

Schedule H: Level 3 Appeals Postgraduate Tribunal Terms of Reference and Rules of Procedure

I. Postgraduate Tribunal Function

To determine appeals from a postgraduate medical residents, fellows, or International Medical Graduates in the Assessment Verification Period (hereafter referred to as “residents” or “appellants”) from a Level 2 decision of the ARB with respect to probation or a requirement to withdraw, or from a decision of the Associate Dean, PGME, to uphold the ARB’s decision with respect to a suspension. 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 and/or clinical performance determinations. The decision of the Tribunal is final. A resident does not have access to the University Student Appeal Board of the University Senate.

II. Tribunal Membership

A Tribunal will normally consist of no less than three members including:

- A designated Chair
- A faculty representative
- A resident representative

This number may be expanded at the discretion of the Vice-Dean, Health Sciences Education, in consultation with the Dean should circumstances warrant. Administrative support will be provided by the Postgraduate Medical Education Office and legal counsel will be provided by the Office of the University Secretariat and Legal Counsel or delegate.

Members will be selected from the Appeals Subcommittee (see Schedule I), a standing group of medical educators who have agreed to participate in postgraduate appeals as Chairs or Faculty Representatives.

III. Starting an Appeal – Time Limits

- (a) A resident may, within 15 business days of notification 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.

IV. Parties

Parties to every resident appeal shall include:

- (a) The resident who is appealing (the appellant); and
- (b) The program director of the Program that imposed the probation or requirement to withdraw, or from which the resident was suspended (the respondent).

V. Right to Representation and Assistance

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

VI. 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, any relevant facts, the precise grounds of the appeal, the specific remedy sought, all documents upon which the appellant intends to rely (including any authorities to which the Tribunal will be referred), the appellant's preferred method of proceeding, the reasons for requesting an in-person proceeding (if applicable) together with a list of any 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 (including any authorities to which the Tribunal will be referred), the respondent's preferred method of proceeding, the reasons for requesting or opposing a request for an in-person proceeding (if applicable) together with a list of any witnesses to be called, and the name of respondent's counsel if any.
- (c) The secretary shall provide both parties with a list of the Appeals Subcommittee membership by email and 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. The parties shall then have 5 business days from the day after it was sent to respond by email, identifying any members they perceive could have a conflict of interest with regard to the case.
- (d) Any submissions about preliminary matters such as jurisdiction or summary dismissal shall be raised at this time.

- (e) The Secretary shall provide the appellant with a copy of the Response.
- (f) 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.

VII. Convening the Tribunal

The Chair shall convene the Tribunal within five 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. Upon request, the Tribunal shall also have access to the resident's file.

VIII. Disclosure

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

IX. Delivery of Documents

- a) Documents from both parties may be delivered personally, electronically, or by mail.
- b) An appellant shall provide the Secretary with the following information:
 - (i) a mailing address;
 - (ii) an email address; and
 - (iii) a 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 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.

X. Notice of Appeal Proceeding

The Secretary, on behalf of the Tribunal, shall give the parties reasonable notice of the appeal proceeding. A Notice of Appeal Proceeding shall include:

- a) a statement of the method of the proceeding as selected by the Tribunal, and if the proceeding is to be held in person, the time and place selected; and
- b) a statement that if the party notified does not provide written submissions or attend at the proceeding, as the case may be, the Tribunal may nevertheless proceed and the party will not be entitled to any further notice in the proceeding.

XI. 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 appeal proceeding 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 any University decision-maker 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 any University decision-maker or in a civil matter, other than as required for implementation or enforcement of the term of an agreed final resolution.
- e) Both parties shall sign a confidentiality agreement in the form attached (Form C)

XII. Dismissal of Appeal Without Appeal Proceeding

- 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 IV(f).
- b) The Tribunal shall notify the parties in writing that it is considering dismissing the appeal without an appeal proceeding for any of the reasons described in XII(a), and it shall set a date to receive submissions from the parties on the issue.
- c) If a party files a request with supporting documentation asking that the Tribunal dismiss the appeal without an appeal proceeding, the Tribunal will provide the other party with 10 business days within which to file a response to the request and will schedule a time for the receipt of submissions.
- (d) If a decision is made to dismiss an appeal without an appeal proceeding, the Chair shall inform the parties in writing of the Tribunal's decision with reasons.

XIII. Appeal Proceedings

The Tribunal shall ordinarily determine appeals by way of written submissions. In-person appeal proceedings shall be held on an exceptional basis, including but not limited to the following circumstances:

- where the issues related to the grounds of appeal cannot be determined without the participation of one or more witnesses;
- where a credibility assessment is required to resolve competing evidence on an important point related to the grounds of appeal; or
- where the Tribunal determines that an in-person proceeding would permit a more efficient resolution of the issues before it.

A party that wishes to have an in-person appeal proceeding shall advise the Tribunal of their request in their Notice of Appeal or Response, as the case may be, and shall provide reasons for their request. The Tribunal shall consider any such requests and may exercise its discretion in determining the method of proceeding. Notwithstanding whether any such requests have been made, the Tribunal may decide to hold an in-person proceeding on its own motion.

XIV. Attendance of Witnesses

Where an in-person proceeding has been selected by the Tribunal and witnesses have been permitted to be called:

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

(c)

XV. Appeal Proceedings To Be Private

Tribunal proceedings are to be conducted in private. The Chair may direct who may or may not be present at any stage of an appeal proceeding.

XVI. Examination of Witnesses

(a) A party to an in-person proceeding or their representative may

- (i) Call and examine any witnesses and present evidence and submissions; and
- (ii) Conduct cross-examinations of any 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.

XVII. Adjournments

- (a) If during the course of any appeal proceeding, the Tribunal decides that additional information is required in order to resolve the matter, the Chair may adjourn the matter 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 appeal proceeding 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 appeal were to proceed.

XVIII. Incapacity of Board Member

If a member of a Tribunal who has participated in an appeal proceeding becomes unable, for any reason, to complete the appeal proceeding or to participate in the decision, the remaining members may complete the appeal proceeding and give a decision. In this event, if the decision of the Tribunal is not unanimous, a new Tribunal must be struck and the appeal proceeding recommenced.

XIX. 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 appeal proceeding, disclosure of documents and

- attendance of any witnesses
- (ii) To direct any party to provide particulars or produce documents before or during the appeal proceeding
- (iii) To fix dates for the commencement and continuation of appeal proceedings
- (iv) To admit, in the interests of a fair and expeditious appeal, only evidence that is relevant to the issues properly before it
- (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 that are just and equitable and intended to provide a fair and expeditious appeal proceeding
- (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 and/or probation period developed by the Postgraduate Program prior to being permitted to continue in the Postgraduate Program
- (x) To deny the appeal
- (xi) To remit the matter back to the prior decision-maker for reconsideration with directions regarding the process to be followed

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

XX. Tribunal Decision

The Tribunal shall render a decision with reasons as soon as reasonably possible following the conclusion of the appeal proceeding. The decision and reasons shall be delivered to the Dean, Queen's Health Sciences. That decision will then be distributed to the Associate Dean, PGME, the appellant and the respondent(s).

XXI. 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 an audio recording of any in-person appeal proceeding for the purposes of aiding the Tribunal in its deliberations. Ordinarily any recording that is made shall be erased or destroyed after the decision of the Tribunal is rendered.