DFA

Dalhousie Faculty Association

Under the Microscope:

TENURE, PROMOTION AND REAPPOINTMENT

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TABLE OF CONTENTS

Preface

There are certain milestones which chart the course of an academic's career progress. In addition to the many academic assessments, which occur for grants and publications, your University peers will judge your accomplishments when you apply for reappointment, tenure and promotion.

The award of tenure is for academics the ultimate recognition that their teaching and research makes a noteworthy contribution to the scholarly community. With it comes the guarantee of academic freedom, which confers on the faculty Member both the right and the responsibility to teach, conduct research and disseminate knowledge without fear of hindrance.

The often rigorous review which occurs with tenure consideration is conducted by academic colleagues in a peer review process. Academics serving on such committees have not only the right but the responsibility to make these judgements based solely on the academic performance of the candidate. Fair procedures and due process must guide committee deliberations and proceedings.

The purpose of this Booklet is to inform both the candidate and the peer review committees of their rights and responsibilities in this vital work.

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Under the Microscope:

TENURE AND PROMOTION REVISITED

Introduction

Members about to be considered for tenure (appointment without term or continuing appointment) or promotion are reminded that the Collective Agreement specifies a number of procedural protections to ensure a fair evaluation of your work. Clearly, your performance in teaching or librarianship, research and scholarly work should amply support your request for promotion or tenure. But, as with any scholarly endeavour, preparation and a thorough understanding of both the process and your rights, will facilitate the smooth passage of your application.

Any Member of the professoriate being considered for tenure or promotion, or both, will realize that the document, which governs your consideration, depends on what you are seeking. Of course, the Collective Agreement is the overarching governing document and any procedure must be in accordance with the rules it describes.

As a result of the 1997/98 round of collective bargaining, the criteria and standards to be used in judging your case, as well as the timing and process of decision-making are now contained in the Collective Agreement. This change simplifies the process for Members of the professoriate since you will no longer be required to peruse the *Regulations Concerning Appointments, Tenure and Promotion, 1987.* In fact, since the tenure rules have now been fully incorporated into the Collective Agreement, the *Regulations* document no longer has any legal application to the terms and conditions of employment for DFA Bargaining Unit Members. Thus, with the possible exception of additional criteria that may be set by Faculty Regulations for tenure and additional criteria which may be set by the Faculty or Department for promotion, the complete requirements regarding criteria and procedures for tenure and promotion are now contained in the Collective Agreement.

Tenure consideration is especially stressful. Documenting your accomplishments during your probationary period is time-consuming and can be confusing. No one outline can fully set out all the factors that must be considered in this process, but I hope this brief guide can help direct your attention to the documents you need to review.

PART I: TENURE - APPOINTMENT WITHOUT TERM - CONTINUING TERM

CRITERIA AND STANDARDS

Members of the DFA Bargaining Unit who are about to undergo consideration for tenure or appointment without term or continuing appointment should thoroughly review the following documentation: (1) Collective Agreement; (2) Faculty Regulations (if they exist); (3) Department or School Guidelines; (4) the CAUT Document: "What Is Fair?"; and (5) the CAUT "Teaching Dossier" (Dalhousie Centre for Learning & Teaching has prepared a Teaching Dossier as well).

(1) Professoriate

(a) Collective Agreement: Article 15 provides a complete description of the tenure process but other Articles of the Collective Agreement provide vital information concerning proper procedures. For example, Article 18 and, in particular Clauses 18.08 through 18.11, advise which evaluative material can be used in your tenure consideration. Article 36 incorporates the rules of natural justice into the tenure process and ought to be carefully reviewed.

(b) The Tenure "Test": The Collective Agreement specifies the "test" which is to be applied to the criteria. Clause 15.02 indicates that tenure will be granted "only when it can be firmly predicted that [you] will...attain and maintain a high degree of academic proficiency" (emphasis added). This is clearly in contrast to the "test" to be applied in the determination of a promotion application (see below) which requires that "positive evidence of actual achievement and accomplishment" be demonstrated (emphasis added).

(c) General Criteria: The criteria for tenure are specified at Clause 15.03 in the Collective Agreement. They include "academic and professional qualifications, teaching effectiveness, contributions to an academic discipline, ability and willingness to work with colleagues so that the academic units concerned function effectively, and personal integrity". These are the only criteria by which you will be judged for tenure unless your Faculty established additional criteria by Faculty Regulation. You should note that your Department or School does not have the authority to establish additional criteria.

Members of the professoriate are the **only** Members of the Bargaining Unit where additional criteria may be established by Faculty Regulation. For all other Members

of the Bargaining Unit – Professional Librarians, Professional Counsellors and Instructors, the criteria is specified in the Collective Agreement.

Normally, tenure consideration is in respect of the four (4) areas of a faculty Member's responsibility, namely, teaching, research, academic administration and professional responsibility outside Dalhousie with teaching and research constituting the Member's "principal duties". This will be the case for most faculty Members but in some cases the expected duties may be modified and it is those responsibilities which must be assessed in the tenure application. If, for example, you were hired primarily to teach, this must be specified in your letter of appointment (see Clause 15.05).

(d) Additional Criteria set by Faculty Regulations: The general criteria to be used in judging your work are set out at Clause 15.03 of the Collective Agreement. Your Faculty may add other criteria to this, but such criteria must be established by Faculty Regulations in order to apply. Be sure to read the section in "*What Is Fair?*" entitled "The Duty to be Fair: Criteria and Standards".

(e) Additional Criteria and Standards *cannot* be set at the Department or School level: Departments, Schools and other Units *cannot* establish additional criteria or standards in respect of the criteria for tenure. The right to do so is solely within the authority of the Faculty. However, from time to time the Department (School, College or other such unit) may provide *guidelines* for the processing of the tenure application which, of course, must be consistent with the rules in the Collective Agreement. (This is in contrast to promotion where your School or Department as well as the Faculty may add to or define these criteria more precisely.)

(f) Standards Set by Faculty Regulations: Each Faculty is responsible for establishing the standards which will apply to the general criteria and additional Faculty criteria, if any (see Clause 15.07). If your Faculty has not established standards by Faculty Regulations, then past practice will prevail (see Clause 15.18).

(g) Evaluation based on Criteria and Standards in place at time of initial appointment: On initial appointment to Dalhousie, you were given the criteria and standards to be used in your tenure consideration (see Clause 15.03(b)). If the Faculty criteria or standards have been changed *prior to* the timing of your tenure consideration, you have the right to choose which set of Faculty criteria and standards will be used by the committees and other decision-makers to judge your case for tenure. Ensure you and your committees know which criteria and standards are being used in your case (see Clauses 15.04(b) and 15.07(b)).

(h) Scholarship: the Boyer Model - In the ***2017/20 Collective Agreement*** *(see Clause 17.17)*, in keeping with the Boyer model, the definition of scholarship was expanded to specifically include **scholarship of discovery, integration, application and/or teaching**. Further, the review and assessment of scholarship should recognize "**non-traditional forms of scholarship and traditional ways of knowing**."

Information regarding the Boyer model can be found at this link:

https://dfa.ns.ca/images/BoyerScholarshipReconsidered.pdf

(2) Professoriate (Continuing Education)

Members of the College of Continuing Education holding continuing education appointments are reminded that Article 15 applies to them also. However, the specific **criteria** to be used for your consideration are set out at Clause 37.04 rather than in Article 15. Article 37 takes into account the particular duties and responsibilities of Continuing Education Members. As for the professoriate, however, any additional criteria for Continuing Education Members **must** be established by Faculty Regulations. As is true for some parts of the professoriate (for example, the Law School and Computer Science), the Continuing Education Member will be considered by a Faculty-wide committee rather than a unit committee and a Faculty committee.

The College of Continuing Education is responsible for establishing the standards which will apply to the general and additional Faculty criteria (see Clause 37.04). If additional standards have not been established by College of Continuing Education Regulations, then past practice will prevail (see Clause 15.18).

(3) Professional Librarians

Professional Librarians who are being assessed for an Appointment Without Term will focus on Article 11, and in particular Clause 11.02, which sets out the criteria used to judge your case. Article 11 also describes the timing of decisions and the process for your review. Article 15 applies in that it describes the right to appeal a negative decision in certain circumstances.

There is no provision for any additional criteria to be used in assessing your case except as set out in Article 11. Of course, you should be familiar with Articles 18 and 36 as they describe procedures and requirements for fairness that apply to you.

For Professional Librarians, the standard is described at Clause 11.02, that is, the performance in any of the criteria must be "satisfactory".

(4) Instructors

Instructors on probationary appointments are evaluated in the 5th year of appointment. If they successfully meet the criteria specified at Clauses 12.08 and 12.09, instructor Members will be reclassified to a Senior Instructor position with a Continuing Term Appointment. The "test" to be applied is specified at Clause 12.17(d), which states that the duties and responsibilities performed by the Instructor must be "at the norm for other instructor Members."

For instructor Members the standard is described at Clauses 12.16(a) and 12.17(d), i.e., performance shall "relate to the normal performance level of other Members with the same general responsibilities, duties and/or experience".

Technology Instructor Members at the Faculty of Agriculture who have completed four years of service have the right to be considered for a continuing appointment. Clause 12.17 describes the procedures to be used for the evaluation of Technology Instructor Members. Clause 12.21 describes the criteria to be used in the evaluation process.

The Department-level Appointments Committee which considers the Instructor's case must include an instructor Member. Instructors have the right to be advised of the recommendations at each step in the process (see Clause 12.13). There is no provision for any additional criteria to be used in assessing Instructor Members except as set out in Article 12.

(5) Professional Counsellors

Normally Counsellors will be considered for a Continuing Appointment in the 5th year of a probationary appointment. A Counsellors Appointments Committee, set up according to Clause 13.03, will consider the Counsellor's workload as set under Clause 13.06. The criteria which will be used to determine the award of a continuing appointment are described at Clause 13. 01, i.e., "formal qualifications or their equivalent; relevant professional experience; and where applicable effectiveness of the professional counsellor's performance of the duties and responsibilities specified in Clause 13.06."

As with other Members of the Bargaining Unit, the rights described under Articles 18 and 36 likewise apply to Counsellors. There is no provision for any additional criteria to be used in assessing your case except as set out in Article 13.

TENURE -- APPOINTMENT WITHOUT TERM -- CONTINUING APPOINTMENT

Members	Documentation / Application Deadline	Decision Deadline	Process	Criteria	Rights
PROFESSORIATE	**15 September**	--	Unit Committee	Clause 15.03	Member may request deferral
		--	Faculty Committee	Additional criteria established by Faculty Regulations	Appeal to University Tenure Committee
		31 December	Dean		Decision of University Tenure Committee not grievable if accepted by Board
		28 February	President		Natural Justice (Article 36)
PROFESSORIATE (CONTINUING EDUCATION)	**15 September**	--	College of Continuing Education Promotion & Tenure Committee	Clause 37.04	Member may request deferral
		--	Director	Additional criteria established by College of Continuing Education Regulations	Appeal to University Tenure Committee
		31 December	Dean		Decision of University Tenure Committee not grievable if accepted by Board
		28 February	President		Natural Justice (Article 36)
LIBRARIANS (Appointment without Term)	**15 September**	15 November	Library Appointments Committee	Clause 11.02	Member may request deferral
		15 December	Library System Appointments Committee (LSAC)		Appeal to University Tenure Committee
		W/I 15 days of LSAC decision	Chief Librarian		
		15 January	Dean or Vice-President		Decision of University Tenure Committee not grievable if accepted by Board
		28 February	President		Natural Justice (Article 36)
INSTRUCTORS (TECHNICAL INSTRUCTORS)	**15 September**	"normally" 31 October	Unit Appointments Committee	Clause 12.08	Member may request deferral
		--	Chair	Clause 12.09	If negative decision Member may request reconsideration in fall of year following original consideration
		31 December	Dean		Grieve decision
					Natural Justice (Article 36)
COUNSELLORS (Continuing Appointment)	**15 September**	15 December	Counsellors Appointments Committee	Clause 13.01	Member may grieve decision
		--	Director		
		31 January	Vice-President (Student Serv.)		Natural Justice (Article 36)

PART II: RIGHTS, PROCEDURES AND PROTECTIONS

(Tenure – Appointment Without Term – Continuing Term)

The following checklist presents some of the significant rights you have under the Collective Agreement. As with many lists, it is not meant to be all encompassing but merely a reminder of the protections contained in the Agreement.

The procedures, rights and protections described in this section apply to all Members of the Bargaining Unit. Differences between various types of Bargaining Unit Members are specifically noted.

For a complete description of your rights, please refer to the Collective Agreement. If you need further information, or clarification of provisions of the Collective Agreement, please feel free to contact the DFA Office at 494-3722.

(1) Timing of Consideration

(a) Professoriate: For most Members of the professoriate, tenure consideration will occur in the fall term of the 5th year of your tenure stream appointment at Dalhousie (see Clause 15.12). However, if you are an Assistant Professor with three years teaching experience at a University or hold the rank of Associate Professor or Professor, then tenure consideration will occur in the fall term of your 3rd year at Dalhousie. Your letter of appointment should specify the timing for tenure consideration.

If your **initial** appointment at Dalhousie has been to a 3-year **tenure-track** contract and not to a probationary tenure-track contract, the timing for your tenure consideration will be specified in your letter of appointment. It is vital that you check the timing as stated in the letter because tenure consideration for tenure-track Members can occur in **any year, except the last year,** of your tenure-track contract.

(b) Early Consideration: Members have the option to be considered for tenure before the times specified in Clauses 15.11 and 15.12. A request for tenure consideration, before the times specified in Clauses 15.11 and 15.12, can only be initiated by the faculty Member. Members who request earlier consideration and are not granted tenure will continue in their appointments and will be considered again at the prescribed time (see Clause 15.10).

(c) Professional Librarians: Unless otherwise stated in the letter of appointment, a Professional Librarian will be considered for an appointment without term in the fall term of the 5th year of a probationary appointment as a Professional Librarian at Dalhousie (see Clause 11.11). Professional Librarians with "three or more years of full-time relevant experience" prior to coming to

Dalhousie will be considered for an appointment without term in the fall term of the 3rd year at Dalhousie (see Clause 11.13).

(d) Instructors: Instructors who have completed at least four years of service shall have the right to be considered for a Senior Instructor position with a continuing appointment in the fall term of their 5th year (see Clause 12.17(a)). Instructor Members may request "early" consideration (see Clause 12.17(b)).

A Technical Instructor Member at the Faculty of Agriculture has the right to be considered for a continuing appointment after four years of service. Clause 12.17 describes the procedures to be used for the evaluation of Technology Instructor Members. Clause 12.21 describes the criteria to be used in the evaluation process. Evaluation takes account of qualifications, experience and effectiveness in the performance of duties and responsibilities (see Clause 12.21(c)).

(e) Professional Counsellors: Professional Counsellors are normally considered for a continuing appointment in the fall term of their 5th year (see Clause 13.04). However, if the Member has two or three years of relevant experience, early consideration may take place in the fall term of the 3rd year at Dalhousie.

(2) Deadline and Timelines for decisions

Candidates for tenure, continuing appointment or appointment without term must submit their documentation to their Chair, Head, Director or Chief Librarian, as appropriate, no later than **15 September** in the academic year in which the case is being considered. Typically, the documentation includes an updated *curriculum vitae,* teaching dossier, published materials, scholarly reviews, etc. You do not have to enclose referees' letters since it is the responsibility of the Chair, Head, Director, or Dean to solicit them (see section on referees' letters below). It may be that your Department or School has specified what materials must be included in your package. Your Department guidelines, if any, ought to be consulted before you submit your package.

