

Complete Policy Title:
**Faculty Grievance Review Panel Guidelines
for Hearing Committees**

Approved by:
Faculty Grievance Review Panel

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Responsible Executive :
Faculty Grievance Review Panel

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I PROCEDURE LEADING TO ESTABLISHMENT OF HEARING COMMITTEE

1. Within twenty-one days of the expiry of the time limit of Stage 3 of the Faculty General Grievance procedure, the aggrieved faculty member (the Grievor) files a written Request for a Formal Hearing, with supporting documentation, with the Secretary of the Senate (copies of the Request form are available from the Senate Office).
2. The Secretary of the Senate acknowledges receipt of the grievance, informs the Chair of the Grievance Review Panel (or Vice-Chair in case of absence), forwards a copy of the Request for a Formal Hearing and supporting documentation to the Primary Respondent, the person to whom the grievance was originally addressed, who is the person at the first administrative level having authority to dispose of the grievance, and asks the Primary Respondent for a written response.
3. The Secretary of the Senate also informs the President of the Faculty Association that there is to be a formal hearing under the Faculty General Grievance procedure, and invites the Faculty Association to send an observer.
4. Within fourteen days of receipt of the request for a written response, the Primary Respondent shall deliver to the Secretary of Senate a written reply to items (1) to (3) of the Grievor's Request for a Formal Hearing and shall submit the following information: preference for open or closed hearing; opinion on whether the grievance falls within the scope of the General Grievance Procedure; names of witnesses to be called; and name of Primary Respondent's counsel, if any. The Secretary of the Senate shall forward a copy of this reply to the Grievor.

5. Within fourteen days of the receipt of the written grievance, the Chair of the Grievance Review Panel (or Vice-Chair in case of conflict of interest or absence) nominates a Hearing Committee. The Committee shall consist of the Chair or Vice-Chair of the Grievance Review Panel, who shall act as Chair of the Hearing Committee, and two other members of the Grievance Review Panel. The Chair of the Grievance Review Panel shall select members of the Hearing Committee who have no conflict of interest; for example, they shall not be members of the same department as the Grievor, nor shall they have made a substantive contribution to the decision being grieved. The Chair of the Grievance Review Panel informs the Grievor and the Primary Respondent of the proposed members of the Hearing Committee and gives them an opportunity to object, with reasons, to the proposed membership. The Chair of the Grievance Review Panel shall rule on any such objection before the Hearing Committee begins its work.
6. The Secretary of the Senate arranges a convenient time and place for the first hearing. Once this has been decided a formal Notice of Hearing is sent to the parties to the grievance and to the Hearing Committee members. In addition, copies of the Request for a Formal Hearing and the written response from the Primary Respondent shall be forwarded to the Hearing Committee members.

II PURPOSE OF A HEARING

The purpose of a hearing is to provide the aggrieved faculty member, within the institutional framework of the university, with an impartial adjudication of her or his grievance. The Hearing Committee, composed of three members of faculty who have not been previously involved in the decision being grieved against, is empowered to review the evidence, both written and oral, upon which the former decision was based. The members of the committee shall be the sole judges of the facts and shall render that decision which, in their judgement, is fair and just in the circumstances.

The decision of the Hearing Committee is binding, and is reported to the President for implementation.

III PROCEDURES FOR GRIEVANCE HEARINGS

Hearings are conducted in accordance with the principles of natural justice and the provisions of *The Statutory Powers Procedure Act (S.P.P.A.)*. Requirements of the *S.P.P.A.*, termed "minimal rules", do not set out explicit procedures regarding the conduct of meetings or hearings, but rather leave much to the discretion of the Hearing Committee. The main purpose of the "minimal rules" is to ensure that the Grievor receives a fair hearing and all parties have appropriate notice of hearing and opportunity to participate. The parties to the hearing may, by agreement, waive any of the requirements of the *S.P.P.A.* (Section 4, *S.P.P.A.*).

The onus is on the Grievor to make his or her case, i.e., why the interpretation or application of a duly enacted University policy or established practice was unfair, unjust or unreasonable. The Hearing Committee will decide on the order of presentation of testimony and evidence.

The following is a natural sequence, which any Hearing Committee may vary at its discretion.

