

Complete Policy Title

**Faculty Grievance Policy**

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Responsible Executive

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

Policy Specific Enquiries

[Provost and Vice-President \(Academic\)](#)

General Policy Enquiries

[Policy \(University Secretariat\)](#)

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## SECTION I: INTRODUCTION

### PREAMBLE

1. This Policy is designed to provide McMaster University faculty members with prompt and impartial adjudication of grievances arising from their employment relationship with the University.
2. This Policy is intended to facilitate and promote informal resolution of grievances and to furnish a formal mechanism of grievance resolution when informal means are unsuccessful. Mediation as a means of resolution of grievances is the preferred method for formal resolution of grievances. Only the most serious grievances which have not been resolved by mediation are appropriate for a Hearing.

### TERMS AND DEFINITIONS

3. For the purpose of interpreting this document:
  - a) words in the singular may include the plural and words in the plural may include the singular;
  - b) members of the Administration, and Decision-Makers in this Policy may, where necessary and appropriate, delegate their authority;
  - c) **established practice** means a practice which is identifiable, certain, known and in force as of the date of the decision or action that is the subject of the grievance. The onus to show that such a practice exists rests upon the party who seeks to rely upon it;
  - d) **Faculty Association** means either the [McMaster University Faculty Association](#) or the [Clinical Faculty Association](#);
  - e) **faculty member** means those employees of the University or of a college affiliated with the University who hold the academic rank of professor, associate professor, assistant professor or lecturer, and includes clinical faculty;
  - f) **grievance** means a complaint against an administrative decision made by a Person with Administrative Authority;
  - g) **Grievor** may be an individual faculty member or a group of such members;
  - h) **Initial Decision-Maker** means the person with administrative authority that made the initial decision that is the subject of the grievance;
  - i) **MUFA** means the McMaster University Faculty Association;
  - j) **Person with Administrative Authority** means members of the Administration: the President, Vice-President, Vice-Provost, Dean, Associate Dean, Vice-Dean, Department Chair, Director of a Program, School, Institute or Centre);

- k) **Provost** means the Provost and Vice-President (Academic);
- l) **President** means the President and Vice-Chancellor; and
- m) **Respondent** means an individual University administrator that is a Person with Administrative Authority to remedy the grievance.

## SCOPE

- 4. A grievance is a complaint that the interpretation or application of a duly enacted policy or established practice of the University by any *Person with Administrative Authority* (clause 3.j.), has not been fair, just or reasonable to the Grievor.
- 5. This Policy is open to all faculty members as defined under clause 3.e. above. However, any such faculty member who is covered by a collective agreement of a certified union or appointed through SPS A3 (*Procedures for Other Appointments except in Health Sciences*) or SPS A4 (*Procedures for Other Appointments within the Faculty of Health Sciences*) shall not be eligible to use this Policy.
- 6. The same complaint may not be filed under another University policy and this Policy contemporaneously.
- 7. Grievances about the following matters **are not** within the jurisdiction of this Policy:
  - a) decisions made and procedures under the jurisdiction of a University policy for which specific review or appeal procedures exist, such as in the:
    - (i) [\*Discrimination and Harassment Policy\*](#);
    - (ii) [\*Sexual Violence Policy\*](#);
    - (iii) [\*Research Integrity Policy\*](#);
    - (iv) Section III and IV of the [\*Tenure & Promotion Policy\*](#), regarding Tenure & Promotion and Appeal Procedures;
    - (v) Faculty Career Progress/Merit (CP/M) Plan;
  - b) disciplinary measures imposed by a Tribunal under the [\*Code of Conduct for Faculty and Procedures for Taking Disciplinary Action\*](#), at Stage 4;
  - c) decisions to suspend a faculty member under Section V of the *Tenure and Promotion Policy*;
  - d) decisions made by a Tribunal convened under Section VI of the *Tenure and Promotion Policy*;
  - e) decisions or recommendations made by a Faculty Grievance Tribunal under this Policy;
  - f) remuneration (salary and/or benefits). Nothing in this clause is intended to affect adversely the rights of persons to take complaints about their remuneration to the Provincial Pay Equity Commission if

- they have been unable to resolve them to their satisfaction within the University; and
- g) policies enacted and decisions made by University (the Senate and the Board of Governors) and Faculty governance bodies.
8. Grievances about disciplinary measures imposed under the Code of Conduct for Faculty and Procedures for Taking Disciplinary Action at Stages 1, 2 and 3 are within the jurisdiction of this policy.
  9. Disciplinary measures shall be imposed only in accordance with University policy.
  10. For example, and for greater clarity, while it may be perceived as such, an administrative decision affecting a faculty member is not in itself harassment. Under the *Discrimination and Harassment Policy* harassment means engagement in a course of *vexatious* comment or conduct that is known or ought reasonably to be known to be unwelcome. "Vexatious" comment or conduct is comment or conduct made without reasonable cause or excuse.

