

## ARTICLE 18 - CAREER-PROGRESS DECISIONS

18.1 Career-progress decisions concern increments, merit, promotions, renewal of tenure-track appointments, and granting of appointments with tenure. Career-progress decisions shall be based solely on performance reviews carried out according to applicable provisions in Article 17. All career-progress recommendations are made by the Dean to the President and become effective with the approval of the President.

18.2 For academic staff members in the faculty, librarian, instructor and laboratory instructor categories, increments shall be awarded to those whose performance has met the standards for their level of appointment, subject to the limitations of the salary range for the category and rank and to the provisions of this agreement.

18.3

~~Academic staff members may, in any year, apply for merit on the grounds of exceptional performance as defined in the relevant Criteria Document for the corresponding rank and category. Merit shall be awarded to those academic staff members who, considering their present category, rank, and duties, demonstrate exceptional service or sustained performance that is well above average.~~

~~Academic staff members may apply for merit on grounds of sustained, well-above-average performance only in years in which they are being reviewed by the Peer Review Committee.~~

~~Decisions to grant merit for sustained, well-above-average performance shall be based on the academic staff members' performance in the previous three (3) years.~~

~~Members may apply for merit on grounds of sustained, well-above-average performance only if it has been at least three (3) years since they were last awarded merit. In the case of members who have never received merit, they may only apply if it has been at least three (3) years since appointment.~~

~~Decisions on merit shall be based on the academic staff member's performance since the last merit received or, if the member has never received a merit, since the initial appointment. While decisions on merit are based primarily on a member's performance of the duties listed in Article 16 for the rank of the member, outstanding contributions in the areas of scholarship and administration shall be given due consideration even if these are not among the duties listed for that rank of member.~~

~~Decisions on merit shall be based primarily on members' performance of their duties as listed in Article 16 for present category and rank and as defined through the relevant Criteria Documents. Contributions in the areas of scholarship and administration shall be given due consideration even if these are not among the duties listed for that category of member.~~

~~Applications for merit shall be submitted to the Peer Review Committee and shall take the form of a letter, maximum two pages, outlining how the member has met the criteria for merit as specified in the relevant Criteria Document. The member may also include up to two (2) letters of support. All applications will be accompanied by a current curriculum vitae. Merit applications are due in the office of the Dean by January 31<sup>st</sup> of the year immediately following the period for which merit is being requested; no late applications will be accepted.~~

~~The Peer Review Committee may recommend an academic staff member to the Dean for merit, whether or not the member has applied for merit under Article 17.8.~~

~~For individuals in the regular review process, the Peer Review Committee may nominate an academic staff member for consideration for merit, whether or not the member has applied.~~

~~The Peer Review Committees will review all applications and decide whether or not to recommend the granting of merit to the Dean.~~

~~The Review Committee will provide the member with a written rationale outlining how the criteria for merit have or have not been met, with a copy to the Dean.~~

The Dean may nominate an academic staff member for consideration for merit.

In cases where members have not applied, but have been nominated, the nominator(s) will supply a written rationale, maximum two (2) pages, outlining how the criteria for merit have been met.

The Dean will consider all applications and nominations for merit and decide whether or not to recommend the granting of merit to the President.

Before making the recommendation on merit to the President, the Dean will also forward the application or nomination, along with the College's Criteria Document and any accompanying material or rationale, to the relevant University of Regina department head and Dean. These consultations shall not constitute a *de facto* review of individual members. A summary of the consultations shall be included with the Luther Dean's recommendation to the President.

~~will consult with the Dean of the Faculty and head of the relative department of the corresponding faculty and department at the University of Regina. The Dean will forward the merit application or nomination along with the accompanying curricula vitae, a copy of Luther's criteria for performance review, and written rationales. A summary of Results of these consultations will be included in the recommendation to the Luther President, but shall be advisory only.~~

The timelines for decisions on merit will follow the same timelines as those for Career Progress decisions. As with all other career progress decisions, the appeal process will also follow Article 18. A member can appeal only the recommendations of Luther Dean and President, and not the consultation with the University of Regina Dean.

The value of a merit is equal to one increment for the category and rank.

