

DISCIPLINE, INTERPRETATION AND ENFORCEMENT BOARD PROTOCOLS

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Part 1

Nature and Purpose of Protocols

Definitions

1 In these protocols,

- (a) “Board” means the Discipline, Interpretation, and Enforcement Board of the Students’ Union of the University of Alberta;
- (b) “Applicant” means the party initiating a complaint, request for interpretation, or appeal, as the case may be;
- (c) “Respondent” means a party responding to a complaint, request for interpretation, or appeal, as the case may be;
- (d) “Intervener” means a party who is not an Applicant or a Respondent who is permitted by a panel to make submissions to the panel;
- (e) “Hearing” means a meeting of a Board panel of first instance, convened to consider and decide on an application;
- (f) “Appeal” means a meeting of a Board appeal panel, convened to consider and rule on an appeal from a decision of a Hearing panel;
- (g) “Registrar” means the Registrar of the Board, the Executive Assistant of the Students’ Union; and
- (h) “Chief Tribune” means the Chief Tribune of the Board, or if the Chief Tribune is unable or unavailable to carry out his or her duties, the Associate Chief Tribune who is available to carry out the duties and who has served on the Board for the longest period of time.

Purpose

2 These protocols set out the procedures to be followed by the Board.

Modification of Protocols Permitted in Certain Circumstances

3 A panel of the Board appointed to hear an application may unanimously agree to modify any of these protocols for a Hearing or an Appeal

- (a) if the strict application of these protocols would cause substantial prejudice to a party before the panel;
- (b) if the modification is necessary to allow a party to make full submissions to the panel; or
- (c) where all of the parties before the panel agree to such a modification.

Where Rules Silent, Discretion Lies With Panel

- 4 If Students' Union legislation or these protocols do not provide for how a Hearing or Appeal will operate with respect to a matter, the panel hearing the Hearing or Appeal may make any rule it sees fit to govern the procedure at the Hearing or Appeal.

Limitations on Panel's Modification of Rules

- 5 Notwithstanding a panel's ability to modify these rules and exercise their discretion to create new rules, the panel must still
 - (a) allow each party to make submissions to the panel; and
 - (b) reach a decision in an unbiased manner.

Part 2

Process for Initiating a Hearing or Appeal

Parties May be Individuals of Groups Represented by an Individual

- 6 Applicants, Respondents, and Interveners may be individuals or groups who are represented by an individual.

Substance of Application

- 7 An Applicant initiates a Hearing or Appeal, as the case may be, by submitting the following information to the Registrar:
 - (a) A form similar to Appendix A ("Application for a Hearing or Appeal"), which in particular must set out:
 - (i) the name, student identification number, and contact information of the Applicant;
 - (ii) in the case of a Hearing, the nature of the alleged contravention or request for interpretation, and the relief sought, if any;
 - (iii) in the case of an Appeal, the nature of the alleged errors by the Hearing panel, and the relief sought, if any;
 - (iv) the names of any parties the Applicant proposes as Respondents; and
 - (v) a list of witnesses the Applicant intends to have appear before the panel, if any;and
 - (b) if the Applicant so chooses, written submissions regarding the matters in issue.

Chief Tribune to Appoint Panel

- 8 The Registrar will forward all requests for Hearings and Appeals to the Chief Tribune, who will appoint a panel for the Hearing or Appeal, specifying the chair.

Hearings May Be Adjourned

- 9 A panel may postpone or adjourn a hearing to a later date if:
- (a) it would be impractical for the hearing to proceed at the scheduled date; or
 - (b) proceeding at the scheduled date would unfairly prejudice a party with a material interest in the outcome of the hearing.

Hearing Date to be Set and Communicated

- 10 The chair of the panel will set a date, time, and location for the hearing or adjourned hearing and communicate that information to the Registrar. The Registrar will communicate this information to the Applicant and Respondent(s), and provide the Applicant and Respondent(s) with a copy of these protocols.

Registrar to Publish Applications for Hearing or Appeal

- 11 The Registrar will publish on the website of the Students' Union all Applications for Hearing or Appeal and will update those publications with the dates, times and locations of those Hearings or Appeals within one business day of receipt of that information.

Conflicts of Interest to Be Considered

- 12 If any tribune believes they could be reasonably perceived as being in a conflict of interest with respect to the subject matter or parties involved in an application, the tribune will inform the Chief Tribune of the circumstances surrounding the potential conflict of interest. If the Chief Tribune is satisfied a reasonable apprehension of conflict of interest exists, that tribune will not sit on the panel.

Applicant's Failure to Comply Can Lead to Rejection of Application

- 13 If the individual or group applying for a Hearing or Appeal fails to submit the required information to the Registrar, the Chief Tribune may
- (a) proceed with a Hearing or Appeal notwithstanding the irregularity; or
 - (b) refuse to hear the application.

Circumstances Where Panel Can Reject Application Without Hearing

- 14 Upon review of the application, the panel may unanimously vote to dismiss an application for a Hearing or Appeal without meeting in person to hear evidence or oral submissions if the panel concludes the application is frivolous, vexatious, or has no possibility of success, or if the panel concludes the issue in question is outside of its jurisdiction to hear. The panel must give written reasons for its decision to dismiss the application.

Panel Also May Identify Potential Respondent(s)

- 15 The panel may propose an individual or group as a Respondent where the application suggests that:
- (a) the individual or group may be directly, materially, and adversely affected if the panel accepts the submissions of the Applicant; or
 - (b) the acts or omissions of the individual or group are being challenged by the Applicant.