#### ADVICE AND GUIDANCE

11. Faculty members should consult with the relevant faculty association (either the [McMaster University Faculty Association](#) or the [Clinical Faculty Association](#)), to determine the most suitable policy or procedures to exercise.
12. Other resources for faculty are the University Secretariat, the Equity and Inclusion Office, the Faculty of Health Sciences Professionalism Office (only for members of that Faculty), or Employee/Labour Relations, as appropriate.

## SECTION II: PROCEDURAL GUIDELINES

### TIME LIMITS

13. Prompt adjudication of grievances is predicated upon adherence to the time limits set out in this Policy. Where time limits are not specified all parties are expected to make reasonable efforts to respond in a timely manner. Time limits, including those which apply to mediation, may be extended by mutual agreement of the parties.
14. A Grievor who fails to meet a time limit loses the right to proceed to the next stage. If a Respondent fails to meet a time limit, the Grievor shall have the right to proceed to the next stage.
15. Disputes about time limits (e.g., when the Grievor ought reasonably to have known the decision or action that is the subject of the Grievance) shall be adjudicated by the Chair of the Grievance Review Panel.

### CONFLICTS OF INTEREST

16. Faculty members and persons with administrative authority will disclose conflicts of interest or other circumstances which may reasonably introduce or appear to introduce bias into any academic or administrative decision to which they may be a party.
17. Parties to the procedures shall exercise their good judgement regarding conflict of interest and recuse themselves accordingly.

### CONFIDENTIALITY

18. Confidentiality shall be enjoined on all parties involved in any stage of this Policy. This does not preclude the discreet disclosure of information in order to elicit the facts of the case or as required by law which includes compliance with a summons or order from another administrative tribunal or court.
19. The University, and its employees and agents, will protect personal information and handle records in accordance with the [Freedom of Information and Protection of Privacy Act](#) ,

### PROTECTION FROM REPRISAL

20. The University prohibits reprisal or threats of reprisal against any faculty member who makes use of this Policy or participates in proceedings held under its jurisdiction. An individual who believes they are the subject of a reprisal or threat of reprisal shall report this to the Provost's Office, or to the President's Office. Any individual found to be making such reprisals or threats will be subject to appropriate disciplinary action.

## ADVISOR / REPRESENTATION

21. Grievors may be accompanied by an advisor or counsel at any stage of the procedures outlined in this Policy. The advisor or counsel may represent the Grievor at the Hearing. The costs of any accompaniment or representation are the responsibility of the Grievor.

## UNIVERSITY SECRETARIAT

22. The University Secretariat is the administrative office responsible for the scheduling and holding of Hearings before the Tribunal and for the training of Tribunal members.

## DATA GATHERING & RECORD KEEPING

23. Records related to a grievance shall be retained by the Provost's Office for seven years after last use.
24. Hearing files shall be retained by the University Secretary for seven years after last use and may be retained longer at the discretion of the University Secretary. The Tribunal's Report shall be retained permanently.
25. The Chair of the Grievance Review Panel is responsible for providing a written, anonymized, statistical report to the Chairs of the Senate and the Board of Governors, and the President of MUFA. In order to protect confidentiality, the statistical report will be held over until a sample size of five has been reached. The report will then provide statistics on a **rolling three-year basis**. This report may include recommendations for clarification of or changes to University policies, practices or procedures. The report could also contain a summary of the MUFA Special Enquiries and Grievances Chair's activities if submitted.

## POLICY REVISIONS

26. Proposals for amending this Policy may be made by the Chair of the Grievance Review Panel, the University administration, the Senate, MUFA, or the Clinical Faculty Association. When such proposals are made, there shall be consultation among these parties.
27. If the Senate Committee on Appointments and the MUFA Executive agree that the revisions are minor and reach agreement on the revisions, the amendments will be presented to Senate by the Senate Committee on Appointments.
28. Otherwise, an *ad hoc* drafting committee will be established, and shall consist of 3 members named by the Senate Committee on Appointments and 3 members named by the MUFA Executive.
29. The *ad hoc* drafting committee shall review the proposed amendments and formulate revisions for submission to the Senate and the Board of Governors for approval.



### SECTION III: GRIEVANCE PROCEDURES

30. Faculty members may contact MUFA for advice regarding this Policy and for assistance in formulating and pursuing a grievance.
31. Clinical faculty members who are not members of the McMaster University Faculty Association should consult with the Clinical Faculty Association for advice.
32. Every effort shall be made to resolve the complaint in a timely and collegial manner.

#### Mediation

33. Each year the Provost and the President of MUFA shall jointly establish a list of six (6) mediators. In addition, on an *ad hoc* basis, additional mediators may be agreed upon.
34. Internal mediators or external third-party mediators may be used for mediation. The Provost will propose a mediator. Both parties shall be given the opportunity to object in writing to the proposed mediator.
35. The mediator, who must have had no previous involvement in the case, shall hear both sides of the dispute and shall remain impartial. They shall hold all information in strict confidence and shall issue no public report or statements on the mediation. The mediator may not subsequently be a member of the Tribunal which hears the case if it proceeds to a Hearing, nor may they be called as a witness before a Tribunal.
36. With the mutual consent of the parties, mediation may be requested at any stage in the Policy not already stipulated and timelines for further steps revised accordingly.
37. The costs of mediation will be borne by the University.