- 18.4 Academic staff members with appointments in faculty, librarian, instructor, or laboratory-instructor categories who meet the criteria in the College criteria document shall be promoted.
- 18.4.1 Any academic staff member appointed to the rank of Instructor upon application shall be reclassified to the appropriate rank after providing official documentation of the necessary qualifications as outlined in Article 13.5.
- 18.5 Tenure-track appointments shall be renewed when academic staff members have performed their duties in a satisfactory manner and it is deemed that they should be given a further opportunity to progress towards a tenured appointment.
- 18.6 Academic staff members with appointments in the faculty, librarian, instructor or laboratory-instructor categories shall be granted an appointment with tenure when there is evidence of consistent performance that has met the standards for their category and rank of appointment through the probationary period (including, in the case of faculty members and librarians, professional growth and development demonstrated by contributions to their discipline and to the College) and where there is promise of future contributions that will enhance the academic reputation of the College.
- 18.7 The College Criteria Document may elaborate upon, but shall not prescribe outside, the provisions of Article 18.1 through 18.6 pertaining to the grounds for awarding merit, promotions and tenure.
- 18.8 **Process for Appealing Career-Progress Decisions**
- 18.8.1 Academic staff members may appeal career-progress decisions using the process described in this Article (18.8). In unusual circumstances and with the agreement of the member, the College and the Faculty Association, the Appeal Process may be bypassed and the case handled instead through the Arbitration Process described in Article 18.8.8.

Career-progress decisions cannot be grieved. Nor can an Arbitration Board convened for other reasons rule on related career-progress decisions. An Arbitration Board shall however have the power to require that the College and the member follow the procedures set out in this agreement pertaining to career-progress decisions.

- 18.8.2 An appeal is initiated by the academic staff member filing a notice of appeal with the Chair of the Faculty Association. (Hereinafter the member initiating the appeal shall be known as the appellant.) The notice of appeal must be filed on or before ~~August 15~~ **July 31**. In cases of non-renewal of a tenure-track appointment or denial of an appointment with tenure (regardless of whether it is the final year of probation), appeals must be filed within 30 days of receipt of notification of non-renewal or denial and not later than April 30.

18.8.3 **Notice of Appeal**

The notice of appeal shall be signed by the appellant and shall specify:

- the decision being appealed
- the name, rank, and academic unit of the appellant
- the name of the Dean whose decision or recommendation is being appealed
- the ground on which the appeal is based
- the remedy or remedies being requested

The Faculty Association shall forward in a timely manner to the Dean of the College all notices of appeal that it intends to bring to the Appeals Committee, together with a list of the appeals, signed by the Chair of the Faculty Association.

18.8.4 **Appeals Committee**

When an Appeals Committee is required, it shall be struck no more than fifteen days after the deadlines specified in Article 18.8.2 for submitting a notice of appeal. Appeals arising out of career-progress decisions that take effect on July 1 normally shall be heard by an Appeals Committee convened as soon as possible after September 1. Appeals arising out of a decision denying tenure (regardless of whether it is the final year of probation) or renewal of a tenure-track appointment normally shall be heard by an Appeals Committee that is convened and reports its recommendations before June 30.

The Appeals Committee shall consist of three members who now hold or have held academic rank with tenure. The College and the Faculty Association shall each appoint one member. The third member of the Appeals Committee, the Chair, shall be selected by agreement between the College and the Faculty Association.

The College, on behalf of the Appeals Committee Chair, shall inform each appellant in writing of the names of the Committee members. The appellant shall have five days from receipt of notice to identify any Committee members having a conflict of interest. The appellant may request substitutes for any Committee members identified as being in a conflict of interest. Substitutions shall be made only upon the member's written request and only for that appellant's hearing. In its letter describing the composition of the Appeals Committee, the College shall inform the appellant of the conditions and deadline for requesting substitutes. Any substitutes shall be named by the party that named the original Committee member, except if the member in question is the Committee Chair, in which case the College and the Faculty Association shall agree on a substitute Chair.

18.8.5 **Appeal Hearing**

As soon as possible after the Appeals Committee is formed, the Chair, in coordination with the College and the Faculty Association, shall schedule an Appeal Hearing for each appeal.

The appellant and the Dean may each have a support person present at the Appeal Hearing.

The administrative details of scheduling and conducting an Appeal Hearing are specified in Article 18.9.

