



Tenure, Promotion, and Continuing Appointment Process

Collective Agreement Procedures & Procedural Fairness

November 2019

Outline

1. Highlights of “New” Tenure and Promotion Process
2. Procedural Fairness – Generally
3. Conflict of Interest
4. Reasonable Apprehension of Bias
5. Process

Selecting TPCAC Nominees

Associate Professor/Tenure application –
TPCAC members must be tenured

Promotion to Professor – TPCAC members
must be tenured and at least one must hold
the rank of Professor

Application by Instructor – TPCAC shall be
augmented by an Instructor with continuing
appointment

Selecting TPCAC Nominees

- Small Departments

Where the Department has sufficient tenured Faculty, they shall be nominated and shall serve

Where the Department has insufficient tenured Faculty:

the DPC shall nominate 3 Departments members with rank of Assistant Professor;

At least 2 of the voting members of the TPCAC must be from the applicant's Department; and

At least 3 of the voting members must be tenured.

Articles 24.11 and 25.18 Faculty-Based Criteria (FBC)

Established by the Deans in 2015, following consultation with the Chairs, DPC Chairs, and the Vice-President (Academic)

Must be consistent with the conditions and general criteria in the CA

2019/20 Applications – Applicants shall be evaluated pursuant to the CA and the FBC together

Conditions and Criteria for Tenure, Promotion



Timelines

June 30 - Applications due for tenure and promotion

August 1 – Applications due for continuing appointment

October 1 - DPC nominations to Dean

October 31 - Dean appoints TPCAC

Nov 1 – TPCAC meetings commence

Timelines

March 31 – President's decision on continuing appointment to the applicant

May 15 – Vice-President's recommendation on tenure and promotion to the President

May 31 – President's decision on tenure and promotion to the applicant

Principles of Procedural Fairness

Procedural fairness/natural justice – legal rules governing decision-makers to ensure fair treatment of those about whom decisions are being made

Generally, a right to a full and fair hearing by an impartial decision-maker

Rights may vary depending on the type of tribunal, the rules under which the tribunal is acting, and the subject matter

General Requirements of the CA

Articles 24.04(4) & 25.07(4): The Dean/Administrator is responsible for ensuring that procedural fairness is maintained in the consideration of applications by the TPCAC and the Chair.

Articles 24.04(5) & 25.07(5): If the Dean/Administrator determines that there was a breach of procedural fairness, he/she shall take appropriate steps to remedy the breach.

Specific Requirements in the CA

Referees and TPCAC

Article 25.05(6) – External referees – The list of referees shall be consistent with the UW Conflict of Interest Policy and Article 37 Conflict of Interest and shall not include



UW Conflict of Interest Policy

- Definition: A conflict of interest occurs when the personal interests of an employee clash or have the potential to clash with his/her duties and responsibilities to the University. For the purposes of this policy personal interests include, but are not necessarily limited to, a business, commercial or financial interest, whether of the person involved or arising from family or marital relationships, from friends, or from former, existing or prospective business associations.

UW Conflict of Interest Policy

Policy Definition (continued): A finding of conflict of interest does not depend upon willful wrongdoing by a person, nor upon the issue of whether the judgment of the person has, in fact, been affected. A conflict of interest may exist whether or not a monetary advantage has been or may have been conferred upon the person.

<http://www.uwinnipeg.ca/hr/policies/policy-conflict-of-interest.html>

UWFA Collective Agreement, Article 37

Article 37:01 -



UWFA Collective Agreement, Article 37

- 37:03 A conflict of interest includes but is not limited to situations in which a Member, a person acting on behalf of the Employer or a person acting on behalf of the Association is involved in decision making and:
 - a) stands to benefit or be harmed financially by virtue of the decision;
 - b) has family or close friends who stand to benefit or be harmed financially by virtue of the decision;
 - c) has a close personal relationship, whether positive or negative, with anyone who is the target of the decision-making process.

UWFA Collective Agreement, Article 37

37:05

What is bias?

