



UTFA Newsletter

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Appointments Policy Change

UTFA initiated the Policy Symposium scheduled for February 29th to encourage the participation of our members in the long process of appointments policy change. Both UTFA Executive and Council have, especially in recent years, conveyed clearly the consensus that policy change is a top priority. Over my several years of service at UTFA, it has become clear to me that the document called Policy and Procedures on Academic Appointments (PPAA) needs to be extensively revised. As chair of the Teaching Stream Committee I too often encountered teaching stream faculty whose conditions of employment—including year-at-a-time contracts, excessive workloads, contradictory promotions criteria, and limited opportunities to grow professionally—demonstrated deep weaknesses in policy. My first term as Vice-President, Grievances, has only confirmed what I learned while training for this position with Professor Rhonda Love: a) tenure review policies require clarification if they are to serve the peer review process adequately, b) the faltering tenure appeals process was not designed to cope with Presidential denials of positive tenure committee recommendations, and, for structural/systemic reasons, may not be equipped to ensure fairness and natural justice c) taken together, the Tenure Appeal Committee and the Grievance Review Panel, although they are staffed by excellent colleagues, may not represent best practices in university-level dispute resolution.

Over the last three or four years, UTFA Standing Committees have been researching and revising the librarians' policy, the teaching stream policy, the part-time appointments policy, and parts of the professorial stream policy. Much work is still to be done. Recently, I, the UTFA President, UTFA legal counsel, and a representative from CAUT met with UTFA's outside legal counsel from Sack, Goldblatt, Mitchell to discuss the problems with our tenure appeals policy and other possible models for this type of appeal. These kinds of in-depth discussions will continue over the coming months and will be anchored by ongoing research. The Policy Symposium is another step UTFA is taking to advance the goal of negotiating with the University Administration on these crucial matters.

Cynthia Messenger
Vice-President, Grievances

UTFA Workshop on Tenure Committees

On January 25th, 2008, UTFA hosted its first ever workshop for people serving on tenure committees. The workshop was intended to provide guidance to those serving on tenure committees at the University of Toronto, and to answer questions concerning the policies and procedures governing the tenure review process at this institution.

This workshop arose from concerns about a rise in tenure denials, and particularly those instances involving so-called Presidential turnbacks; these are cases where positive recommendations of tenure committees have been overturned by the Office of the President. There is a widely shared perception among our members that the bar or threshold for tenure is being unilaterally raised by the administration. The workshop is in this sense a direct response to member concerns about the role of tenure committees and the sanctity of peer review in the tenure review process at U of T.

Three speakers were featured: Peter Simpson, Assistant Executive Director of the Canadian Association of University Teachers; Peter Rosenthal, Professor of Mathematics at the University of Toronto and Lawyer with

Roach, Schwartz and Associates; and Rhonda Love, Professor, Department of Public Health Sciences, Faculty of Medicine at the University of Toronto and UTFA past-President and former VP Grievances. Those in attendance were provided with a package of information consisting primarily of documents outlining the policies and procedures governing the tenure review process.

The two hour discussion was lively and covered a range of topics and specific observations, insights, and suggestions. These are too numerous to report in any detail here. However, several important themes were evident vis-à-vis the conduct of tenure committees in the current climate at U of T. These include:

(i) There is widespread concern about and opposition to any assumed authority by the Office of the President of the University of Toronto to overturn tenure committee recommendations on anything other than procedural grounds. This is the subject of an ongoing Association Grievance.

(ii) Presidential turnbacks represent a threat to the sanctity of the peer review process in two respects. First, that consideration for tenure be undertaken primarily by peers, and second, that the standards by which consideration for tenure is evaluated should be established primarily by peers.

(iii) Presidential turnbacks represent a potential unilateral “raising of the bar” or threshold to tenure to which our members have not acquiesced and which is therefore in violation of existing policies governing academic appointments.

