



Regulations on Appeals of Tenure Decisions

Approved:

Senate	February 18, 2015	Minute IIB3
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Full history appears at the end of this document.

SECTION 1. PURPOSE AND SCOPE

- 1.1 These regulations govern appeals by members of the tenure track academic staff of a final decision of the President against recommending a grant of tenure.
- 1.2 These regulations apply to members of the academic staff appointed to tenure track positions under the *Regulations Relating to the Employment of Tenure Track and Tenured Academic Staff* and under the *Regulations Relating to the Employment of Librarian Staff*.

SECTION 2. DEFINITIONS

For the purpose of these regulations, the following definitions shall apply:

- 2.1 “Ad Hoc UTC” means a University Tenure Committee established by decision of a Hearing Subcommittee as provided for in these regulations.
- 2.2 “Advisor” means a member of the University community who has agreed to act in an advisory capacity to a member of the academic staff. Such individuals act in accordance with these regulations and are deemed, in so doing, to perform part of their Academic Duties. They do so without receiving additional remuneration. An Advisor shall be accorded full respect by the University’s administrative officers.
- 2.3 “Appeal” means the formal procedure instituted by the eligible staff member under these regulations regarding the decision of the President against recommending a grant of tenure, following a tenure process undertaken in accordance with the University’s regulations.
- 2.4 “Appellant” means the staff member who has submitted a Notice of Appeal under these regulations.
- 2.5 “Department” means departments, institutes, and schools.
- 2.6 “Departmental Tenure Committee” (hereafter “DTC”), “Library Tenure Committee” (hereafter LTC) and “University Tenure Committee” (hereafter “UTC”) mean those committees constituted under the *Regulations Relating to the Employment of Tenure Track and Tenured Academic Staff* and the *Regulations Relating to the Employment of Librarian Staff*.
- 2.7 “Dossier” means the tenure dossier as provided for in the *Regulations Relating to the Employment of Tenure Track and Tenured Academic Staff* and the *Regulations Relating to the Employment of Librarian Staff*.
- 2.8 “Hearing Subcommittee” means the three-member subcommittee of the Appeals Committee constituted under these regulations to hear the appeal.
- 2.9 “Notice of Appeal” means the written notice to the Secretary-General filed under these regulations following receipt of the written notification of the final decision of the President.
- 2.10 “Parties to the Appeal” means the Appellant and the Respondent.
- 2.11 “Respondent” means the President or such other staff member designated as the University representative for the purpose of these regulations.

- 2.12 "Secretary to the Committee" means the person designated by the Office of the Secretary-General to act as secretary to the Appeals Committee and the Hearing Subcommittee.
- 2.13 All references to the President and the Secretary-General include their delegates, unless otherwise indicated.

SECTION 3. NOTICES

- 3.1 Any notice required to be communicated under these regulations may be communicated:
- i. by email; or
 - ii. by delivery to the staff member's office at the University.
- 3.2 Any notice sent in accordance with these regulations shall be deemed to be received by the staff member on the earlier of:
- i. the day it was sent by e-mail;
 - ii. the day it was delivered.

SECTION 4. DUE DILIGENCE

- 4.1 It is the responsibility of the staff member to prepare and pursue the case for appeal of a decision of the President against tenure.
- 4.2 Earnest effort shall be made by the Appellant and Respondent, and all involved in the appeal process, to make themselves available, and to ensure that the appeal proceeds in a timely manner through the necessary steps.
- 4.3 The Parties to the Appeal agree to be bound by and to give full and immediate effect to decisions arrived at under the procedures set forth herein.

SECTION 5. TIME LIMITS

- 5.1 A staff member who does not file an appeal within the time limits set out in these regulations shall forfeit the right to appeal.
- 5.2 All time limits are fixed and may be modified only by express written permission of the Chair of the Appeals Committee and with the written agreement of both Parties.
- 5.3 The appeal is held to be abandoned if the prescribed time limits are not observed by the Appellant.
- 5.4 The months of July and August shall not be taken into account in calculating any time limits.

