

General Procedure for the Tribunal¹

Tribunal

Approved: July 22, 2015



Authority & Mandate

- 1 (1) Article VIII, Sections A and B of the Constitution establish the Review Board and Tribunal for the purpose of carrying out the judicial functions within the jurisdiction of the Students' Union, as provided for in the Union Bylaw.
- 2 (2) The Union Bylaw preamble establishes that the Tribunal has inherent jurisdiction over decisions of the Review Board.
- 3 (1) Common law provides for the power of the Tribunal to control its own processes and adopt rules of procedure of general application to govern its proceedings, subject to procedural fairness and the requirements of the Constitution and Union Bylaw.
- 4 (1) The purpose of this procedure shall be:
 - (a) To establish the grounds for the Tribunal's review of Review Board decisions;
 - (b) To provide for a fair and just process; and
 - (c) Ensure the efficiency and effectiveness of administrative proceedings of the Tribunal.

Grounds and Relief

- 5 (1) A person who had standing in and is dissatisfied with a decision of the Review Board may, in accordance with this procedure, appeal the decision or determination to the Tribunal, solely on the grounds that:
 - (a) The Review Board's decision shows a significant defect in the appeal process or in the content of the decision which is likely to change the result of the original decision;
 - (b) New evidence is now available, with reasonable and justifiable explanation, and that evidence is:
 - (i) Relevant to the decision; and
 - (ii) Likely to have had a significant impact on the Review Board's decision; or
 - (c) The Review Board's decision was based on a process that was obviously unfair or unjust.

¹Explanatory notes included throughout this procedure are intended to assist the reader in understanding the purpose of a provision, and may elaborate on the meaning of a particular term or set out considerations for the Tribunal to bear in mind in applying a provision. Explanatory notes are derived from the Alberta Law Reform Institute Consultation Memorandum (September 2008) establishing a model code for administrative tribunals. Explanatory notes do not have legal effect.

Explanatory Note: Generally, the Tribunal is intended to give deference to the decisions of the Review Board. Other than in cases of clear errors of jurisdiction, the application of new evidence, or unfairness, the Tribunal is concerned mostly with the transparency and intelligibility within the Review Board's decision-making process and is not to substitute its views of the evidence for those of the Review Board, nor decide the matter afresh.

6 (1) Upon hearing an appeal under section 5(1), the Tribunal may:

- (a) Confirm, reverse, or vary the decision or determination appealed;
- (b) Direct that its decision be implemented within a specific time period; and
- (c) Refer any matter back to the Review Board, as the case may be, for further action or decision, with or without directions.

Powers and Procedures

7 (1) Unless an order is granted permitting reliance on new evidence, appeals shall be decided on the record of the Review Board.

(2) The Tribunal may control its own processes and may adopt rules of procedure of general application to govern its proceedings.

(3) This procedure and all subsequent amendments shall be documented and made available to the Union to allow for public inspection.

(4) In the event that this General Procedure does not provide for a matter of procedure, the Tribunal may do whatever is necessary and permitted by law to enable it to effectively and completely adjudicate the matter before it.

Explanatory Note: The Tribunal has the power to control its own processes, subject to fairness. Examples of the types of power include the ability to:

- Set hearing times and venues;
- Order that separate proceedings be heard immediately one after the other;
- Order that proceedings be stayed until after determination of other procedures;
- Making interim procedural orders;
- Grant adjournments;
- Order the exchange of documents among parties or other participants;
- Specifying the manner in which a party or other participant may make representations on procedural questions; and
- Excluding repetitious or marginally-relevant evidence.

Standing

- 8 (1) The Tribunal shall grant standing in proceedings before it to persons whose rights or obligations will be directly affected by the Tribunal's determination of the matter before it.
- (2) The Tribunal may, at its discretion, grant standing to participate in proceedings before it to persons who are otherwise affected by the Tribunal's determination of the matter and may specify the extent of these other participants' participation rights.

Explanatory Note: The extent that others participate in proceedings is left to the discretion of the Tribunal. The Tribunal may limit the participation of other participants in a number of ways. For example, the Tribunal may limit other participants with respect to:

- The cross-examination of witnesses;
- The right to lead evidence;
- One or more of the issues raised in the application;
- Written submissions; and
- Time limited oral submissions.

- 9 (1) The Tribunal may exercise its discretion to allow a party to be represented by an agent or a lawyer.