(3) Extensions to timelines

From time to time, there are unexpected delays in the processing of the tenure application. Since the timelines are specified in the Collective Agreement, any change to them (and any extension to your appointment as a consequence) must be approved by the DFA and the Board of Governors through the Association-Board Committee. However, in no case can the President's recommendation regarding tenure occur later than **1 September in the final year of your appointment.**

(4) Stages in Tenure Process

Typically, the stages in tenure consideration are: the Department- or School-level, the Faculty-level, the Dean and the President. Each stage is a distinct and autonomous part of the tenure process and each is entitled to formulate its recommendations separate from the recommendations made at other levels. Having formulated its recommendation, the Committee then advises the candidate of its recommendation and provides it to the next level. However, the Faculty Committee is required to consult with the Department Chair and others in the

Department, as they choose, before coming to a decision on a recommendation if the recommendation would differ from that of the Department Chair, Head or Director. After the Faculty Committee makes its recommendation, it forwards it to the Dean who considers the information provided to the Faculty Committee and the recommendation of the Faculty Committee before making a recommendation. At each stage in the tenure process, you will be advised of the recommendations "**at the time it is sent to the next stage**".

Except where otherwise stated, the procedures in Article 15 refer only to Members of the professoriate, including Continuing Education Members.

The stages in the process for Professional Librarians are described at Clauses 11.07 through 11.15. Professional Librarians are evaluated by a Library Appointments Committee in each Library (see Clause 11.07) followed by a Library System Appointments Committee (see Clause 11.08). Their recommendations are forwarded to the appropriate Chief Librarian who makes a recommendation to the appropriate Dean or Vice-President (see Clause 11.14). Candidates must be notified of recommendations **at each stage of the process** (see Clause 11.07).

Professional Counsellors are considered by a Counsellor Appointments Committee which consists of all professional Counsellor Members. The Director makes a recommendation after consulting with the Committee. The decision is made by the Vice-President (Student Services). There is no Faculty-level committee involved in the process (see Clauses 13.03 and 13.04).

Instructors will be considered by the Department Appointments Committee (see Clauses 12.12, 12.13 and 12.17). The Department Appointments Committee must include an Instructor Member from the Department (see Clause 12.12(a)). There is no Faculty-level committee involved in the process. Candidates must be notified of recommendations **at each stage of the process** (see Clause 12.13).

(5) Department/unit level committee for Members who identify as Aboriginal or African Nova Scotian

In the ***2017/20 Collective Agreement,*** Members seeking tenure, appointment without term or continuing appointment who identify as Aboriginal or African Nova Scotian may elect to have a non-voting representative on their Department or unit level committee. For tenure, see Clause 15.20(i) or Clause 37.03(c) for details. For appointment without term, see Clause 11.07 for details. For continuing appointment, see Clause 12.12 (a)(i) for instructor Members or Clause 13.03 (a)(i) for professional counsellor Members for details.

(6) Deferral

If you are on parental leave, you have the right to "elect" to defer your tenure consideration for one-year (see Clause 15.14).

Professional Librarian Members on parental leave also may elect to defer their appointment without term consideration for one year (see Clause 30.08(g)).

Instructor Members on parental leave also may elect to defer their continuing appointment consideration for one year (see Clause 30.08(g)).

Professional Counsellor Members on parental leave also may elect to defer their

continuing appointment consideration for one year (see Clause 30.08(g)).

If this deferral will mean that tenure, appointment without term or continuing appointment consideration will occur in the last year of your contract, you will have an additional year added to your tenure stream appointment contract (see Clause 15.13 for tenure and Clause 15.35 for appointment without term and continuing appointment).

Members have the right to request that their tenure consideration be deferred for a period of up to two (2) years. The Faculty Committee and the Dean must agree and make this recommendation to the President who may then approve it. Members have a right to make this request before or at any stage after procedures have commenced. The deferral of tenure consideration will not prejudice your subsequent application for tenure.

Candidates who have had a significantly greater teaching or administrative workload as a result of major changes in Department curriculum may request a deferral of tenure consideration of up to two (2) years (see Clause 15.13(c)). If you are granted a deferral on this basis, your workload will be reduced to enable you to concentrate on meeting the criteria for tenure.

Members requesting deferral of tenure consideration are required to submit a letter outlining the reasons for the request (see Clause 15.13(b)). The letter must contain sufficient information to enable the Faculty Committee and the Dean to assess the appropriateness of the request. **Members do not have to submit their tenure dossier when requesting a deferral.** It is likely that the requirements for making this request will vary from Faculty to Faculty. If you intend making this request before your tenure case has started you should review your Faculty Regulations to determine if there is a specific process to follow. If deferral is approved, your tenure-track contract will be extended.

(7) Special File

The Collective Agreement requires that a "special file" be created for each Member who is being considered for tenure.

The requirements regarding "special files", their contents and use, apply likewise to Professional Librarians, Professional Counsellors and Instructors being considered for appointment without term and continuing appointment, respectively.

The file will contain material submitted by the Member together with referees' letters, other confidential material (see below) and material included by the participants in the process such as the various committees and the Dean. This "special file" will contain an inventory sheet, which describes the contents of the file and notes any additions or deletions to it. Members will have access to this "special file" within two days of making the request (see Clause 18.01(b)).

Members of your Department, School or Library, may peruse this "special file" and may submit a written assessment based on the criteria in the Collective Agreement (see Clause 18.12(d)). Written assessments by your colleagues follow the same rules regarding confidentiality as for external referees' letters and other written confidential material (see also "Department Colleagues," below).

The University Tenure Committee and/or the University Promotion Appeal Committee likewise have access to your special file in the event your tenure or promotion is considered by those committees. In addition, they have the right to review other special

files for candidates within the same Faculty in the same year and the year preceding your consideration (see Clause 18.13(b)).

(8) Referees

Clause 15.19(b) provides that referees from outside Dalhousie must be obtained (unless the Member and the Dean agree such letters are inappropriate). This is consistent with the requirements specified in Clauses 16.10 and 16.11 regarding promotions. Like promotion, you have a right to specify **half** of the persons to be approached for written recommendations from external referees, and can comment on the suitability of any proposed referee. Unlike promotions, however, the number of referees required is not stated. It the responsibility of the Chair, Head, Director or the Dean to obtain written recommendations from external referees.

Letters from external referees, including the identity of the author will be made available to the candidate. However, referees may request anonymity. If they do, their letters will be provided to the candidate but with the *identifying letterhead and signature block removed*. The body of the letter will remain intact. Potential referees will be advised of the requirements of the Collective Agreement in this regard. A representative from the DFA, at the candidate's request, may scrutinize the edited and unedited documentation (see Clause 18.11(b)).

Appendix VI of the Collective Agreement provides examples of letters for soliciting assessment from external referees. The use of letters to communicate with potential referees will eliminate much of the need to communicate by telephone or other means to clarify the University's requirements regarding the criteria and standards to be applied. In addition, standardized letters will help ensure consistent and equitable treatment of Members in the tenure process (see Clause 18.12). The Member is entitled to a written summary of any "material oral confidential information" conveyed by the external referee which might affect the tenure decision (see Clause 18.11(b)(iii)).

The rules regarding the use and solicitation of external referees' letters apply also to Professional Librarians, Professional Counsellors and Instructors (see Clause 18.11(b)).

(9) Other Written Confidential Information

The rules regarding the removal of letter-head and signature block for external referees' letters apply to other written confidential information. The author of the letter will be contacted and advised that the letter will be provided to the candidate with the *letterhead and signature block removed*. If the author chooses to withdraw the letter it will be deleted from the file and not used in the process. The author also has the option of re-drafting the letter, which will then go into the file -- again with the letterhead and signature block removed. As with the revisions regarding the use of confidential referees' letters, this change will mean that editing of the contents of the letters will no longer be required to preserve the confidentiality of the authors (see Clause 18.12(b)(ii)).

(10) Department Colleagues

All Members* of your Department or School may have access to your "special file" and may submit an assessment based on the tenure criteria which will be included in that file. These assessments will be made available to the candidate on request. If your colleague has requested confidentiality you

will receive the letter with the *letterhead and signature block removed*. This follows the same rule for external referees' letters and other written confidential material (see Clause 18.12(d)).

*** For clarification, you will recall the word "Member" when printed with an upper case refers only to those persons within the DFA Bargaining Unit. Therefore, other employees of Dalhousie University including, part-time faculty who are in the CUPE bargaining unit, and clerical, technical staff and students do not have access to this "special file".**

These rules apply similarly to Professional Librarians, Professional Counsellors and Instructors being considered for appointment without term and continuing appointment, respectively.

(11) Student Questionnaires

Anonymous, multiple-choice student questionnaires that have been authorized by your Faculty or Senate, may be used to evaluate your teaching performance. Unsigned student comments **cannot** be used as part of the evaluation unless their use has been specifically approved by your Faculty or Senate. In other words, either the Senate or your Faculty must have specifically approved the use of unsigned comments. (To my knowledge, there are no Faculties which have passed a motion specifically approving unsigned student comments for evaluation purposes.)

Student evaluation instruments (SRI's), provided they have been approved by your Faculty or the Senate, may be included in your "special file" for purposes of tenure. Unsigned comments must be excised and cannot be included in the "special file" but those comments will be provided to you in confidence (see Clause 18.09(b)).

In addition, you have the right to request a copy of the raw data for the student evaluation once it has been placed in the "special file". The Chairperson, Head or Director, as well as the Dean, likewise have a right to request a copy (see Clause 18.09(c)).

Clause 18.09(e) describes the relevant factors that are to be used by the Committees and others to interpret the SRI's.

These rules apply similarly to Professional Librarians, Professional Counsellors and Instructors being considered for appointment without term and continuing appointment, respectively.

(12) Submissions to Committee and Attendance at Committee Meetings

During the tenure process, you have a right to submit a written statement to and appear before the Department (see Clause 15.20) and the Faculty-level Committees. In specific terms, you have a right to attend any meeting or portion of a meeting where the Tenure Committee is considering your case. That includes instances where the Committee is interviewing your Chair, Head or Director or Member of your Department or anyone else who wishes to speak to the issue of your tenure. Of course, you have a right to reasonable notice of Committee meetings and you have the right to make submissions to the Committee. If the Committee is meeting "solely and exclusively" to deliberate on your case, you do not have the right to attend that particular

meeting or portion of the meeting (see Clause 36.03).

If the Department Chair recommends that tenure not be granted or that consideration be deferred, or if the Faculty-level Committee perceives some difficulty with a favourable Department recommendation judged against general Faculty standards, the candidate **must** be invited to appear before the Faculty-level Committee or submit a statement if s/he has not already provided one (see Clause 15.22).

Likewise, Professional Librarians, Professional Counsellors and Instructors may appear before the Committees considering appointment without term or continuing appointment, respectively. Interestingly, if a Library System Appointments Committee **anticipates** a negative recommendation it must provide a written statement to the candidate of the areas of concern, with an invitation to appear before the Committee.

(13) Committee Anticipates a Negative Decision

When a Committee (or another participant in the process such as the Dean or the President) **anticipates** making a recommendation not to award tenure or to defer the tenure consideration, they must notify the candidate in writing. The candidate has five (5) days to respond in writing. (See Clause 15.18. Unlike the Library System Appointments Committee, Faculty committees and other participants are not required to invite the candidate to meet with them when they anticipate a negative recommendation.)

(14) Statement of Reasons

Under Clause 36.03 of Article 36 "Fairness and Natural Justice" you have the right to request written reasons for the decision of the Department- or Faculty-level Committee. In addition, **at each stage** of the tenure process where there is a recommendation against tenure or a recommendation for deferral, the Member must be provided with a written statement of reasons in respect of (1) each of the criteria under the Collective Agreement and the Member's letter of appointment, if appropriate; (2) any additional criteria, where established by Faculty Regulations; and (3) the standards, where established by Faculty Regulations.

Likewise, Professional Librarians have a right to receive a written statement of reasons at each stage of the process of consideration for appointment without term including a positive recommendation (see Clause 11.07).

Instructors are entitled to a written statement of reasons in respect of the criteria in "sufficient particularity" to allow them to respond to alleged deficiencies. This is significant because they have the right to re-submit their application the following year if they have received a negative recommendation (see Clauses 12.13 and 12.17(d)).

The right to receive written reasons on a denial of continuing appointment to Professional Counsellor is specified in Clause 13.04.

(15) Consistency in the Application of Criteria and Standards

It is the responsibility of the Department and Faculty Committees, the Dean and the President to ensure that their recommendation regarding each candidate is made with consistency in the application of criteria and standards within the same Faculty in the same academic year (see Clause 15.18).

(16) Improper Procedures

Aside from any rights you may have under the grievance and arbitration procedures of the Collective Agreement, Clause 15.25 provides that the Faculty Committee, the Dean and the President, following in sequence, have the authority to send the tenure case back to the previous level **if** he, she or they believe that it may affect the disposition of the case. **If you have any concerns that improper procedures may have been used in the consideration of your case, contact the DFA Office for advice as soon as you become aware of the matter.** There is no similar clause for other Members of the Bargaining Unit. However, if you have concerns in this regard you should contact the DFA Office since other provisions of the Collective Agreement may apply.

(17) Reconsideration and Appeal

(a) Professoriate: Members of the professoriate have, under certain conditions, the right to request a reconsideration of a negative decision. If a Faculty Committee recommends tenure or deferral **and** the Dean recommends otherwise, the Member may initiate an appeal. Further, if the President intends to reject the Dean's recommendation for tenure or deferral, s/he shall refer the matter to the University Tenure Committee. The timelines for appeal are very precise; in the first instance the Member must notify the President no earlier than 14 days after notice of the Dean's recommendation but no later than 21 days after the notice. In the second instance, the President must notify the Member within 14 days after notice to the Member of the Dean's recommendation. In either case, you should contact the DFA Office for assistance, if you have not already done so (see Clauses 15.27 through 15.30).

The University Tenure Committee must ensure their recommendation is made with **consistency** in the application of criteria and standards within the same Faculty for candidates assessed in the same academic year.

The University Tenure Committee must report its conclusion and recommendations to the Member and the President **no later than 15 July (see Clause 15.30).** *NOTE: The President's decision regarding tenure must occur before 1 September of the final year of your appointment.*

The rules of natural justice apply to the procedures of the University Tenure Committee. You have the right to notice of and the right to attend the hearings in your case. The President of the DFA has the right to attend as an observer (see Article 36). In practice, Members often consult with the DFA regarding the process and experienced DFA Members frequently assist Members during the proceedings.

A faculty Member who has been denied tenure will not be reconsidered in a subsequent year **unless** either (1) the Faculty Tenure Committee has originally recommended deferral or (2) the Member's Chair, Head or Director recommends **re-**

consideration in a subsequent year because of a "relevant change in circumstances or grounds for consideration" (see Clause 15.16).

(b) Professional Librarians: Professional Librarians have the right to appeal **if** the Library System Appointments Committee recommends deferral or an appointment without term **and** the Dean or Vice-President responsible recommends otherwise. The Member may appeal the decision by writing to the President within 21 days following notice by the Dean or Vice-President (see Clause 15.31).

Professional Counsellors and Instructors do not have a right of appeal. (Instructors and Technical Instructors who have received a negative recommendation for a continuing appointment, have a right to request a **re-consideration** of their case in the fall of the year following the original consideration (see Clause 12.17(e) and 12.21). Other provisions of the Collective Agreement, particularly the grievance and arbitration articles, may apply. You should contact the DFA Office for advice and assistance.

(18) Expedited Arbitration

In the event a Member decides to grieve the recommendation of the President not to recommend tenure, there is a special arbitration process which will apply (see Clause 15.02). The expedited arbitration process means that the Member does not have to go through the Informal and Formal steps of the grievance procedures described in Article 29. Rather the case goes directly to an arbitrator (the arbitrator's list is specified in Article 29) who is required to hear and render a decision within 90 days of the President's recommendation to deny tenure. In the event you receive a negative tenure recommendation, you are urged to contact the DFA Office for advice and assistance, if you have not already done so.

PART III: PROMOTION

CRITERIA AND STANDARDS

Members of the DFA Bargaining Unit who are about to undergo promotion consideration, should thoroughly review the following documentation: (1) Collective Agreement; (2) Faculty Regulations (if they exist); (3) Department or School Guidelines; (4) the CAUT document "What Is Fair?"; and (4) the CAUT "Teaching Dossier" (Dalhousie Centre for Learning & Teaching has prepared a Teaching Dossier as well).