#### Respondent

38. The Respondent is an individual University administrator that is a Person with Administrative Authority to remedy the grievance. Normally, the Initial Decision-Maker reports directly to the initial Respondent with respect to their administrative duties. The Initial Decision-Maker is normally not a Respondent under these procedures.
39. In the case of a Committee decision, the Initial Decision-Maker will be the administrative officer at the level to which the Committee reports, i.e., in the case of a Departmental Committee it will be the Chair of the Department, of a Faculty Committee it will be the Dean, of a University Committee the appropriate Vice-Provost, Vice-President or the President.

#### Deadline to Initiate a Grievance

40. The grievance must be brought **within 21 business days** after the Grievor knows, or ought reasonably to have known, the grounds for the grievance.

**TYPE A GRIEVANCE**

41. A Type A Grievance is when the **Initial Decision-Maker** is a:
  - a) Department Chair;
  - b) Centre Director; or
  - c) Program/School Director.
42. The **Respondent** is normally the Faculty Dean. In the Faculty of Health Sciences, the Executive Vice-Dean & Associate Vice-President (Academic) is normally delegated as the Respondent.
43. An unexplainable lack of action/response by either party will allow either party to proceed to the next step in the procedure.

*Informal Resolution with Initial Decision-Maker*

44. The Grievor shall request to meet with the Initial Decision-Maker to informally discuss a resolution to the grievance.
45. The Initial Decision-Maker shall arrange a meeting **within 14 business days of receipt** of the request.

*Informal Resolution with Respondent*

46. If a resolution cannot be reached, the Grievor may choose to proceed to the next step, and shall **within 7 business days** after the meeting with the Initial Decision-Maker, request to meet with the Respondent to informally discuss with the Respondent a resolution to the grievance.
47. The Respondent shall arrange a meeting **within 14 business days of receipt** of the request.

*Mediation with Initial Decision-Maker*

48. If a resolution cannot be reached, the Respondent shall:
  - a) notify the Provost's Office of the grievance **within 7 business days** after the first meeting between the Grievor and the Respondent; and
  - b) arrange for mediation between the Grievor and the Initial Decision-Maker to commence **within 14 business days** of the Respondent's informal resolution meeting with the Grievor.

*Written Decision from Respondent*

49. If mediation is not successful in bringing about a resolution to the grievance, **within 14 business days from the first day of mediation**, the grievance shall be:
  - a) presented in writing to the Respondent:

- (i) the written grievance shall specify the nature of the grievance; and
- (ii) the remedy sought;
- b) a copy shall be provided to the Provost’s Office; and
- c) at the Grievor’s discretion, a copy may be provided to MUFA.

50. The **Respondent** shall respond to the Grievor in writing **within 14 business days** following receipt of the written grievance, with a copy provided to the Provost’s Office.

Request for Hearing

51. If the grievance is not resolved to the Grievor’s satisfaction, the Grievor may, **within 21 business days of receipt** of the decision, make a written request for a Hearing (see Section IV: Written Request for a Hearing).



**TYPE B GRIEVANCE**

52. A Type B Grievance is when the Initial Decision-Maker is a:
- Dean (in the Faculty of Health Sciences, “Dean” and/or “Executive Vice-Dean & Associate Vice-President (Academic)”);
  - Institute Director; or
  - University Committee or Equivalent.

53. The **Respondent** is normally the Provost. However, where appropriate the Provost may refer the grievance to the relevant Vice-Provost or Vice-President, or to the President, and that person will become the Respondent.

54. An unexplainable lack of action/response by either party will allow either party to proceed to the next step in the procedure.

Informal Resolution with Initial Decision-Maker

55. The Grievor shall request to meet with the Initial Decision-Maker to informally discuss a resolution to the grievance.

56. The Initial Decision-Maker shall arrange a meeting **within 14 business days of receipt** of the request.

Informal Resolution with Respondent

57. If a resolution cannot be reached, the Grievor may choose to proceed to the next step, and shall **within 7 business days** after the meeting with the Initial Decision-Maker, request to meet with the Respondent to informally discuss with the Respondent a resolution to the grievance.

58. The Respondent shall arrange a meeting **within 14 business days of receipt** of the request.

Mediation with Initial Decision-Maker

59. If a resolution cannot be reached the Respondent shall:

- notify the President’s Office of the grievance **within 7 business days** after the first meeting between the Grievor and the Respondent; and
- arrange for **mediation** between the Grievor and the Initial Decision-Maker to commence **within 14 business days** of the Respondent’s informal resolution meeting with the Grievor.

