

## Article 21: Appeal

21.01 The UAB shall be convened each academic year. In hearing appeals, it shall in particular determine whether:

- a) the criteria applied at the Faculty/Library level, having been clearly articulated, were reasonably and consistently applied;
- b) the proper procedures set out in this Agreement were followed.

21.02 In its deliberations, the UAB shall accept that the criteria derive from the particular goals and objectives of a Faculty/Library and its academic units/divisions.

### RIGHT OF APPEAL

21.03 Appeals may be based on grounds of substance or on a combination of grounds of substance and procedure.

#### Individual right of appeal

- a) A member has the right to appeal a negative decision in the following cases:
  - i) where a negative recommendation of the DPC/DTC or FPTC has received less than seventy-five (75%) support of the voting members;
  - ii) where the FPTC serves as the DPC or the DTC;
  - iii) where a negative recommendation of the LPC or LPRC has received less than seventy-five (75%) support of the voting members;
  - iv) in all cases involving tenure in the Library.

#### Academic unit right of appeal

- b) The academic unit has the right to appeal in cases where its recommendation/decision has been reversed at any higher level and where at least seventy-five percent (75%) of all the committee members at the academic unit level voted in favour of the recommendation/decision.

21.04 Conditions of a granted reappointment (e.g., length of contract, special conditions, etc.) are not appealable.

21.05 Perceived injustices based solely on alleged violations of procedure fall under the purview of Article 22.

21.06 Notwithstanding Articles 21.03, the Joint Grievance Committee has the right to refer such cases to the UAB when warranted.

#### 21.07 PROCEDURES

- a) In the case of tenure, notice of intent to appeal shall be filed by May 21 with the Provost in accordance with Article 18 or 19, with a copy to the Association.

- b) In all other cases, notice of intent to appeal shall be sent to the Provost, with a copy to the Association, within twenty (20) days of the date of written notification of the decision being appealed.
- c) The appeal dossier shall consist of the following components:
  - i) the notice of intent to appeal;
  - ii) the complete original dossier submitted by the candidate, supplemented by all additional documentation added to the dossier during the process and all reasoned reports and recommendations generated during the process;
  - iii) letters sent to the candidate by the department chair under the provisions of Article 14.13 f);
  - iv) if the appellant so wishes, an appendix to the dossier consisting of material consistent with the provisions of Article 21.07 d) and e).
- d) The appellant shall deposit the appendix with the secretary of the UAB, if applicable, within twenty-five (25) days of the notice of intent to appeal.
- e) The appendix to the dossier shall contain only additional information pertinent to the case and belonging to one (1) of the following categories:
  - i) written argumentation by the appellant explaining why the appeal should be upheld;
  - ii) information provided by the appellant in the form of copies of material already in the appellant's possession but not available during consideration of the original dossier; this information shall be provided to the secretary of the UAB at the same time as the written argumentation;
  - iii) information obtained from other sources by the appellant and provided by the appellant in support of the appeal;
  - iv) a list of all materials contained in the appendix.
- f) In all cases:
  - i) within five (5) days following the date of the notice of intent to appeal, the secretary of the UAB shall provide the appellant with access to the appeal dossier, with the exception of the appendix. At the same time, the appellant shall confirm whether or not these portions of the appeal dossier are complete and shall advise the secretary of the UAB whether an appendix will be added;
  - ii) if the appeal dossier, with the exception of the appendix, is not complete, the appellant shall notify the secretary of the UAB who shall complete it and make it available to the appellant within five (5) days;
  - iii) within five (5) days following the date of the notice of intent to appeal, the appellant may request additional information pertinent to the case through the secretary of the UAB from sources within Concordia

University. This information shall not be unreasonably withheld and shall be provided to the appellant within fifteen (15) days of request.

- iv) within ten (10) days following the date of the notice of intent to appeal, the secretary of the UAB shall make the appeal dossier available to members of the UAB, the Vice-President, the Dean, the academic unit head/Assistant Director or appropriate administrator for librarian positions located outside the Library and the appellant;
- v) within thirty (30) days following the notice of intent to appeal, the secretary of the UAB shall provide a copy of the appendix to members of the UAB, the Vice-President, the Dean, the academic unit head / Assistant Director or appropriate administrator for librarian positions located outside the Library, the appellant and the Association.
  