Some of the provisions regarding promotion are similar or identical to those regarding tenure. In those instances, reference to the tenure section is indicated.

(1) Professoriate

(a) Collective Agreement: Article 16 of the Collective Agreement provides a complete description of the promotion process but other Articles of the Collective Agreement provide vital information concerning proper procedures. For example, Articles 18 and in particular, Clauses 18.08 through 18.11, advise which evaluative material can be used in your promotion consideration. Article 36 incorporates the rules of natural justice into the promotion process and ought to be carefully reviewed.

(b) The Promotion "Test": The Collective Agreement specifies the "test" which is to be applied to the criteria. Clause 16.02 indicates that promotion will be granted when there is "positive evidence of actual achievement and accomplishment" (emphasis added). This is clearly in contrast to the "test" to be applied in the determination of a tenure application (see above) which requires that tenure be granted "only when it can be firmly predicted that [you] will...attain and maintain a high degree of academic proficiency" (emphasis added).

(c) General Criteria: The criteria for promotion are specified at Clause 16.06(a). They are the same as tenure which include "academic and professional qualifications, teaching effectiveness, contributions to an academic discipline, ability and willingness to work with colleagues so that the academic units concerned function effectively, and personal integrity".

Normally, promotion consideration is, in respect of the four (4) areas of a faculty Member's responsibility, namely, teaching,

research, academic administration and professional responsibility outside Dalhousie with teaching and research constituting the Member's "principal duties". This will be the case for most faculty Members but in some cases the expected duties may be modified and it is those responsibilities which must be assessed in the promotion application. If, for example, you were hired primarily to teach, this must be specified in your letter of appointment.

Associate Professors applying for promotion to the rank of Professor should review the criteria and standards at Clause 16.11(see also "Standards Set by Faculty Regulation", below).

(d) Additional Criteria Set By Faculty Regulation: The general criteria specified at Clause 16.06 are the only criteria by which you will be judged for promotion unless your Faculty has established *additional* criteria (Clause 16.06).

(e) Department or School Criteria: While Departments, Schools and other Units *cannot establish additional criteria for tenure*, they are free to establish additional criteria in respect of promotion.

(f) Standards Set by Faculty Regulations: Each Faculty is responsible for establishing the standards which will apply to the general criteria and additional Faculty criteria, if any (see Clause 16.06).

You have a right to receive a written copy of the standards to be used to determine your case for promotion.

Associate Professors who are applying for promotion to Professor should note the additional standards described in Clause 16.11 in which case you must establish "solid evidence" that you have (1) "attained" standards of competence in both teaching and scholarship appropriate to a new full Professor; (2) that you have "attained" and are "likely to maintain a high level of effectiveness in teaching and/or scholarship"; and (3) that your teaching and/or scholarship "represents a significant contribution to [your] discipline or to the University" (see chart on page 53).

Associate Professors who wish to be considered for promotion "principally" on the grounds of teaching effectiveness should review the standards described in Clause 16.11. Consideration based on this criterion requires demonstration that you have "attained and [are] likely to maintain a high level of effectiveness in teaching". The Clause requires that you include peer evaluations and/or student evaluations in your submission. It also describes other evidence that you may use to demonstrate teaching effectiveness.

(g) Scholarship: the Boyer Model - In the ***2017/20 Collective Agreement*** *(see Clause17.17),* in keeping with the Boyer model, the definition of scholarship was expanded to specifically include **scholarship of discovery, integration, application and/or teaching**. Further, the review and assessment of scholarship should recognize "**non-traditional forms of scholarship and traditional ways of knowing**."

Information regarding the Boyer model can be found at this link:

https://dfa.ns.ca/images/BoyerScholarshipReconsidered.pdf

(2) Professoriate (Continuing Education)

Members of the College of Continuing Education holding continuing education appointments are reminded that Article 16 applies to them also. However, the Collective Agreement stipulates that the **criteria** for your consideration are set out at Clause 37.09 rather than in Article 16 to take into account their particular duties and responsibilities (see Clause 37.09). The College of Continuing Education may by Faculty Regulation add to or define these criteria, which must be approved by Faculty Regulation. As is true for some parts of the professoriate (for example, the Law School), the Continuing Education Member will be considered by a Faculty-wide Committee rather than a Department or unit committee and a Faculty Committee. Members in the College of Continuing Education should note that the criteria for promotion for them is slightly different than for other Members of the professoriate.

(3) Professional Librarians

Professional Librarians who are being assessed for promotion will focus on Article 11 and in particular, Clauses 11.02 and 11.05, which set out the criteria used to judge your case. There is no provision for any additional criteria to be used in assessing your case except as set out in Article 11.

For Professional Librarians, the standards are described at Clause 11.05.

(4) Instructors

Instructor Members on probationary appointments will be evaluated in the 5th year of appointment. If they successfully meet the criteria specified at Clauses 12.08 and 12.09, they will be reclassified to a Senior Instructor position with a Continuing Term Appointment.

For Instructor Members, the standard is described at Clauses 12.16(a) and 12.17(d), i.e. performance shall "relate to the normal performance level of other Members with the same general responsibilities, duties and/or experience."

University Teaching Fellow

The promotion test: Promotion will be granted when the Member has "attained and is likely to maintain a high level of effectiveness in teaching... and the Member's teaching represents a significant contribution to the University (see Clause 12.18(b)).

Scholarly activity (other than scholarly activity related to pedagogy) may be considered **if** the scholarly activity is a requirement of the position set out in the instructor Member's letter of appointment or job description.

Technology Instructor

The promotion test: Promotion to the rank of Technology Instructor III shall be recommended when the member has "attained and is likely to maintain a high level of effectiveness in teaching and other primary duties and responsibilities that support the dissemination of knowledge and understanding" and "represents a significant contribution to the University." (Clause 12.23)

The Department-level Appointments Committee which considers the Instructor's case must include an instructor Member. Instructors have the right to be advised of the recommendation sat each step in the

process (see Clause 12.13).There is no provision for any additional criteria to be used in assessing your case except as set out in Article 12.

(5) Professional Counsellors

There are no "promotion" provisions for Professional Counsellors in the Collective Agreement.

PROMOTION

Members	Documentation / Application Deadline	Decision Deadline	Process	Criteria	Rights
PROFESSORIATE	**15 September**	(request by) 15 September	To Chair, Head or Director	Clause 16.06	Member can stop or defer consideration at any stage
		30 November	Unit Committee and Chair, Head or Director	Additional criteria may be established	Natural Justice (Article 36)
		15 February	Faculty Committee	Clause 16.11 (Professor)	No limit as to how often Member may request promotion
		31 March	Dean		Grieve decision
		31 May	President		Promotion Appeal Committee – decision final and binding
PROFESSORIATE (CONTINUING EDUCATION)	**15 September**	(request by) 15 September	to Dean	Clause 37.09	Member can stop or defer consideration at any stage
		15 February	Promotion and Tenure Committee	Additional criteria may be established by College of Continuing Education Faculty Regulations	Natural Justice (Article 36)
		15 February	Director		No limit as to how often Member may request promotion
		31 March	Dean		Grieve decision
		31 May	President		Promotion Appeal Committee – decision final and binding
LIBRARIANS (Appointment without Term)	**15 September**	(request by) 15 September	to Chief Librarian	Clause 11.02	Member may request deferral
		15 November	Library Appointments Committee	Additional criteria – Clause 11.05	If denied, Member must wait at least two years before reconsideration
		15 December	Library System Appointments Committee (LSAC)		Grieve decision
		W/I 15 days of LSAC decision	Chief Librarian		Natural Justice (Article 36)
		--	Dean or Vice-President		
		--	President		
INSTRUCTORS (TECHNICAL INSTRUCTORS)	**15 September**	"normally" 31 October	Unit Appointments Committee	Clause 12.08	Member may request deferral
		--	Chair	Clause 12.09	If negative decision Member may request reconsideration in fall of year following original consideration
		31 December	Dean		Grieve decision
					Natural Justice (Article 36)

PART IV: RIGHTS, PROCEDURES AND PROTECTIONS

(Promotion)

The following checklist presents some of the significant rights you have under the Collective Agreement. As with many lists, it is not meant to be all encompassing but merely a reminder of the protections contained in the Agreement. For a complete description of your rights, please refer to the Collective Agreement. If you need further information, or clarification of provisions of the Collective Agreement, please feel free to contact the DFA Office at 494-3722.

(1) Timing of Consideration

(a) Professoriate: For Members of the professoriate, promotion consideration may occur at any time. However, if you have not applied, you will be advised by the Dean in your 5th year as an Assistant Professor that you are eligible for promotion consideration to the rank of Associate Professor. Likewise, if you have not applied, you will be advised by the Dean in your 5th year as an Associate Professor that you are eligible for promotion consideration to the rank of Professor. There is no limit as to how often a Member may request promotion (see Clause 16.12).

(b) Professional Librarians: Librarian 1 *shall* be considered for promotion to Librarian 2 in the fall term of their 3rd year as a Librarian 1 (if the Member has not requested consideration in the fall term of their 2nd year as Librarian 1). A Librarian 2 *shall* be considered for promotion to a Librarian 3 in the fall term of their 3rd year as a Librarian 2 (if the Member has not requested consideration in the fall term of their 2nd year as a Librarian 2) and a Librarian 3 *shall* be considered for promotion to a Librarian 4 in the fall term of their 5th year as a Librarian 3 provided the Librarian 3 has been at Dalhousie for at least the previous twelve months. There is no limit as to how often a Librarian Member may request promotion (see Clause 11.06).

(c) Instructors: Instructors have the right to be considered for classification as a Senior Instructor with a continuing appointment after completion of at least four years of service. The Department-level Appointments Committee which considers the Instructor's case must include an instructor Member.

Senior Instructors may be considered for promotion to University Teaching Fellow at any time. However, if you have not applied, you will be advised by the Dean in your 5th year as a Senior Instructor that you are eligible for promotion to University Teaching Fellow.

Technical Instructor II may be considered for promotion to Technical Instructor III at

any time. However, if you have not applied, you will be advised by the Dean in your 5th year as a Technical Instructor II that you are eligible for promotion to Technical Instructor III (see Clause 12.22).

(2) Deadline and Timelines for Decisions

Candidates for promotion must submit their documentation to the Chair, Head, Director or Chief Librarian no later than **15 September** in the academic year in which the case is being considered. Typically, the documentation is similar to that included in a tenure package, i.e., updated *curriculum vitae,* teaching dossier, published materials, scholarly reviews, etc. You do not have to enclose referees' letters since it is the responsibility of the Chair, Head, Director or Dean to solicit them (see the section on referees' letters below). It may be that your Department or School has specified what materials must be included in your package. Your Department guidelines, if any, ought to be consulted before you submit your package.

(3) Stages in Promotion Process

Typically, the stages in promotion consideration are at the Department- or School-level, the Faculty-level, the Dean and the President. The Law School, Computer Science and the College of Continuing Education are treated as Faculties without Departments. Each of these stages is a distinct and autonomous part of the promotion process and each is entitled to formulate its recommendations separate from the recommendations made at other levels.

The stages in the process for Professional Librarians are described at Clauses 11.07 through 11.15. Professional Librarians are evaluated by a Library Appointments Committee in each Library (see Clause 11.07) followed by a Library System Appointments Committee (see Clause 11.08). Their recommendations are forwarded to the appropriate Chief Librarian who makes a recommendation to the appropriate Dean or Vice-President (see Clause 11.14).

Instructor Members will be considered by a single Committee, the Department Appointments Committee (see Clause 12.17) which makes a recommendation to the Dean through the Department Chairperson.

(4) Department/ unit level committee for Members who identify as Aboriginal or African Nova Scotian

In the ***2017/20 Collective Agreement,*** Members seeking promotion who identify as Aboriginal or African Nova Scotian may elect to have a non-voting representative on their Department or unit level committee. For the professoriate, see Clause 16.01(i) or Clause 37.03(c) for details. For professional librarians, see Clause 11.07 for details. For instructor Members, see Clause 12.12 (a)(i).

(5) Automatic Promotion

Faculty Members initially appointed as Lecturers will be automatically "promoted" to the rank of Assistant Professor on the receipt of a Ph.D. (takes effect from the beginning of the academic year in which the Ph.D. was received). If you claim to have "acquired the equivalent of the appropriate qualifications" then by agreement with your Dean, you may request promotion

consideration at another time (see Clauses 14.05 and 16.09).

A Technology Instructor I who obtains a university degree shall be automatically promoted to the rank of Technology Instructor II (see Clause 12.20).

(6) Deferral

At **any stage** of promotion consideration you have the right to withdraw your case from consideration or request that your case be deferred (see Clause 16.04).

(7) Special File

The Collective Agreement requires that a "special file" be created for each Member who is being considered for promotion. The file will contain material submitted by the Member together with referees' letters, other confidential material (see below) and material included by the participants in the process such as the various committees and the Dean. (*See above under "Tenure" for further information under this Heading*).

The requirements regarding "special files", their contents and use, apply likewise to Professional Librarians and Instructors being considered for promotion.

(8) Referees

It is the responsibility of the Chair, Head, Director or the Dean to obtain written recommendations from external referees.

The requirements are specified in Clauses 16.10 and 16.11. Normally **two** recommendations are required for promotion from Assistant Professor to Associate Professor (see Clause 16.10) while **four** is the norm for promotion to full Professor. If the candidate is being considered for tenure as well as promotion, the referees' letters obtained with regard to your tenure application count as evidence for the promotion as well and no further referees' letters are required. As for tenure, you have a right to specify **half** of the persons to be approached for written recommendations from external referees, and can comment on the suitability of any proposed referee.

The rules regarding the use and solicitation of external referees' letters in the promotion process apply also to Professional Librarians and Instructors (see Clause 18.11(b)). (*See above under "Tenure" for further information under this Heading*)

(8) Other Written Confidential Information

(*See above under "Tenure" for further information under this Heading*)

These rules apply similarly to Professional Librarians and Instructors being considered for promotion.

(10) Department Colleagues

(*See above under "Tenure" for further information under this Heading*)

These rules apply similarly to Professional Librarians and Instructors being considered for promotion.

(11) Student Questionnaires

(*See above under "Tenure" for further information under this Heading*)

These rules apply similarly to Professional Librarians and Instructors being considered for promotion.

(12) Submissions to Committee and Attendance at Committee Meetings

During the promotion process, you have a right to submit a written statement to and appear before the Department- and the Faculty-level Committees (see Clause 16.04). In specific terms, you have a right to attend any meeting or portion of a meeting where the promotion committee is considering your case. That includes instances where the committee is interviewing your Chair, Head or Director or Member of your department or anyone else who wishes to speak to the issue of your promotion. Of course, you have a right to reasonable notice of committee meetings and you have the right to make submissions to the committee. If the committee is meeting "solely and exclusively" to deliberate on your case, you do not have the right to attend that particular meeting or portion of the meeting (see Clause 36.03).

Likewise, Professional Librarians and Instructors may appear before the Committees considering applications for promotion. Interestingly, if a Library System Appointments Committee **anticipates a negative recommendation** it must provide a written statement to the candidate of the areas of concern, with an invitation to appear before the Committee. Under the tenure provisions, when a committee or other participant in the process **anticipates a negative recommendation,** they must notify the Member who has the right to submit a written response. There is no analogous requirement under the promotion provisions of the Collective Agreement. (By Faculty regulation passed in November 1990, the Faculty of Arts and Social Sciences (FASS) requires that an anticipated negative recommendation in promotion or tenure cases be passed onto the candidate prior to forwarding a recommendation to the Dean -- see *DFA Dialogue*, Vol. IV, No. 6 -- December 1990).