**Documentation for the Appeal Hearing**

The Dean shall provide the Chair of the Appeals Committee with copies of all the evidence and documentation from the performance review that was available to the Dean at the time the decision under appeal was made. The Dean may only submit evidence and documentation from the review period that is relevant to the decision under appeal. The Dean shall supply this material to the Chair at least one week before the Appeal Hearing. After the Dean has supplied the material to the Chair, the appellant may peruse them there and make copies as desired (at the appellant's expense). The appellant may provide any additional material that the appellant deems relevant, as long as it concerns the relevant review period and is submitted to the Chair at least three days before the Appeal Hearing. The Dean shall be notified whenever the appellant submits additional material and shall be entitled to peruse this material and make copies as desired. Copies of all of the materials submitted shall be provided by the Chair to each member of the Appeals Committee.

If the appeal concerns a decision that required letters of reference to be submitted, the letters shall be reviewed, using the procedures outlined in Article 17.9, to obscure all identification of source.

At least twenty-four hours before the Appeal Hearing, both the appellant and the Dean shall provide the Chair of the Appeals Committee with three copies of a written submission making their respective cases. A copy of the appellant's submission shall be supplied to the Dean and a copy of the Dean's submission shall be supplied to the appellant at the beginning of the Hearing.

**Appellant's Presentation**

The appellant shall be entitled to provide any evidence that the academic staff member deems relevant and that was available to the Dean when the decision under appeal was made.

The appellant must show that the grounds cited in the notice of appeal are well-founded and that the decision or recommendation made by the Dean was contrary to the evidence presented or manifestly unfair to the appellant, making specific reference to the collective agreement and the criteria document.

The appellant may have a support person present at the Hearing. This support person may act as an advocate and present the case on behalf of the appellant and the Faculty Association. If the appellant presents his or her own case, the appellant's support person shall participate verbally in the hearing only with the approval of the Appeals Committee Chair.

**Dean's Presentation**

The Dean shall indicate the reasons for the decision under appeal, making specific reference to the collective agreement and the relevant criteria document. The Dean shall also outline the specific improvements that would in future result in a positive career-progress decision.

The Dean may have a support person present at the Hearing. The Dean's support person shall not participate verbally at the Hearing.

**18.8.6 Appeals Committee Report**

The Appeals Committee shall review the decision under appeal and report to the appropriate official. Normally its report shall go to the President, except where the appeal concerns non-renewal of a tenure-track appointment or denial of an appointment with tenure, in which case, it shall go to the Chair of the Board of Regents.

The report of the Appeals Committee shall include a clear recommendation to uphold or deny the appeal. The recommendation shall be based on fair and uniform application of the terms and conditions of Articles 17 and 18 of the Collective Agreement. The report shall also state the reasons for the recommendation, making specific reference to the collective agreement and the appropriate criteria document.

The report shall be in writing, with copies provided to the Faculty Association and to the College.

**18.8.7 Decision**

The President or the Board of Regents, as appropriate, shall receive the report of the Appeals Committee and decide whether to accept or reject its recommendation. The decision shall be based solely on the documentary evidence collected in the performance review process and presented in oral or written form at the Appeal Hearing. In rendering their decision, neither the President nor the Board of Regents shall confer privately with, or receive additional evidence or arguments from, the appellant or the Dean. If the Appeals Committee recommendation is rejected, the President or the Board of Regents shall give reasons for overturning the recommendation. The President or the Chair of the Board of Regents shall convey all decisions (and reasons where appropriate) to the appellant in writing (with copies to the Dean and the Faculty Association), together with a copy of the report of the Appeals Committee.

**18.8.8 Taking a Career-Progress Decision to Arbitration**

Following the Appeal Process, the appellant and the Faculty Association may submit any decision of the President or the Board of Regents to arbitration. The arbitration process shall be the same as that outlined in 21.6, with two exceptions: the members of the Arbitration Board shall hold or have held academic rank with tenure; and the chair shall be selected by agreement between the College and the Faculty Association.

**18.9 Appeals Hearing Procedures and Protocol**

**18.9.1 Scheduling and Preliminary Activities**

The Chair of the Appeals Committee shall provide the appellant and all others involved directly in the Appeal with a written notice, with copies to the Dean and the Faculty Association, of the date, time, and location of the Appeal Hearing. This communication shall draw to the appellant's attention the appropriate sections of the Collective Agreement pertaining to appeals (Articles 18.8 and 18.9).

