

School of Medicine
Postgraduate Medical Education: Level 3 Appeals
Postgraduate Tribunal: Terms of Reference and Rules of Procedure

1. Postgraduate Tribunal Function:

To hear appeals from a postgraduate medical student or an International Medical Graduate in the Assessment Verification Period (hereafter referred to as “residents” or “appellants”) from a level 2 appeal decision or from a decision of the Associate Dean, Postgraduate Medical Education (PGME), to suspend a resident or require a resident to withdraw from Queen’s School of Medicine. The resident must submit the appeal within 15 business days after being advised of the Level 2 decision or the decision of the Associate Dean, PGME. The Postgraduate Tribunal (the Tribunal) has no jurisdiction over academic judgments. The decision of the Tribunal is final. A resident does not have access to the University Student Appeal Board of the University Senate.

2. Tribunal Membership

(a) The Tribunal membership shall consist of:

- A Chair: To be appointed for a one year renewable term by the School of Medicine Academic Council from among the Faculty Panel.
- A Faculty Panel: Seven faculty members who are experienced in the training of postgraduate medical resident, appointed by School of Medicine Academic Council for staggered three-year terms. The faculty members may or may not be Program Directors. No residency program shall have more than two representatives on the Panel.
- A Resident Panel: Three postgraduate medical residents, appointed by School of Medicine Academic Council for one-year terms, renewable. No residency program shall have more than one postgraduate resident representative on the Panel.

The Tribunal will be assisted by legal counsel and a secretary.

- (b) For each hearing the Tribunal shall consist of three members; the Chair, one faculty member from the membership of the Faculty Panel (from outside of the discipline of the appellant) and one postgraduate medical resident from the membership of the Student Panel (also from outside the residency program of the appellant) selected by the Dean of the School of Medicine.
- (c) Members must recuse themselves and will be replaced if they have been involved in supervising or evaluating the appellant or are from the appellant’s residency program.

3. Starting an Appeal – Time Limits

- (a) A resident may, within 15 business days of the decision complained of, appeal to the Tribunal. Failure to adhere to the time limits may prevent the resident from pursuing the matter further.
- (b) The Chair may extend or abridge this and other time limits established in these rules if, upon a written application by the requesting party, a satisfactory reason is provided for the delay and there is no undue prejudice to the other party. Normally time limits will be extended during holiday periods.

4. Parties

Parties to every resident appeal shall include:

- (a) The resident who is appealing (the appellant); and
- (b) A respondent, who shall be the Associate Dean, PGME.

5. Right to Representation and Assistance

An appellant is encouraged to seek the assistance of an advisor or any other person, including legal counsel.

6. Procedure

- (a) An appeal to the Tribunal is commenced by filing a Notice of Appeal (Form A) with the Tribunal Secretary (the Secretary), with all supporting documentation, including a copy of the decision being appealed, the underlying facts, the precise grounds of the appeal, the specific remedy sought, all documents upon which the appellant intends to rely (e.g., case law), a list of witnesses that the appellant intends to call, the name of appellant's counsel, if any, and the appellant's current contact information.
- (b) The respondent shall be provided with a copy of the Notice of Appeal by the Secretary and shall have 15 business days from the date of receipt to file a Response (Form B) which will include all documents upon which the respondent intends to rely (e.g., case law), a list of witnesses to be called, and the name of respondent's counsel if any.
- (c) Any submissions about preliminary matters such as jurisdiction or summary dismissal shall be raised at this time.
- (d) The Secretary shall provide the appellant with a copy of the Response.
- (e) No matter shall be placed before the Tribunal unless the appellant has filed, to the satisfaction of the Secretary, the appeal documents described above. The Secretary shall notify the appellant of any deficiencies in the appeal documents, and if these deficiencies are not corrected within the timeframe specified by the Secretary, the appeal may be disallowed for lack of completeness or for non-compliance with procedures. In the event that the Secretary is unable to contact the appellant at the last known address, the appeal shall be considered withdrawn.