SECTION 6. ADVISORS

- 6.1 The Appellant and Respondent may be accompanied by an advisor at any step in the appeal process as set out in these regulations.
- 6.2 Advisors are not parties to the appeal. The role of the advisors is to provide advice to the parties and to assist them with the presentation of the case. Advisors may speak at a Hearing with the consent of the Chair.
- 6.3 The parties shall provide the Secretary-General with the names of their advisors no later than ten (10) working days before the date set for the hearing.
- 6.4 The Secretary-General shall transmit the names of the advisors to the Parties to the Appeal and to the members of the Hearing Subcommittee.

SECTION 7. APPEALS COMMITTEE

- 7.1 There shall be an Appeals Committee for hearing appeals of the final decision of the President against recommending a grant of tenure.
- 7.2 The Appeals Committee shall consist of ten (10) members of the academic staff, appointed to staggered terms of office of three (3) years, commencing on September 1st.
- 7.3 The appointments shall be approved by Senate and the Board of Governors, following the nominating process set out below.

- 7.4 Prior to the March 1st of each year, the Secretary-General shall request from the President of the McGill Association of University Teachers (M.A.U.T.) and the President a slate of names consisting of at least twice the number of vacancies on the Appeals Committee to be filled that year.
- 7.5 The slate of recommended names shall be submitted by the President of M.A.U.T. and the President to the Secretary-General for consideration by the Senate Nominating Committee. From this slate, the Senate Nominating Committee shall select the persons to recommend to Senate to fill the vacancies. Reasonable efforts shall be made to give due consideration to gender representation as well as representation from different faculties when appointing members to the Appeals Committee.
- 7.6 To be eligible to serve, the staff member shall be a tenured member of the full-time academic staff who is on active employment with the University, and available to serve for the full term of the appointment.
- 7.7 The Appeals Committee shall select a Chair and Vice Chair annually from amongst the serving members.

SECTION 8. HEARING SUBCOMMITTEE

- 8.1 Following a Preliminary Determination by the Chair of the Appeals Committee that the appeal may proceed, the appeal shall be heard by a subcommittee (hereinafter referred to as the Hearing Subcommittee) consisting of:
- i. the Chair or Vice-chair of the Appeals Committee who shall act as Chair of the Hearing Committee;
 - ii. two other members chosen in accordance with the provisions set out in these regulations.
- 8.2 The Office of the Secretary-General shall provide a secretary to the Appeals Committee and to the Hearing Subcommittee.
- 8.3 Neither the Parties to an Appeal, nor their advisors, may communicate directly with the Chair of the Appeals Committee, the Chair of the Hearing Subcommittee or any of the members of the Hearing Subcommittee. All communications shall be made in writing through the Office of the Secretary-General.
- 8.4 The Secretary-General shall ensure that all questions, communications or documents received regarding an appeal shall be communicated in whole in a timely manner to the Hearing Subcommittee and the Parties to the Appeal.

SECTION 9. GROUNDS FOR APPEAL

- 9.1 A final decision of the President against recommending a grant of tenure may only be appealed on one or both of the following grounds:
- i. that the decision was arrived at on the basis of a failure to follow proper procedures (procedural error) or bias;
 - ii. that the decision is unreasonable in light of the dossier at the time of the decision and inconsistent with University standards.
- 9.2 The following decisions are not subject to appeal: refusal of early tenure; refusal of an appointment with tenure; refusal of tenure for retention.

SECTION 10. APPEAL PROCEDURES

Filing the Appeal

- 10.1.1 A staff member who wishes to file an appeal shall submit a written Notice of Appeal to the Secretary-General, in the form prescribed by the Secretary-General, no later than twenty (20) working days from receipt of the written decision of President.
- 10.1.2 A staff member who does not file an appeal, or proceed with his or her appeal as prescribed, and within the time limits set out in these regulations, shall forfeit the right to appeal, and the appeal shall receive no further consideration.
- 10.1.3 The Notice of Appeal shall include the Appellant's rank, department, and contact information. The Notice shall succinctly set out the grounds for the appeal as stated above, outlining the facts and providing complete and substantive reasons as to how each stated ground of appeal affected the decision against tenure. A copy of the letter constituting the final decision of the President against tenure shall be appended, together with any supporting documentation.