Written Decision from Respondent

60. If mediation is not successful in bringing about a resolution to the grievance, **within 14 business days from the first day of mediation**, the grievance shall be:

- a) presented in writing to the Respondent:
  - (i) the written grievance shall specify the nature of the grievance; and
  - (ii) the remedy sought;
- b) a copy shall be provided to the President’s Office; and
- c) at the Grievor’s discretion, a copy may be provided to MUFA.

61. The Respondent shall respond to the Grievor in writing **within 14 business days** following receipt of the written grievance, with a copy provided to the President’s Office.

Request for Hearing

62. If the grievance is not resolved to the Grievor’s satisfaction, the Grievor may, **within 21 business days of receipt** of the decision, make a written request for a Hearing (see Section IV: Written Request for a Hearing).



**TYPE C GRIEVANCE**

63. A Type C Grievance is when the Initial Decision-Maker is a Vice-Provost or Vice-President.
64. The Respondent is the President.
65. An unexplainable lack of action/response by either party will allow either party to proceed to the next step in the procedure.

*Informal Resolution with Initial Decision-Maker*

66. The Grievor shall request to meet with the Initial Decision-Maker to informally discuss a resolution to the grievance.
67. The Initial Decision-Maker shall arrange a meeting **within 14 business days of receipt** of the request.

*Informal Resolution with Respondent*

68. If a resolution cannot be reached, the Grievor may choose to proceed to the next step, and shall **within 7 business days** after the meeting with the Initial Decision-Maker, request to meet with the Respondent to informally discuss with the President a resolution to the grievance.
69. The President shall arrange a meeting **within 14 business days of receipt** of the request.

*Mediation with Initial Decision-Maker*

70. If a resolution cannot be reached the President shall arrange for **mediation** between the Grievor and the Initial Decision-Maker to commence **within 14 business days** of the President's informal resolution meeting with the Grievor.

*Written Decision from Respondent*

71. If mediation is not successful in bringing about a resolution to the grievance, **within 14 business days from the first day of mediation**, the grievance shall be:
  - a) presented in writing to the President:
    - (i) the written grievance shall specify the nature of the grievance; and
    - (ii) the remedy sought; and
  - b) at the Grievor's discretion, a copy may be provided to MUFA.
72. The President shall respond to the Grievor in writing **within 14 business days** following receipt of the written grievance.

Request for Hearing

73. If the grievance is not resolved to the Grievor’s satisfaction, the Grievor may, **within 21 business days of receipt** of the decision, make a written request for a Hearing (see Section IV: Written Request for a Hearing).



**TYPE D GRIEVANCE**

- 74. A Type D Grievance is when the Initial Decision-Maker is the President, they shall be referred to as the Respondent.
- 75. An unexplainable lack of action/response by either party will allow either party to proceed to the next step in the procedure.

Informal Resolution with Respondent

- 76. The Grievor shall request to meet with the Respondent to informally discuss a resolution to the grievance.
- 77. The President shall arrange a meeting **within 14 business days of receipt** of the request.

Mediation

- 78. If a resolution cannot be reached the Respondent shall arrange for **mediation** between the Grievor and the Respondent to commence **within 14 business days** of the Respondent’s informal resolution meeting with the Grievor.

Written Decision from Respondent

- 79. If mediation is not successful in bringing about a resolution to the grievance, **within 14 business days from the first day of mediation**, the grievance shall be:
  - a) presented in writing to the Respondent:
    - (i) the written grievance shall specify the nature of the grievance; and
    - (ii) the remedy sought; and
  - b) at the Grievor’s discretion, a copy may be provided to MUFA.
- 80. The Respondent shall respond to the Grievor in writing **within 14 business days** following receipt of the written grievance.

Request for Hearing

- 81. If the grievance is not resolved to the Grievor’s satisfaction, the Grievor may, **within 21 business days of receipt** of the decision, make a written request for a Hearing (see Section IV: Written Request for a Hearing).





## SECTION IV: WRITTEN REQUEST FOR A HEARING

82. If, after receipt of the written decision from the Respondent, the grievance is not resolved to the Grievor's satisfaction, the Grievor may **within 21 business days** of the date of the decision letter, file a ***Request for a Hearing Form***, with the University Secretariat.
83. The **Request for a Hearing** shall contain:
- a) the details of the grievance;
  - b) a statement describing the grounds for the grievance;
  - c) a statement of the relief sought;
  - d) names of witnesses to be called;
  - e) the name of the Grievor's legal counsel or advisor, if applicable;
  - f) any documents the Grievor wishes to submit to the Tribunal as evidence in support of their position;
  - g) their decision on whether they agree to the Observer attending the Hearing;
  - h) their decision on whether they agree to the Observer receiving the Hearing Record; and
  - i) a copy of the Respondent's written decision.
84. The University Secretariat shall acknowledge receipt of the grievance and inform the Chair of the Grievance Review Panel (or Vice-Chair) of the request for hearing.
85. The University Secretariat shall forward a copy of the request for a hearing and supporting documentation to the Respondent and ask them for a written response to the *Request for a Hearing Form*.
86. The University Secretariat also shall inform the relevant faculty association that there is to be a Hearing under this procedure and, if the Grievor so consents, shall invite the faculty association to send an Observer.
87. Within **21 business days of the receipt** of the request for a written response to the *Request for a Hearing Form*, the Respondent shall deliver to the University Secretariat a written reply to the Grievor's Request for a Hearing and shall submit the following information:
- a) preference for open or closed Hearing;
  - b) opinion on whether the grievance falls within the scope of this Policy;
  - c) names of witnesses to be called; and

