

## Practice Direction on Commencing an Appeal Before the Discipline Appeals Board

### 1.0 Purpose

**1.1** This practice direction outlines the process to appeal a decision of the Trial Division of the University Tribunal to the Discipline Appeals Board (“DAB”). It discusses:

- the content and timelines for a notice of appeal and amended notice of appeal;
- the materials to be filed on an appeal;
- the process for proceedings management conferences; and
- the process for a party to seek permission to submit new evidence at an appeal.

**1.2** This practice direction should be read together with the *Code of Behaviour on Academic Matters, 2019* (“Code”) and the University Tribunal’s *Rules of Practice and Procedure* (“Rules”).

**1.3** This practice direction is to be interpreted and applied to permit the resolution of every appeal as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.

**1.4** If a deadline specified in this practice direction falls on a holiday, which includes a date on which the University is closed, then the requirement must be met on the next business day. The term “holiday” has the meaning specified in rule 6 (e) of the Rules.

### 2.0 Notice of appeal to be filed within 21 days after the decision of the Trial Division

**2.1** Pursuant to section E.5 of the Code, a party who wishes to appeal a decision of the Trial Division of the University Tribunal (the “appellant”) must file a notice of appeal by email to the Office of Appeals, Discipline and Faculty Grievances (“ADFG Office”) within 21 calendar days after being given notice of the decision. That is, after the signed Order relating to the outcome of the hearing or the Reasons for Decision have been given to that party, whichever is earlier. Notice of a decision is usually given orally at the hearing, by a signed order, or both, and is followed later by written reasons. In some instances, the panel reserves its decision (i.e., it does not make a decision at the hearing) and notice of the decision is given through written reasons at a later date. The Notice of Appeal may be amended if reasons are released after the filing of the Notice of Appeal.

**2.2** The notice of appeal must be served on the other party (i.e., the “respondent”) on the same day it is filed with the Secretary through the ADFG Office. Service can be effected by adding the respondent to the email to the ADFG Office.

**2.3** The appellant’s notice of appeal must indicate:

- a. the relief sought; and
- b. the grounds upon which the appeal is taken.

**2.4** The “relief sought” refers to what a party is asking the DAB to do (e.g., send the case back to the Trial Division for a new hearing, modify the verdict, modify the penalty or sanction imposed by the Trial Division, or otherwise modify the result of the hearing). The “grounds upon which the appeal is taken” refers to the reasons why the party is appealing the Trial Division’s decision, that is, the basis for the appeal.

### 3.0 Extension of time to file a notice of appeal

**3.1** Section E.5 of the Code provides that, in exceptional circumstances, the Senior Chair may extend the time to submit a notice of appeal upon application made either before or after the expiry of the 21-day time limit.

**3.2** If a party needs additional time to file a notice of appeal or wishes to appeal after the time limit has expired, they must request an extension in writing.

**3.3** The request for extension must include an explanation of why the notice of appeal was not filed in time or why the party requires additional time to file the notice of appeal. The party may include any documentation they would like the Senior Chair to consider that supports the reasons for the need for the extension (e.g., medical documentation).

**3.4** The request must be sent by email to the respondent for their response and copied to the ADFG Office.

**3.5** Upon receipt of the request and the respondent’s response, the ADFG Office will forward the request and response to the Senior Chair (or their delegate), who will decide whether to grant the extension.

### 4.0 Materials to be filed on an appeal

**4.1** Unless otherwise directed by the Chair at a proceedings management conference (described below), the materials to be filed on an appeal include:

- written arguments of the position the parties will rely upon at the hearing
- copies of any cases that are referred to in that written argument
- a collection of the documents associated with the appeal, including the Notice of Appeal, any orders, and the exhibits filed at the original hearing.

### 5.0 Proceedings management conferences

**5.1** Once a notice of appeal has been filed, a chair will be assigned to the appeal. Unless otherwise ordered, within 30 calendar days of the date of the delivery of the written reasons for decision, the Chair will hold a proceedings management conference (“PMC”) with the parties.

**5.2** The PMC will be held virtually, unless otherwise ordered by the Chair conducting the PMC.

**5.3** The purpose of the PMC is to ensure that the appeal proceeds and is heard justly and expeditiously.

**5.4** At the PMC, the Chair may:

- a) address any preliminary or procedural issues;
- b) provide any necessary clarification of the appeal process to the parties, including the process for ordering a transcript;
- c) set timelines for the appeal, including timelines for the filing of an amended notice of appeal, if any, the factums, and an appeal book;
- d) consider any other issues that may assist in securing the just and expeditious determination of the appeal; and
- e) issue any directions or make orders, as necessary, including that a further PMC be scheduled.

**5.5** A further PMC may be scheduled on the Chair's own initiative or at the request of a party.

**5.6** Unless the Chair orders otherwise, parties to an appeal, or their legal representatives, must attend the PMC on the date specified in the Notice of Proceedings Management Conference ("Notice"). The Notice will include the date and time of the PMC and the video conference link.

## **6.0 Amended notice of appeal, transcript of the hearing, and motion to submit new evidence**

**6.1** An appellant may file an amended notice of appeal without leave at any time before the deadline set for the filing of the appellant's factum.

**6.2** Within 15 calendar days from the date of the PMC, the appellant, unless otherwise ordered, must advise the ADFG Office and the respondent whether the appellant will order a transcript of the Trial Division hearing in accordance with section E.6 of the Code and, if so, order and pay for the transcript.

**6.3** The ADFG Office provides information relating to approved transcription companies. Should the appellant wish to use a different transcription company, they must first request the consent of the respondent. If the respondent does not consent, the Chair assigned to the appeal will decide whether the transcription company proposed by the appellant can be used.

**6.4** Despite section E.6 of the Code, the appellant is not required to order five hard copies of the transcript and must instead file a certified electronic copy of the transcript by email to the ADFG Office and copy the respondent.

**6.5** Section E.8 of the Code provides that an appeal is not a trial *de novo*. This means that, normally, an appeal is based on the evidence that was before the Trial Division (for example, the testimony that was given by witness and the documents that were marked as exhibits).

In exceptional circumstances, the DAB may allow the introduction of new evidence on appeal which was not available or was not before the Trial Division on such terms as the DAB panel hearing the appeal shall direct.

- 6.6** Should a party wish to file new evidence, they must inform the Chair and the respondent of their intention to file a motion to submit new evidence within 15 calendar days of the party's receipt of the transcript, or the PMC order/direction in cases where the transcript has not been ordered.
- 6.7** Unless otherwise directed by the chair, Part 7 of the Rules applies to a motion to submit new evidence.
- 6.8** The criteria the DAB considers in determining whether to admit new evidence on appeal are set out in numerous DAB decisions, available on the ADFG Office's website (<https://governingcouncil.utoronto.ca/adfg/university-tribunal-decision-appeals>).

## 7.0 Resources

**7.1** For additional information, please see the following resources:

- *Code of Behaviour on Academic Matters, 2019*
- *University Tribunal's Rules of Practice and Procedure*
- *Discipline Appeals Board Terms of Reference*

## Date

January 2025