

Complete Policy Title

**Faculty Respondent Option for External
Recommendation of Sanctions Policy**

Policy Number (if applicable):

Approved by

**Senate /
Board of Governors**

Date of Most Recent Approval

**December 8, 2021 /
December 9, 2021**

Date of Original Approval(s)

Supersedes/Amends Policy dated

Responsible Executive

Provost and Vice-President (Academic)

Policy Specific Enquiries

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

General Policy Enquiries

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

DISCLAIMER:

*If there is a Discrepancy between this electronic policy and the written copy held
by the policy owner, the written copy prevails.*

INTRODUCTION AND SCOPE

1. The option for an External Recommendation of sanctions (External Review) is only available to faculty member Respondents in hearings conducted under the jurisdiction of the:
 - a) [Code of Conduct for Faculty and Procedures for Taking Disciplinary Action](#);
 - b) [Discrimination and Harassment Policy](#);
 - c) [Research Integrity Policy](#); and
 - d) [Sexual Violence Policy](#).
2. External Reviews shall be limited to a hearing where one or more of the recommended sanctions are of greater severity, which shall include all forms of discipline, up to and including termination, that:
 - a) withhold remuneration from the faculty member;
 - b) restrict access to University resources (including office/laboratory space and interaction with individuals);
 - c) restrict access to University services (including computing, communication, and finances); and/or
 - d) alter normal job duties (research, teaching and service).
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) **MUFA** means the McMaster University Faculty Association; and
 - c) **Tribunal** means a duly constituted Tribunal or Hearings Committee.

EXTERNAL REVIEW REQUEST

4. The request for an External Review must be made, in writing, to the Tribunal when the Respondent makes their closing arguments.
5. The University Secretariat, on behalf of the Tribunal, shall forward the request to the relevant faculty association (MUFA or the Clinical Faculty Association).
6. The faculty association shall have **10 business days** from receipt to submit their response to the University Secretariat, either their agreement to bear half the costs associated with the External Review or declining to bear the costs.
7. The University Secretariat shall forward the response to the Tribunal and the parties to the hearing. If the faculty association declined to bear the costs, the Respondent shall have **10 business days** from receipt to respond with either their agreement to bear half the costs associated with the External Review or declining to bear the costs.

Costs

8. In order for an External Review to proceed, either the relevant faculty association and/or the Respondent must agree to bear half the costs associated with the External Review.
9. Contingent upon the agreement of the faculty association and/or the Respondent, half the costs associated with the External Review will be borne by the University.

EXTERNAL REVIEWERS

10. Each year the President of the University and the President of MUFA shall jointly establish a list of six (6) External Reviewers. In addition, the two Presidents may identify, on an *ad hoc* basis, additional individuals to be included on the list of External Reviewers.
11. External Reviewers will normally be individuals who demonstrate active involvement in labour arbitration in the higher education sector in Ontario as a consensually appointed neutral single arbitrator or chair of boards of arbitration.
12. External Reviewers must have the appropriate background/training to be able to review the case. Cases under the *Discrimination and Harassment Policy* or the *Sexual Violence Policy*, require appropriate background/training in the area of discrimination and harassment as identified under those policies.

Selection of an External Reviewer

13. Selection of the External Reviewer will be based on availability to conduct the review within **60 business days**.

Confidentiality

14. Confidentiality shall be enjoined on all parties involved in this Policy. This does not preclude the disclosure of information as required by law which includes compliance with a summons or order from an administrative tribunal or court.
15. 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](#).

Review Process

16. The External Reviewer shall be provided with:
 - a) the Tribunal's findings;
 - b) the sanction submissions from both parties to the Hearing (if submitted); and
 - c) any previous findings of violation by the Respondent of the relevant Policy.
17. The University Secretariat shall provide the External Reviewer with additional documents upon request pertaining to University policies and processes.

18. The External Reviewer cannot review or retry the facts and findings of a Tribunal. The External Reviewer may ask clarifying questions.
19. The External Reviewer may consider the severity of the offence, previous findings of violations of the relevant policy, precedent in case law, and any other relevant legal principles.
20. The External Reviewer will provide to the Tribunal a sanction recommendation based on relevant precedent in the (Ontario) post-secondary landscape. The External Reviewer sanction recommendation will be shared with both parties to the Hearing.

Tribunal

21. The Tribunal will consider the recommendations from the External Reviewer in their deliberations regarding sanctions.