- 10.1.4 Together with the Notice of Appeal, the Appellant shall submit in a sealed envelope labelled 'Appellant's Confidential Nomination' the name of a member of the Appeals Committee (other than the Chair or Vice-chair) that the Appellant selects to serve on the Hearing Subcommittee for the appeal.
- 10.1.4.1 In making the Confidential Nomination, the Appellant shall be mindful of the *Regulation on Conflict of Interest*.
- 10.1.5 Within five (5) working days following the filing of the Notice of Appeal, the Secretary-General shall ask for the President's Confidential Nomination of a member of the Appeals Committee to serve on the Hearing Subcommittee.
- 10.1.6 The Secretary-General shall promptly transmit the Appellant's Notice of Appeal and the Confidential Nominations of the Appellant and the President to the Chair of the Appeals Committee.

Preliminary Determination

- 10.2.1 The Chair of the Appeals Committee, in consultation with the Secretary General, shall make a preliminary determination as to whether the Appellant:
- i. is eligible to file an appeal under sections 1.1, 1.2 and 9.2; and
 - ii. has filed the Notice of Appeal in compliance with these regulations, including applicable time limits.
- 10.2.2 If the Chair of the Appeals Committee determines that the Appellant has met the conditions set out in these regulations, the Chair of the Appeals Committee shall, within 10 working days, inform the Appellant, the President, and the Secretary-General, in writing, that the required conditions have been met and that the Appeal may proceed.
- 10.2.3 If the Chair of the Appeals Committee makes a preliminary determination adverse to the Appellant, the Chair shall, within 10 working days, inform the Appellant, the President, and the Secretary-General, in writing as to which of the required conditions have not been met and that the Appeal may not proceed and may have no further consideration.
- 10.2.4 A preliminary determination adverse to the Appellant may not be further appealed.

Respondent's Reply

- 10.3.1 As soon as it has been determined that the Appellant has met all conditions for an Appeal, the Secretary-General shall make available to the Parties, in electronic form, the Appellant's Notice of Appeal and the Appellant's complete tenure dossier that gave rise to the appeal and shall ask for the Respondent's written reply to the Appellant's arguments as set out in the Notice of Appeal. The Respondent shall be entitled to submit supporting documentation. The Respondent's reply shall be submitted within fifteen (15) working days of the request. The Appellant shall have the right to reply at the hearing.

Establishing the Hearing Subcommittee

- 10.4.1 Within five (5) working days of making a preliminary determination that the Appellant has met all conditions, the Chair of the Appeals Committee shall constitute the Hearing Subcommittee by designating the Chair and confirming the other two members nominated by the Appellant and the President respectively.
- 10.4.2 If the Appellant and the President have nominated the same person, the Chair of the Appeals Committee shall choose that person and shall select one other person from the membership of the Appeals Committee to hear the appeal.
- 10.4.3 The Secretary-General shall notify the Parties to the Appeal of the composition of the Hearing Subcommittee.
- 10.4.4 In the event that a vacancy occurs in the Hearing Subcommittee, the member shall be replaced, as follows.
- i. In the event the vacancy occurs in respect of the Chair of the Hearing Committee, the Chair or Vice-Chair of the Appeals Committee shall replace the other, if available; if not available, the replacement chair shall be chosen by the Secretary-General from the available members of the Appeals Committee.
 - ii. In the event the vacancy occurs in respect of the members selected by the parties, the Secretary-General, in consultation with the party concerned, shall forthwith name a replacement from the available members of the Appeals Committee.
 - iii. In the event that a member of the Hearing Subcommittee is unable to attend a hearing and a postponement is not possible, a new member shall be chosen in accordance with these regulations and the Hearing Subcommittee shall recommence its consideration of the

Appeal.

Notice of Hearing

- 10.5.1 The hearing date shall be set by the Chair of the Hearing Subcommittee, after reasonable consultation with the Parties to the Appeal. The Secretary-General shall communicate a Notice of Hearing to the parties confirming the date, time and place for the hearing, with a copy to the members of the Hearing Subcommittee.
- 10.5.2 No later than five (5) working days before the date set for the hearing, the Chair of the Hearing Committee shall determine the order and general procedures for the conduct of the hearing and the Secretary-General shall communicate these to the parties, with a copy to the members of the Hearing Subcommittee.
- 10.5.3 No later than ten (10) working days before the date set for the hearing, the Secretary-General shall make available to the Parties to the Appeal and to the Hearing Subcommittee, in electronic form, all documentation to be considered by the Hearing Subcommittee.

