



UNIVERSITY OF TORONTO

The University Tribunal Rules of Practice and Procedure

Effective April 19, 2012

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Part 1. Interpretation and Application

1. These Rules apply to hearings before the University Tribunal. They are enacted pursuant to s. C.II.(a)(8) of the University's *Code of Behaviour on Academic Matters*.

2. 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) "deliver" means serve and file with the Secretary with proof of service;
- (d) "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;
- (e) "electronic hearing" means a hearing conducted by electronic means that permits the parties and the panel to hear and see any witnesses throughout the hearing;
- (f) "holiday" means,
 - (i) any Saturday or Sunday,
 - (ii) Family Day,
 - (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;
- (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 and his or her assistants appointed by Academic Board;
 - (k) "written hearing" means a hearing held by means of the exchange of documents, whether in written form or by electronic means and all the parties and all the non-party participants who have been permitted to participate in the hearing are entitled to receive every document that the panel receives in the hearing.
3. 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.
4. These Rules shall be liberally construed to secure the just and expeditious determination of every proceeding on its merits.
5. Where matters are not provided for in these Rules, the practice shall be determined by analogy to them.

Part 2. Time

6. 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.
7. 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.
8. A motion for an order extending time may be made before or after the expiration of the time prescribed.

Part 3. Service of Documents

9. Charges, notices of hearing, disclosure, material for use on motions, 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.

10. Documents may be served on Discipline Counsel by e-mailing, faxing, 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, fax, registered mail or e-mail.

11. Documents may be delivered to the Secretary by e-mail, fax, mail, campus mail service, or courier as appropriate to:

Director, Appeals, Discipline and Faculty Grievances
Office of the Governing Council
Simcoe Hall, Room 106
27 King's College Circle
Toronto, ON M5S 1A1

Phone: 416-946-7663
Fax: 416-978-8182
Email: christopher.lang@utoronto.ca

12. 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.

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Part 4. Scheduling

13. The Secretary shall provide the parties with reasonable notice of a hearing and shall send to all parties a notice of the hearing on the merits of the proceeding.

14. A notice of an oral 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 person notified does not attend at the hearing, the panel may proceed in the person's absence and the person will not be entitled to any further notice in the proceeding.

15. A notice of written 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;
- (d) a statement that the hearing shall not be held as a written hearing if the party satisfies the tribunal that there is good reason for not holding a written hearing (in which case the tribunal is required to hold it as an electronic or oral hearing) and an indication of the procedure to be followed for that purpose;
- (e) a statement that if the party notified 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.

16. A notice of an electronic hearing shall also 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;
- (d) a statement that the only purpose of the hearing is to deal with procedural matters, if that is the case;
- (e) if clause (d) does not apply, a statement that the party notified may, by satisfying the tribunal that holding the hearing as an electronic hearing is likely to cause the party significant prejudice, require the tribunal to hold the hearing as an oral hearing, and an indication of the procedure to be followed for that purpose; and
- (f) a statement that if the party notified 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

17. Where notice of an oral hearing, electronic hearing, or written hearing has been given to a person in accordance with this rule, and the person does not attend at or does not participate in the hearing, the panel may proceed in the absence of the person or without the person's participation and the person is not entitled to any further notice in the proceeding.

18. 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

19. A party to a proceeding may, at any time, request to attend before the Senior Chair, or an Associate Chair or co-chair designated by the Senior Chair for a proceeding management (pre-hearing) conference.

20. 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, Associate Chair, or designated co-chair who will decide whether or not to convene a proceeding management conference.

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

22. A proceeding management conference may be held in person, by telephone conference, by exchange of documents, or by any combination of the aforementioned formats.

23. 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.

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

25. 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.

26. A chair is not disentitled from presiding over a hearing merely because the chair has conducted a proceeding management conference in the same matter.

Part 6. Hearing cases together

27. 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.
28. A motion under this rule 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.
29. In making an order under Part 6, 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.
30. In making an order under Part 6, 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, on the motion of a party or on its own motion, the panel may order separate hearings for all or any part of the proceedings.
31. A panel may order that a proceeding be divided into two or more proceedings.
32. In making an order under Part 6, 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

33. Unless a chair or a panel grants leave to proceed otherwise, motions shall be brought in accordance with this Part.
34. 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 delivered to the Secretary.
35. The moving party shall serve a motion record on every responding party at least ten days before the hearing of the motion.
36. 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.
37. 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.
38. 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.
39. 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.

40. 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.

41. 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 rule.