(13) Statement of Reasons

Under Clause 36.03 of Article 36 "Fairness and Natural Justice" you have the right to request written reasons for the decision of the Department or Faculty-level Committee. In addition, if promotion is not recommended or consideration is deferred you have a right to be given written reasons at each stage in the process **"with sufficient particularity"** to enable you to understand the decision. The written statement of reasons which is provided to the Member must be in respect of (1) each of the criteria under the Collective Agreement and the Member's letter of appointment, if appropriate; (2) any additional criteria, where established by the your Department or Faculty; and (3) the standards specified in Clause 16.11, if appropriate.

Likewise, Professional Librarians have a right to receive a written statement of reasons at each stage of the process of consideration including a positive recommendation (see Clause 11.07).

Instructors are entitled to a written statement of reasons in respect of the criteria in "**sufficient particularity**" to allow them to respond to alleged deficiencies. This is significant because they have the right to re-submit their application the following year for the rank of Senior Instructor with continuing appointment if they have received a negative recommendation (see Clauses 12.13, 12.17(d) and 12.18(h)).

(14) Consistency in the Application of Criteria and Standards

It is the responsibility of the Department and Faculty Committees, the Dean and the President to ensure that their recommendation regarding each candidate is made with consistency in the application of criteria and standards within the same Faculty in the same academic year. (Clause 16.04)

(15) Reconsideration and Appeal

Members of the professoriate who have been denied promotion may elect to appeal the decision or grieve the denial in accordance with the grievance and arbitration provisions (see Clause 16.13).

The right to appeal does not occur if the Department-level Committee, Chair (Head or Director), Faculty-level Committee and Dean concur that promotion ought to be denied. A Member who elects to appeal a negative decision must notify the President **within 21 days** of notice of denial of promotion.

A University Promotion Appeal Committee, convened to hear your case, must render a decision no later than 4 months following the establishment of the Committee.

The University Promotion Appeal Committee must ensure their recommendation is made with **consistency** in the application of criteria and standards within the same Faculty for candidates assessed in the same academic year. The decision of a University Promotion Appeal Committee is **final and binding** on the Member, the Association, the President and the Board and the decision cannot be grieved so long as the decision is reached in a way that is "consistent" with the procedures in the Collective Agreement".

A Member who has received a negative recommendation for promotion should contact the DFA Office for advice and assistance.

Professional Librarians and Instructors do not have a right to appeal a negative decision regarding promotion.

Instructors and Technical Instructors who receive a negative recommendation for a continuing appointment, have a right to request a **re-consideration** of their case in the fall of the year following the original consideration (see Clause 12.17(e) and 12.21). You should contact the DFA Office for advice and assistance.

PART V: REAPPOINTMENT – Tenure Stream

Members of the Professoriate, Librarians, Instructors and Counsellors who hold probationary or probationary tenure-track appointments are reminded that consideration for reappointment occurs in the fall term of the 3rd year of your appointment.

The process for reappointment varies somewhat depending on the particular group to which you belong.

For Professional Librarians, consideration for reappointment follows the same process as consideration for appointment without term. Similarly, probationary Instructors are reviewed by the same committees as review applications from Members for Senior Instructor appointments. For Professional Counsellors there is some distinction in the process depending on whether you are seeking reappointment or a continuing appointment (see Clause 13.03). The clearest distinction, however, is for Members of the Professoriate seeking reappointment versus tenure.

CRITERIA AND STANDARDS

Members of the DFA Bargaining Unit who are about to undergo reappointment consideration should thoroughly review the following documentation: (1) Collective Agreement; (2) Department or School Guidelines; (3) the CAUT document: "What Is Fair?"; and (4) the CAUT "Teaching Dossier" (Dalhousie Centre for Learning & Teaching has prepared a Teaching Dossier as well).

(1) Preparing for the Reappointment "Test"

The performance assessment near the end of your probationary or probationary tenure-track appointment will probably be less demanding than an assessment for appointment without term, continuing appointment or tenure.

If, however, your performance in any area is less than "satisfactory", that will be sufficient grounds not to reappoint. Keeping that in mind, it would be prudent to submit a reappointment package that demonstrates without question your satisfactory performance in each of the areas of your responsibility. Generally speaking reappointment is less stressful and demanding than consideration for appointment without term, continuing appointment or tenure. The reappointment process could serve as a valuable dress rehearsal for the more rigorous review to come.

Procedurally, there is another reason why it is wise to put some effort into demonstrating the merits of your reappointment case. Unlike tenure and appointment without term, **there is no appeal from a negative decision on reappointment.** (Instructors and Professional Counsellors should also be aware there is no appeal from a denial of a continuing appointment.) However, if you believe that fair procedures were not followed, you may use the Collective Agreement to grieve the decision of the Dean or the President if reappointment is not recommended.

(2) Professoriate

(a) Collective Agreement: Article 14 describes the criteria and procedures to be used in the reappointment process.

(b) The Reappointment "Test": Faculty Members undergoing reappointment consideration from a probationary tenure-track to a tenure-track contract must establish that the quality of the teaching, research, scholarly, artistic and/or professional activity has been "**satisfactory**." Clause 14.15 states that no Member may be reappointed if performance in any characteristic of their duties (i.e., teaching, research, professional activity) is "less than satisfactory".

(c) General Criteria: In order for a candidate to be reappointed to a tenure-track position, there must be evidence provided that (i) the relevant provisions of the candidate's previous appointment have been respected and fulfilled where appropriate; (ii) the quality of the candidate's work has been satisfactory and that (iii) programme and budgetary considerations under Articles 25, 26 and 27 have been satisfied.

Candidates will be assessed in relation to their (a) undergraduate and/or graduate teaching; (b) research, scholarly, artistic and/or professional activity; (c) academic administration within Dalhousie University; and (d) professional responsibilities outside Dalhousie University. A candidate whose duties vary from this norm will be assessed only on those duties for which s/he has been hired. The description of those duties must be contained in the Member's letter of appointment (see Clause 17.08).

(d) Faculty Regulations: There are *no* provisions in the Collective Agreement, which permit the Faculty to add to or define the criteria for reappointment. The criteria to be used in judging your work are set out at Clause 14.15 of the Collective Agreement.

(e) School Regulations: There are *no* provisions in the Collective Agreement which permit the Faculty, Department or School to add to or define the criteria for reappointment. The criteria to be used in judging your work are set out at Clause 14.15 of the Collective Agreement.

(f) Standards: Members of the Professoriate (Clause 14.15) and Professional Librarians (Clause 11.02 and 14.15) whose work is judged to be "s*atisfactory*" will receive a positive recommendation for reappointment.

(g) Scholarship: the Boyer Model - In the ***2017/20 Collective Agreement*** *(see Clause17.17)*, in keeping with the Boyer model, the definition of scholarship was expanded to specifically include **scholarship of discovery, integration, application and/or teaching**. Further, the review and assessment of scholarship should recognize "**non-traditional forms of scholarship and traditional ways of knowing**."

Information regarding the Boyer model can be found at this link:

https://dfa.ns.ca/images/BoyerScholarshipReconsidered.pdf

(3) Professoriate (Continuing Education)

Members of the College of Continuing Education are reminded that Clause 14.15 regarding reappointment applies to them also.

(4) Professional Librarians

Professional Librarians who are being assessed for reappointment will focus on Article 11 and in particular, Clause 11.02, which sets out the criteria used to judge your case. There is no provision for any additional criteria to be used in assessing your case except as set out in Article 11.

(5) Instructors

Instructor Members who are judged to be at the performance level of other Instructors with the same general responsibilities, duties and/or experience, can expect to be recommended for reappointment. (Clause 12.09)

Reappointment criteria for Instructors is described at Clauses 12.08,12.09 and 12.16(a).

For Technical Instructor Members, the criteria for reappointment is described at Clause 12.21.

There is no provision for any additional criteria to be used in assessing your case except as set out in Article 12.

(6) Professional Counsellors

Reappointment criteria for Professional Counsellors is stated at Clause 13.01. There is no provision for any additional criteria to be used in assessing your case except as set out in Article 13.

REAPPOINTMENT – Tenure Stream

Members	Type of Reappointment	Decision Deadline	Process	Criteria	Rights
PROFESSORIATE	(i) Probationary Tenure-Track	31 October (Clause 14.15)	Unit Reappointments Committee	Satisfactory performance (Clause 14.15)	No Appeal
			Dean (Clause 14.15)		Grieve decision
					Natural Justice (Article 36)
PROFESSORIATE (CONTINUING EDUCATION)	(i) Probationary Tenure-Track	31 October (Clause 14.15)	Unit Reappointments Committee	Satisfactory performance (Clause 14.15)	No Appeal
			Dean (Clause 37.03(a))		Grieve decision
					Natural Justice (Article 36)
LIBRARIANS	(i) Probationary (ii) Limited-Term	15 November (Clause 11.07)	Library Appointments Committee	Satisfactory performance (Clause 11.02)	No Appeal
		15 December (Clause 11.09(a))	Library System Appointments Committee		Grieve decision
		W/I 15 days of LSAC decision (Clause 11.14)	Chief Librarian		
			Dean or Vice-President (Article 11)		Natural Justice (Article 36)
INSTRUCTORS (TECHNICAL INSTRUCTORS)	(i) Probationary (ii) Limited-Term	31 October	Unit Appointments Committee	Satisfactory performance (Clause 12.09)	No Appeal
			Chairperson		Grieve decision
			Dean (Clause 12.12)		Natural Justice (Article 36)
COUNSELLORS (Continuing Appointment)	(i) Probationary (ii) Limited-Term	Not Specified	Counsellors Appointments Committee	Qualification	No Appeal
			Director (Clause 13.03)	Performance effectiveness (Clause 13.01)	Grieve decision
					Natural Justice (Article 36)

PART VI: RIGHTS, PROCEDURES AND PROTECTIONS

(Reappointment – Tenure Stream)

The following checklist presents some of the significant rights you have under the Collective Agreement. As with many lists, it is not meant to be all encompassing but merely a reminder of the protections contained in the Agreement. For a complete description of your rights, please refer to the Collective Agreement. If you need further information, or clarification of provisions of the Collective Agreement, please feel free to contact the DFA Office at 494-3722.

(1) Timing of Consideration

Unless early tenure has been agreed, Members of the professoriate are normally considered for reappointment from a probationary tenure-track to a tenure-track contract in the fall term of the third year of their contract (see Clause 14.15(a)).

Professional Librarians, Instructors and Professional Counsellors likewise will undergo reappointment consideration in the 3rd year of their initial probationary contract (this also is subject to any early consideration as may have been agreed - see "Timing of Consideration" for Tenure above).

(2) Deadline and Timelines for Decisions

Unlike the tenure and promotion deadlines specified in the Collective Agreement there are no deadline requirements for the submission of documentation in reappointment cases.

However, your Department may have rules that specify when you ought to submit your package.

Members of the Professoriate who are being considered for reappointment from probationary tenure track to tenure track must be advised of the decision by **31 October** if there is fall consideration of your case and **30 April** if there is spring consideration.

Instructors who are being considered for a reappointment to either a 2nd Probationary appointment or another limited-term appointment should note the 31 October deadline for the decision in your case (*see Reappointment Chart above).*

Professional Librarians should consult the *Reappointment Chart above* for deadlines and timelines.

(3) Extensions to Timelines

From time to time, there are unexpected delays in the processing of the reappointment application. Since the timelines are specified in the Collective Agreement, any change to the timelines

must be approved by the DFA and the Board of Governors through the Association-Board Committee. In some instances such a delay can pose a serious hardship to the Member, particularly where reappointment consideration occurs in the last year of the Member's probationary tenure-track contract.

The Collective Agreement provides for the extension of the time limit for the reappointment decision and the option for an extension of the Member's appointment. Such extensions must be approved through the Association-Board Committee where "appropriate reasons" have been demonstrated (see Clause 14.15(b) which is analogous to the provision at Clause 15.34).

(4) Stages in the Reappointment Process

Clause 14.11 states that Members of the Professoriate are considered for reappointment by "an appropriate committee of the relevant Department or other such Unit." In some instances, this Committee will be the appointments committee that made the original recommendation for hiring. In other cases, Departments have assigned this responsibility to the Tenure committee of the Department and in other cases the appointments, reappointments, tenure and promotion committees are one and the same. *(For further information about the Committee structure and procedures see below.)*

(5) Department/ unit level committee for Members who identify as Aboriginal or African Nova Scotian

In the ***2017/20 Collective Agreement,*** Members seeking reappointment who identify as Aboriginal or African Nova Scotian may elect to have a non-voting representative on their Department or unit level committee. For the professoriate see Clause 14.15(c) or Clause 37.03(c) for details. For professional librarians, see Clause 11.07 for details. For instructor Members see Clause 12.12 (a)(i) for details. For professional counsellor Members, see Clause 13.03 (a)(i) for details.

There is no Faculty-level committee in the reappointment process for Members of the Professoriate.

Once the Committee formulates its recommendation, it then submits it to the Dean. Members must be advised of the reappointment decision by 31 October if there is a fall consideration and by 30 April if there is a spring consideration.

Professional Librarian Members will undergo reappointment consideration by two committees: the Library Appointments Committee and the Library System Appointments Committee who submit their recommendations to the Chief Librarian. The Chief Librarian submits a recommendation to the appropriate Dean or Vice-President. The stages in the process are described at Clauses 11.07 through 11.15.

Professional Counsellors and Instructors will be considered by single committees, the Counsellor Appointments Committee and the Department Appointments Committee, respectively (see Clause 13.03 and 13.04 for Professional Counsellors and Clauses 12.12, 12.13 and12.17 for Instructors).

(6) Deferral

Unlike tenure and promotion, there is no specific provision in the Collective Agreement that provides for deferral of reappointment consideration. However, there may be circumstances where you would like to request a deferral, and possibly an extension of your contract, for example, if you are going on pregnancy and/or parental leave. Any change to the timelines and/or extension of your contract must be approved by the DFA and the Board of Governors through the Association-Board Committee. If you have questions regarding deferral of your reappointment consideration, you should contact the DFA Office for advice and assistance.

(7) Special File

A "special file" is created for each Member who is being considered for reappointment.

The file will contain material submitted by the Member together with referees' letters (if required), other confidential material (see below) and material included by the participants in the process such as the various committee(s) and the Dean. *(See above under "Tenure" for further information under this Heading.)*

The requirements regarding "special files", their contents and use, apply likewise to Professional Librarians, Professional Counsellors and Instructors being considered for reappointment.

(8) Referees

Unlike tenure and promotion, there is no specific provision in the Collective Agreement which provides for the solicitation or use of external referees in the reappointment process. If, however, your Department or unit does require them then the provisions of Article 18 governing their use must be followed. (*See above under "Tenure" for further information under this Heading.*)

The rules regarding the use and solicitation of external referees' letters apply also to Professional Librarians, Professional Counsellors and Instructors (see Clause 18.11(b)).

(9) Other Written Confidential Information

The rules regarding the removal of letter-head and signature block for external referees' letters apply to other written confidential information if any such material has been submitted for consideration in your reappointment case. (*See above under "Tenure" for further information under this Heading.*)

(10) Department Colleagues

All Members* of your Department or School may have access to your "special file" and may submit an assessment based on the reappointment criteria, which will then be included in that file.

*** For clarification, you will recall the word "Member" when printed with an upper case refers only to those persons within the DFA Bargaining Unit. Therefore, other employees of Dalhousie University including, part-time faculty who are in the CUPE bargaining unit, and clerical, technical staff and students do not have access to this "special file".**

(*See above under "Tenure" for further information under this Heading.*)

These rules apply similarly to Professional Librarians, Professional Counsellors and Instructors being considered for reappointment.

(11) Student Questionnaires

Student evaluation instruments which have been approved by your Faculty or the Senate may be included in your "special file" for purposes of reappointment. *(See above under "Tenure" for further information under this Heading.)*

These rules apply similarly to Professional Librarians, Professional Counsellors and Instructors being considered for reappointment.