Witnesses

- 10.6.1 No later than five (5) working days before the first hearing day, the Parties to the Appeal shall provide the Secretary-General with the names of relevant witnesses.
- 10.6.2 The Secretary-General shall forthwith transmit the names of the witnesses to the Parties to the Appeal and to the members of the Hearing Subcommittee.
- 10.6.3 The Parties to the Appeal are responsible for ensuring that their witnesses are present in person to provide oral evidence on the required hearing date.
- 10.6.4 The advisor to either Party to the Appeal may not be called as a witness to the Appeal.

SECTION 11. HEARING OF THE APPEAL

- 11.1 If either party fails to attend the hearing, the Hearing Subcommittee may proceed in their absence.
- 11.2 The Hearing Subcommittee shall not proceed to a hearing *de novo*.
- 11.3 The Hearing Subcommittee shall consider only those substantive issues that are alleged in the Notice of Appeal.
- 11.4 The Hearing Subcommittee shall consider the appeal on the basis of a review of the following documentation:
- the Appellant's Notice of Appeal and supporting documents;
 - the Respondent's Reply and supporting documents;
 - the candidate's tenure dossier;
 - the report of the DTC or LTC;
 - the report of the UTC;
 - the letters from the external evaluators, which shall be transmitted to the Parties with nominative information removed; and
 - the President's decision.
- 11.5 The Appellant bears the burden of proof, and shall proceed first to present the case for appeal. The Appellant shall address only those grounds of appeal as set out in the Notice of Appeal, as well as any matters arising from the Respondent's Reply.
- 11.6 The Hearing Subcommittee may permit new evidence to be adduced and witnesses to be heard in the presence of the Parties, but only to clarify issues that are not evident from the existing written record.
- 11.7 New evidence and witnesses relating to the period after the year of tenure consideration shall not be introduced.
- 11.8 The Hearing Subcommittee shall provide an opportunity for oral statements by the Parties.
- 11.9 Either Party to the Appeal may put questions to the other and to any relevant witnesses. With permission of the Chair, Advisors may also ask questions.
- 11.10 The Hearing and the deliberations are confidential. No stenographic record or recording of the Hearing Subcommittee's proceedings shall be kept.

11.11 The Hearing is closed and observers are not permitted.

Decision of the Hearing Subcommittee

11.11.1 The Hearing Subcommittee shall determine whether the staff member has met the burden of proof with respect to the stated grounds of appeal.

11.11.2 The decision of the Hearing Subcommittee shall be by simple vote.

11.11.3 The decision of the Hearing Subcommittee shall be final and binding on both parties and without further appeal.

Decision Concerning the Grounds of Procedural Error or Bias

11.11.4 If the Hearing Subcommittee decides that there was procedural error or bias and is satisfied that the procedural error or bias might reasonably have affected the decision against tenure, it shall allow the appeal and refer the case back for reconsideration by an Ad Hoc UTC. In the event that such procedural error or bias occurred at the level of the DTC, the Hearing Subcommittee shall provide the Ad Hoc UTC with its own conclusions on the issue and ask the Ad Hoc UTC to take them into account as part of its reconsideration.

11.11.5 If the Hearing Subcommittee decides that there was procedural error or bias and is satisfied that the procedural error or bias did not affect the decision against tenure, it shall dismiss this ground of appeal.

11.11.6 If the Hearing Subcommittee decides that there was no procedural error or bias, it shall dismiss this ground of appeal.

Decision Concerning the Grounds of Unreasonable and inconsistent

11.11.7 If the Hearing Subcommittee decides that the decision against tenure was unreasonable in the light of the dossier available at the time of the decision and inconsistent with University standards, it shall allow the appeal and refer the case back for reconsideration by an Ad Hoc UTC.