7. Convening the Tribunal

The Chair shall convene the Tribunal within 5 business days after the filing of the Response, or as soon thereafter as is possible, to examine the documents and to determine whether any additional information may be required. If the Tribunal requires additional information, it may request that the parties supplement their submissions or provide additional documents. The Tribunal shall have access to the resident's file, containing written evaluation reports, ITERs, relevant School of Medicine documents and other material, including without limitation,

- College of Physicians and Surgeons of Ontario - Licensing Standards.
- Royal College of Physicians and Surgeons of Canada - Standards of Accreditation.
- College of Family Physicians of Canada - Standards of Accreditation.
- Objectives of Training and training requirements for individual programs.
- CMA Code of Ethics.
- Regulated Health Professions Act.
- The Medicine Act.
- The PARO-CAHO contract.

8. Disclosure

The Secretary will forward to all parties every document that is before the Tribunal.

9. Delivery of Documents

- a) Documents referred to in this document may be delivered personally or by mail, fax, or email.
- b) An appellant shall provide the Secretary with the following information:
 - (i) a full residential and mailing address;
 - (ii) an email address; and
 - (iii) a home telephone number.
- c) The appellant shall ensure that the information provided is current and accurate at all times until the appeal is finally disposed of. The appellant shall immediately notify the Secretary in writing of any change in this information.
- d) If the document is sent by regular mail, it shall be sent to the latest mailing address provided by the appellant and shall be deemed to be received by the party on the fifth business day after it was mailed.
- e) If the document is sent by fax or email, it shall be deemed to be received on the day after it was sent, unless that day is a holiday, in which case it shall be deemed to be received on the next day that is not a holiday.

10. Notice of Hearing

The Secretary, on behalf of the Tribunal, shall give the parties reasonable notice of the hearing. A Notice of Hearing shall include:

a statement of the time, place and purpose of the hearing; and

a statement that if the party notified does not attend at the hearing, the Tribunal may proceed in the party's absence and the party will not be entitled to any further notice in the proceeding.

11. Alternate Dispute Resolution

- a) The Chair may at any stage of the proceedings before a decision is rendered, recommend that the parties participate in an alternate dispute resolution process for the purpose of resolving the proceeding or an issue arising in the proceeding.
- b) If the parties agree to participate in an alternate dispute resolution process, they and the Chair must establish timelines for resolving the dispute, normally no longer than 20 business days. At any time during the dispute resolution process, or at the conclusion of the established timeline if the dispute remains unresolved, either party may request that the hearing resume.
- c) No person called upon as a mediator or otherwise appointed to facilitate the resolution of a dispute under this section shall be required to give testimony or produce documents in a proceeding before the Tribunal or in a civil proceeding with respect to matters that have come before her or him in the course of carrying out such duties.
- d) No mediation notes or document, which is produced for the purposes of resolving the dispute, will be disclosed in a proceeding before the Tribunal or in a civil matter.
- e) Both parties shall sign a confidentiality agreement in the form attached (Form C)

12. Dismissal of Appeal Without Hearing

- a) The Tribunal may, on its own motion, dismiss a case after a review of the documents filed and without hearing from the parties if:
 - (i) The Chair determines that the Tribunal does not have jurisdiction;
 - (ii) The Tribunal determines that the appeal is clearly without merit or was commenced in bad faith; or
 - (iii) The appellant has not complied with the timelines or has failed to rectify a deficiency described in 6(e).
- b) The Tribunal shall notify the parties in writing that it is considering dismissing the appeal without a hearing for any of the reasons described in 12(a), and it shall set a date to hear submissions from the parties on the issue.

- c) If a party files a motion with supporting documentation requesting that the Tribunal dismiss the appeal without a hearing, the Tribunal will provide the other party with 10 business days within which to file a response to the motion and will schedule a hearing to hear the motion.
- (d) If a decision is made to dismiss an appeal without hearing, the Chair shall inform the parties in writing of the Tribunal's decision with reasons.

13. Attendance of Witnesses

- (a) Witnesses are not expected to be sworn or affirmed.
- (b) The Tribunal has no power to compel any person to attend a hearing.