42. When filing a document with the Secretary, the moving party shall file,

- (a) two copies of the document where the motion is to be heard by a chair alone; and
- (b) four copies of the document where the motion is to be heard by a panel.

43. 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.

44. The following motions may, without a motion or an order being made, be heard as an electronic or written hearing or by telephone conference:

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

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

- (a) making the order sought;
- (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.

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Part 8. Form of Hearing

46. A hearing shall be held as an oral hearing with the parties, and their representatives, if any, appearing in person, unless otherwise ordered.

47. An order may be made that a hearing or a part of a hearing be held as an electronic hearing or a written hearing.

48. In deciding whether to order that a hearing be held as an electronic hearing, or a written hearing, a chair or panel may consider,

- (a) the suitability of an electronic hearing or written hearing to the subject matter of the hearing;
- (b) the nature of the evidence to be called at the hearing and whether credibility is in issue;
- (c) the convenience of the parties;
- (d) the cost, efficiency and timeliness of the proceeding in which the hearing is being held;
- (e) the avoidance of delay;
- (f) the fairness of the process;
- (g) public accessibility to the hearing; and
- (h) 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.

49. Where a hearing is to be held as an electronic hearing or written hearing, the Secretary shall make all the necessary arrangements for the hearing and shall give notice of those arrangements to all the persons participating in the hearing and their representatives, if any.

50. Where a hearing is to be held as a written hearing, the Secretary shall make all the necessary arrangements for the hearing and shall give notice of those arrangements to all the persons participating in the hearing and their representatives, if any.

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Part 9. Access to hearing

51. Subject to this rule, every hearing in a proceeding shall be open to the public.
52. 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) intimate financial or personal matters or other matters may be disclosed of such a nature, having regard to the circumstances, that 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; or
 - (b) in the case of a hearing or a part of a hearing that is to be held as an electronic hearing, it is not practical to hold the hearing or the part of the hearing in a manner that is open to the public and the desirability of proceeding electronically outweighs the desirability of adhering to the principle that hearings be open to the public.
53. Where a hearing or a part of a hearing is held in the absence of the public, no person shall disclose, except to his, her or its 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.
54. On the motion of a person, an order may be made permitting a person to disclose any information mentioned in above.

55. If an order is made in respect of any matter dealt with in this rule, 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.

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Part 10. Conduct of hearing

56. The Secretary shall cause every oral and electronic hearing to be recorded by a reporting service to permit the production of a transcript of the hearing.

57. 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.

58. 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.

59. 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.

60. 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.

61. 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, subject to the panel ordering otherwise.

62. 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

- (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.

63. 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.

64. At a hearing, a party or a non-party participant tendering a document as evidence shall provide,

- (a) a copy of the document to every other party and non-party participant; and
- (b) four copies of the document to the panel.

65. 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.

66. 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.

67. A summons may be signed by a co-chair.

68. On the request of a person, the Secretary shall issue to the person a blank summons and the person may complete the summons and insert the name of the witness to be summoned.

69. The person who obtains a summons shall serve the summons on the witness to be summoned.

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

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

72. 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 62.

73. 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.

74. Evidence that is not disclosed as required under in this rule may not be introduced as evidence in a proceeding, except with leave of the panel.

Part 11. Communication with hearing panel

75. No party, representative or other person who attends at or participates in a hearing shall communicate with a panel outside of the hearing with respect to the subject matter of the hearing 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 and all non-party participants, who have been permitted to participate in the hearing with respect to the subject matter of the communication, or their representatives.

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Part 12. Decisions, orders and reasons

76. A decision is effective from the date on which it is rendered.
77. An endorsement of every decision shall be made by the chair of the panel and included in the record of proceedings.
78. Where written reasons are delivered, the endorsement may consist of a reference to the reasons. Written reasons shall normally be delivered within 90 days of the final day of the hearing to which they relate.
79. An order is effective from the date on which it is rendered, unless it provides otherwise.
80. Any party affected by an order or decision and order may prepare a draft of the formal order or formal decision and order.
81. 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.

Part 13. Costs

82. 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.

83. 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

84. 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 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) the endorsement of the decision and order in the proceeding and of the order in a motion in the proceeding.
 - (e) the formal decision and order in the proceeding and the formal order in a motion in the proceeding.
 - (f) the reasons, if any, for the decision or order in the proceeding and for the order in a motion in the proceeding.
 - (g) 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

85. 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.

86. 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.

87. 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.

88. An order dispensing with compliance with any procedural requirement in these Rules may be made by a chair or a panel where it is necessary in the interests of justice.

89. A party may dispense with compliance with any procedural requirement in these Rules with the consent of all other parties.