- d) name of Respondent's counsel, if any.
88. The University Secretariat shall forward a copy of this reply to the Grievor.
89. The purpose of a Hearing is to provide the aggrieved faculty member or group of faculty members, within the institutional framework of the University, an impartial adjudication of their grievance.
90. The Tribunal, 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 decision was based.
91. The members of the Tribunal shall be the sole judges of the facts and shall render a decision which, in their judgement, is fair and just in the circumstances.
92. The matter will be considered by a Tribunal under the *Procedural Rules for Hearings*, Section V.

## SECTION V: PROCEDURAL RULES FOR HEARINGS

93. Hearings shall be conducted in accordance with the principles of procedural fairness, namely the rights to receive notice, to be heard, and to know the case against one. Adjudications and Hearings shall follow the applicable procedural rules specified in the [Statutory Powers Procedure Act \(SPPA\)](#) and set out in this Policy. The Tribunal shall have the right to control its own process, and, in this regard, if the Tribunal determines that variations to the procedures would lead to a fair, just, and efficient resolution of the Hearing, it has the power to make any Order in furtherance of this objective.
94. Where any procedural matter is not dealt with specifically in this Policy or the SPPA, the Tribunal may, after hearing submissions from the parties, establish an appropriate procedure.
95. Any procedural requirement contained in this Policy may be waived with the consent of the Tribunal and of all the parties.

### **Settlement**

96. Parties are encouraged to settle any and all disputes prior to a hearing before the Tribunal. In the event that the issue is settled between the parties *prior* to any hearing before the Tribunal, the grievance may be withdrawn by mutual agreement of the parties. Once a Hearing has commenced, however, any settlement proposed by the parties must be approved by the Tribunal before the matter can be dismissed or resolved.

### **Submissions and Disclosure**

97. Parties to the Hearing are required to make written submissions prior to the Hearing, as both Parties have a right to know the case to be met and must be given a fair opportunity to respond. Disclosure also helps the Parties prepare for the hearing.
98. Written submissions must include:
  - a) a list of all witnesses the Party intends to call to testify; and
  - b) a copy of all arguably relevant documents or other evidence in their possession;
  - c) and any such evidence shall be made available to the members of the Tribunal and to all parties prior to the Hearing.
99. Prior to a Hearing, members of the Tribunal shall be provided with:
  - a) the Grievor's complaint in the *Request for a Hearing Form*, which includes the details of the grievance, a statement of the issue or issues in dispute, a statement of the remedy sought, and documentation, including the written decision from the Respondent and any responses from all previous stages of the grievance; and
  - b) all written or other documentary evidence submitted by the parties.

100. Members of the Tribunal must not hear evidence or receive representations regarding the substance of the case other than through the procedures described in this Policy.

### **Evidence**

101. Parties to the Hearing have the right to present evidence in support of their case to the Tribunal and to see any written or documentary evidence presented to the Tribunal.
102. The Parties are expected to produce all arguably relevant documents (with normal limitations of privilege, etc.), a **minimum of 10 business days prior** to the Hearing.
103. The Tribunal has the power to require production of written or documentary evidence by the parties or by other sources.
104. The Tribunal has the power to rule on the admissibility of evidence.

### **Witnesses**

105. Parties to the Hearing, and the Tribunal, have the right to call, question, and cross-examine witnesses. Other than the parties, witnesses are present in the Hearing room only during the time they are testifying.
106. Any person appearing before the Tribunal as a witness shall be required to give evidence under affirmation or oath.
107. The Tribunal has discretion to limit the testimony and questioning of witnesses to those matters it considers relevant to the disposition of the case.
108. **Parties are responsible for contacting their own witnesses; for making all arrangements for witnesses to attend the Hearing; for paying any costs associated with their appearance before the Tribunal; and for absorbing the costs of any legal counsel attending on their behalf.**
109. The Tribunal Chair has the power to compel an unwilling witness to attend, and parties may contact the University Secretariat to request the Chair's assistance in this regard. The power to compel a witness is derived from the *Statutory Powers Procedure Act*. An unwilling witness may be compelled by the Chair under summons to testify where the written request by the party for the summons demonstrates the witness' testimony is relevant and related to the alleged facts of the case.

