

Complete Policy Title:

**Procedures for Faculty  
Appeal Tribunals**

Policy Number (if applicable):

**SPS D1**

Approved by:

**Senate  
Board of Governors**

Date of Most Recent Approval:

**December 14, 2011  
December 15, 2011**

Date of Original Approval(s):

**January, 1993**

Supersedes/Amends Policy dated:

**February, 2002 (SPS 20)**

Responsible Executive:

**Provost and Vice-President (Academic)**

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## **I Definitions**

The following definitions are used in these procedures:

1. 'Appellant' means a faculty member who is entitled to appeal a tenure/permanence and/or promotion decision according to the Tenure and Promotion Policy, Section IV, clause 2 [hereinafter cited as the Policy, Section IV, clause 2].
2. 'Determining Committee' or 'Respondent' means the party to the appeal other than the Appellant as otherwise defined, together with its representative, within the Policy, Section IV, clauses 6(a) and 6(b).

## **II Documents Governing Appeal Procedures**

The following documents, in descending order of paramouncy, set out the basic procedures and principles which must govern all appeal proceedings

1. The Statutory Powers Procedure Act (the "SPPA"),
2. McMaster University Revised Policy and Regulations with Respect to Academic Appointment, Tenure and Promotion, January 2012 (the "Policy")
3. Senate By-laws -- By-laws 146 and 147, and

4. Faculty Association Observers at Appeal Tribunal Hearings (“SPS D2”).

### **III Purpose of an Appeal**

An appeal affords an Appellant the opportunity, within the institutional framework of the University, to appeal a decision denying tenure/permanence and/or promotion. The Appeal Tribunal (as defined in the Policy, Section IV, clause 2), composed of three members of faculty who have not been previously involved in the decision under appeal, is empowered to review the evidence, both written and oral, upon which the decision being appealed was based, to consider new evidence under certain circumstances (see the Policy, Section IV, clause 10) and to decide, by a majority, whether to grant the appeal of the decision. The Appeal Tribunal’s members are the sole judges of fact and shall render a decision which is fair and just in the circumstances.

The delegated authority of Senate, under Section IV, clause 12 of the Policy renders the decision of the Appeal Tribunal final and the report to Senate is informational.

### **IV Procedure Leading to Establishment of Appeal Tribunal**

1. The appeal shall be submitted in writing by the Appellant to the University Secretary.
2. The University Secretary shall acknowledge receipt of the appeal within five business days and forward a copy to the Tenure and Promotion Appeals Nominating Committee of Senate.
3. The receipt of the appeal shall be reported for information to the next Senate meeting.
4. The Tenure and Promotion Appeals Nominating Committee shall nominate, for recommendation to Senate, the membership of an Appeal Tribunal, in conformity with the Policy, Section IV, clause 3. Prior to the nomination to Senate, the Appellant and the Chair of the Determining Committee are informed of the list of suggested members for the Appeal Tribunal and each may object, and give reasons for objecting, to any person or persons on it. Objections shall be considered by the Tenure and Promotion Appeals Nominating Committee, but the Committee retains all discretion to nominate the members of the Appeal Tribunal.
5. By resolution, Senate shall establish the Appeal Tribunal, as recommended by the Tenure and Promotion Appeals Nominating Committee, and in doing so, delegates authority to make the final decision to the Appeal Tribunal.
6. Thereafter the University Secretary shall inform the Appellant and Determining Committee of the composition of the Appeal Tribunal.
7. Prior to the first substantive hearing date, the University Secretary (or delegate) shall convene a procedural meeting of the Appeal Tribunal members to review the relevant procedures, establish fixed subsequent date(s) for a hearing, timelines for the

exchange of documents and submissions, and decide other procedural matters. At this meeting, the Appeal Tribunal shall select from its members a Chair. The Chair has primary responsibility for the orderly conduct of the proceedings. The University Secretariat shall provide administrative support to the Appeal Tribunal. After the procedural meeting, a formal Notice of Hearing is sent by the University Secretariat to the Appeal Tribunal and to the parties to the appeal.

## **V Procedures Prior to the First Hearing**

The University Secretariat shall correspond with the parties as follows:

1. The Appellant shall be requested to provide the following information:
  - a. preference for an open or closed hearing (see V, 3. a. below);
  - b. names of witnesses to be called (see V, 3. d. below);
  - c. name of Appellant's counsel or advisor, if applicable (see V, 3. b. below);
  - d. whether the Appellant is agreeable to having a Faculty Association Observer present during the appeal hearings and if so, to all documentation being provided to the Observer;
  - e. a written statement giving reasons for contesting the decision of the Determining Committee, as well as any other documents the Appellant wishes to provide prior to the first hearing.
  