1. **FACULTY ASSOCIATION OBSERVER.** If a Faculty Association observer is present, the Hearing Committee shall satisfy itself that the Grievor consents to this observer's presence and also to her or his receipt of all the documentation submitted by either party to the Hearing Committee. This documentation shall be considered confidential and submitted to the Chair of the Hearing Committee at the close of the hearing.
2. **COUNSEL.** Parties to the grievance should identify who if anyone will be acting as their counsel. Both parties may be represented by counsel -- a lawyer, colleague, friend, etc. (Section 10 (a), *S.P.P.A.* and clause 7.3 of the Faculty General Grievance Procedure). Counsel does not have to be limited to one person.
3. **OPEN OR CLOSED HEARING.** The Hearing Committee shall decide, after giving the parties an opportunity to speak to the issue, whether the hearing shall be open or closed. The *S.P.P.A.* requires that all hearings be open (Section 9), except that a hearing may be closed when the Hearing Committee is of the opinion that intimate financial or personal matters would be disclosed (Section 9, 1[b] of the *S.P.P.A.*).
4. **JURISDICTION.** The Hearing Committee shall decide, after giving the parties an opportunity to speak to the issue, whether the grievance falls within the scope of the General Grievance procedure, as that scope is defined within clause 3 of the Procedure.
5. **ACCESS TO INFORMATION.** The Grievor has the right to request information to be placed before the Hearing Committee. The Hearing Committee must make a preliminary determination, after giving the parties an opportunity to speak to the issue, that the information so requested is relevant to the grievance in question. Once that determination has been made the Grievor may request the information in question from the person or body who holds it. The person or body holding the information shall release it to the Hearing Committee unless that person or body is otherwise precluded by law from divulging it. If the information is denied on the basis that the person or body holding it is precluded by law from releasing it, then the Grievor may exercise her or his rights at law to compel the delivery of that information to the Hearing Committee.
6. **WITNESSES.** Each party should provide a list of witnesses to be called, if they have not already done so. Both parties have the right to call, examine and cross-examine witnesses. The Hearing Committee may, however, limit the cross-examination of witnesses beyond that necessary to elicit a full disclosure of the facts (Section 10, 11 and 12, *S.P.P.A.*). If, during the course of the hearings, either party wishes to call additional

witnesses, they should inform the Hearing Committee and the other party prior to the hearing at which the additional witness or witnesses are to appear.

7. HEARING COMMITTEE'S ROLE. The Hearing Committee may examine and cross-examine witnesses called by either party. It may request copies of documents mentioned in testimony.

8. PROCEDURE FOR PRESENTING EVIDENCE. The Hearing Committee should determine the procedure to be followed for the presentation of evidence. Either party has the right to present evidence and both parties must see any written evidence which is presented. (Section 10 and 15, *S.P.P.A.*). The following procedure is a natural sequence, which the Hearing Committee may vary at its discretion:

8.1 The Grievor presents the reasons for grieving and gives evidence in support of those reasons. In addition to the submission of documents, this would entail the calling of witnesses, and the examination and cross-examination of the witnesses by the Primary Respondent and the Hearing Committee. The Hearing Committee should feel free to ask questions at any time although it is probably best if it asks its questions at the end of the questioning of each witness by both parties.

8.2 The Primary Respondent answers the allegations by way of an opening statement and then calls witnesses, if any, and/or submits written evidence to show the Hearing Committee why the previous decision was made and, in effect, to defend the previous decision. The Grievor and the Hearing Committee have the right to cross-examine the witnesses called by the Primary Respondent.

8.3 The Grievor then has the opportunity to reply to the Primary Respondent's Evidence.

8.4 The hearing(s) then conclude with summation and argument by each party; first the Grievor and then the Respondent, with the Grievor having the right to again reply in argument, if necessary.

IV RECORD OF PROCEEDINGS

All hearings of Hearing Committees are recorded on tape. The Secretary of the Senate (or delegate) maintains a record of what is on the tape, corresponding to the digital counter, so that if any Hearing Committee member or party to the grievance wishes to locate certain testimony on the tape, this information can be located relatively quickly and easily. Hearing Committee members must, however, keep their own notes of the hearings if they wish to have a record of the testimony other than the tape recording.

Documentation submitted to a Hearing Committee will be retained by the University for a period of seven years after the Hearing Committee has submitted the report containing its decision. It will then be destroyed, unless required for any legal proceedings external to the

University which have been initiated during the seven-year period, in which case the material will be destroyed immediately after all legal processes have been exhausted.

V FACULTY ASSOCIATION OBSERVER

With the consent of the Grievor the Faculty Association shall be entitled to have an observer at any formal hearing under the Faculty General Grievance Procedure. The function of the observer shall be to monitor the conduct of the formal hearing, in accordance with the Senate "Guidelines Concerning the Appointment of Faculty Association Members as Observers and Concerning the Role of Observers at Appeal Hearings".

The Faculty Association observer also receives a copy of the document in which the Hearing Committee reports its decision to the Grievor, the Respondent and the President.

VI FORMAT AND CONTENT OF REPORTS FROM HEARING COMMITTEES

At the conclusion of the hearing, the Hearing Committee must decide by majority vote whether or not the original decision is to be upheld. The Committee reports its decision in writing to the Grievor, the Respondent, the President of the University, and the Faculty Association observer. The report shall include a summary of the issues, the factual findings, the conclusions, and the decision with reasons.

The President shall implement the decision promptly, and shall notify all those eligible to receive the Hearing Committee's report of the implementation of the decision. Reports of hearings held in open session will be available on request from the Office of the President.

The Hearing Committee shall not have jurisdiction to change any provision of a duly enacted policy or established practice of the University. The Hearing Committee may, however, make recommendations to the President of the University regarding policies, procedures and practices.

VII DOCUMENTS GOVERNING HEARING PROCEDURES

The following documents set out the basic procedures and principles which must govern all formal hearings under the Grievance Procedure:

1. *The Statutory Powers Procedure Act*
2. Manual of Practice on Administrative Law and Procedure in Ontario under *The Statutory Powers Procedure Act*
3. McMaster University Faculty General Grievance Procedure
4. Guidelines Concerning the Appointment of Faculty Association Members as Observers and Concerning the Role of Observers at Appeal Hearings.