

FOR APPROVAL

PUBLIC

OPEN SESSION

TO: Governing Council

SPONSOR: Professor Cheryl Regehr, Vice-President and Provost

CONTACT INFO: provost@utoronto.ca

PRESENTER: See Sponsor

CONTACT INFO:

DATE: June 20, 2023, for June 27, 2023

AGENDA ITEM: 6

ITEM IDENTIFICATION:

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

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 concurrence with the recommendation of the Academic Board] (May 31, 2023)
2. Academic Board [for recommendation] (May 25, 2023)
3. Executive Committee [for endorsement and forwarding] (June 15, 2023)
4. **Governing Council [for approval] (June 27, 2023)**

PREVIOUS ACTION TAKEN:

On June 1, 1995, the Governing Council approved the Discipline Appeals Board *Terms of Reference*. On June 25, 2019, the Governing Council approved revisions to the Discipline Appeals Board *Terms of Reference*.

HIGHLIGHTS:

One proposed language change to the *Terms of Reference* is being proposed, following consultation with the Senior Chair of the University Tribunal and the Director of Appeals, Discipline and Faculty Grievances (ADFG). Both academic discipline appeals and non-academic discipline appeals are heard by members of the Discipline Appeals Board. Each of these quasi-judicial processes are distinct with different procedures and memberships. When rules are created or modified for one type of appeal process, the Chairs and the members of those who are in the pool of members to normally sit on those respective appeals, form a majority of the membership. Given the difference in process and membership, this change codifies the current process, namely, that it is the members of the relevant appeal process that is creating or modifying rules that will be consulted and approve such rules. This update simply codifies the process associated with creating and modifying rules.

The other proposed changes are administrative in nature – first, correcting the name of the *Code of Student Conduct*, second, putting the *Code of Behaviour on Academic Matters* and *Code of Student Conduct* in italics in three sections, and third, formatting changes were also made to more clearly identify Appendices A & B to the *Terms of Reference* and make the titles of the appendices consistent with each other (this change can be seen in the attached clean and marked-up versions of the *Terms of Reference*).

These proposed changes have no impact on operations or the current process.

FINANCIAL IMPLICATIONS:

There are no financial implications.

RECOMMENDATION:

Be it Resolved:

THAT the proposed amendments to the Discipline Appeals Board *Terms of Reference*, 1995, as outlined in the Memorandum dated May 18, 2023, from Professor Cheryl Regehr, Vice-President and Provost, be approved, effective July 1, 2023.

DOCUMENTATION PROVIDED:

Discipline Appeals Board Terms of Reference – Effective July 1, 2019 (current)

Discipline Appeals Board Terms of Reference – Effective July 1, 2023 (with proposed revisions in track changes)

Discipline Appeals Board Terms of Reference – Effective July 1, 2023 (proposed revised clean copy)



UNIVERSITY OF TORONTO

University of Toronto
Governing Council

Discipline Appeals Board Terms of Reference

Approved June 25, 2019

Effective July 1, 2019

To request an official copy of this policy, contact:
The Office of the Governing Council
Room 106, Simcoe Hall
27 King's College Circle
University of Toronto
Toronto, Ontario
M5S 1A1
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 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 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 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 27~~5~~,
20~~23~~~~19~~

Effective July 1, 20~~23~~~~19~~

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Room 106, Simcoe Hall
27 King's College Circle
University of Toronto
Toronto, Ontario
M5S 1A1
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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 Conduct Council* and to the Academic Board those adjudicated under the *Code of Behaviour on Academic Matters*.

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2. Membership

The Discipline Appeals Board shall consist of the Senior Chair and the 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.

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

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ii) 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).

iii) 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.~~

For rules that apply only to appeals under Appendix A, “a majority of its members” means a majority of the Senior Chair, the Associate Chairs of the University Tribunal, and the members listed under Section 2(ii). For rules that apply only to appeals under Appendix B, “a majority of its members” means a majority of the Senior Chair, the Associate Chairs of the University Tribunal, and the members listed under Section 2(i). All such rules and modifications applying to appeals under Appendix A shall be reported to the Academic Board for information. All such rules and modifications applying to appeals under Appendix B shall be reported to the University Affairs Board for information.

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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

Code of Behaviour on Academic Matters: Procedures for Appeals

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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 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 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 for Appeals*

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1. Nature of Appeals

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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
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Discipline Appeals Board Terms of Reference

Approved June 27, 2023

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reference including Appendices A and B hereto.

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June 1, 1995.

Appendix A

Code of Behaviour on Academic Matters: Procedures for Appeals

Discipline Appeals Board-panel membership

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Appendix B

Code of Student Conduct: Procedures for Appeals

1. Nature of Appeals

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