Explanatory Note: There is no absolute right to a lawyer; where the issues are not complex and the individual is capable of presenting his or her case, the right to a lawyer can be dispensed with. This provision does not impose a duty on the Review Board to provide a lawyer. The ability of an individual to be represented by an agent (a person who is not legally qualified), is a matter of procedure and falls within the Tribunal's general authority over its own procedures.

Service of Notice or Other Documents

- 10 (1) Where the Tribunal is required to provide a notice or any document to a party or other participant in an application, it may do so by sending a copy to the other party or other participant in an application, using any of the following means:
 - (a) Personal service;
 - (b) Recorded mail; or
 - (c) Electronic transmission, including an email or telephone transmission of a facsimile.

Withdrawal

- 11 (1) If an applicant wishes to withdraw an application before the hearing is held, the applicant must file a written notice of withdrawal of application with the Tribunal and serve a copy of the notice on the other parties or participants.

- (2) The Tribunal may, with or without a hearing, grant or refuse an application to withdraw an application on any terms that it considers appropriate.

Summary Dismissal

12 (1) Without holding a hearing on the merits of the appeal, the Tribunal may, on its own motion or on the motion of a party, hear and determine:

- (a) Whether the appeal is clearly without grounds
- (b) Whether the Tribunal lacks jurisdiction or the application contains some other fundamental defect;
- (c) Whether to proceed is an abuse of process; or
- (d) Whether the material file in support of the application fails to support the basis of an application,

and may dismiss all or part of an application.

Explanatory Note: The Tribunal cannot reject an application without giving the applicant an opportunity to be heard. The Tribunal can, however, separate jurisdictional questions from issues of merit and hold a hearing confined to jurisdictional issues. Examples of fundamental defects include:

- The matter is submitted beyond the time limit, or beyond an extended time limit;
- The applicant has not taken steps or met conditions that are required for advancement of the proceedings;
- The Tribunal does not have the power to grant the remedy or make the decision or order requested by the applicant; and
- The supporting reasons show no basis for triggering the Tribunal's processes, or no basis for granting a remedy or making a relevant decision or order.

Consent Orders

13 (1) The Tribunal may make a determination, disposition, or grant an order or provision consistent with its purpose, procedures, and jurisdiction, on the consent of all parties.

Explanatory Note: The purpose of this provision is to enable the Tribunal to simplify proceedings by issuing a consent order. A consent order is a voluntary mutual agreement between one or more parties in a dispute to settle a point without determining the final outcome in a hearing. In addition to orders that deal with the substance of matters in dispute, consent orders may also deal with procedural issues.

Record of Proceedings

- 14 (1) The Tribunal shall compile a record of any proceedings in which it issues a decision. A record of proceedings shall include:
- (a) The document by which the proceedings were commenced (i.e. the application);
 - (b) All notices and acknowledgements;
 - (c) Any written orders, directions, or decisions made during the course of the proceedings;
 - (d) Documentary evidence;
 - (e) Audio recordings or transcripts of oral evidence provided during the course of the proceedings;
 - (f) Written or recorded submissions of arguments; and
 - (g) The decision or order of the Tribunal and the reasons for the decision.

Explanatory Note: A record of proceedings must be available for appeal or judicial review, where applicable. Further, this ensures transparency in proceedings. This provision also applies to pre-hearing conferences, in proceedings where the Tribunal makes a decision to refuse to accept an application, to refuse to continue where proceedings have begun, or to make a decision based on the consent of the parties and other participants.

Request for Further Information

- 15 (1) Where the Tribunal receives an appeal, it may request further necessary information including information concerning any errors or omissions in the application.

Notice of Application

- 16 (1) Where the Tribunal receives an application that will give rise to further proceedings before it, the Tribunal must provide notice of the application to all relevant parties or participants within a reasonable time of receipt of the application.

Notice of a Pre-Hearing Conference

- 17 (1) The Tribunal shall give reasonable notice of a pre-hearing conference to the parties and other participants.
- (2) Notice of a pre-hearing conference shall contain:
- (a) A statement of the date, time, and place of the pre-hearing conference; and
 - (b) A summary of the issues to be addressed at the pre-hearing conference.

Explanatory Note: Pre-hearing powers and procedures can contribute to the efficiency and effectiveness of proceedings by clarifying the issues and the procedures, by determining whether or not a hearing is required, and by informing parties of available alternatives such as alternative dispute resolution. They can also contribute to the fairness and justness of the process, for example, by ensuring that parties are giving notice of the proceedings, by determining who has standing, and by determining the procedures to apply to a particular case.