### **Closed Hearings**

110. Hearings shall be held *in camera* unless either the Grievor or the Respondent requests that the Hearing, or some part of the Hearing, should be held in public. In the event of such a request, the Tribunal shall hear representations from all parties. In making its ruling, the Tribunal shall consider whether matters of

an intimate financial or personal nature are to be raised, whether there is an issue of public safety involved, the desirability of holding an open Hearing and other relevant circumstances.

### **Parties**

111. Parties to a Hearing shall include:
- a) the Grievor; and
  - b) the Respondent.

### **Onus, Burden of Proof and Basis of Decision**

112. The **balance of probabilities** is the test to be met to show, by the weight of the evidence presented, that all of the facts necessary to make a determination that an injustice or error have occurred, have a greater likelihood of being true than not.
113. The Grievor normally has the onus to present evidence to satisfy the Tribunal that, on a balance of probabilities, the interpretation or application of a duly enacted policy or established practice of the University by the initial Decision-Maker has not been fair, just or reasonable to the Grievor; however, for grievances related to disciplinary measures (section 8), the onus is on the Respondent to show that discipline is just, fair and reasonable to the Grievor.
114. The principles and procedures described in this section shall apply to all proceedings before the Tribunal. Tribunals shall not be charged with investigative duties.

### **Advisor / Representation**

115. Parties have the right to be advised or represented by an Advisor or legal counsel. The costs of any representation are to be borne by the party retaining such representation.
116. An Advisor is a person of the individual's choice who acts in an advisory role (e.g., friend, family member, legal counsel), but is not a witness or potential witness in the matter.

### **Administrative and Legal Support**

117. Administrative support for the Tribunal will be provided through the University Secretariat. Legal counsel for the Tribunal shall be provided as needed through the University Secretariat.

### **Other Parties**

118. If other persons, in addition to the Grievor and the Respondent, have been specified as parties to the proceedings, the Hearing procedure shall be altered by the Tribunal to provide an opportunity for such additional parties to be heard.

**Recess or Adjournment**

119. The Tribunal may consider and grant a recess or an adjournment at the request of either party to allow them to review written or documentary evidence submitted at the Hearing.
120. The Tribunal may grant an adjournment at any time during the Hearing to ensure a fair Hearing.

**Recording**

121. Although the Hearing shall be recorded in order to obtain an accurate record of the proceedings, such 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.
122. The recording shall be held in confidence by the University Secretariat for a period of three years from the last date of the Hearing. Any party to the Hearing may request access to the recording and the reproduction thereof, upon reasonable notice and payment of the reasonable costs associated therewith.

**Similar Questions of Fact or Policy**

123. If two or more proceedings before the Grievance Review Panel involve the same or similar questions of fact or policy, the Chair of the Panel, after seeking written input from the parties, may decide:
  - a) to consolidate the proceedings or any part of them; or
  - b) to hear the proceedings at the same time; or
  - c) to hear the proceedings one immediately after the other.

**WRITTEN HEARINGS****Notice of Written Hearing**

124. The parties shall be given reasonable, written notice of the Written Hearing submission deadlines.
125. The notice shall include the process and timelines for submissions for the Written Hearing. Any party whose reasons for failing to participate in the process that are not considered valid by the Tribunal's Chair, or whose failure to participate may cause unreasonable delay, shall be notified that the Tribunal will proceed in that party's absence.

**HEARINGS****Notice of Hearing**

126. A Hearing shall be commenced as soon as possible following the appointment of the Tribunal.
127. An attempt shall be made to schedule the Hearing at a time and place convenient for the Tribunal and for the parties to the Hearing. However, any party whose reasons for absence are not considered valid

by the Tribunal's Chair, or whose absence may cause unreasonable delay, shall be notified that the Tribunal will proceed in that party's absence.

128. The parties shall be given reasonable, written notice of the Hearing.

### ORDER OF THE HEARING

129. The first item of business for the Tribunal shall be to confirm the Hearing shall be closed, in accordance with the procedure set out above, or to hear and rule upon representations in favour of an open Hearing.

130. At the outset of the Hearing, the Chair shall:

- a) identify the nature of the case;
- b) review the order of the Hearing;
- c) note for the record the documentary information submitted by the parties to the Hearing, including any preliminary or procedural orders;
- d) note the names of the witnesses for each party;
- e) confirm the likely dates for sitting and the projected length of the Hearing;
- f) raise, or request the parties to raise, any and all preliminary issues concerning composition of the Tribunal and other unaddressed procedural matters; and
- g) proceed to deal with any matters raised in (f) above before the commencement of the substantive portion of the Hearing, by either proceeding directly to the Hearing or considering and rendering a decision on matters raised in (f) above.

131. The Grievor is the first party heard.

- a) Grievor's opening statement shall contain:
  - (i) a brief description of the grievance including what interpretation or application of a duly enacted policy or established practice of the University by the Respondent they believe was not fair, just or reasonable to the Grievor; and
  - (ii) what remedy they are seeking.
- b) Grievor's case provides factual support to show why their grievance should be remedied and may include any or all of the following:
  - (i) Grievor's oral testimony;
  - (ii) oral testimony of Grievor's witnesses; and
  - (iii) documents or other written evidence in support of this testimony.