(12) Submissions to Committee and Attendance at Committee Meetings

During the reappointment process, you have a right to submit a written statement to and appear before the Department or unit Committee (see Clause 36.03). In specific terms, you have a right to attend any meeting or portion of a meeting where the Reappointment Committee is considering your case. That includes instances where the Committee is interviewing your Chair, Head or Director or Member of your department or anyone else who wishes to speak to the issue of your reappointment. Of course, you have a right to reasonable notice of committee meetings and you have the right to make submissions to the committee. If the committee is meeting "solely and exclusively" to deliberate on your case, you do not have the right to attend that particular meeting.

Professional Librarians, Professional Counsellors and Instructors may also appear before the Committees considering their reappointment. Interestingly, if a Library System Appointments Committee **anticipates** a negative recommendation for reappointment, it must provide a written statement to the candidate of the areas of concern, with an invitation to appear before the Committee. There is no similar provision for reappointment for the Professoriate, Professional Counsellors or Instructors.

(13) Statement of Reasons

Under Clause 36.03 of Article 36 "Fairness and Natural Justice", you have the right to request written reasons for the decision of the Committee which is considering your reappointment case.

Professional Librarians have a right to receive a written statement of reasons at each stage of the process of consideration for reappointment including a positive recommendation (see Clause 11.07).

Instructors are entitled to a written statement of reasons in respect of the criteria in "sufficient particularity" to allow them to respond to alleged deficiencies.

(14) Appeals

Unlike tenure and appointment without term (or promotion for that matter), **there is no appeal from a negative decision on reappointment**. However, if you believe that fair procedures were not followed, you may use the Collective Agreement to grieve the decision of the Dean or the President if reappointment is not recommended.

Instructors and Professional Counsellors should also be aware there is no appeal from a denial of a continuing appointment. However, Instructors who receive an unfavourable decision are reminded they may request reconsideration for a continuing appointment in the fall of the year following the original consideration.

There is no requirement for a committee to warn you that they are leaning toward a negative recommendation – unless you are a Professional Librarian. Clause 11.10 requires that if the Library System Appointments Committee (LSAC) apprehends a negative recommendation, it must inform the candidate in writing with an invitation to appear before the Committee.

PART VII: REAPPOINTMENT - Limited Term

Limited term appointments are for a fixed term and do not hold the possibility of consideration for tenure (see below for exceptions). The particular terms and conditions of employment for those holding limited term contracts are stated in the letter of appointment. Consideration for a subsequent limited term appointment is not automatic. However, depending on the nature of the position, there may be a need for the position to be filled again – usually this will be with another limited term appointment. In general, the Collective Agreement requires advertising for a subsequent limited term appointment. Under certain circumstances, the advertising requirement may be waived by the Association-Board Committee.

While there is no requirement that a limited term appointment will be followed by a subsequent limited term position, there are similarities in the procedural protections afforded those being considered for a subsequent limited term appointment.

CRITERIA AND STANDARDS

Members of the DFA Bargaining Unit who are about to undergo reappointment consideration should thoroughly review the following documentation: (1) Collective Agreement; (2) Department or School Guidelines; (3) the CAUT document: "What Is Fair?"; and (4) the CAUT "Teaching Dossier" (Dalhousie Centre for Teaching &Learning has prepared a Teaching Dossier as well).

(1) Professoriate:

The Collective Agreement does not explicitly state the criteria and standards for a reappointment from one limited term appointment to a subsequent limited term appointment. However, Clause 14.15 describes the criteria and standards to be used in assessing candidates for reappointment from a *probationary tenure track contract* to *a tenure track contract.* Arguably, the criteria and standards are no more stringent than those specified for that type of appointment. In particular, it would be reasonable to assess the candidate's suitability for reappointment based on their performance of the duties specified in the Member's letter of appointment and that the quality of that work has been *satisfactory* (*see* Clause 14.15).

(2) Professional Librarians:

The criteria for reappointment from a limited term appointment to a subsequent limited term appointment are the same as for reappointment from an initial probationary to a subsequent probationary appointment as well as for promotion and appointment without term. Decisions are based on an overall assessment of duties but the performance must be *satisfactory* in each of the applicable criteria (*see* Clause 11.02)

(3) Instructors:

The criteria for reappointment from a limited term appointment to a subsequent limited term appointment are the same as for reappointment from an initial probationary to a subsequent probationary appointment. The assessment focuses on the instructor Member's "effectiveness and general competence" in the performance of their duties. The judgment shall relate to the normal performance level of other instructors with the same general duties and/or experience (*see* Clauses 12.08 and 12.09.)

The criteria for reappointment for Technical Instructor Members is described at Clause 12.21.

(4) Professional Counsellors:

The criteria for reappointment from a limited term appointment to a subsequent limited term appointment are the same as for reappointment from an initial probationary to a subsequent probationary appointment as well as for consideration for a continuing appointment *(see* Clause 13.01).

PART VIII: RIGHTS, PROCEDURES AND PROTECTIONS

(Reappointment – Limited Term)

(1) The Nature of limited term appointments

The Collective Agreement provides that "a probationary or probationary tenure-track appointment is one which is in a career stream which may lead to consideration for continuing appointment, appointment without term or tenure"(*See:* Clause 14.12).

In contrast, limited term contracts, by definition, do not lead to tenure, appointment without term or continuing appointment. Indeed, the Board is under "no obligation to change limited-term appointments' to tenure stream appointments (Clause 14.20). In theory, it is possible for Members to serve on limited term contracts for many years and never be considered for a 'tenured' position at Dalhousie. However, this general rule regarding the prohibition of converting a limited term appointment into a tenure stream appointment applies only to the professoriate and is 'relaxed' under certain circumstances in the case of a Professional Librarian, Instructor or Professional Counselor holding a limited term appointment *(see below)*

(2) Kinds of limited term appointments

Limited term contracts can be held by Members of the professoriate, Professional Librarians, Instructors and Professional Counsellors. However, the Collective Agreement restricts the kinds of limited term appointments that can be made to each category of Members of the bargaining unit.

Limited term appointments *shall not be for less than ten (10) months* except where the appointment is for a leave replacement of a Member of the bargaining unit or the Member requests that the appointment be for less than ten months (*See:* Appendix IV – Letter of Understanding)

(a) Professoriate: Clause 14.16(a)

Article 14 describes the types of limited term appointments available to Members of the professoriate. Under Clause 14.16(a), there are nine (9) types of limited term appointments described with a residual clause permitting limited term appointments to fulfill duties not otherwise described in the Clause.

Limited term appointments under Clause 14.16(a) can range in duration from one to three years. If a limited term appointment is for less than one (1) year, the appointment details must be presented to the Association-Board Committee (ABC) before the appointment commences.

Limited term appointments under Clause 14.16(a) *cannot be renewed* without the approval of the ABC.

(b) Professoriate: Clause 14.16(b)

Under Clause 14.16(b), there are an additional seven (7) categories of limited term appointments.

Limited term appointments under Clause 14.16(b) can range in duration from one to three years *except* appointments made under Clause 14.16(b)(v) and (vi) which may be for a period not exceeding 5 years. Appointments made under Clause 14.16(b)(ii) are for a three year period while appointments under Clause 14.16(b)(vii) are for a four year period.

Limited term appointments under Clause 14.16(b) *can be renewed* as decided by the Board without the approval of the ABC.

(c) Professional Librarians: Clause 11.03 and 11.04

Article 11 describes the types of limited term appointments available to Professional Librarians. Under Clause 11.03, there are four (4) types of limited term appointments.

Professional Librarians who hold limited term appointments for *at least three consecutive years* shall be entitled to consideration for a probationary appointment or an appointment without term (*see:* Clause 11.04). In this instance, Professional Librarians must submit a written request by 1 October to the appropriate Library Appointments Committee.

(d) Instructors: Clause 12.11

Article 12 describes the types of limited term appointments available to Instructors. Under Clause 12.11, there are seven (7) types of limited term appointments, all of which are described in Clause 14.16.

An instructor Member who has completed *at least four (4) years of service* including service under a limited term appointments shall be entitled to consideration for a Senior Instructor position with continuing appointment (*see:* Clause 12.17).

(e) **Professional Counsellors: Clause 13.02**

Article 13 describes the types of limited term appointments available to Professional Counsellors. Under Clause 13.02, there are four (4) types of limited term appointments.

A Professional Counsellor Member who has held a limited term appointment for *three consecutive years* shall be entitled to consideration for a probationary appointment or a continuing appointment (see: Clause 13.02.)

(3) Limited term Appointment and Reappointment – the Process

Generally, limited term appointments and reappointments require the same procedures as for tenure stream appointments. That is, there must be a proper search following the advertising requirements specified in Clause 14.11(c). Advertising requirements apply to the professoriate, Professional Librarians, Instructors and Professional Counsellors.

Certain limited term appointments *do not* require advertising. (*see:* Clauses 14.16(a) (iii), (iv), and (v) and 14.16(b) (ii), (iii) and (vi)). **In addition, if there has been a full national search, members of the professoriate and instructor Members may be reappointed without further advertising (or posting in the case of instructor Members) up to a maximum of six years consecutive service *before advertising shall be required again.***

Further, if there has been advertising, no further advertising is required for the first time reappointment of members of the professoriate made under Clause 14.16(b)(vii) to a *maximum of ten years in total.*

Under certain circumstances, a waiver of advertising may be obtained in those instances where advertising would normally be required, upon request and approval of the ABC.

All academic appointments and reappointments of Members of the DFA bargaining unit, including limited term appointments, require the recommendation of an "appropriate committee of the relevant Department" (*See* Clause 14.11(a)).

There are no deadline requirements for the submission of documentation in limited term reappointment cases. However, your Department may have rules that specify when you ought to submit your package. You are advised to check with the Chair, Head, Director or Chief Librarian.

(a) **Professoriate:**

Applications from Members undergoing reappointment consideration from a limited term appointment to a subsequent limited term

appointment will be considered by the appropriate Department or School committee. The committee makes its recommendation to the Dean through the Department Chair, Head or Director. There is *no* Faculty level committee for reappointment consideration of either limited term or probationary tenure track applications.

(b) Professional Librarians:

Professional Librarians on limited term appointments will be considered for a subsequent limited term position by a Library Appointments Committee (LAC). The LAC forwards their recommendation to the Library System Appointments Committee which, in turn, makes its recommendation, both of which are considered by the appropriate Chief Librarian followed by the appropriate Dean or Vice-President.

(c) Instructors:

Reappointment consideration from a limited term appointment to a subsequent limited term appointment is undertaken by the appropriate Department or School committee. An instructor Member (other than the instructor Member under consideration) must be on the Department Committee. The committee makes its recommendation to the Dean through the Department Chair, Head or Director. There is *no* Faculty level committee for reappointment consideration of either limited term or probationary applications.

Instructors who are being considered for a reappointment to either a 2nd probationary appointment or another limited-term appointment should note the 31 October deadline for the decision in your case (*see Reappointment Chart above).*

(d) Professional Counsellors:

Reappointment consideration from a limited term appointment to a subsequent limited term appointment is undertaken by the Counsellor Appointments Committee, composed of all professional counsellor Members. The committee makes its recommendation to the Director who makes a recommendation to the Vice-President (Student Services).

(4) Notice of Renewal of limited term contract

The Collective Agreement requires that a Member with a limited term appointment *of ten months or longer in three consecutive years* shall be notified **at** *least four (4) months*

prior to the expiry of their last appointment whether or not their appointment will be renewed. Failure to inform the Member shall constitute renewal for the lesser of (a) another appointment of the same duration or (b) a one-time renewal of one (1) year.

This notice provision applies to all Members of the bargaining unit, i.e. the professoriate, Professional Librarians, Instructors and Professional Counsellors.

(5) Deferral

There is no specific provision in the Collective Agreement that provides for deferral of reappointment consideration. However, there may be circumstances where you would like to request a deferral, and possibly an extension of your contract, for example, if you are going on pregnancy and/or parental leave. Any change to the timelines and/or extension of your contract must be approved by the DFA and the Board of Governors through the Association-Board Committee. If you have questions regarding deferral of your reappointment consideration, you should contact the DFA Office for advice and assistance.

(6) Special File

A "special file" is created for each Member who is being considered for reappointment. The file will contain material submitted by the Member together with referees' letters (if required), other confidential material (see below) and material included by the participants in the process such as the various committee(s) and the Dean. *(See above under "Tenure" for further information under this Heading.)*

The requirements regarding "special files", their contents and use, apply likewise to Professional Librarians, Professional Counsellors and Instructors being considered for reappointment.

(7) Referees

Unlike tenure and promotion, there is no specific provision in the Collective Agreement which provides for the solicitation or use of external referees in the reappointment process. If, however, your Department or unit does require them then the provisions of Article 18 governing their use must be followed. (*See above under "Tenure" for further information under this Heading.*)

The rules regarding the use and solicitation of external referees' letters apply also to Professional Librarians, Professional Counsellors and Instructors (see Clause 18.11(b)).

(8) Other Written Confidential Information

The rules regarding the removal of letter-head and signature block for

external referees' letters apply to other written confidential information if any such material has been submitted for consideration in your reappointment case. (*See above under "Tenure" for further information under this Heading.*)

(9) Department Colleagues

All Members* of your Department or School may have access to your "special file" and may submit an assessment based on the reappointment criteria, which will then be included in that file.

*** For clarification, you will recall the word "Member" when printed with an upper case refers only to those persons within the DFA Bargaining Unit. Therefore, other employees of Dalhousie University including, part-time faculty who are in the CUPE bargaining unit, and clerical, technical staff and students do not have access to this "special file".** (*See above under "Tenure" for further information under this Heading.*)

These rules apply similarly to Professional Librarians, Professional Counsellors and Instructors being considered for reappointment.

(10) Student Questionnaires

Student evaluation instruments which have been approved by your Faculty or the Senate may be included in your "special file" for purposes of reappointment. *(See above under "Tenure" for further information under this Heading.)*

These rules apply similarly to Professional Librarians, Professional Counsellors and Instructors being considered for reappointment.

(11) Submissions to Committee and Attendance at Committee Meetings

During the reappointment process, you have a right to submit a written statement to and appear before the Department or unit Committee (see Clause 36.03). In specific terms, you have a right to attend any meeting or portion of a meeting where the Reappointment Committee is considering your case. That includes instances where the Committee is interviewing your Chair, Head or Director or Member of your department or anyone else who wishes to speak to the issue of your reappointment. Of course, you have a right to reasonable notice of committee meetings and you have the right to make submissions to the committee. If the committee is meeting "solely and exclusively" to deliberate on your case, you do not have the right to attend that particular meeting.

Professional Librarians, Professional Counsellors and Instructors may also appear before the Committees

considering their reappointment. Interestingly, if a Library System Appointments Committee **anticipates** a negative recommendation for reappointment, it must provide a written statement to the candidate of the areas of concern, with an invitation to appear before the Committee. There is no similar provision for reappointment for the Professoriate, Professional Counsellors or Instructors.

(12) Statement of Reasons

Under Clause 36.03 of Article 36 "Fairness and Natural Justice", you have the right to request written reasons for the decision of the Committee, which is considering your reappointment case.

(13) Appeals

There is no appeal from a negative decision on reappointment. However, if you believe that fair procedures were not followed, you may use the Collective Agreement to grieve the decision of the Dean or the President if reappointment is not recommended.

There is no requirement for a committee to warn you that they are leaning toward a negative recommendation – unless you are a Professional Librarian. Clause 11.10 requires that if the Library System Appointments Committee (LSAC) apprehends a negative recommendation, it must inform the candidate in writing with an invitation to appear before the Committee.

PART IX: PEER EVALUATION PROCESS

Undoubtedly, one of the most important tasks committees can be called on to perform for the University is to evaluate a colleague's performance. In examining the evidence about a colleague's performance, there is a duty to be fair; to be thorough in your consideration and to found your decision on academic grounds.

The following section describes some of the elements of the fairness requirement as well as addressing some of the most frequently asked questions about the peer review process.

A. Establishing the Committee

(1) Elections: While tenure, promotion, and appointment without term committees are typically elected (for variations see below), reappointment committees follow the appointment committee rules described in Article 14. Hence, a reappointment committee (if different from the tenure and promotion committee) must be "an appropriate committee of the relevant Department or other such unit" (See Clause 14.11 and the Section above regarding *Reappointments*. Note there are no Faculty-level committees involved in the Reappointment process.)