14. Hearings To Be Private

Tribunal hearings are to be conducted in private. The Chair may direct who may or may not be present at any stage of a hearing.

15. Examination of Witnesses

- (a) A party to a proceeding or their representative may,
 - (i) Call and examine witnesses and present evidence and submissions; and
 - (ii) Conduct cross-examinations of witnesses reasonably required for a full and fair disclosure of all matters relevant to the issues in the proceeding.
- (b) The Chair may reasonably limit examination or cross-examination of a witness when satisfied that the examination has been sufficient to disclose fully and fairly all matters relevant to the appeal, or that the questioning is irrelevant or abusive.

16. Adjournments

- (a) If during the course of any hearing, the Tribunal decides that additional information is required in order to resolve the matter, the Chair may adjourn the hearing to permit the parties to bring forward such additional information or facts or to permit the Tribunal to obtain such additional information.
- (b) The Tribunal may decide to adjourn the hearing at the request of a party when it is satisfied that no party will be unduly prejudiced by the delay or that an injustice would occur if the hearing were to proceed.

17. Incapacity of Board Member

If a member of a Tribunal who has participated in a hearing becomes unable, for any reason, to complete the hearing or to participate in the decision, the remaining members may complete the

hearing and give a decision. In this event, if the decision of the Tribunal is not unanimous, a new Tribunal must be struck and the hearing re-commenced.

18. Powers of the Tribunal

(a) The Tribunal has the following powers:

- (i) To make preliminary or interim directions and procedural rulings concerning the conduct of the hearing, disclosure of documents and attendance of witnesses.
- (ii) To direct any party to provide particulars or produce documents before or during a hearing.
- (iii) To fix dates for the commencement and continuation of hearings.
- (iv) To admit, in the interests of a fair and expeditious hearing, only evidence that is relevant.
- (v) To admit evidence that would not be admissible in a court of law if it is determined that the evidence is relevant, reliable and its probative value outweighs any prejudice which its admission might produce.
- (vi) To exclude evidence on the ground that it is unduly repetitious, irrelevant, or otherwise inadmissible, for example because of confidentiality or privacy concerns.
- (vii) To determine rules of procedure what are just and equitable and intended to provide a fair and expeditious hearing
- (viii) To uphold the appeal and grant the remedy sought by the appellant in whole or in part, including re-instatement in the Postgraduate Program, and fashion any remedy deemed just and reasonable in the circumstances;
- (ix) Grant the appeal in part and require the appellant to complete a remediation plan developed by the Postgraduate Program prior to being permitted to continue in the Postgraduate Program
- (x) To deny the appeal and require the appellant to withdraw

(b) The Tribunal may not award financial compensation or costs to an appellant except for compensation for out-of-pocket (non-legal and non-medical) expenses that were incurred by the appellant as a direct result of the decision that was reversed on appeal.

19. Tribunal Decision

The Tribunal shall render a decision with reasons as soon as reasonably possible following the conclusion of the hearing. The decision and the reasons shall be delivered to the appellant and the respondent(s).

20. Record of Proceeding

(a) The Secretary shall keep a record of all proceedings before the Tribunal which shall include:

- (i) Any written documents filed by the parties;
 - (ii) Any interim orders made by the Tribunal;
 - (iii) The decision of the Tribunal and the reasons therefore.
- (b) The Secretary may make a tape recording of the proceedings for the purposes of aiding the Tribunal in its deliberations. If directed by the Chair, a transcript of the hearing may be prepared. Ordinarily any tape that is made shall be erased or destroyed one year after the decision of the Tribunal is rendered.
- (c) Unless the preparation of a transcript is directed by the Chair, any party to a proceeding may, within one year from the date of the decision, make a written requisition of the Secretary for a transcript of all or part of the proceeding. Under no circumstances can this time limitation be extended.
- (d) A party requisitioning a transcript pursuant to subsection (c) shall be liable for the cost of its preparation calculated at an hourly rate on a strict cost-recovery basis. The requisition must be accompanied by a deposit in the amount of \$250.00, payable to "Queen's University", to be credited toward the final preparation cost.