

Tenure, Promotion and Continuing Appointment

December 2024



THE UNIVERSITY OF
WINNIPEG

Outline



Process Overview



Procedural Fairness



Conflict of Interest
(COI)



Reasonable
Apprehension of Bias



Case Law

Tenure/Promotion and Continuing Appointment Committee (TPCAC)

RESPONSIBILITIES

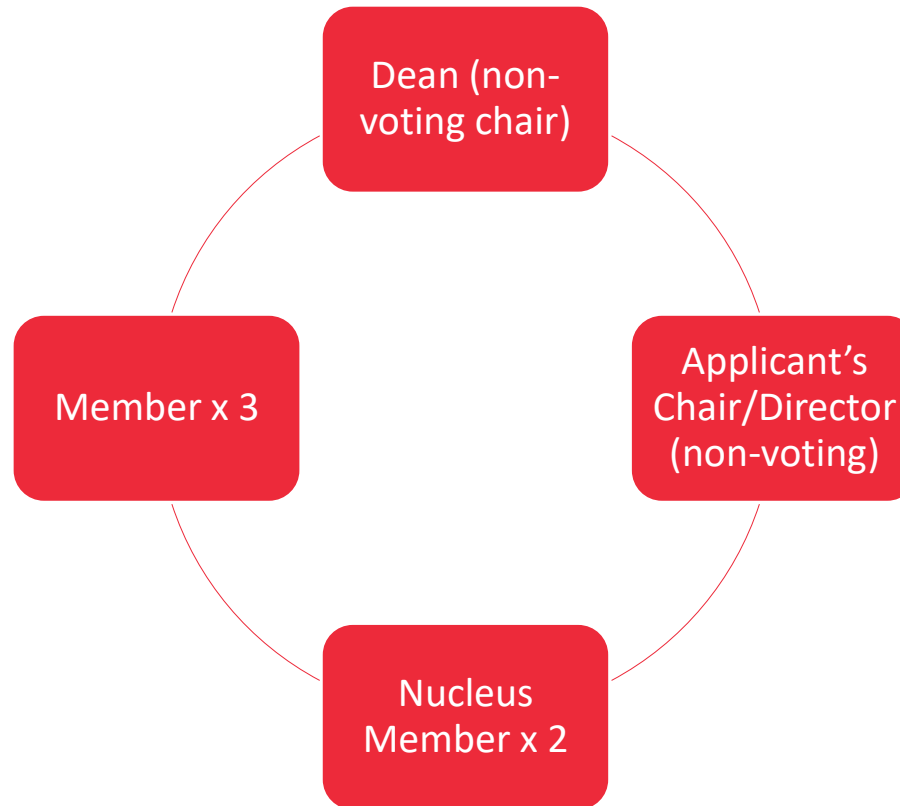


Provide recommendations on applications for tenure and promotion as per Article 27



Provide recommendations on applications for continuing appointment as per Article 26

TPCAC Structure



When considering nominees for TPCAC...



TENURE



INSTRUCTORS



SMALL DEPARTMENTS

Faculty-Based Criteria (FBC)

- Clause 26.11 for Continuing Appointment and Clause 27.17 for Promotion
- Established by the Deans in consultation with Chairs, DPC chairs and VPA
- FBC must be consistent with the conditions and general criteria of the collective agreement
- They are posted on the HR website