Typically, a small panel of only one or two Tribunal members participates in a pre-hearing conference that includes settlement discussions (i.e. conferences described in 18(1)(c) and 18(2) below). This is to ensure that enough Tribunal members who did not participate in settlement discussions are available to participate in a hearing.

Pre-Hearing Conferences

- 18 (1) The Tribunal may, on its own initiative or at the request of a party, hold a pre-hearing conference, with the parties or any other participants for one or more of the following reasons:
- (a) To identify the issues in question and the position of the parties, and any other participants;
 - (b) To recommend the procedures to be adopted with respect to the hearing;
 - (c) To explore the possibilities for settlement; or
 - (d) To determine standing or participation.
- (2) A Tribunal member who participated in a pre-hearing conference at which the parties attempted to settle issues may only participate in a subsequent hearing if all parties provide their express written and informed consent to the member's participation in the subsequent hearing.

Explanatory Note: Pre-hearing conferences can be effective case management tools; they can be used to identify and simplify issues to be considered and set the timetables for a hearing. They can also be used to assess the potential for and to make referrals for settlement or for decision by alternative dispute resolution mechanisms.

To retain flexibility and accommodate limitations, a Tribunal member who presided at a pre-hearing conference is not prohibited from participating in a subsequent hearing; however, to avoid the perception of bias, a Tribunal member who participated in a pre-hearing conference at which the parties attempted to settle issues is not to preside at the hearing unless the parties given their consent.

Notice of Hearing

- 19 (1) The Tribunal shall give reasonable notice of a hearing to the parties and other participants.
- (2) Notice of hearing shall contain:

- (a) A statement of the date, time, and place of the hearing;
- (b) A general description of the issues to be decided;
- (c) Information about the Tribunal's procedural rules; and
- (d) Information about how to contact the Tribunal.

Role of Parties or Other Participants

- 20 (1) The Tribunal shall give parties or other participants fair opportunity to present a case and to know and respond to the case to be heard.

Quorum

- 21 (1) A quorum of members of the Tribunal as given in the Union Bylaw, may hold any hearing the Tribunal is authorized to hear.
- (2) If a Tribunal hearing requires more than one meeting to determine the outcome of a particular matter, the same members of the Tribunal must be present at all additional meetings.

Access to Proceedings

- 22 (1) The Tribunal may consider it necessary and appropriate to prevent the disclosure of intimate personal, financial, or other matters when the need to protect the confidentiality of those matters outweighs the desirability of an open hearing. In such circumstances, the Tribunal may exercise its discretion to make any of the following orders:
- (a) That all or part of the hearing be held in private;
 - (b) That all or some persons be excluded;
 - (c) That persons be admitted on terms and conditions;
 - (d) That restrictions be placed on the disclosure and publication of evidence;
 - (e) That restrictions be placed on inspection of the Tribunal's record; or
 - (f) Any other appropriate order.
- 23 (1) Nothing in section 20(1) may be interpreted as limiting a party's or other participant's right to be informed and to participate in the proceedings.

Explanatory Note: The Tribunal should only use its discretion to order a closed or private hearing or a publication ban when such an order is necessary to prevent a real and substantial risk to the fairness of the administrative tribunal (including disclosure of personal or privileged information), because no other alternative measures are reasonably available to prevent the risk and the useful effects of the publication ban outweigh the harmful impact the ban has on the freedom of expression and the freedom of the press guaranteed by the Charter.

Type of Hearing

- 24 (1) The Tribunal may hold a hearing in any form considered by it to be appropriate for the parties, other participants, and circumstances, including in-person, written, video or teleconference.

Explanatory Note: The discretion to choose the type of hearing (or combination) is a matter for the Tribunal. Determining which type of hearing should be held, to comply with the duty to act fairly binding administrative tribunals, is highly fact or context-sensitive. In exercising its discretion as to the form of a hearing, a tribunal should consider and balance the following factors:

- The convenience to the parties, other participants, and the Tribunal;
- The prejudice to the parties and the other participants;
- The seriousness of possible consequences to the parties or other participants; and
- The nature of the issue(s) to be considered (e.g. credibility of witnesses).

Submission of Arguments

- 25 (1) The Tribunal shall give a reasonable opportunities to the parties or participants to submit arguments.

Evidence

- 26 (1) If the Tribunal has granted an order permitting reliance on new evidence, the Tribunal may receive and accept any evidence that it considers relevant and appropriate.