(a) **Professoriate**: For promotions, both the Department- and the Faculty-level Promotion Committees must be elected from within the Unit or the Faculty, respectively. The Tenure provisions of the Collective Agreement are silent regarding the requirements for elected members of the committee but since promotion and tenure committees tend to be the same, the members of a Tenure Committee, likewise, will be elected. The Members of College of Continuing Education should note that Clause 37.03(b) requires that the Members of the College of Continuing Education Promotion and Tenure Committee shall be elected.

(b) **Professional Librarians**: Members of the Librarian Appointments Committee and Library System Appointments Committee *must* be elected as required by Clauses 11.07 and 11.08, respectively.

(c) **Instructors**: Article 12 is silent on whether the Departmental Appointments Committee is required to be elected but there is a requirement that the committee *must* include an instructor Member when an instructor Member is being considered for a continuing appointment.

(d) **Professional Counsellors**: Article 13 requires that the Counsellor Appointments Committee be composed of *all* Professional Counsellor Members. In addition, the committee must also have a person "mutually agreeable to the Director and the Vice-President (Student Services)".

(2) Service on Previous Committee: Committee members who have participated in tenure, appointment without term and/or promotion proceedings as a "decision-maker" cannot participate at a later stage in the same case. This means that Members who have served on a Department or School Committee cannot serve on a Faculty Committee, which later considers the same case.

This rule applies similarly to Professional Librarians (see Clause 36.04). Professional Counsellors and Instructors do not have a Faculty-level Committee when they are being considered for a continuing appointment.

In addition, members of Promotion Committees should note that if you have provided an *oral or a written submission* to the Department-level Committee, you cannot serve on a Faculty-level Committee concerning the same case (see Clause 16.02).

(3) Non-Tenured and CUPE members of Committees: In terms of service on peer review committees, the Collective Agreement does not distinguish between Members of the Bargaining Unit holding tenured or tenure-stream appointments and Members holding limited-term contracts. All Members of the Bargaining Unit are eligible to serve on these committees. (It is CAUT policy that both tenured and non-tenured faculty members should serve on these committees. See Section 1.3 of "*What Is Fair?*") Regarding academic staff holding part-time and/or CUPE appointments, CAUT notes that "in certain circumstances rules may be enacted which regulate the proportion of full-time and part-time members of the Committee. (See Section 1.4 of "*What Is Fair?*") In addition, Committee members should consult their Department and/or Faculty Regulations regarding the staffing of these committees.

(4) Department/ unit level committee for Members who identify as Aboriginal or African Nova Scotian

In the ***2017/20 Collective Agreement,*** Members seeking reappointment, tenure, appointment without term or continuing appointment or promotion who identify as Aboriginal or African Nova Scotian may elect to have a non-voting representative on their Department or unit level committee. For the professoriate, see Clause 14.15 (c) for reappointment, Clause 15.20(i) or Clause 37.03(c) for tenure and Clause 16.01(i) for promotion. For professional librarian Members, see Clause 11.07 for reappointment, appointment without term and promotion. For instructor Members, see Clause 12.12 (a)(i) for reappointment, continuing appointment and promotion. For professional counsellor Members, see Clause 13.03 (a)(i) for reappointment and continuing appointment.

B. Preliminary Matters

(1) Management Function or Peer Review? Faculty members serving on tenure, appointment without term, continuing appointment, promotion and reappointment committees **are not exercising a management function**. In evaluating the candidate's submission and the supporting documentation, peer review committees are charged with the responsibility of assessing the academic accomplishments of their colleagues. CAUT states in "*What Is Fair?*" that "the purpose of peer evaluation is to combine expertise in the subject and fairness in judgment"(see Section 2.3 of "*What Is Fair?*"). As has

been noted in various arbitral decisions, the role of faculty is not the same as management, which exercises ultimate and final authority over personnel decisions such as tenure and promotion.

(2) **Conflict of Interest**: CAUT has considered the issue of conflict of interest. You should review Section 2 in "*What is Fair?*" which provides an analysis of this matter. CAUT recommends that if a conflict of interest arises, you should disqualify yourself from serving on the committee. If as a committee member you become aware of someone on the committee who can reasonably be shown to have a conflict of interest, the committee should consider this matter at the earliest opportunity and preferably before the committee begins its consideration of the candidate's file.

Simply "knowing" a candidate does not disqualify a committee member from service on a committee. CAUT notes that "The purpose of the fairness requirement is not to require peers who are devoid of all information about a candidate. Rather it is to ensure that those who make the decisions assess all the evidence with an open mind and have not made up their minds in advance" (see Section 2.3 of "*What Is Fair?*").

(3) **Natural Justice and Ethical Responsibilities**: Clause 36.02 notes the requirement that committee members observe the rules of natural justice when serving on peer review committees. The Collective Agreement notes the responsibility of faculty to be "fair and objective" when presenting a professional judgment of a colleague and to refrain from unjust criticism of the character or competence of colleagues (see Clause 17.04).

CAUT lists the components of natural justice requirements in the University environment (see Section 3 of "*What Is Fair?*").

(4) **Reviewing Background Material**: Committee members should be thoroughly familiar with the appropriate articles of the Collective Agreement. They should review the appropriate Faculty Regulations, if any. Reviewing CAUT's "What Is Fair?" will provide a helpful primer on the rules of natural justice as they apply to the Committee's consideration of the file.

(5) **Quorum**: The Collective Agreement requires that both the Department- and Faculty-level Committees consider tenure/promotion applications only in the presence of a "quorum" which shall be two-thirds (2/3) of the committee members. Quorum requirements are also present in appointment/reappointment considerations. Vacancies that occur as a result of resignation from the committee must be filled before the committee can proceed unless the interviews with the candidates have commenced in which case the vacancy shall remain (see Clause 15.26 for tenure). This requirement applies to all Members of the Bargaining Unit. For Professional Librarians, this rule applies to both the Library Appointments Committee (Clause 11.07) and the Library System Appointments Committee (Clause 11.08).

A Departmental Appointments Committee considering an Instructor for a position as a Senior Instructor with a continuing appointment likewise is governed by this quorum requirement (see Clause 12.12(b)).

Professional Counsellors will find the same requirement for the Counsellors Appointments Committee stated at Clause 13.03(b) while Continuing Education Members are covered by this rule at Clause 37.03.

C. Work of the Committee - Getting Down to Business

(1) Reviewing the file: All members of the committee should thoroughly review the content of the "special file" Does the file conform to the requirements of appropriate documentation described in the Collective Agreement? For example, is there anonymous material in the file? (See sections above regarding "Referees," "Other Written Confidential Information and "Student Questionnaires".) If so this material **must be removed** before the committee begins its consideration of the file. The requirement that comments and letters of recommendation be attributed before they can be considered by a peer review committee is grounded in the principle of fairness. The rules of natural justice require that the candidate knows all the evidence, both oral and written upon which the peer review committee will deliberate in his/her case. Where negative recommendations have been submitted, the candidate has the right to challenge them and to present oral or written submissions to the committee.

Is there material which is missing from the file such as student questionnaires, referees' letters and the like? Ensure that all documentation is present in the file before you begin your consideration of the contents.

(2) Deadlines: Committee members should be aware of the deadlines (see Charts above) when performing your responsibilities. From time to time there will be circumstances (for example, referees' letters arrive late) when an extension of the deadline is required in order to fairly and completely assess the file. Requests for extensions must be submitted to the Association-Board Committee (the joint committee of the DFA and the Board of Governors) for consideration and approval, where appropriate. If the committee anticipates a difficulty in meeting deadlines, it should contact the Dean's office as soon as possible for assistance in making the request to the ABC.

(3) Dealing With Requests for Deferral? What material is needed to make a deferral decision? Candidates who request a deferral of consideration for tenure do not have to submit a dossier for consideration. The candidate is required to write a letter "outlining the reasons for the request sent to the Faculty Tenure Committee and the Dean with a copy to the Association". Clause 15.13 states that the letter should "contain sufficient detail to enable the Faculty Tenure Committee and the Dean to determine the appropriateness of the request".
The Collective Agreement notes that "the granting of a deferral shall not prejudice a candidate's case for tenure in subsequent tenure consideration (see Clause 15.13). In effect, this means that when a candidate comes forward for tenure consideration following a deferral, the candidate should be evaluated as though a deferral had not occurred and that the tenure consideration is occurring at the appropriate time.

(4) Requests that consideration be terminated: What does the committee do with the "Special File"? Clause 16.04 states that "at any stage of consideration a Member may request that promotion not be considered or that consideration be terminated or deferred, and such requests shall be honoured." When a Member requests a termination of promotion consideration (which should be in writing), there should be **no record** that promotion consideration occurred. To facillitate this, we recommend that the Special File be

returned to the Dean's office where the contents will be reviewed and their disposal determined. For example, documentation submitted by the candidate should be returned to him/her. Referees' letters, other letters of reference as well as recommendations from committees and others involved in the process should be destroyed. Documentation such as student surveys/evaluations should be returned to the candidate's Personal File according to the requirements of Article 18.

Unlike the promotion situation, there is no provision in the Collective Agreement for the termination of tenure, appointment without term or continuing appointment. If a candidate has decided that they do not intend to undergo tenure consideration (or appointment without term or continuing appointment), they should advise their Dean in writing. In effect, this will mean that the candidate will complete their current contract and then leave the University.

(5) Criteria and Standards: Does the candidate have a Choice? Clause 15.03(b) states that when a faculty member is initially appointed to the University, s/he is to receive the criteria and standards, which shall be used for the Member's tenure consideration. If, during the course of the candidate's probationary tenure track or tenure track appointment the *additional Faculty criteria and/or standards* have been modified, the candidate has the **right to elect which set of criteria and/or standards will be used in their case**. That is, they can elect to be judged by the Faculty criteria and/or standards in place at the time of their initial appointment **or** at the time of their tenure consideration. (Remember that the general criteria of the University, described at Clause 15.03, do not change and can only be modified by the DFA and the Board of Governors as a change to the Collective Agreement.)

Therefore, before the Committee can begin its work it needs to determine whether there have been any changes to the Faculty criteria and/or standards since the candidate was appointed. If there have been changes, the candidate needs to make the election as to which set of Faculty criteria and/or standards will be used in their case. The Committee would be well advised to get the candidate's election in writing.

(6) Evaluating multiple candidates - Criteria and Standards: Because of the election option available to candidates (*see above*), it is possible that peer review committees and others evaluating the file, may be applying different Faculty criteria and/or standards for each separate candidate under consideration in any given year. As noted above, the Committee must determine which Faculty criteria and standards apply to each individual case. Of course, if there have been no revisions to the Faculty criteria and standards since the candidate(s) was hired then the same Faculty criteria and standards will apply to all candidates under consideration in that year.

(7) Notice of Meetings: Ensure notice of all meetings is given to the candidate including notice of interviews with people who wish to speak to the committee about the candidate's case.

If the candidate chooses not to be present when the committee is interviewing someone, the committee must ensure that the candidate is fully informed of the substance of the comments made about the candidate's application. A minimal requirement of fairness means that the candidate should be provided with a written report of the person's comments. (A University Tenure Committee noted this

fairness requirement in considering a recent tenure case. This requirement was reaffirmed by an Arbitrator who considered whether there had been procedural fairness in the case.)

The candidate does not have a right to be present for the actual deliberations of the committee (see Clause 36.03).

(8) Meeting with the candidate: Candidates have a right to "be heard by, and to submit a written statement to, the appropriate Departmental Committee" (see Clause 15.02). The Faculty Committee **must** invite the candidate to speak to the committee or to submit a written statement, if the candidate has not already done so, where the Faculty committee (1) has difficulty reconciling a positive Department recommendation with general Faculty standards or (2) if the Department Chair (Head or Director) recommends deferral or denial of tenure (see Clause 15.22).
If there are aspects of the special file which are incomplete or require clarification, the committee would be well advised to contact the candidate or others, as appropriate, before proceeding with their evaluation of the case.

(9) Assessment of the file: The committee must ensure that its analysis of the candidate is consistent with its analysis of other candidates. CAUT'S "*What Is Fair?*" notes that committees ought to make "decisions based on comparisons with comparable academic staff." The Collective Agreement requires committees make recommendations "with consistency in the application of criteria and standards within the same Faculty or other such unit for candidates assessed in the same academic year (see above under "Consistency in the Application of Criteria and Standards").

(10) Committee Anticipates a Negative Decision: When a Committee (or another participant in the process such as the Dean or the President) anticipates making a recommendation not to award tenure or to defer the tenure consideration, they must notify the candidate in writing. The candidate has five (5) days to respond in writing.

(11) Writing the Recommendation - Statement of Reasons: The Committee recommendation shall include a written statement of the reasons for their recommendation in respect of each of the general University criteria and additional Faculty criteria, if any, (Clauses 15.02 - 15.06), and the Faculty standards (Clauses 15.07 and 15.08).

Regarding promotion applications, the committee is required to state its reasons in writing " in *sufficient particularity* to assist the member to understand the decision and with specific reference to the duties specified in Clause 20.04 together with each of the criteria specified in Clause 16.06 and, if appropriate, Clause 16.11.

Clearly the intention of the Collective Agreement is to provide the candidate with sufficient information to determine their success or failure when measured against the criteria and standards. Letters of recommendations that leave the candidate in confusion as to the reason for the committee's judgement do not meet the requirements of fairness and natural justice.

Members of peer committees are protected by the *doctrine of qualified privilege*. CAUT notes that "peers cannot be found responsible for libel as a consequence of statements made carrying out normal university duties, such as evaluation, unless they are knowingly malicious or act with a

reckless disregard for the truth (see Section 7.6 of "*What Is Fair?*").

(12) Recommendation to the candidate: The committee is required to send its recommendation to the candidate "at the same time it is sent to the next stage" (see Clause 15.18). This requirement affords the candidate an opportunity to address concerns identified by the committee in a timely fashion before the special file is considered at the next level. It also gives the candidate an opportunity to consider options such as requesting deferral or in the case of promotion, a withdrawal of the file from consideration.