Bias: An unauthorized predilection toward a particular result or to be subject to unauthorized factors which lead, or have the



Reasonable Apprehension of Bias

Supreme Court of Canada:

The apprehension of bias must be a reasonable one, held by reasonable and right-minded persons, applying themselves to the question and obtaining thereon the required information.



Reasonable Apprehension of Bias

Two-part objective test:

1. Is the person considering the alleged bias reasonable?

A reasonable person is vested with knowledge and understanding of the decision-making process.

A reasonable person knows and considers the context surrounding the impugned behaviour.

Reasonable Apprehension of Bias

2. Is the apprehension of bias itself reasonable?

The grounds for the apprehension must be substantial, not mere suspicion or speculation.

E.g. Is there a financial interest, specific conduct, evidence of pre-determination, or a close relationship?

Letter of Understanding – UW & UWFA

Signed September 30, 2015

Absent other evidence, co-authorship and collaboration with the applicant for professional outputs and publication shall not normally amount to a conflict of interest or reasonable apprehension of bias with respect to Department Members who serve on the

Letter of Understanding – UW & UWFA (continued)

Two specific circumstances that the parties agree constitute a conflict of interest or reasonable apprehension of bias and prevent a Department Member from sitting on a TPCAC for an applicant.

Letter of Understanding – UW & UWFA (continued)

Where the Dean is satisfied that the
Department Member:

1. has engaged in prior co-authorship and collaboration on a substantial quantum of the material presented for the deliberations of the TPCAC; or
2. is involved in current and on-going collaboration or co-authorship with the applicant for a grant competition or other TPCAC; or

Case 1 – York University

Procedural Fairness & Reasonable Apprehension of Bias

President made the final decision regarding tenure and promotion after receiving recommendations from the Adjudicating

Case 1 (continued)

Breach of CA as it did not provide for the Provost to make their own recommendation in the tenure and promotion process.

Breach of PF because the Member had no opportunity to respond to Provost's recommendation.

Reasonable apprehension of bias because a denial letter had been drafted before the President had made a decision.

Case 2 - University of Western Ontario

Improper Considerations

Provost made final decision regarding promotion and tenure.

Provost began a practice of having the Vice-Provost review the file and prepare a synopsis and recommendation, which was not contemplated by the CA.

Case 2 (continued)

Vice-Provost's recommendation said that if the Provost granted tenure and promotion, it could result in damage to the employer's reputation, setting a precedent for the future, and potential conflict with the Dean.

Case 3 – University of MB

Reasonable Person Test

University of Manitoba – Refusal of Research/Study Leave Grievance

Head of Department was spouse of Dean.

Acting Dean was put in place to insulate Dean from decisions made in the Department.

Case 3 (continued)

Head of Department and Acting Dean denied research/study leave.

Recognition of spousal hiring and academic couples as part of University context

Mere speculation insufficient to support reasonable apprehension of bias



Case 4 – University of Windsor

Reasonable Apprehension of Bias

University of Windsor – Promotion Grievance

University Committee on Academic Promotion & Tenure (UCAPT) – Ten person Board chaired by Vice-President

VP was the defendant in a lawsuit brought by the Applicant and had been cross-examined in the civil suit shortly before the UCAPT hearing

Process

TPCAC members should be advised of duty to advise of potential conflict.

Applicants should be notified of the constitution of their TPCAC and advised to raise any concerns regarding conflict or bias as soon as they become aware.

Remedies

Voluntary withdrawal/recusal from TPCAC

Removal by Dean from TPCAC

Document decision to applicant

New recommendation by reconstituted TPCAC
(depending on stage of deliberations)

Arbitral Review of Tenure & Promotion Decisions

Members' recourse is to the grievance process

Standard of review at arbitration

1. Compliance with Collective Agreement

Correctness standard; no deference

2. Review of the assessment or decision

Substantial deference; should not be interfered with unless it is arbitrary, discriminatory, made in bad faith or manifestly unreasonable.

TPCAC Resources

<https://www.uwinnipeg.ca/hr/collective-agreements.html>

- UWFA Collective Agreement
- Faculty-based Criteria
- Tenure & Promotion FAQ's
- Summary of Tenure & Promotion Provisions
- This Power Point