Conditions and Criteria

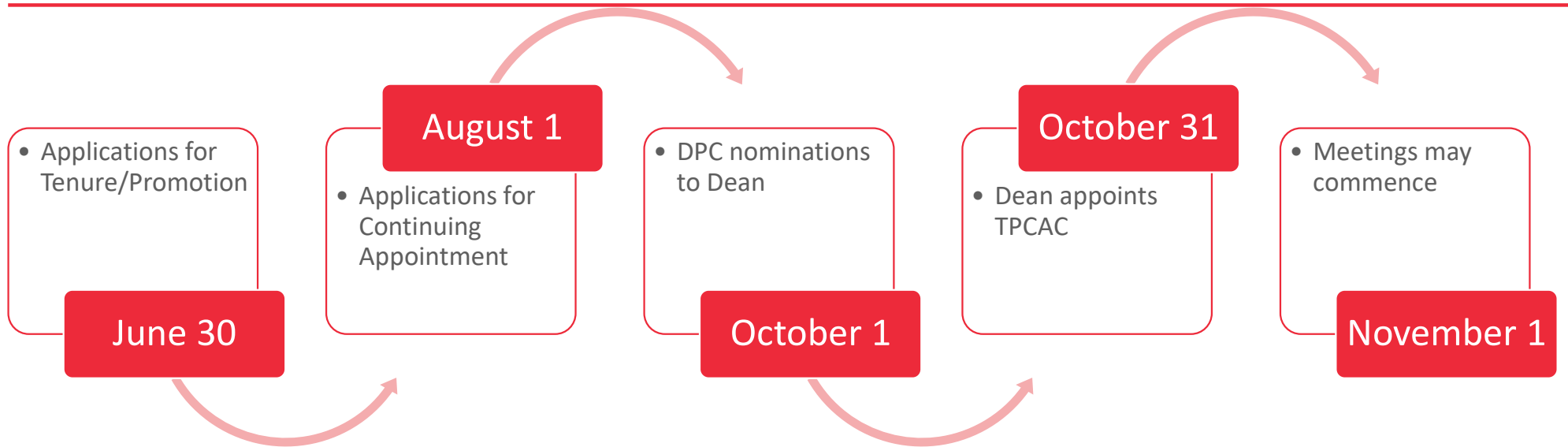
Continuing Appointment

- Librarians – Clause 26.09
- Instructors – Clause 26.10
- Counsellors – Clause 16.08

Promotion

- Faculty – Clause 27.11 and 27.13
- Librarians – Clause 27.14
- Instructors – Clause 27.15
- Coach/Director, Athletic Therapy – 27.16

Timelines



Timelines (cont.)



Procedural Fairness



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Principles



NATURAL JUSTICE



HEARING

General Requirements of the CA

Procedural Fairness

The Dean is responsible for ensuring procedural fairness in the consideration of applications by the Chair and TPCAC

If there is a breach, the Dean shall take appropriate steps to remedy the breach

General Requirements of the CA

Referees

- Clause 27.05(6) External Referees
 - Shall be consistent with the Conflict of Interest (COI) policy and Article 40: Conflict of Interest
 - Shall not include previous supervisors (thesis, postdoc)
 - Have not actively collaborated, published or shared funding in the last 6 years with Applicant
 - Are not currently collaborating with Applicant

Specific Requirements of the CA

TPCAC

- No Member shall serve on the TPCAC while their own application is under consideration
- When the TPCAC is unable to make a positive recommendation, the Applicant shall be invited to present any further evidence/supporting information to the TPCAC
- Where the Dean's recommendation is negative, the Applicant shall be notified of the reason in writing and given the chance to meet with the Dean within 10 Working Days

Conflict of Interest (COI)



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UWFA CA Article 40: Conflict of Interest

- 40.01 All Members are governed by the provisions of the UW Conflict of Interest Policy, which shall be updated from time to time in consultation with the Association through the Labour Management Committee (LMC) pursuant to Article 4.
- 40.02 Members, persons acting on behalf of the Employer and persons acting on behalf of the Association shall avoid participation in or voting on any decision-making process in which they have a conflict of interest.
- 40.03 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 CA Article 40: Conflict of Interest

- 40.05 Whenever a potential conflict of interest arises, the person who is first aware of the situation shall immediately inform in writing the relevant party or parties (e.g. Department Chair, committee chair, Dean) of the potential conflict, with the goal of resolving the matter in an open and collaborative manner.
- 40.06 The usual remedy for alleviating a conflict of interest is the recusal or removal of the person with the conflict of interest from the decision-making process.

UW Conflict of Interest Policy

[conflict-of-interest-policy.pdf](#)

[conflict-of-interest-faq.pdf](#)

- A COI means a situation where the personal interests of an employee clash or have the potential to clash with their duties and responsibilities to the University.
- A finding of a COI does not depend upon willful wrongdoing by a person, or whether the person's judgement has been affected.
- A COI may exist whether a monetary advantage has been or may have been conferred upon the Applicant, or not.

Reasonable Apprehension of Bias



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Bias

An unauthorized predilection toward a particular result or to be subject to unauthorized factors which lead or have the tendency to lead to a particular result.

Actual bias need not be proven.

Test: Reasonable Apprehension of Bias

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.

The test is “what would an informed person, viewing the matter realistically and practically – and having thought the matter through – conclude? Would they think that it is more likely than not that (the decision-maker), whether consciously or unconsciously, would not decide fairly?”

Reasonable Apprehension of Bias

Two-part Objective Test



Objective Standard



Reasonable Apprehension

Letter of Understanding UW/UWFA

Conflict of Interest and Reasonable Apprehension of Bias and DPC and TPCAC Members

- 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 TPCAC. Each case shall be examined based on its particular circumstances.

Letter of Understanding UW/UWFA

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 contract expected to result in monetary compensation.