2. All written material submitted by the Appellant shall be forwarded to the Determining Committee. The Determining Committee shall then be requested to provide the following information:
  - a. preference for an open or closed hearing (see V, 3. a. below);
  - b. names of witnesses to be called (see V, 3. d. below);
  - c. name of Respondent's counsel, if applicable (see V, 3. b. below);
  - d. The name(s) of the individual(s) who will represent the Determining Committee at the hearings
  - e. a written statement responding to the Appellant's reasons for contesting the decision of the Determining Committee, as well as any other documents the Respondent wishes to provide prior to the first hearing.
  
3. Clarification of Procedural Elements:
  - a. Open or Closed Hearing -- The S.P.P.A. requires that all hearings be open (Section 9). However, the hearings may be closed when the Appeal Tribunal is of the opinion that intimate financial or personal matters would be disclosed (Section 9, [1][b] of the S.P.P.A.). Therefore the Appeal Tribunal, after hearing from the parties (Policy, Section IV, clause 9), shall decide whether the hearings should be open or closed.

- b. Counsel -- Either party to the appeal may be represented by counsel or an advisor who will speak and submit argument on behalf of the party, except for the party's own testimony. (Policy, Section IV, clause 7). Although more than one counsel or advisor may represent a party, only one representative may speak, after being clearly identified, for the party during any one segment of the hearing.
- c. Evidence -- Either party has the right to present evidence at the hearing and both parties must see any documentary evidence which is presented to the Appeal Tribunal (Section 10, S.P.P.A.) subject to the specific regulations regarding evidence set out in the Policy, Section IV, clauses 10 & 11.
- d. Witnesses -- Both parties and the Tribunal have the right to call, examine and cross-examine all witnesses.

A person appearing before the tribunal shall be required to give evidence under affirmation or oath (Section 22, S.P.P.A.).

The Appeal Tribunal has discretion to limit the testimony and questioning of witnesses to those matters it considers relevant to the disposition of the case (Section 23[2], S.P.P.A.).

Parties are responsible for producing their own witnesses and for paying the costs associated with their appearance before the Appeal Tribunal. The Appeal Tribunal has no power to award costs for or against a witness, party or counsel. The Appeal Tribunal Chair has the power to compel a witness to attend and parties may request the Chair's aid in this regard (Section 12, S.P.P.A.).

Witnesses, who are not parties, are present in the hearing room only during their testimony. During any recess or adjournment prior to the completion of the witness' testimony, a witness may not discuss his/her testimony with any other person including counsel, a party or other witness.

- e. Recesses and Adjournments Subject to the restrictions on witnesses above, during a Hearing, the Appeal Tribunal may grant a recess or an adjournment to allow parties or the Appeal Tribunal to review written or documentary evidence submitted at the hearing or for any other reason to ensure a fair hearing (Section 21, S.P.P.A.).

## **VI First Hearing**

At the first hearing the following matters should be addressed:

1. whether the hearing will be open or closed;
2. the procedure to be followed for the presentation of evidence. (Normally the procedure used is the one outlined in Section VII);
3. the identification of counsel, if any, by both parties to the appeal;
4. the witnesses to be called by the parties to the appeal. If, during the course of the hearings, either party wishes to call additional witnesses, the Appeal Tribunal and the other party must be informed prior to the hearing at which the witness or witnesses are to appear.

## **VII Procedures for Appeal Hearings**

Appeals are conducted in accordance with Section IV of the Tenure and Promotion Policy and S.P.P.A. Requirements of the S.P.P.A., termed as "minimal rules", do not set out explicit procedures regarding the conduct of meetings or hearings, but rather leave much to the discretion of the Appeal Tribunal based upon the other informing documents and the law. The main purpose of the "minimal rules" is to ensure that the Appellant receives a fair hearing and all parties have appropriate notice of hearing and opportunity to participate.

Appropriate Procedures-- Where any procedural matter is not dealt with specifically in the Tenure and Promotion Policy or in these procedures, the Appeal Tribunal may, after hearing submissions from the parties and considering the principles of fairness, establish an appropriate procedure.