(iv) In the context of concern that pressure is being placed on committees to raise the bar, individuals serving on tenure committees are encouraged to *read and understand* all relevant policies and procedures governing the tenure review process, to ask questions and take notes during tenure committee meetings and deliberations, and to feel welcome to consult the UTFA office for confidential advice at any time regarding the policies and procedures.

(v) More generally, principals of procedural fairness and equity require that the policies and procedures governing the tenure review process be strictly followed. Quite independently of the concerns about raising the bar, UTFA is sufficiently concerned based on evidence from grievances that existing policies are not being adequately followed, and that this in some instances arises from poor instruction from tenure committee chairs (see box below for examples of common problems with tenure review). UTFA advises all members of tenure committees to take an active role in reading, understanding, and following the existing policies and procedures.

Some common problems with tenure review processes:

- External examiners are asked to comment on whether or not the candidate would receive tenure at their institution.
- Not all work, including not only published but also in progress work, is included in the evaluation.
- Poor or unreasonable interpretation of the guidelines for evaluating teaching excellence. In particular, the Provost’s Office memo listing of criteria for the evaluation of excellence in teaching is not to be interpreted as a checklist; rather, the memo asks for *some combination of elements listed*.
- Inappropriate contact between administration and tenure committee chairs.
- Evaluation of promise is often poorly executed on both the teaching and research fronts.

The 1995 GRP Report: Safeguarding Policy from Memos and Guidelines

In 1993, the Provost’s office issued PDAD&C Memorandum #134, a document on tenure review practices that became the object of a major Association Grievance argued before the Grievance Review Panel (GRP) in 1994 and 1995. In

the 1993 memorandum, University Administration attempted to clarify, augment, and redefine some of the procedures for tenure review set out in the Policy and Procedures on Academic Appointments (PPAA). UTFA's challenge at the GRP produced mixed results. The most well-known issue in this grievance involved the role of the U of T President in the tenure review process. The President was again the focus of attention in 2007, when he refused the positive recommendations of four tenure committees. In this newsletter article I will focus on a few of the GRP's almost forgotten rulings that were clear victories for UTFA and for the integrity of both the peer-review process and the PPAA. I will close with a too-brief discussion of a centrally important issue: the need to revise the tenure appeals policy. Note: Quotations from the Administration's Memo #134 appear in italics and are headed "Administration," and GRP rulings appear in bold below.

The SGS representative on tenure committees:

The Administration attempted to give the SGS representative special standing: *"It is equally important that the full documentation for the tenure hearing be forwarded to the SGS representative in sufficient time to permit a careful review so that procedural and documentary deficiencies can be identified and corrected before the committee meets."* UTFA argued that the Administration was shifting "decision-making power from peers to administrators."

The GRP ruled that "The SGS representative has no special privilege. The meeting quorum is the full membership of the tenure committee."

Members of tenure committees must bear in mind that, as the GRP stated clearly and more than once implied, *all* members of the tenure committee are responsible for safeguarding procedure. As the policy now stands, the SGS rep does not have any extraordinary power in this respect; nor does this rep possess any special authority over the process. If University Administration would like the SGS rep to play a special role in the tenure review process, it will have to *negotiate* the appropriate change in *policy* with the Faculty Association.

Added layer in the tenure review process:

University Administration also attempted in its 1993 memo to create another level or layer of authority beyond the departmental tenure committee. The GRP rejected these attempts as incompatible with the PPAA.

Administration: *"Once the committee has reached its decision and the recommendation has been forwarded to the division head, the division head should review the recommendation with the Chair of the tenure committee"*

The GRP ruled that "The Division Head of a multi-departmental division has no authority in the PPAA to review the recommendation with the chair of the tenure committee."

Administration: *"While the Policy does not call for a recommendation from the division head, it remains the responsibility of the division head to ensure that the Policy has been carried out."*

The GRP ruled that "The Division Head has no authority to assume special responsibility to ensure that the PPAA has been carried out. All members of the committee are equally responsible for ensuring that the PPAA is correctly followed."