- c) Questioning of the Grievor and their witnesses by the Respondent and/or by the Tribunal occurs at the close of each person's testimony.
132. Following the completion of the Grievor's case, the Respondent presents their case.
- a) Respondent's opening statement shall contain:
- (i) a brief reply to the Grievor's claims; and
  - (ii) the main arguments of their defence.
- b) Respondent's case presents the evidence to support their defense, which may include any or all of the following:
- (i) Respondent's oral testimony;
  - (ii) oral testimony of Respondent's witnesses; and
  - (iii) documents or other written evidence in support of this testimony.
- c) Questioning of the Respondent and their witnesses by the Grievor and/or by the Tribunal occurs at the close of each person's testimony.
133. Grievor's Reply: The Grievor and their witnesses have the right to offer testimony or other evidence in reply to the issues raised in the Respondent's case.
134. After the testimony of each witness, the Tribunal may, in addition to asking questions of the witness, request copies of such documents mentioned in testimony as the Tribunal in its discretion sees fit.
135. **After this point in the Hearing, no new evidence or witnesses may be introduced.**
136. The parties are entitled to make closing arguments, and to summarize briefly the main points of their cases, in the following order:
- a) Grievor;
  - b) Respondent; and
  - c) Grievor's reply, if necessary.
137. The Tribunal may alter the order described above in the interest of fairness to any or all of the parties.
138. While procedural fairness is essential, the Tribunal reserves its right to direct, curtail or encourage the organisation of witnesses, testimony and evidence in the interests of enhancing the clarity, relevance, and efficiency of the proceedings.
139. The Tribunal shall first warn, then caution, and may prohibit from continuing in such a manner, any party presenting testimony, evidence, argument or materials which are, in the reasonable opinion of the



Tribunal, irrelevant, unprovable, defamatory, vexatious or specious, or which impede or prevent the Tribunal from conducting the Hearing or reaching a decision.

## DELIBERATIONS

140. The Tribunal shall deliberate in closed session and shall reach a decision. After deliberation and decision in closed session solely with members of the Tribunal is complete, the Tribunal may solicit the assistance of the University Secretariat and legal counsel regarding the precise form or wording of any order and reasons for judgement to support its decision and may request information on the range of decisions for previous cases heard under the Policy.

## DECISION

141. The Tribunal Report shall normally be issued **within 90 business days** from the last day of the Hearing.
142. The Tribunal Report shall be sent to the:
- a) Grievor;
  - b) Respondent;
  - c) President; and
  - d) Faculty Association Observer (if one attended the hearing).
143. Where the Tribunal deems appropriate, affected parties may receive information about the decision and/or remedies that have a direct impact on them, within the constraints of relevant legislation.
144. The Tribunal will report its majority decision regarding the findings and remedies.
145. The report shall include:
- a) the membership of the Tribunal;
  - b) the background of the case, including the nature of the grievance;
  - c) a summary of the cases of the parties;
  - d) the Tribunal's majority findings;
  - e) the Tribunal's majority decision and the reasons for the decision; and
  - f) any ordered remedies and/or recommendations.
146. The President shall implement the decision promptly and shall notify all those eligible to receive the Tribunal's report, of the implementation of the decision.

147. The Tribunal shall not have jurisdiction to change any of the provisions of a duly enacted policy or established practice of the University.

### **OTHER RECOMMENDATIONS**

148. Apart from its duty under these procedures to hear and decide the matters properly brought before it, any Tribunal may make recommendations or suggestions to University bodies or members. Such recommendations are offered for informational purposes and shall be distinct and separate from the decision.

## APPENDIX A: GRIEVANCE REVIEW PANEL

### GRIEVANCE REVIEW PANEL MEMBERSHIP

1. The President of the University and the President of the Faculty Association shall jointly appoint a full-time tenured/CAWAR faculty member as Chair of a Grievance Review Panel for a two-year term. The two Presidents, in consultation with the Chair, shall appoint 8 full-time, tenured, CAWAR or permanent faculty members, with at least one chosen from each Faculty, to a Grievance Review Panel for staggered three-year terms and shall appoint one or more of the members as Vice-Chair(s). The Chair shall have the authority to delegate to the Vice-Chair(s).