Registrar Will Contact Potential Respondent(s)

- 16 The Registrar will provide individuals and groups proposed as Respondents with
- (a) a copy of the application (with the applicant's student ID number omitted) and any written submissions of the Applicant; and
 - (b) information regarding how to become a Respondent, including a copy of Appendix B ("Response to an Application for a Hearing or Appeal").

Respondents' Submissions

- 17 An individual or group proposed as a Respondent may become a Respondent by submitting the following information to the Registrar:
- (a) a form similar to Appendix B ("Response to an Application for a Hearing or Appeal"), which in particular must set out:
 - (i) the name, student identification number, and contact information of the Respondent;
 - (ii) a statement indicating the Respondent wishes to respond to the application; and
 - (iii) a list of witnesses the Applicant intends to have appear before the panel, if any;and
 - (b) if the Respondent so chooses, written submissions regarding the matters in issue.

Registrar Will Contact Applicant With Response

- 18 In advance of the Hearing or Appeal, the Registrar will contact the Applicant and Respondent(s), and provide them with the names and any written submissions of the Respondent(s).

Appearance of Respondent Not Mandatory for Adverse Ruling

- 19 The failure of a proposed Respondent to provide submissions to a panel or appear at a Hearing or Appeal does not prevent the panel from issuing a ruling adverse in interest to the proposed Respondent.

Failure to Attend Hearing May Result in Dismissal of Application

- 20 If the Applicant or an agent for the Applicant fails to appear at a Hearing or Appeal, the panel may, by majority vote, dismiss the application without hearing any parties' submissions.

Part 3

Hearings and Appeals: Burden and Standard of Proof

Burden of Proof

- 21 With respect to any alleged infringement of Students' Union legislation or rules, the burden of proof of any facts lies on the Applicant.

Standard of Proof

- 22 An alleged infringement of Students' Union legislation or rules must be proven on a balance of probabilities.

Burden of Proof for Elections

- 23 With respect to an appeal of a decision by the Chief Returning Officer, a panel may accept as proven any or all facts set out in the Chief Returning Officer's decision.

Burden of Proof on Appeal

- 24 With respect to an Appeal, the panel may accept as proven any or all facts set out in the Hearing panel's decision.

Part 4

Hearings and Appeals: Preliminary Matters

Introductions and Explanations

- 25 At the beginning of a Hearing or Appeal, the chair of the panel will
- (a) introduce the panel members; and
 - (b) respond to questions regarding the procedure to be followed during the Hearing or Appeal.

Interveners May be Permitted

- 26 Before hearing the case, any individuals present who wish to make submissions before the panel may apply to the panel to be certified as Interveners. The panel will decide, by a majority vote, whether an individual or group represented by an individual will be permitted to make submissions as an Intervener.

Standard for Allowing Interveners

- 27 The panel will allow an application for Intervener status only if:
- (a) the party applying for intervener status has relevant expertise or information that cannot be provided by another party; or
 - (b) the party applying for intervener status has a material interest in the outcome of the Hearing or Appeal and their interest cannot be represented by another party.

Challenge for Conflict of Interest

- 28 Before hearing the case, a party may challenge a tribune on the basis of a conflict of interest. The entire panel will then, by majority vote, decide whether the tribune will be permitted to sit on the Hearing or Appeal. If a tribune is not permitted to sit on the panel, the Hearing or Appeal will be adjourned for the Chief Tribune to appoint a new panel member.

Applicants and Respondents May be Represented by Agents

- 29 The Applicant, Respondent(s) and Interveners may be represented by an agent with permission of the panel hearing a case.

Part 5

Hearings and Appeals: Parties Presenting their Cases

Opening Statements

- 30 Each of the Applicant, Respondents, and Interveners will be invited to give an opening statement.

Presentation of Evidence and Cross-Examination

- 31 Following the opening statements, the Applicant, Respondent(s), and Interveners will be invited to present their respective cases. The parties may address the panel themselves, call witnesses, or, with permission of the panel, present any other form of evidence. After any individual gives evidence for a party, the other parties may ask questions of that individual.

Closing Statements

- 32 Following the opportunity to examine witnesses, each of the Applicant, Respondents, and Interveners will be invited to give a closing statement.

Panel May Ask Questions

- 33 Tribunes may ask an Applicant, Respondent, Intervener, or witness questions at any time.

Part 6

Hearings and Appeals: Deliberations and Decisions

Hearing Adjourns for Deliberation

34 After hearing the submissions of the parties the panel will meet in private to deliberate.

Panel to Reach Decision and Issue Ruling

35 The panel will reach a decision, by a majority vote, and issue a written ruling.

Dissenting and Concurring Opinions Permitted

36 Any tribune may write an individual set of reasons for his or her decision, whether the tribune is in the majority or in the minority.

Release and Publication of Decisions

37 The chair of the panel will provide the Registrar with a copy of all panel decisions within three business days of the Hearing or Appeal unless it is impracticable for the chair of the panel to do so. The Registrar will provide a copy of these decisions to Students' Council and the parties to the Hearing or Appeal.

Part 7

Special Procedure for Appeal

Parties to Panel of First Instance to be Notified

38 The Registrar will inform the Applicant, Respondent(s) and Interveners from a Hearing panel of any application for an appeal of the decision of that Hearing panel.