of the hearing or of the proceeding in which the hearing is being held.

55. Where a hearing is to be held, the Secretary shall make all the necessary arrangements for the hearing and shall give notice of those arrangements to all the parties.

## **Part 9. Access to hearing**

56. Subject to this Part, every hearing, or portion of a hearing, that is held in person or virtually shall be open to the public.

57. On the motion of a party, an order may be made that a hearing or a part of a hearing in a proceeding shall be held in the absence of the public where,

(a) private financial or personal matters or other matters may be disclosed of such a nature, that having regard to the circumstances, the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public;

(b) in the case of a hearing, or a portion of a hearing, that is held virtually, it is not practical to hold the hearing or the part of the hearing in a manner that is open to the public.

58. A motion for an order that a hearing, or part of a hearing, be held in the absence of the public may, on the order of a chair, be held in the absence of the public.

59. Where a hearing or a part of a hearing is held in the absence of the public, unless otherwise ordered or unless the public was excluded for reasons of practicality only, no person shall disclose, except to their representative or to another person who attends at or participates in the hearing or the part of the hearing that is held in the absence of the public,

(a) any information, including documents, disclosed or entered into evidence in the hearing or the part of the hearing that is held in the absence of the public; and

(b) if and as specified by the panel, the panel's reasons for a decision or an order arising from the hearing or the part of the hearing that is held in the absence of the public, other than the panel's reasons for an order that a subsequent hearing or a part of the subsequent hearing be held in the absence of the public.

## Rules of Practice and Procedure

60. If an order is made in respect of any matter dealt with in this Part, on the motion of a person, the panel conducting the hearing may at any time review all or a part of the order and may confirm, vary, suspend or cancel the order.

## **Part 10. Conduct of hearing**

61. The Secretary shall cause every hearing, or portion of a hearing, that is held in person and virtually to be recorded to permit the production of a transcript of the hearing.

62. A panel may reasonably limit further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.

63. An order may be made excluding a witness from a hearing until the witness is called to give evidence, but such an order may not be made in respect of a party or a witness whose presence is necessary to instruct the representative of the person calling the witness. An order may be made requiring any such party or witness to give evidence before other witnesses are called to give evidence on behalf of the party or the person calling the witness.

64. Where an order is made excluding a witness from a hearing, there shall be no communication to the witness of any evidence given during the witness' absence from the hearing until after the witness has been called to give evidence and has given evidence unless the panel orders otherwise.

65. On the motion of the party calling a witness who has been excluded from a hearing, an order may be made permitting communication to the witness of any evidence given during the witness's absence from the hearing.

66. At the hearing on the merits of a proceeding, the evidence of a witness or proof of a particular fact or document may be given by affidavit, unless otherwise ordered by the panel.

67. Where the evidence of a witness or proof of a particular fact or document is given by affidavit, if a party adverse to the party tendering the affidavit evidence wishes to cross-examine the deponent,

- (a) the deponent shall attend at the hearing on the merits of the proceeding for the purposes of cross-examination; or

## Rules of Practice and Procedure

(b) the deponent shall attend before an official examiner for the purposes of cross-examination and the transcript of the cross-examination may be admitted in evidence at the hearing on the merits of the proceeding.

68. At a hearing on the merits of a proceeding, the panel may receive and act on any facts agreed to by the parties without further proof or evidence.

69. A party tendering a document as evidence at a hearing shall tender it electronically, unless otherwise ordered.

70. Where the panel is satisfied as to its authenticity, a copy of a document or other thing may be admitted as evidence at a hearing.

71. The panel may, by summons, require any person,

(a) to give evidence on oath or affirmation at a hearing; and

(b) to produce in evidence at a hearing specified documents and things.

72. A summons may be signed by a chair.

73. On the request of a party, or the direction of a panel, the Secretary shall issue a summons and in the case of a party shall issue a blank summons to the party who shall complete the summons and insert the name of the witness to be summoned.

74. The party who obtains a summons shall serve the summons on the witness to be summoned.

75. The party who obtains a summons shall pay the witness to be summoned, at the same time as the party serves the summons on the witness, attendance money calculated in accordance with Tariff A under the *Rules of Civil Procedure*.

## Rules of Practice and Procedure

76. If a witness is in attendance at a hearing, a party who obtains a summons is not required to serve the summons on the witness or to pay the witness attendance money in order to call the witness at the hearing.