Administration: *"In the transmittal letter to my [Provost's] Office the division head should comment on the strengths and weaknesses of the tenure committee's review and, in particular, on the fair and objective application of the criteria for granting tenure."*

The GRP ruled that "The GRP finds no authority in the PPAA or elsewhere for the Division Head to assume responsibility for commenting outside the tenure committee on the strengths and weaknesses of the tenure committee's review."

An additional layer of review in the tenure process may have its advantages and disadvantages. But instead of using guidelines and memos to change and/or distort policy, University Administration must be willing to *negotiate* policy

changes. It is UTFa's duty to protect the rights of members and to agree to only those changes that will enhance working conditions and ensure the fairness of any process that touches faculty.

Teaching Excellence:

UTFa succeeded, in part, in challenging Memo #134 where it attempted to change the means of assessing teaching effectiveness.

Administration: *"The dossier should contain, for example, evidence of the impact of the candidate's teaching on the discipline or profession, or how the teaching is creative."*

The GRP suggested the following change, and it was taken up by the Provost: "The dossier *might* contain, for example, any evidence of the impact of the candidate's teaching on the discipline or profession, or how the teaching is creative." (This wording stands in the 2004-05 revision of memo #134.)

The Administration's Memo #134 was overruled on similar wording when it attempted to define excellence in teaching: *"Excellence in teaching usually involves a level of creativity that has resulted in major contributions to the curriculum or major impact on how a subject is taught. It is often evidenced as well in contributions to journals devoted to teaching or in publications such as text books."*

The GRP, calling the Provost's language "unintentionally misleading," suggested that "usually involves" be replaced by "might involve" and "It is often evidenced" by "might be evidenced." The Provost adopted these changes. The problem for tenure candidates is that, with time, "might" has turned into "must" in the minds of many tenure committees.

The PPAA calls for divisional guidelines on teaching effectiveness that have the force of policy. These powerful guidelines, modeled on a document titled "Provostial Guidelines for Developing Written Assessments of Effectiveness of Teaching in Promotion and Tenure Decisions," have set out fairly arbitrary definitions of "competence" and "excellence" in teaching. Those who publish in the field of pedagogy in higher education have not reached consensus on what constitutes excellence in teaching. Divisional guidelines, reinforced by the Provost's Guidelines and Checklist *appear* to make it almost impossible to gain tenure based on excellence in teaching. Tenure committees should remember, however, that the various guidelines preface their lists of criteria with "some combination of" or similar phrasing. A candidate need *not* show evidence of every achievement on the list. It is a myth that candidates must have published textbooks or articles on pedagogy. Nothing in the PPAA or in any of the guidelines insists on this kind of publication as proof of excellence.

Tenure Appeals process:

The GRP ruled that the President of the University had effective authority to decide to grant or deny tenure, and is not automatically bound to accept the recommendation of the tenure committee. The GRP perhaps failed to see the serious procedural problems that would result for a candidate who received a positive recommendation from the tenure committee but was denied tenure by the President. For example, the PPAA sets out four possible bases for an appeal to UTAC of a negative tenure decision, but in the case of a Presidential reversal of a positive recommendation, the GRP decision explicitly mentioned only one of those grounds as a basis for an appeal (s. 23 d) of the PPAA). Clarification is required as to whether the other grounds of appeal are also available in these circumstances. As UTFa General Counsel has pointed out, why should the candidate who has succeeded in the tenure review conducted by peers have only one ground of appeal, when the candidate who is denied tenure by peers has four from which to choose? This lack of certainty in the remedies available to the candidate undermines fairness and denies natural justice. The framers of the appeals mechanism apparently did not think through carefully enough the steps that would follow the President's refusal of a tenure committee's positive recommendation. Many faculty fail to realize that even when candidates are successful at UTAC, they are not granted tenure but only a second tenure committee. The policy that governs second committees is among the most elliptical and ill-conceived of any of U of T's appointments policies.

Cynthia Messenger
Vice-President, Grievances