The Appellant bears the onus to make his or her case (i.e., why the Respondent should have recommended her or him for tenure/permanence and/or promotion). The following order of proceedings shall be followed:

1. The Appellant presents the reasons for appealing and provides evidence in support of those reasons. In addition to the submission of documents, this includes the calling of any witnesses, and the examination and cross-examination of witnesses by the Respondent and questioning by the Appeal Tribunal.
2. The Respondent answers the allegations by way of an opening statement and then calls its witnesses, if any, and/or submits written evidence to show the Appeal Tribunal why the previous decision was made and answer the Appellant's assertions. The Appellant has the right to cross-examine, and the Appeal Tribunal has the right to question, the witnesses called by the Respondent.

3. The Appellant then has the opportunity to reply to provide evidence solely in the Respondent's evidence.
4. The hearing then concludes with summation and argument by each party; first the Appellant and then the Respondent, with the Appellant having the right to solely reply again to the Respondent's argument, if necessary. The Appeal Tribunal is free to ask questions at the conclusion of each party's submission.

## VIII Record of Proceedings

The University Secretary (or delegate) shall maintain a log of the audio recording so that if any Appeal Tribunal member or party to the appeal wishes to locate certain testimony, this information can be found. Appeal Tribunal members must, however, keep their own notes of the hearings if they wish to have a record of the testimony other than the audio recording.

Although the hearing shall be recorded in order to obtain an accurate record of the proceedings, such audio recording is done for convenience purposes only and the malfunction of the recording device or subsequent loss of the recording shall not invalidate, in any way, the related hearing. The recording shall be held in confidence by the University Secretariat for a period of three years from the date of the Appeal Tribunal's report to Senate.

## IX Faculty Association Observer

The Senate policy governing Faculty Association observers is:

**"that, subject to the agreement of the Appellant, a Faculty Association observer be permitted to be present at all hearings of appeal tribunals and to receive all the documentation available to the appellant. Such an observer would be non-participating."** (Approved by Senate - June 13, 1979).

The agreement of the Appellant should be obtained before the first hearing as to whether he or she has any objection to a Faculty Association Observer being present. In seeking this agreement, the University Secretary shall provide the Appellant with a copy of SPS D2.

The Faculty Association Observer is subject to the "Faculty Association Observers at Appeal Tribunal Hearings" SPS D2.

The Faculty Association observer also receives a copy of the document in which the Appeal Tribunal reports its decision to Senate.

## **X Reports to Senate from Appeal Tribunals**

At the conclusion of the hearings, the Appeal Tribunal shall decide whether or not to grant the appeal.

The Appeal Tribunal shall report its decision in writing to the parties and to Senate.

The Appeal Tribunal is required to report to Senate within three months, under normal circumstances, of its being constituted. (Senate By-law 147(b)). The report goes to Senate for information only, although the Chair of the Tribunal may be invited to the Senate meeting to answer any questions of information or clarification. If the appeal is successful, Senate shall proceed to recommend to the Board of Governors that the faculty member be granted tenure/permanence and/or promotion.

Senate requires that the following information be included in the Report to Senate from an Appeal Tribunal.

1. A statement of the essential nature of the appeal (for example, appeal of a decision not to promote, appeal of a decision to deny tenure/permanence, etc.) and the decision reached by the Appeal Tribunal, i.e. whether the appeal was successful or not, as well as whether or not the vote was unanimous.
2. An outline of the nature of the case and the process and reasoning in relation to the University's criteria for tenure/permanence, reappointment or promotion, as appropriate, which led to the Tribunal's decision.
3. To be included in an appendix:
  - a. a list of meetings and hearings held by the Appeal Tribunal;
  - b. a list of evidence considered by the Tribunal; and
  - c. a list of the witnesses called by parties to the Appeal and/or the Appeal Tribunal.

If an Appeal Tribunal feels that there are issues which relate to Senate policies or any other matters on which it wishes to make comments or recommendations, such recommendations or comments shall be made in a separate report to the appropriate University body.

4. The report to Senate from the Appeal Tribunal is also subject to the following Senate policies:
  - a. The report to Senate of an Appeal Tribunal, whether the appeal hearings are held in open or closed session, is available on request from the University Secretary after such report has been received by Senate, subject to the written agreement of the Appellant and any other party who might be identified in the report. (Approved by Senate: October 12, 1977)

- b. In the case of written appeal reports, where comment is passed on the role played by an individual, the relevant portion of the report shall be made available to that individual subsequent to the Senate meeting, and he/she shall be given the opportunity to communicate with the Senate. (Approved by Senate: June 11, 1975)
- c. Recordings and/or minutes of Appeal Tribunals, as well as any supportive documents or evidence, are to be released if such material is requested by the Human Rights Commission in support of a specific complaint. (Approved by Senate: October 12, 1977) Such material must be retained by the University Secretariat for a minimum of 36 months.