Tenure and Promotion Appeals

1. Policy

This policy sets out the procedures by which a faculty member may appeal a decision by the President not to recommend him/her for contract renewal, tenure or promotion to an independent Ombudsperson.

2. Appointment of the Ombudsperson

In September of each year the Vice-President, Academic or his/her designate together with the President of the Simon Fraser University Faculty Association shall jointly appoint an individual to serve as Ombudsperson for the following calendar year. If by November 1st, no one has been appointed, then the Faculty Review Committee shall make the appointment by December 31st. The Ombudsperson must hold or have held a tenured position with the rank of full professor at a university other than Simon Fraser University and shall not be a person on the faculty of Simon Fraser University. In accepting the position of Ombudsperson, the person appointed must agree in writing to fulfill the responsibilities of the Ombudsperson pursuant to these procedures. The person appointed as Ombudsperson for any period may be re-appointed to hold that position for any other period.

3. Appeals to the Ombudsperson

3.1 A faculty member entitled to appeal to the Ombudsperson may do so only in accordance with this policy.

3.2 Within two weeks of transmittal to a faculty member of the President’s decision not to recommend to the Board of Governors renewal of contract, tenure or promotion for the faculty member, the faculty member entitled to appeal may do so by giving the Vice-President, Academic written notice of his/her appeal to the Ombudsperson. The notice shall set forth in reasonable detail the ground or grounds for appeal having regard to the issues which the Ombudsperson may consider pursuant to section 3.5.

3.3 The Vice-President, Academic shall inform the Ombudsperson of each appeal and shall provide the Ombudsperson with complete access to all of the material pertaining to the case under appeal which has been submitted to or considered by the President or any other person or committee pursuant to these procedures. Subject to the need to ensure that appropriate information remain confidential, as such need is determined by the Ombudsperson in consultation with the Vice-President, Academic, the faculty member shall be entitled to review the material.

3.4 The appeal shall not be conducted as a rehearing of the faculty member’s case but as a review of the manner in which the University has dealt with the case. The procedure to be followed for each appeal shall be established by the Ombudsperson. The faculty member and the University shall each have the right to make a submission to the Ombudsperson in respect of that appeal. The Ombudsperson may direct whether a submission shall be oral or in writing, whether evidence may be presented and the issues to which evidence is to be related, and whether a submission may be made by someone on behalf of the faculty member. The faculty member shall be entitled to receive a copy of each submission and all evidence presented by the University in writing and to be present when a submission or evidence is presented on behalf of the University orally. The University shall have corresponding rights with respect to submissions made and evidence presented by or on behalf of the faculty member.

3.5 The Ombudsperson shall review the material and the submissions and evidence presented and shall consider only the following in determining whether the appeal shall be upheld or denied:
a. whether procedural irregularities occurred which are likely to have materially and adversely influenced the recommendation made at any level of consideration of the faculty member's case, and the extent to which any such irregularity was rectified or neutralized in impact by virtue of action taken at a subsequent level of consideration;

b. whether bias on the grounds of personal prejudice existed at any level of consideration of the faculty member's case or whether the faculty member reasonably apprehended such bias to have existed, and the extent to which any such bias or reasonable apprehension thereof or the basis therefore was obviated by virtue of any actions taken at a subsequent level of consideration;

c. whether the consideration of the faculty member's case was adversely affected by discrimination against the faculty member due to race, colour, sex, sexual orientation, national origin, creed, marital status and/or family relationship, political or religious affiliation or belief, age (other than the established provisions relating to retirement), membership or non-membership in or activities on behalf of Simon Fraser University Faculty Association, or any other factor unrelated to the performance of the faculty member's duties as a faculty member of the University, and the extent to which any such discrimination was obviated by virtue of subsequent level of consideration; and

d. whether an adverse recommendation was made at any level of consideration of the faculty member's case due to legitimate exercise by the faculty member of a recognized right of academic freedom, and whether the recommendation at a subsequent level of consideration was reached without regard to the exercise of such a right.

4. Decision of the Ombudsperson

4.1 The Ombudsperson shall render his/her decision on each appeal by August 31, if possible, and in any event by October 31, of the year in which the appeal is brought. He/she shall provide written reasons for his/her decision in each appeal to the interested parties.

4.2 If in any case the Ombudsperson is satisfied that although any one or more of such grounds for appeal has been established by the faculty member, the ground for appeal was rectified, neutralized or obviated or otherwise satisfactorily dealt with at or by virtue of a subsequent level of consideration of the faculty member's case, the Ombudsperson shall deny the appeal.

4.3 If the appeal is upheld, the University shall pay the costs of the Ombudsperson in connection with the case. If the appeal is denied, these costs shall be shared equally by the University and the faculty member.

4.4 If the appeal of the faculty member is denied, the President's decision not to recommend contract renewal, tenure or promotion for the faculty member shall stand.

4.5 If the appeal of the faculty member is upheld, the Ombudsperson shall direct that the faculty member's case be reconsidered by the University, specifying whether the reconsideration should commence at the level of the Tenure and Promotion Committee, the Dean, the Faculty Review Committee, or the President, and should continue according to the procedures outlined in this policy. If the case involves renewal of contract or tenure, the contract of the faculty member shall be extended for one year from its current expiry date.

4.6 The faculty member's case shall be reconsidered commencing at the level specified in the decision of the Ombudsperson and shall continue in accordance with these procedures. If the consideration results in a decision of the Board of Governors to award contract renewal, tenure or promotion for the faculty member, then the decision shall be retroactive for the purpose of the administration of the faculty member's employment by the University, as though the decision had been made by the Board of Governors at its meeting next following the date on which the President originally informed the faculty member of his/her intention not to recommend to the Board of Governors contract renewal, tenure or promotion for the faculty member.
INTERPRETATION

Section 14.1 of the Faculty Association Framework Agreement deals with matters of interpretation of this Policy.