- g) With the exception of appeals requiring recourse to outside experts as described in Article 21.07 I), the UAB will normally hear the appeal within forty-five (45) days of receipt of the notice of intent to appeal, with the proviso that an appeal not heard prior to July 1 shall be heard no later than October 31. The hearing date shall be set in consultation with all the parties involved, and they shall be notified of the date(s) in writing at least ten (10) days prior to the first hearing day.
- h) In the case of appeals requiring recourse to outside experts, the hearing may be delayed for no more than twenty (20) days to allow sufficient time for the experts to respond.
- i) An appeal against a decision shall be reasoned and indicate the specific grounds whether substantive and/or procedural, on which it is based.
- j) The UAB hearing
  - i) the appellant, the academic unit head/Assistant Director or appropriate administrator for librarian positions located outside the Library, and the Dean or Vice-President, have the right to be heard by the UAB, to call and examine witnesses, and also to be present with the right to rebut and cross-examine when one of them or a witness is to appear. The UAB has the power to decide that sufficient witnesses have been heard on a given point;
  - ii) the appellant has the right to be accompanied or represented by a full-time faculty member or librarian as an advisor;
  - iii) Either party may send an observer to an appeal hearing provided that ten (10) days prior to the hearing written notice is given to the UAB.
- k) In the case of appeals on tenure, the academic unit head/ Assistant Director or appropriate administrator for librarian positions located outside the Library may be replaced by any other member of the DTC at its discretion.

In the case of academic unit appeals, the DPC may send a second member of the DPC at its discretion.

- l) The UAB shall receive copies of the entire record, including the appellant's dossier and all recommendations and reports. It may call witnesses and obtain any other information required. It may also require additional written or oral information or clarification from any of the parties. A request for such additional information or clarification to any of these parties shall be accompanied by notification to the other parties at least fifteen (15) days prior to the hearing, and they shall be given the opportunity to respond to additional material.
  - m) The UAB shall only consider those substantive issues that were alleged in the appeal. In dealing with substantive issues, the UAB is itself competent to judge on teaching performance and on service to the University and the community for faculty members; and in the case of librarians, on the contribution to the direct and indirect services to users provided by the Library, as well as service to the University. The UAB shall, however, elicit opinion from outside experts prior to making its own judgment on matters relating to the competence of the candidate in research and other creative activity. In such cases, such outside experts shall be chosen as set out below.
  - n) In all appeals requiring recourse to outside experts, the candidate shall be asked to provide the UAB and the other parties with a list of four (4) experts with an appropriate statement of their credentials. A second list of four (4) experts, with an appropriate statement of their credentials, shall be provided by the Dean to the UAB and the other parties. Experts shall not be in a position of conflict of interest.
  - o) The required lists shall be supplied to the UAB within ten (10) days of the UAB's request.
  - p) The UAB shall choose the persons from the lists provided as follows:
    - i) if there are three (3) or four (4) names common to both lists, those persons shall be chosen, and the group shall consist of three (3) or four (4) experts, as the case may be;
    - ii) if one (1) or two (2) names are common to both lists, those names shall be chosen and one (1) additional name chosen from each list;
    - iii) if no names are common to both lists, the UAB shall choose two (2) names from each list.
- In the event that an expert is unavailable for service, the UAB shall choose a replacement from the same list.
- q) A signed copy of each expert opinion received by the UAB shall be provided to all parties at least five (5) days before the hearing.

#### 21.08 UAB Decisions

In all its proceedings and decisions, the UAB shall abide by this Collective Agreement. In particular, and without limiting the generality of the foregoing, the UAB shall abide by Articles 18.07 b) and 19.07 b).

- a) Within fifteen (15) days of the hearing, the UAB shall give, in writing, its reasoned decision. The decision shall be final and binding.
- b) No recommendation shall be reversed by the UAB on the basis of procedural irregularities only.
- c) Where the UAB finds that procedural irregularities have occurred that might reasonably have affected the recommendation, the case shall be referred back to the level where the irregularities occurred, for reconsideration.
- d) In the case of the appeal of a non-renewal of contract:
  - i) if the UAB decides to reverse a non-renewal, the UAB's only remedy shall be a two (2)-year contract renewal;
  - ii) if the UAB upholds the non-renewal, the UAB may decide that a one (1)-year non-renewable contract shall be offered.
- e) The Chair of the UAB shall send the President the entire file with regard to each case, including the reasoned decision and the supporting documentation of the UAB and any dissenting opinion.
- f) Copies of the decision shall be sent to the appellant and other parties involved, including the Association.
- g) The Employer shall arrange for the implementation of the UAB's decisions as soon as possible.