Explanatory Note: Appeals to the Tribunal are intended to be decided on the record of the Review Board (s. 7(1)). There should be no need to receive any additional evidence, unless new evidence was one of the groups for appeal (s. 5(1)).

Should the Tribunal decide to admit new evidence, the Tribunal has wide latitude in determining what to admit. The freedom of administrative tribunals from the technical rules that determine admissibility in courts is a principle of common law. Many cases that deal with the admissibility of evidence in administrative hearings note that tribunals are entitled to act on relevant material even if it would not be admissible as evidence in a court as long as in doing so they adhere to the principles of natural justice. Additionally, decision makers may give more or less weight to evidence at their discretion.

- (2) The Tribunal is not bound by the formal rules of evidence.
- (3) Despite section 26(1), nothing that would be subject to privilege shall be admissible before the Tribunal.

Witnesses

- 27 (1) If an order has been granted pursuant to section 7(1), parties and other participants, in the latter case depending on the terms of their participation, may call and examine witnesses.
- (2) If applicable, the Tribunal may ask any question of witnesses which it considers necessary for clarification provided that it does so fairly, without preventing a party or other participant from presenting his or her submissions.
- (3) The Tribunal may, at its discretion, allow parties or participants to cross examine witnesses regarding new evidence, and to the extent that it is required to afford a participant or party a fair opportunity to correct or controvert any relevant statement brought forward to his or her prejudice.

Explanatory Note: Unless an order has been granted pursuant to section 7(1), the Tribunal would not normally need witnesses. The Tribunal retains the ability to exclude repetitious or irrelevant witnesses. There is no absolute right to cross-examine witnesses. The cross-examination of a witness is more likely to be allowed if the credibility of a witness is in question. The power to compel the attendance of witnesses is not appropriate for all tribunals and is a matter best left to the enactment of individual tribunals.

Effect of Non-Participation

- 28 (1) Where a party who has been given reasonable notice of proceedings fails to appear or to participate, the Tribunal may proceed and may render a decision in the party's absence.

Failure to Comply with Tribunal Orders

- 29 (1) Where a party fails to comply with a Tribunal order, the Tribunal may take any measure it considers appropriate, including:
 - (a) Proceeding in the absence of a party;
 - (b) Refusing to admit evidence not previously disclosed;
 - (c) Adjourning a hearing; or
 - (d) Dismissing or allowing an application.

Maintaining Order at the Hearing

- 30 (1) At an oral hearing, the Tribunal may make orders or give directions that it considers necessary for the maintenance of order at the hearing.

Factors for Decision Making

- 31 (1) In reaching a decision, the Tribunal must not take into account any facts or issues whose substance was not disclosed and to which an opportunity to make representations was not given to parties or other participants.

Explanatory Note: The manner in which a decision is reached and how it is communicated with the parties, other participants, and the public must be consistent with the requirements of procedural fairness. The purpose of these sections is to set out the requirements of procedural fairness with respect to decisions and reasons and to reduce any doubts that a tribunal may have as to its powers.

Timely Decision

- 32 (1) The Tribunal shall issue a decision within a reasonable time.

Decisions and Reasons in Writing

- 33 (1) Decisions shall be made by the majority of the Tribunal members participating in the proceedings.
- (2) The Tribunal shall make its final decision in writing and set out the findings of fact on which it based its decision, and the reasons for the decision.
- (3) Any member of the panel disagreeing in whole or in part with the majority must provide his or her dissenting opinion in writing and set out the findings of fact on which the dissent is based, and the reasons for the dissent.

Natural justice and procedural fairness rules require providing written reasons for a decision in certain circumstances, although the form and extent of those reasons may vary for each tribunal depending on the context of issues dealt.

Date of Decision

- 34 (1) A decision shall take effect on the date specified by the Tribunal, or if none, then when the written decision is provided to the parties.

Availability of the Decision

- 35 (1) The Tribunal shall provide a copy of its decision to the parties.
- (2) The Tribunal shall make available a copy of its decision to the other participants.
- (3) Except as otherwise provided for in this procedure, the Tribunal's decision shall be available for public inspection.

Correcting an Error

- 36 (1) The Tribunal may, within a reasonable time, amend its final decision for any of the following reasons:
- (a) To correct a clerical or typographical error or error of calculation;
 - (b) To rectify an accidental slip or omission; or
 - (c) To clarify an ambiguity.

An ambiguity is a type of omission that requires clarification. It can be contrasted with the situation where words are added to an award to expand or amend it.