Case Law



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York University v York University Faculty Association, 2016 CanLII 73265 (ONLA)

Procedural Fairness & Reasonable Apprehension of Bias

- President made the final decision regarding tenure and promotion after receiving recommendations from the Adjudicating Committee (AC) and the Senate Review Committee (SRC).
- Tenure & Promotion process in CA permitted President to seek advice as they deemed appropriate, so the President commenced a practice of having the Provost review the application and provide a recommendation.
- Administrative staff also took the step of preparing a draft denial letter on behalf of the President.
- President agreed that the draft had been prepared, but testified he would not have signed it if it did not reflect his decision.
- President's decision quashed.

York University v York University Faculty Association, 2016 CanLII 73265 (ONLA)

Procedural Fairness & Reasonable Apprehension of Bias (cont.)

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

University of Western Ontario Faculty Association and University of Western Ontario, 2013 CanLII 148453 (ON LA)

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.
- 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.

University of Western Ontario Faculty Association and University of Western Ontario, 2013 CanLII 148453 (ON LA)

Improper Considerations (cont.)

- Decision quashed – no basis for entertaining a recommendation from the Vice-Provost; the recommendation included matters not properly considered under the CA.

University of Manitoba

Reasonable Person Test

- Grievance – refusal of Research/Study Leave
- Department Head was the Dean's spouse
- An Acting Dean was put in place to insulate the Dean from decisions made in the Department
- The Department Head and the Acting Dean denied RSL
- Recognition of spousal hiring and academic couples as part of UM context
- Mere speculation was insufficient to support reasonable apprehension of bias

University of Windsor

Reasonable Apprehension of Bias Test

- Promotion grievance
- University Committee on Academic Promotion & Tenure (UCAPT) – 10-person committee chaired by the Vice-President
- VP was the defendant in a lawsuit brought by the Applicant and was cross-examined in the civil suit before the UCAPT hearing

Key Takeaways

PROCESS

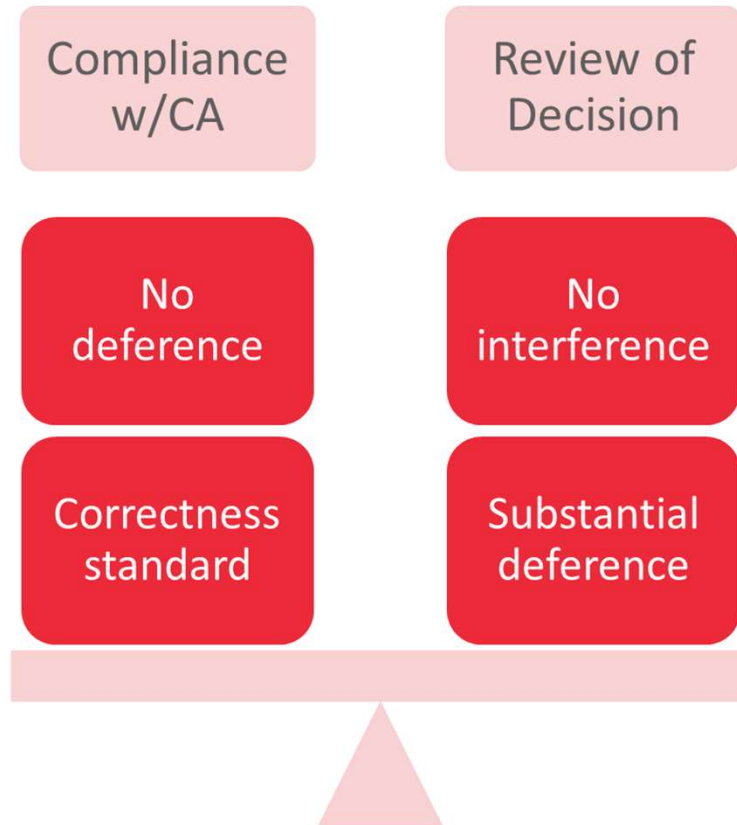
- TPCAC members are advised of their duty to report potential COIs
- Applicants should be advised of their TPCAC's composition and to raise any concerns regarding conflict or bias ASAP

Key Takeaways

REMEDIES

- Withdrawal/recusal from TPCAC
- Removal from TPCAC by the Dean
- Document decision for the Applicant
- Recommendation by a reconstituted TPCAC

Recourse and Arbitral Review



Resources

UW/UWFA RAS [Collective Agreement](#)

UWFA section of the [Human Resources website](#)

- Faculty-Based Criteria
- Tenure, Promotion and Continuing Appointment PowerPoint presentation