PART X:

CHARTS

Professoriate

Reappointment
Probationary tenure-track *to* Tenure Track

Candidate submits Application
15 September (deadline)

↓

Department/ School Committee

Chairperson/Director

↓ ↓

Dean
31 October (deadline)

Professoriate

Tenure

Candidate submits Application
15 September (deadline)

Department/ School Committee

Chairperson/Director

↓ ↓

Faculty Committee

↓

Dean
31 December (Deadline)

↓

President
28 February (Deadline)

Professoriate

Promotion

Candidate submits Application
15 September (deadline)

↓

Department/
School Committee
November (deadline)

Chairperson/Director
30 November (deadline) **30**

↓ ↓

Faculty Committee
15 February (deadline)

↓

Dean
31 March (deadline)

↓

President
31 May (deadline)

Promotion to Professor – Clause 16.11

1st test: Solid evidence of **competency** in

Teaching *and* **Scholarship**

2nd test: Attained and likely to maintain a **High level of effectiveness** in

Teaching *and/or* **Scholarship**

3rd test: Represents a **significant contribution** to the Discipline *or* University

Teaching *or* **Scholarship**

Promotion to Professor ***Promotion to Professor***

Professional Librarians

Reappointment
(1st) Probationary *to* (2nd) Probationary

Candidate submits Application
15 September (deadline)

↓

Librarian Appointments Committee
15 November (deadline)

↓

Library System Appointments Committee
15 December (Deadline)

↓

Chief Librarian
(within 15 days of LSAC)

↓

Dean/ Vice-President

↓

President

Professional Librarians

Appointment without Term

Candidate submits Application
15 September (deadline)

Librarian Appointments Committee
15 November (deadline)

Library System Appointments Committee
15 December (deadline)

Chief Librarian
(within 15 days of LSAC)

Dean/ Vice-President
15 January (deadline)

President
28 February (deadline)

Professional Librarians

Promotion

Candidate submits Application
15 September (deadline)

Librarian Appointments Committee
15 November (deadline)

Library System Appointments Committee
15 December (Deadline)

Chief Librarian
(within 15 days of LSAC)

Dean/ Vice-President

President

Instructors

Reappointment
(1st) Probationary *to* (2nd) Probationary

Candidate submits Application
15 September (deadline)

↓

Department/ School Committee

Chairperson/Director

↓ ↓

Dean
31 October (deadline)

Instructors

Continuing Appointment *with* Promotion to Senior Instructor

Candidate submits Application
15 September (deadline)

↓

Department/ School Committee
31 October (deadline)

↓

Chairperson/Director

↓

Dean
31 December (Deadline)

Senior Instructors

Promotion to University Teaching Fellow

Candidate submits Application
15 September (deadline)

↓

Department/ School Committee
31 October (deadline)

↓

Chairperson/Director

↓

Dean
31 December (Deadline)

Technical Instructors

Reappointment
(1st) Probationary *to* (2nd) Probationary

Candidate submits Application
15 September (deadline)

↓

Department/ School Committee

Chairperson/Director

↓ ↓

Dean
31 October (deadline)

Technical Instructors

Continuing Appointment

Candidate submits Application
15 September (deadline)

↓

Department/
School Committee
31 October (deadline)

Chairperson/Director

↓ ↓

Dean
31 December
(Deadline)

Technical Instructors

Promotion

Candidate submits Application
15 September (deadline)

↓

Department/ School Committee
31 October (deadline)

↓

Chairperson/Director

↓

Dean
31 December (Deadline)

Professional Counsellors

Reappointment
(1st) Probationary *to* (2nd) Probationary

Candidate submits Application
15 September (deadline)

↓

Counsellors Appointment Committee

↓

Director

Professional Counsellors

Continuing Appointment

Candidate submits Application
15 September (deadline)

↓

Counsellors Appointment Committee
15 December (deadline)

Director

↓

Vice-President (Student Services)
31 January (deadline)

What Is Fair?

Q&A ON PROCEDURES & STANDARDS IN PEER REVIEW

Contents:

FOREWORD

CAUT has long argued for the primacy of peer review procedures in decisions affecting academic careers. These arguments have prevailed, and our institutions generally make academic career decisions based on the advice of peer committees.

The purpose of peer evaluation is to combine expertise in the subject with fairness in judgment so that such decisions will be made for sound academic reasons, will follow appropriate criteria, and will be made by persons qualified to evaluate academic performance.

The following Q&A is intended to assist academic staff to carry out their roles on peer committees, especially those concerned with tenure, renewal, and promotion decisions. This document does not provide a complete discussion of the procedures used in making academic status decisions, nor should it substitute for advice received from a local association. *What Is Fair?* provides general guidance focused on the typical procedural components of peer review as well as the comportment of those who participate in peer evaluations. Faculty associations and unions, which have a duty to negotiate for fair procedures, should consult relevant CAUT policies, bargaining advisories, and model clauses to ensure that appropriate procedures are in place at their institutions.

This document should not be relied upon in arriving at a decision in any particular case. Legal advice on individual cases should be sought from the local academic staff association. Terminology differs from one institution to the next. The term *candidate* is used throughout this document to denote an individual being considered for tenure, renewal, or promotion, but it should be noted that this usage has been deliberately rejected in some institutions.

Approved by the Academic Freedom and Tenure Committee, October 1986; Revised by the CAUT Board, November 1986; editorial revisions, July 1988; Revised by the CAUT Collective Bargaining and Economic Benefits Committee and the CAUT Executive Committee, February 2002; Received by CAUT Council, April 2002.

Revised and approved by the Academic Freedom & Tenure Committee, March 2009. Revised and approved by the CAUT Executive Committee, April 2009.

1. SELECTION OF PEER COMMITTEES

1.1
Who should select faculty peer committees?

Members of the committee should be elected by, and from, the full constituency of peers. At a minimum this should include all full-time members of the academic unit. Part-time and contract academics who are part of the bargaining unit, or included in accord with university policy, should be afforded the same opportunities to participate in the selection process as tenured and tenure-track faculty. Where appropriate, a range of perspectives should be sought and steps taken to ensure adequate representation by rank and sex. In small institutions a whole department may sometimes be an appropriate committee. Some faculties do not have departments and, in such cases, faculty peer committees should be elected from the most appropriate unit (analogous to a traditional academic department) within which the candidate works.

1.2
Should faculty peer committees be restricted to the department?

Every effort should be made to ensure that peer committees have sufficient expertise to make an informed judgment. This is especially important in situations where the candidate's specialty is not shared by other members of the department. Some collective agreements require, or explicitly permit, the election of peers from other departments where such expertise exists. Where sufficient expertise to assess a candidate is lacking at the institution, particular attention should be paid to the opinions of external reviewers.

1.3
Should non-tenured faculty serve on tenure committees? When considering promotion to a specific rank, should faculty of a lower rank serve on the promotion committee?

Yes. Such faculty perform the same functions as the candidate, and are true peers. Untenured faculty often bring the latest approaches, techniques, and theories to their subject. They should, therefore, not be excluded as such exclusion might result in important perspectives being omitted from the discussion.

1.4
What about part-time or contract academic staff (CAS)? May they serve on peer committees?

Yes. Part-time and contract academic staff who are part of the bargaining unit or included as part of a university policy could serve on such committees. Nevertheless, CAUT recognizes that some collective agreements regulate the proportions of full-time, part-time and contract academic staff members of specific committees. If CAS are excluded completely, the tenure system can too easily become a restrictive guild, reflecting an administrative and hierarchical—as opposed to scholarly and egalitarian—view of collegiality.

1.5
Is it not the case that CAS are more vulnerable than other faculty and, therefore, more likely to be manipulated by their tenured colleagues?

It is important to insulate CAS from retribution and manipulation; however, this does not necessitate their exclusion from collegial processes. Rather, faculty should insist upon the confidentiality of the committee's deliberations (to lessen concern about retribution). The coercion of any faculty member violates academic freedom and should be opposed vigorously, regardless of the employment status of the individuals involved.

2. CONFLICT OF INTEREST & APPREHENSION OF BIAS

2.1
What are likely sources for conflicts of interest?

Conflicts of interest can arise where there is a family or other close personal relationship with a candidate, where there has been significant conflict or collaboration, or where there is co-authorship or some financial relationship with the candidate.

2.2
If I believe that I can divorce my personal prejudice or bias toward the candidate from an objective consideration of his/her scholarship, should I serve on the committee?

Generally, no. Not only must justice be done, but it must be seen to be done. Whichever way the committee decides, you may be suspected of being more or less charitable, and you should avoid putting yourself in such a position. The intent here is not to exclude from peer committees those individuals whose collegial engagement does not rise above a normal level with the candidate in question. For instance, faculty members in a science department who see many co-written (multiple author) papers may not consider a fourth, fifth, or sixth author to be in a *significant* collaboration with a candidate. Nor for that matter, would it necessarily follow that the ideational gulf between a Marxist labour historian and a conservative Intellectual historian constitutes a significant conflict unless their disputes cross from the academic to the personal.

As a British judge, in turn quoted by a Canadian court in a case involving a tenure application, said:

I would just add a few words on the question of bias.... If a reasonable person who has no knowledge of the matter beyond knowledge of the relationship which subsists between some members of the tribunal and one of the parties would think that there might well be bias, then there is in his opinion a real likelihood of bias.... Of course, someone else with inside knowledge of the characters of the members in question might say: 'Although things don't look very well, in fact there is no real likelihood of bias.' ***But that would be beside the point, because the question is not whether the tribunal will in fact be biased, but whether a reasonable man with no inside knowledge might well think that it might be biased.***
[Emphasis added][1]

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[1] *Thomas v. Mount St. Vincent University*, [1986] N.S.J. no 256, pp. 24-25. The quote is taken from the decision of *L.J. Cross in Hannam v. Bradford City Council*, [1970] 2 All E.R. 690 (C.A.), p. 700.

2.3
I am a member of the same department and know the candidate quite well. Does this mean I should resign?

No. Peer evaluations at the departmental level and frequently at the faculty level involve critical assessment by faculty members who know each other. The purpose of the fairness requirement is not to require peers who are completely unfamiliar with the candidate. Rather it is to ensure that those who make recommendations about an individual scholar are themselves competent to judge the professional fitness of the candidate, will assess all the evidence on the basis of its academic merits, and have not made up their minds about the candidate in advance of the deliberation process. In the pithy words of an arbitrator working on a case at Saint Mary's University: "Because subjectiveness is included in the process, fairness is not excluded."[2] Only those with a serious conflict with the candidate, those who cannot approach the matter with an open mind, or those with a personal prejudice toward the candidate must withdraw from the process.

2.4
Should an academic staff member who also has an appointment as a senior academic administrator be eligible for election to a peer committee?

No. There is an inherent tension between these roles and people in such a category should disqualify themselves from serving on any such committees. Administrators must not sit on committees if they themselves are part of the formal review or decision-making structure at a later stage (see 8.1).

Chairpersons, however, may be members of such committees unless excluded expressly by institutional policies, governing documents, or collective agreements. That said, chairpersons should not place themselves in questionable positions and should certainly excuse themselves from departmental committees if they have to review the departmental decision at a later stage. Nor should chairpersons (or anyone else for that matter) exploit vague or imprecise procedures in order to give one opinion publicly to the department and/ or the candidate and a different one privately to a senior administrator.

2.5
What should I do if I become aware that I am in a conflict of interest situation?

You should resign from the committee.

2.6
What should I do as a candidate if I can reasonably show that a member of the committee should resign because of a conflict of interest?

You should formally challenge that person's membership on the committee with reasons as soon as you become aware of her/his membership on the committee. If this is done at a meeting of the committee, it should be raised as the first order of business. Such allegations, if made after a judgment has come down, have the odour of sour grapes.

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[2] *D.A. MacFarlane v. Saint Mary's University,* [1979] CAUT Arbitration Index.0200, p. 787.

2.7
Is it legitimate for me as a member of a peer committee to make private representations to the president of the university or the person or body responsible for the final decision?

No. If you are a member of a peer committee and disagree with the substantive decision of the majority, you may attach a written dissent to the decision, but as someone with access to privileged information you should not make an end-run around the system itself.

2.8
What should a member of a peer committee do if he/she believes that a candidate's rights are being or have been violated and/or that the procedures in place to protect the candidate have been compromised?

The committee member in this situation should continue to serve under protest and then issue a report about the problem to his/her colleagues on the committee, the candidate, the candidate's Dean, and the academic staff association's president. This report should confine itself to any procedural problems and issues relating to the integrity of the process. It should not offer any opinion on the merits of the candidate except where such information is germane to the analysis of procedural failings. For instance, the report might mention the individual's production of peer-reviewed articles if the committee had refused to consider them.

2.9
Is it ever legitimate to set up an ad hoc outside peer evaluation where it seems likely that the normal procedures will produce a biased committee?

Yes, but only if the academic staff association and the university administration agree.

3. DUE PROCESS & NATURAL JUSTICE

3.1
What should due process and natural justice mean in the university context?

"Natural justice" is a term that refers to the elementary conditions of procedural fairness. It is not a fixed concept, but has evolved over time. The following may be regarded as the basic components of natural justice as they relate to the university context:

a) Notice. The candidate and the faculty association should receive reasonable notice of any hearing including the particulars of the case and the mode of operation of the committee or tribunal.

b) The right of candidates to see and/or hear all evidence presented in their case. This means that all written evidence and documentation submitted to the peer committee should be made available to the candidate in full (see 3.1.d). Summaries are not satisfactory since they are likely to produce arguments about the fairness of the summary. If there is oral evidence, the candidate should either be present to hear it or should receive an audio recording. This does not mean that the candidate has the right to be present or to have a recording of that section of the meeting when the committee deliberates on its conclusions. The candidate should also have the right to respond to any oral representations, written

evidence or documentation introduced at any other level of consideration or review within the university. At the level of an appeal or arbitration, the candidate and his/her representative or counsel should be present for all testimony.

c) The right of candidates to confront and challenge negative witnesses or evidence. At the departmental level this means that the candidate should have the right to make a written and/or oral submission on the substance and the procedures involved in regard to any negative evidence prior to the deliberations of the committee. In addition to this hearing, a committee that intends to make a negative recommendation should offer the candidate an opportunity to meet with the committee to discuss that recommendation and the reasons for it before finalizing a report. At an appeal, the candidate or her/ his representative/counsel should have the right to cross-examine all adverse witnesses.

d)The invalidity of anonymous evidence. Unattributed individual opinions cannot be fairly considered by peer committees. This does not prevent the use of aggregated statistical evidence (such as student evaluations), but committee members should be mindful of the source of such data, the manner of its collection, and the methods by which it was analysed. Some universities conduct student evaluations in two parts: a statistical section for peer committees and a commentary provided only to the academic staff member. CAUT recommends that anonymous student comments not, in fact, be used for any purpose other than individual professional development.

All letters of reference, including the signatures, should be supplied to the candidate in full. It should be noted that some academic staff agreements provide for open files but others only permit access if there is a formal grievance launched. Referees should know the rules of the game in advance.

If the rules of your university or the relevant collective agreement do provide for confidentiality of referees' assessments, fairness nevertheless demands that the candidate be given the letters of the referees without attribution. It should be noted that this frequently leads to additional difficulties and unfairness. It may be necessary to know the background of a referee in order to challenge a letter. It is surely important to know if a negative letter comes from someone who a *priori* rejects the approach of the candidate or is otherwise *parti pris*. This is why CAUT discourages the use of anonymous materials. Even worse is the use of summaries (see 3.1.b).

e) The right of the candidate to be assisted by the person of his/her choice. At the departmental committee level the candidate should have the right to be assisted by an academic representative from his/her academic staff association or by a colleague of her/his own choosing. It would ordinarily be inappropriate at this level for the academic staff member to be represented by legal counsel. It is important that there be no confusion over who is representing an appellant.

f) The right of the candidate to be given detailed reasons for the committee's decision. The candidate must be provided with a substantive and comprehensive explanation for the committee's decision as well as any written dissents provided by individual committee members.

g) The right to a fair tribunal. Members of peer committees must insist on the application of the principles of natural justice, and, if necessary, record an objection in writing when they are violated. They should also ensure that the rules and procedures governing the operation of the committee are observed.

4. JUDICIAL CONSIDER ATION

4.1
Our department/departmental committee weighed this decision carefully and voted against the candidate. Surely that is democratic and all that needs to be said?

No. A democratic majority is not a guarantee that a decision has been fairly and reasonably made. Democratic majorities can be as arbitrary as any individual administrator. CAUT recommends due process and quasi-judicial procedures to ensure that academic status decisions are based on academic criteria only and not on extraneous ones. The academic staff should also ensure that an appeal process is in place to review both the conduct and decision of the peer committee and that the matter be grievable.

4.2
Doesn't collegiality mean that we should proceed as informally as possible and dispense with legalities and rules?

No. Collegiality does not mean vaguely structured or informal committees. In this context, it means bringing the academic judgments of peers to bear on academic matters such as appointments, tenure, renewal and promotion. This should be done by the proper and formal weighing of the evidence. It is precisely the integrity of the process that makes the outcome fair and legitimate.

5. EXAMINATION OF THE EVIDENCE

5.1
What does *fair* mean in looking at the evidence?

a) It means that any judgments must be made on academic grounds precisely related to the issue at hand. Furthermore, the committee should base its judgments on the material before it and that material should, in turn, be relevant to the case. The committee's recommendations must relate the evidence to the criteria. The process must not become a venue for personal vendettas. Consider the following comments from an arbitrator in a tenure denial case:

Obviously, decisions were made on erroneous information, incomplete information and remote and unreliable hearsay, all of which appears to have been orchestrated by the Chairman of the Committee out of motives of open hostility.... [T]here is no doubt that the Department Hearing and Report lacked the degree of fundamental fairness any tribunal of such a nature would be expected to possess.[3]

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[3] *D.A. MacFarlane v. Saint Mary's University*, [1979] CAUT Arbitration Index. 0200, p. 788.