11.11.8 If the Hearing Subcommittee decides that the decision was reasonable in the light of the evidence in the dossier available at the time of the decision and consistent with University standards, it shall dismiss this ground of appeal.

Final Disposition of Hearing Subcommittee Decision

11.11.9 Within fifteen (15) working days from the last day of the hearing, the Hearing Subcommittee shall report in writing to the Secretary-General its decision to either dismiss the Appeal or to allow the Appeal and refer the case back to an Ad Hoc UTC. The Secretary-General shall forthwith communicate the decision to the Parties to the Appeal.

11.11.10 Unless the Hearing Subcommittee decides to allow the Appeal on one or more of the stated grounds, it shall dismiss the Appeal.

11.11.11 If the decision of the Hearing Subcommittee is to dismiss the Appeal, tenure shall not be granted. If, at the time of the President's original decision against tenure, the Appellant has not been given at least 37 weeks' notice before the termination date of the current appointment, the staff member's appointment shall continue until May 31st of the year immediately following the President's original decision against tenure.

Ad Hoc UTC

11.11.12 In the event that the Hearing Subcommittee refers the case to an Ad Hoc UTC for reconsideration, the Ad Hoc UTC shall be constituted forthwith by the Secretary-General under these regulations.

11.11.13 All members of the Ad Hoc UTC shall be members who did not serve on the original UTC. The Ad Hoc UTC shall be composed of the following:

- i. the Chair, who shall be the Dean or an Associate Dean from the Appellant's Faculty;
- ii. two tenured staff members drawn from the Faculty list of the Appellant's Faculty;
- iii. three tenured staff members drawn from the Senate list.

11.11.14 Within 10 working days of the composition of the Ad Hoc UTC, the Parties to the Appeal shall be informed by the Secretary-General, in writing, of its membership. In the event that the Appellant has good and valid reasons to object to any of the membership of the Ad Hoc UTC, the objection shall be submitted to the Secretary-General in writing within 5 working days and the Secretary-General shall appoint a replacement,

in accordance with 11.11.13.

- 11.11.15 The Ad Hoc UTC shall consider the case in light of the dossier at the time of earlier considerations of the case, as follows:
- the candidate's tenure dossier;
 - the report of the DTC or LTC;
 - the letters from the external evaluators.
- 11.11.16 New evidence relating to the period after the year of tenure consideration shall not be introduced.
- 11.11.17 The Ad Hoc UTC shall follow the procedures for UTCs laid down in the *Regulations Relating to the Employment of Tenure Track and Tenured Academic Staff* and the *Regulations Relating to the Employment of Librarian Staff*.
- 11.11.18 The Appellant and the chair of the DTC shall be given the opportunity to address the Ad Hoc UTC in the presence of the other party.

Ad Hoc UTC Decision and Final Disposition

- 11.11.19 The decision of the Ad Hoc UTC shall be in writing and shall be submitted to the Secretary-General, within two (2) calendar months of the date of referral by the Hearing Subcommittee. The Secretary-General shall forthwith communicate the decision to the Parties to the Appeal and to the Chair of the Hearing Subcommittee.
- 11.11.20 If the decision of the Ad Hoc UTC supports a grant of tenure, a recommendation for tenure shall be made to the Board of Governors, retroactive to June 1st.
- 11.11.21 If the decision of the Ad Hoc UTC is to recommend against tenure, tenure shall not be granted and the decision shall be without further appeal. If, at the time of the President's original decision against tenure, the Appellant has not been given at least 37 weeks' notice before the termination date of the current appointment, the staff member's appointment shall continue until May 31st of the year immediately following the President's original decision against tenure.

Effective February 26th 2015 the appeal procedures for tenure contained in the *Regulations Relating to the Employment of Academic Staff (section 8)* and the *Regulations Relating to the Employment of Librarian Staff (section 7)* are repealed and replaced by the *Regulations on Appeals of Tenure Decisions*. Appeals of negative reappointment decisions will continue to be dealt with under the *Regulations Relating to the Employment of Academic Staff (section 8)* and the *Regulations Relating to the Employment of Librarian Staff (section 7)* until such a time as these Regulations can be reviewed as far as appeals of reappointment decisions are concerned.

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