For purposes of scheduling and preparing the Appeal Hearing, the appellant, the Dean, and the Faculty Association shall communicate through the Chair of the Appeals Committee, not directly with one another. The Chair shall be responsible for scheduling the Appeal Hearing.

A pre-hearing meeting of the Appeals Committee shall be arranged by the Chair and attended by representatives of the College and the Faculty Association. The purpose of this meeting is to discuss the Appeal Process and ensure that no member of the Committee is in conflict of interest.

**18.9.2 Recordings and Documentation**

An audio recording shall be made of each Appeal Hearing. The Chair of the Appeals Committee is responsible for arranging, making and storing the recording. If a decision that has been appealed subsequently goes to arbitration, the College or the Faculty Association may require a transcription of part or all of the recording. The party requesting the transcript shall pay the cost of its preparation; if both parties request a transcript, the cost shall be shared equally.

After the Appeals Committee issues its report, the Chair shall provide the President or the Chair of the Board of Regents with copies of all the documentation presented at the Appeal Hearing.

After the hearing is concluded and a recommendation is made, the Appeals Committee shall return all documentation to the Chair. Following the decision, the President or the Board of Regents shall return all documentation to the Chair. After the deadline for filing for arbitration has passed, or after any arbitration is complete, the Chair shall destroy all documentation, retaining only a single copy.

**18.9.3 Hearing Attendees**

- The Appeals Committee (including any support staff required for duties such as recording)
- The appellant or a person designated in writing by the appellant to represent the appellant in his or her absence
- The appellant's support person
- The Dean
- The Dean's support person
- Two observers for the Faculty Association
- Two observers for the College

**18.9.4 Hearing Protocol**

18.9.4.1 At the beginning of the Appeal Hearing all persons present shall introduce themselves and briefly explain the reason for their presence.

18.9.4.2 The Hearing is first addressed by the appellant or the appellant's advocate.

18.9.4.3 The Hearing is then addressed by the Dean.

- 18.9.4.4 After the Dean or the Dean's advocate has responded to the appellant's case, the appellant shall have the right of rebuttal. Rebuttal must be confined to the Dean's presentation; it cannot be used to introduce new material.
- 18.9.4.5 Next, members of the Appeals Committee may direct questions to the appellant, the appellant's support person, or the Dean.
- 18.9.4.6 After the Appeals Committee has finished with its questions, the Dean and then the appellant shall each be given an opportunity to make a brief closing statement.
- 18.9.4.7 At the end of the Hearing, the Chair shall advise the appellant and the Dean that the Appeals Committee shall report its recommendations to the President or Board of Regents, as required by Article 18.8.6.

18.9.5 **Time Allotments**

Appeal Hearings shall last approximately ninety minutes, allocated as follows:

- Appellant's initial presentation – 20 minutes
- Dean's presentation and rebuttal – 20 minutes
- Appellant's rebuttal – 10 minutes
- Questions from the Committee – 20 minutes
- Dean's closing summary – 5 minutes
- Appellant's closing summary – 5 minutes

Following the Appeal Hearing, the Appeals Committee shall meet *in camera* for as long as required.

18.9.6 **Appeals Committee Report**

The Appeals Committee shall provide its report, in a timely manner, in accordance with the provisions of Article 18.8.6.

18.10 **Witnesses**

In the unusual case where the appellant and/or the Dean wishes to have witnesses present at the Appeal Hearing, the following provisions shall apply:

- 18.10.1 At least one week before the scheduled date of the hearing, any party wishing to have witnesses present at the appeals hearing shall submit to the Chair of the Appeals Committee the name(s) of any intended witness(es) who have agreed to attend, together with a summary of the testimony to be given by each of those witnesses. If the Chair deems that a given witness will contribute testimony that is relevant and bears only upon information that was available to the Dean at the time the decision under appeal was made, the Chair shall approve the witness and notify the other party of the witness' name.
- 18.10.2 Witnesses shall be called into the hearing one at a time. Once the testimony has been given, the other party and then the members of the Appeals Committee may ask questions of the witness. The witness shall then leave the hearing.
- 18.10.3 If witnesses are used, the Chair of the Appeals Committee may increase the time allotted for the initial presentations, with the proviso that the appellant and the Dean shall each have the same amount of time for their initial presentations.