### TRIBUNAL SELECTION

2. When the University Secretariat receives the written grievance, the University Secretariat shall inform the Chair of the Grievance Review Panel that a Tribunal needs to be established.
3. Within fourteen **(14) business days of receipt** of the written grievance by the University Secretariat, the Chair of the Grievance Review Panel (or a Vice-Chair in case of conflict of interest or absence), shall establish a Tribunal.
4. The Committee shall consist of the Chair or a Vice-Chair of the Grievance Review Panel, who shall act as Chair of the Tribunal, and two other members of the Grievance Review Panel.
5. The Chair shall select members of the Tribunal who have no conflict of interest; for example, they shall not be members of the same Department as the Grievor or Respondent, nor shall they have made a substantive contribution to the decision being grieved. These are examples only and are not intended to limit the range of conflicts of interest. The Chair must have scrupulous regard to real and perceived conflicts of interest.
6. The Chair or Vice-Chair of the Grievance Review Panel shall propose the membership of the Tribunal.
7. The University Secretariat shall forward to the Grievor and the Respondent the proposed membership of the Tribunal. Both parties shall be given the opportunity to express, in writing, **within 14 business days**, any objections they may have concerning the proposed membership of the Tribunal.
8. After careful consideration of any such objections, the Chair or Vice-Chair of the Grievance Review Panel shall either confirm the members of the Tribunal or propose a revised membership. The Panel Chair shall approve the Tribunal Chair and Tribunal members and, through the University Secretariat, shall so inform the Tribunal members, and the parties to the Hearing.
9. The University Secretariat shall ensure that all members of the Tribunal receive appropriate training to discharge their responsibilities.

## APPENDIX B: FACULTY ASSOCIATION OBSERVERS AT HEARINGS

1. As described in *Procedural Rules for Hearings*, the Faculty Association is permitted, subject to the consent of the Grievor, to send an Observer to any Hearing.
2. The function of the Observer is to allow the Faculty Association to monitor the workings of the Policy of which it is a joint author. It is important that the University have full confidence in the Policy. The presence of a Faculty Association Observer is an additional guarantee of fairness and may provide information leading to an improved policy.
3. The University Secretariat shall send a copy of these guidelines to the Grievor when a Hearing is initiated and request the Grievor's consent (a) to the presence of a Faculty Association Observer, and (b) if so, to all the documentation being provided to the Observer. The University Secretariat shall notify the Faculty Association of the faculty member's response. If the Grievor consents, the University Secretariat shall request the Faculty Association to provide the name of the Observer.
4. The Observer should be an active or retired member of the Faculty Association and should be at "arm's length" from the case. The Observer does not attend on behalf of the Grievor and should avoid interacting with any of the parties. At no time should the Observer engage the parties or the Tribunal in any discussions regarding the matter being heard.
5. The Observer must be familiar with the most recent version of this Policy including the *Procedural Rules for Hearings*, Appendix E.
6. Seating arrangements at the Hearing are at the discretion of the Chair. The Observer may not speak without invitation from the Chair. The Observer is not entitled to be present when the Tribunal members recess for discussion among themselves.
7. The Observer shall be provided with all the documentation available to the Grievor, subject to the Grievor's consent. This documentation shall be considered confidential and must be surrendered to the Chair at the close of the Hearing.
8. The Observer shall receive a confidential copy of the Tribunal Report.
9. After the Hearing is over the Observer should ask the parties separately, and outside of the presence of the Tribunal, if they were satisfied with the process followed and whether they wish to make any comment on the process.
10. The Observer shall write a report of the proceedings for the President of the Faculty Association using the *Observer Report on a Hearing* as provided by MUFA. They shall limit comment to procedural matters and take care not to quote either from confidential documents or utterances, unless it is absolutely necessary to do so to make a point concerning procedural issues.
11. The Observer report should include a statement of what proportion of the Hearing the Observer attended and a description of any comments on, or expressions of dissatisfaction with, the Policy by either party. The report should not be confidential, except that any quotations from confidential documents/utterances be confined to a confidential appendix to which only the Presidents of the University and of the Faculty Association should have access. If major procedural irregularities are noted by the Observer, the President of the Faculty Association should inform the President of the University.

## APPENDIX C: RELATED POLICIES

This Policy is to be read in conjunction with the following policies, procedures, etc. Any question of the application of this Policy or related policies shall be determined by the Provost and Vice President (Academic), and in conjunction with the administrator of the other policy or policies. The University reserves the right to amend or add to the University's policies and statements from time to time (this is not a comprehensive list):

- [Career Progress/Merit Plan](#)
- [Code of Conduct for Faculty and Procedures for Taking Disciplinary Action](#)
- [Discrimination and Harassment Policy](#)
- [Freedom of Information and Protection of Privacy Act](#)
- [Group Conflict and Senate Mediation Procedures](#)
- [Ontario Human Rights Code](#)
- *Removal policy (Section VI of the [Tenure and Promotion Policy](#))*
- [Research Integrity Policy](#)
- [Sexual Violence Policy](#)
- [Statement on Building an Inclusive Community with a Shared Purpose](#)
- [Statement and Guidelines on Inclusive Communications](#)
- *Suspension policy (Section V of the [Tenure and Promotion Policy](#))*
- *T&P Appeal (Section IV of the [Tenure and Promotion Policy](#))*
- [Violence in the Workplace, Policy on](#)
- [McMaster University Policy on Accessibility](#)