77. Every party shall provide to every other party, not later than 10 days before the hearing on the merits of a proceeding,

- (a) a list of the expert or medical witnesses that the person intends to call;
- (b) a copy of the curriculum vitae of every expert or medical witness included in the list mentioned in above;
- (c) a summary of the anticipated oral evidence of every expert or medical witness included in the list mentioned above;
- (d) a copy of the written report of every expert witness included in the list mentioned above, and any medical documents, if the person intends to rely on the written report or document in the hearing; and
- (e) a copy of any affidavits proposed to be tendered in evidence pursuant to rule 66.

78. A summary of the oral evidence of an expert or medical witness shall be in writing and shall contain,

- (a) the substance of the evidence of the expert or medical witness;
- (b) a list of documents or things, if any, to which the expert or medical witness will refer; and
- (c) the expert or medical witness's name and address.

79. Evidence that is not disclosed as required under rules 77 and 78 may not be introduced as evidence in a proceeding, except with leave of the panel.

**Part 11. Communication with a Chair or Other Panel Members**

80. No party, representative or other person who attends at or participates in a proceeding shall communicate with a chair or panel outside of a proceeding with respect to the subject matter of the proceeding except,

- (a) in the presence of all parties or their representatives; or
- (b) in writing by sending the written communication to the Secretary and a copy of the written communication to all parties.



## **Part 12. Decisions, orders and reasons**

81. A decision is effective from the date on which it is rendered.

82. If an endorsement of a decision is made by the chair of the panel, it shall be included in the record of proceedings.

83. Where written reasons are delivered, an endorsement, if any, may consist of a reference to the reasons.

84. Written reasons shall normally be delivered within 90 days of the final day of the hearing to which they relate.

85. An order is effective from the date on which it is rendered, unless it provides otherwise.

86. Any party affected by an order or decision and order may prepare a draft of the formal order or formal decision and order.

87. A party that has prepared a draft of a formal order or decision and order may submit it to the panel that made the order or decision and order at the end of the hearing.

88. The chair of the panel who signed the reasons or order may at any time, and without prior notice to the parties, correct typographical errors, errors of calculation or similar minor errors which do not materially affect the reasons or result, and the corrected version will be supplied to the parties by the Secretary.

89. A party may submit a request in writing, with notice to all the parties, that the chair correct such typographical errors, errors of calculation, or similar minor errors made in the reasons or order.

### **Part 13. Costs**

90. The panel may order a party to pay all or part of another party's costs in a proceeding where the conduct or course of conduct of a party has been unreasonable, frivolous or vexatious or a party has acted in bad faith.

91. The panel shall provide both parties with an opportunity to call evidence and make submissions, orally or in writing as the panel may direct, with respect to:

- (a) whether or not it is an appropriate case to order costs;
- (b) the amount of costs to be ordered; and
- (c) any terms of payment.

**Part 14. Record of proceeding**

92. The Secretary shall compile a record of every proceeding, which shall contain:
- (a) every document filed with the Secretary under these Rules in respect of the proceeding or a step in the proceeding;
  - (b) every document received by a panel or chair under these Rules in respect of the proceeding or a step in the proceeding;
  - (c) the notice of a hearing on the merits of a proceeding;
  - (d) every direction issued by a chair in respect of the proceeding or a step in the proceeding;
  - (e) the endorsement of the decision and order in the proceeding and of the order in a motion in the proceeding;
  - (f) the formal decision and order in the proceeding and the formal order in a motion in the proceeding;
  - (g) the reasons, if any, for the decision or order in the proceeding or the order in a motion in the proceeding; and
  - (h) the recording of the hearing or motion as well as the transcript of the hearing or motion, if one is prepared.

## **Part 15. Non-Compliance with Rules**

93. A failure to comply with a procedural requirement in these Rules is an irregularity and does not render a proceeding or a step or document in a proceeding a nullity.
94. On the motion of a party to attack a proceeding or a step or document in a proceeding for irregularity, an order may be made,
- (a) granting any relief necessary to secure the just determination of the matters in issue; or
  - (b) dismissing the proceeding or setting aside a step or document in the proceeding in whole or in part only where and as necessary in the interests of justice.
95. A motion to attack a proceeding or a step or document in a proceeding for irregularity shall not be made, except with leave of the panel,
- (a) after the expiry of a reasonable period of time after the moving party knows or ought reasonably to have known of the irregularity;
  - (b) if the moving party has taken any further step in the proceeding after obtaining knowledge of the irregularity; or
  - (c) if the moving party has otherwise consented to the irregularity.
96. Where it is necessary in the interests of justice, an order dispensing with compliance with any procedural requirement in these Rules may be made by a chair or a panel.
97. A party may dispense with compliance with any procedural requirement in these Rules with the consent of all other parties.