On a related point, assessors and evaluators should consider the possibility of cluster effects in which clusters or patterns of evidence might be interpreted unfairly and unreasonably to justify complaints about faculty members. For instance, evidence that a faculty member has not been well prepared for class on multiple occasions, might become a ground for professional penalty. Yet homophobia (to name just one possible motive) might have led one or more persons to make such charges, or to have encouraged evaluators to take seriously those charges when other evidence suggests they are irrelevant or weak.

Chairs must exercise restraint and good judgment to avoid directing the committee to a particular outcome. The decisions of a peer committee may be overturned if there is evidence that the chair intimidated the committee, coerced any of its members, or otherwise subverted the deliberative process by calling successive votes until arriving at a preferred decision or by insisting on special or onerous requirements for a particular candidate.

b) Fairness in the evaluation of colleagues means recognizing differences and similarities among them. Fundamental grounds of equity include race, Aboriginality, national origin, class, gender, gender identity, sexual orientation, ethnicity, and disability. All are relevant in fair evaluations of colleagues. Care must be taken to ensure that the possibility of systemic inequity has been considered in assessing a candidate for appointment or preferment/ promotion.

Assessors of scholarship must recognize the diverse experiences of marginalized groups, remembering that systemic discrimination may creep into evaluations through received ideas about what counts as correct or *best* scholarly methods, or about who are the most reputable publishers or grantors. Similarly, assessors should remember that systemic discrimination may affect teaching evaluations. Any evaluations of faculty members of marginalized communities should be carefully reviewed in light of data about colleagues in similar locations, disciplines and career stages.

c) Fairness means that a department must follow procedures consistent with the procedures followed for others. "Fairness and consistency require that like cases be treated alike. Accordingly, comparisons must be made among similar cases, that is, among candidates from analogous disciplines with similar duties."[4] If a department does not follow its own normal procedures, any variations should be fair, agreed to by the faculty association, approved in a constitutional manner by the senior administration, and known to the candidate in advance. It is not proper to make up new procedures or new standards to advantage or to disadvantage a candidate. For instance, an arbitrator held that it was not proper for a president to insist on a 2/3 voting rule in promotion decisions when no such rule had been negotiated as part of the collective agreement.[5] Similar reasoning should apply to committees and unique or peculiar conditions should not be set for any individual. Committees should not, for example, arbitrarily insist that publications may only be considered if they are the result of sole authorship, use an abbreviated list of publications, or only review a candidate's publications since the last promotion. With respect to co-authored works, a committee should certainly not "reject a candidate's collaborations as inconsequential without sufficient evidence to warrant that conclusion."[6]

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[4] *Association of University of New Brunswick Teachers v. University of New Brunswick*, Thompson grievance [1985] CAUT Arbitration Index. 0031, p. 25.
[5] *Carleton University Academic Staff Association v. Carleton University,* Marwah grievance, [1980] CAUT Arbitration Index. 0154.
[6] *Robin Dawes v. Queen's University*, [1990] CAUT Arbitration Index. 0050, p. 38.

d) Fairness means that the department must conduct a thorough and deliberate evaluation of all the information relevant to the case or in its possession. This requires a reasonable period of discussion, particularly in controversial cases or where a negative recommendation is likely. The committee should ensure that all relevant information is supplied to them, and that the candidate has been formally asked, preferably in writing, to supply all information that she/he wishes to have considered. There is also an obligation on the chair of the department and on the university administration to supply to the candidate all the information that it has that is relevant to the issue, especially evaluations which might not be in the hands of the candidate. If the file is not adequate, the committee should request that the candidate, the chair of the department, or the senior administration supply the missing documentation. A committee should not make a negative recommendation based on a technicality relating to the sufficiency of information since it should insist on being provided with the information necessary for a full and complete consideration of any relevant issues of law and fact.

e) Fairness means that if consultation is required in the peer assessment process, it should be thorough, systematic and recorded. It should not be carried out by chance meetings in the corridor or by the collection of gossip. It is, therefore, fine for a committee to consult with external experts, but it must do so openly and provide the candidate with the same opportunities to respond to the results of such consultation as he/she is afforded to respond to other evaluations.

f) Fairness means that the departmental peer committee must address the real and complete issue at hand. It should not restrict its discussion and judgment to evidence that buttresses a preconceived position. Nor should it decide to exclude certain areas of study on the grounds that they are not sufficiently traditional (social work, nursing, or qualitative sociology, for example). The decision to sanction particular areas of study belongs to the department, the faculty and the senate, not to peer committees. The committee should not improperly segment the decision in such a way as to prevent evidence being given or to hide the real issue by deciding on the basis of one aspect of a candidacy and then refusing to consider other evidence.

g) Fairness means that if the department alleges a lack of scholarly publication or characterizes a candidate's scholarship as second-rate, there must be demonstrable proof, based on criteria universally applied and known in advance. Experts in the field must read and evaluate the work if those judging do not have the requisite expertise to do so themselves. The experts should not all represent a single position, or school of thought. The candidate must have a determining say in the choice of some of the assessors, and should be able to challenge assessors on the grounds of bias. He or she must, therefore, know the names of the assessors and the process by which they were chosen. The letters sent to assessors should be neutral in tone and should be available to the candidate. There should be a summary procedure in place to adjudicate challenges to particular assessors or to the procedure followed in soliciting their feedback.

h) Fairness means that if the department alleges that a candidate's scholarly interests do not coincide with the academic plans of the department, then there must be (to justify a decision on such grounds) an academic plan showing a substantive change in academic priorities that has been approved by the relevant faculty unit and the university administration, consistent with the university's by-laws or collective agreement, and known to the candidate sufficiently far in advance of the decision to allow him/her to conform to the objectives of the plan.

This must not be an ad hoc reason used to exclude a particular candidate and justified by vague references to the good of the department. Nor should the plan itself involve a violation of academic freedom.

i) Fairness means that if the department alleges that the candidate's teaching is ineffective, there must be organized longitudinal data (student evaluations, direct observation, review of instruction materials selected by the instructor, grading practices, and so forth) to substantiate this judgment. "If teaching is to be seriously evaluated for career purposes, it seems incumbent upon Faculties not to rely only on classroom administered evaluations but to broaden the case of assessment."[7] Student evaluations (no matter how comprehensive they may be) should never serve as the only indicator of teaching effectiveness, nor should decisions be based on student gossip, hearsay or unsigned comments. Any adverse comments respecting the candidate should be made available to him or to her. The criteria for judgement should be consistently applied and known in advance.

j) Fairness means that a department cannot rule against a candidate for financial reasons. Probationary appointments to the tenure stream assume that the university has made provision for an ongoing appointment. A subsequent financial crisis may require lay-offs of untenured or tenured academic staff, but this process should be distinct and part of a procedure for financial exigency negotiated by the academic staff association.

k) Fairness means that all judgments should be consistent with the collective agreement and Canadian law on non-discrimination. Peer committees should be sensitive not only to the disciplinary inroads made by historically disadvantaged groups (Women's studies, Black studies, Queer studies, etc.), but also to the non-traditional research questions and methods that scholars from socially marginalized groups may bring to the academic enterprise.

l) Fairness means that a candidate is fully informed, in writing, of the reasons for a peer committee's decisions and is afforded an opportunity, and appropriate length of time within which to appeal the decision.

6. CRITERIA & STANDARDS

6.1
What criteria should apply?

Criteria that are consistent with the principles of academic freedom should be specified in the collective agreement and their application in individual cases should be measured as far as is possible by objective standards. Candidates must be able to assess beforehand the extent to which they meet the criteria. At the beginning of proceedings, peer committees should review the criteria and make sure that there is an expressed consensus as to their meaning and application.

6.2
Can standards change?

Yes. Standards of scholarship and teaching can be changed, but only after a negotiated agreement between the academic staff association and the university. Moreover, clear notice

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[7] *University of Regina Faculty Association v. University of Regina,* Jalan grievance, [1993] CAUT Arbitration Index. 0298, p.20.

of changed standards must be given in such a way that those who will be expected to meet them have the opportunity of doing so:

If standards are to be raised, fairness and reasonableness require that proper notice be given to parties who are likely to be adversely affected by the change. Parties must not be caught by surprise and thereby harmed; notice must be adequate so that an affected party may have time to respond in order to meet new standards.[8]

7. REASONS FOR THE DECISION

7.1
What happens if a peer committee cannot reach a unanimous decision?

The view of the majority should prevail. One person among the majority should write the majority opinion in consultation with the other members of the majority. Minority views may be put in writing by dissenters if they wish to do so.

7.2
Why should a peer committee give reasons in writing?

Without written reasons, it is impossible to know whether fair procedures have been followed. One grievance decision from Laurentian University described such requirements as "a form of insurance that decision-makers actually do reason and adhere to the mandate imposed upon them."[9]

7.3
What amount of detail is necessary?

A peer committee's reasons for a negative decision must not be simply a restatement in the negative of the grounds on which positive decisions are made. Reasons for a negative decision should be detailed enough that the candidate can decide in an informed way on the likely success of an appeal, or use the criticism to improve her/his performance and likelihood of success on a subsequent application. The decision and related evidence should be related to the criteria provided to the candidate. Reasons for a positive decision should be specific enough to withstand subsequent challenges and to provide guidance for future candidates.

7.4
Are comparisons with the performance of successful (current or former) candidates reasonable grounds for a negative recommendation?

Tenure and promotion should be based on specific and known criteria. In these circumstances, comparison with successful candidates is relevant when it is used to illustrate

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[8] *Association of Professors of the University of Ottawa v. University of Ottawa*, Chouinard grievance, [1985] CAUT Arbitration Index. 0069, p.16.
[9] *Laurentian University Faculty Association v. Laurentian University*, Bastin-Miller grievance, [1983] CAUT Arbitration Index. 0090, p.15.

the attainment of these criteria. However, the candidate should be able to make comparisons on grounds of equity either before the committee or, more feasibly, at a subsequent appeal level. This means that those adjudicating appeals and arbitrators should have access to all the relevant files.

7.5
Should peer committees vote by secret ballot?

In principle, no. Since the purpose of peer evaluations is to ensure free, full, and fair discussions of a candidate's academic merits, secret voting tends to negate this process. It also makes it difficult to give reasons. In circumstances where strong concerns to limit intimidation do result in secret ballot voting, the chair is still obliged to compile and provide the reasons and rationale for the committee's recommendations.

7.6
Can members of peer committees be sued for giving reasons?

Yes, but members of peer committees should be protected by the doctrine of qualified privilege which affirms that statements are not libelous if made in the context of fulfilling a responsibility and are only made to those who have a need to receive them (i.e. the other members of a committee and the candidate).

8. REVIEW COMMITTEES

8.1
What are review committees?

At some universities the recommendations of departmentally based peer committees are reviewed by faculty-wide and/or university-wide committees. These secondary bodies are nonetheless still part of the original decision-making process and not normally appeal bodies. Such review committees are often composed of both academic administrators (or their appointees) and regular faculty members.

In the context of review committee work, the academic staff members serving on such committees are acting as peers at the broader level of the whole faculty and should be particularly concerned with the uniformity and consistency of standards in terms of both procedure and substance. Review committees should be elected by department/faculty councils, and those elected should form the majority of voting members of any such committee.

8.2
What is the difference between a review committee and an appeal committee?

A review committee is part of the hierarchy of decision making. Faculty review committees can, for instance, judge a departmental recommendation on whether or not it meets general institutional standards and whether due process procedures have been followed. But such committees are advisory to the person or group that makes the final decision. Appeal committees hear the appeals of grievors against that final decision. These two functions should be kept separate.

8.3
What procedural standards apply to review committees?

The above guidelines concerning fairness, natural justice, criteria and the provision of reasons for recommendations and decisions apply to the procedures of review committees. A review committee's recommendation should not be substituted for the initial peer committee's recommendation, but should be added to it. The recommendation should be confined to commenting on the correctness of the procedures and the standards used by the departmental committee. Any additional evidence gathered by such a committee, as well as its recommendations, should be supplied in full to the candidate and to the departmental peer committee. The candidate should have the right of reply to any substantive issues raised by the review committee.

8.4
Who makes the final decision following a peer assessment?

It varies from university to university and indeed within a particular institution depending on the nature of the decision. It may be a dean, a vice-president (academic), a committee, a president or a governing board. However, the person or group making the final decision—subject to grievance and arbitration procedures in any collective agreement that may pertain at that institution—should not arbitrarily assign more weight to a review committee than to the initial peer committee when the committees conflict in their advice.

Such persons or groups should read and review all the decisions and the evidence from the beginning and not simply rely on the last in the hierarchy. They must follow fair procedures in rendering a judgment including making available to the candidate all the information involved in the decision and the reasons for that decision. In a case at the University of British Columbia, an arbitrator found that the University president's "decision was unreasonable as she acted contrary to, or ignored, the agreement between these parties" by failing to "consider the possibility of evidence of scholarly activity other than peer reviewed publications. A decision is unreasonable when evidence that the parties have agreed should be considered is ignored or excluded from consideration."[10]

8.5
Should the governing boards hear and consider recommendations from others besides the peer committee or committees?

The governing board's members should rely on the advice they have received through the institution's peer review process. They too are bound by the rules of fair procedure. The Supreme Court of Canada has held that a candidate should be able to challenge any and all evidence presented to a board and so should be present, with or without a representative, at the board meeting to hear and to respond to such evidence. "The tribunal must listen fairly to both sides giving the parties to the controversy a fair opportunity for correcting or contradicting any relevant statement prejudicial to their views."[11] The same should apply *mutatis mutandis* to others making final decisions. Because the board of governors is the legal employer of academic staff, CAUT does not regard hearings before the board as a substitute for an impartial and independent appeal.

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[10] *Faculty Association of the University of British Columbia v. University of British Columbia,* Rucker grievance, [2004] CAUT Arbitration Index. 0682, p.21.

[11] *Kane v. University of British Columbia*, [1980] 1 S.C.R. 1105

9. APPEAL PROCESSES

9.1
Why should appeals be allowed?

Peer committees sometimes do make mistakes or poor decisions even when acting in good faith and standards across an institution ought to be generally consistent: for these reasons, candidates must be given recourse to appeal through external appeal processes. Good faith does not negate errors or bad judgment, but the certainty of procedural fairness and the right to appeal increase confidence in the institution and its academic processes.

9.2
What are the grounds on which appeals can be filed?

Appeals should be permitted on both substantive and procedural issues.

9.3
Why not simply return a case to the original committee if a mistake is involved?

Peer committees seldom admit to mistakes or poor judgment. Rather, there is the likelihood that they will simply come to the same conclusion, albeit in a more elegant fashion, the second time around.

9.4
Who should hear appeals?

CAUT recommends an appeal to an arbitrator or arbitration board external to the institution. The decision of the arbitrator or arbitration board must be final and binding on all parties.

9.5
Why are internal committees not appropriate bodies to hear appeals?

At the point where a decision is appealed, it is no longer necessary to have the matter deliberated by peer experts. In fact, any individuals hearing the appeal should not have participated (in any capacity) in previous considerations of the case in question An appeal may be likened to a court case where evidence, including expert evidence, is placed before an impartial judge. In such circumstances a fair hearing can only be guaranteed if it is conducted by individuals with no vested interest in any particular outcome, and who are competent to decide on issues of fairness and procedure as well as to apply applicable human rights legislation. Since those hearing an appeal cannot escape the issue of comparability, it is useful to charge individuals who have broad experience over time and across several institutions.

It is also desirable, if not absolutely necessary, to have an appeal body chaired by someone who is familiar with the conduct of proper hearings, the standards of procedural fairness, and rules of evidence. The chair will be required to draft a final recommendation that squarely addresses the arguments of the parties. Moreover, failure to address legal issues may be grounds for overturning a decision and so the chair must be competent to address preliminary legal issues as they are raised.

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