



TO: Members of the Academic Board

SPONSOR: Kate Hilton, Senior Chair, Academic Appeals Committee

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AGENDA ITEM 7

**ITEM IDENTIFICATION:**

**Academic Appeals Committee – Revisions to the Terms of Reference:  
Proposed Changes to the Composition Requirements of the Academic Appeals  
Committee (“AAC”)**

**JURISDICTIONAL INFORMATION:**

Sections **3.2.2** (iv) and **3.2.4** (ii) of the *Terms of Reference* for the AAC describes the process for changing the *Terms of Reference* as follows:

**3.2.2** Policy meetings may be called in the following circumstances:

(iv) to consider or recommend changes to the Terms of Reference of the Academic Appeals Committee of Governing Council;

**3.2.4** At the conclusion of a policy meeting, the Committee shall report its advice and recommendations for consideration in the following manner:

(ii) For items considered under 3.2.2(iv), the Committee shall report to the Academic Board;

Section **3.2.3** of the *Terms of Reference* describes the vote, including quorum requirements as follows:

The quorum for policy meetings is 6, excluding the Chairs, at least 3 of whom must be teaching staff members and at least 1 of whom must be a student. Motions in such meetings will be carried by a simple majority. The Chairs each have a vote in such meetings.

## **HIGHLIGHTS:**

### **Background**

The proposal is to change the composition of the AAC so that appeals are heard in front of a committee of three members (at present it is a committee of five members). There would be a requirement that at least one student member and at least one teaching staff member be present on all committee hearings (previously three members of the teaching staff had to be on the committee). A majority of those present would continue to be members of the Governing Council. The Chair of the AAC would become a voting member of the three person committee, whereas previously the Chair would only vote in the event of a tie.

This proposal has been precipitated by the fact that for several years there has been great difficulty scheduling AAC hearings in a timely manner, because of the stringent composition requirements. This requirement has created an onerous burden in terms of scheduling for the Office of Appeals, Discipline, and Faculty Grievances (“ADFG”), resulting in unnecessary and often inordinate delays<sup>1</sup> which directly affect procedural fairness for student appellants. Timeliness is a fundamental component of natural justice, and has recently been recognized and mandated by the courts in the academic appeals context of a University setting. Our attention has also been focused by the concern raised by the Ombudsperson, who identified problems for students arising from delays.

Timely disposition of an academic appeal ensures a fair process: first, students should be able to plan their academic and professional lives, since the outcome of an academic appeal often affects their graduation or admission to another program; and second, an inordinate passage of time might create a situation where a student cannot obtain the original remedy they requested (e.g. writing a deferred exam).<sup>2</sup>

A change in the composition requirements would also allow the ADFG Office to provide material to the panel members well in advance of hearings, as panels and hearing dates could be set more expeditiously than at present. This would address another fundamental principle of natural justice, which is to be heard by a well-informed Panel who has reviewed the material in detail.

### **Proposal**

The AAC Chairs raised the issue of timeliness and composition requirements as a matter that needed to be examined and addressed, given the potential legal vulnerability of not

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<sup>1</sup> For example, it took 6 weeks for one person working full-time to schedule the June hearing week. Often the earliest date that can be found is at least two to three months in the future, given the current requirements.

<sup>2</sup> Many divisions have also indicated a preference for having appeals disposed of earlier, as remedies are often more easily implemented (e.g. deferred exams).

### *Proposed Changes to the Composition Requirements of the Academic Appeals Committee*

disposing of cases in a timely manner. The result of this discussion was an extensive consultation with the University's legal counsel, who advised that the only proposal that would facilitate scheduling and also comply with legal principles and various pieces of legislation such as *The University of Toronto Act, 1971*, would be the following: a panel of three members, including one voting Chair. As outlined above, there would be one faculty member, one student member, and a majority of the three-person panel would be governors. As none of the current chairs is a governor, this would mean the faculty and student members would always be governors. The requirement that all Chairs be legally qualified would remain. Appropriate representation from the Academic Board would also continue to be ensured for the AAC membership pool; the Academic Board *Terms of Reference* allows for the appointment of up to four student governors and six faculty governors to the Academic Board, all of whom would be in the AAC membership pool.

At present Chairs only vote in the case of a tie, which is highly unusual. Therefore, in almost all AAC appeals, it is only the other 4 members who vote. This means that the proposal would almost always result in a change from 4 voting members to 3 voting members. Such a model of three, which is similar to that of the University Tribunal, would work well for the AAC. This model for the Tribunal has been effective, both from a process and a substantive standpoint, and it would benefit the AAC as well.

### **Consultation**

Extensive consultation regarding this proposal was conducted with current members of the AAC, student and faculty governors, student and faculty members of the Academic Board, and divisional representatives involved in academic appeals. Three consultation meetings were held, and written and oral feedback was invited and received. The feedback that has been provided is overwhelmingly positive and supportive of this proposed change.

### **Review**

It is recommended that a review of the composition change of the AAC should be conducted by the ADFG by June 30, 2013. The outcome of that review would be reported to the members of the AAC who are members on that date, and then to the Academic Board and other governance bodies as appropriate.

### **Process**

If recommended for approval by the Academic Board, the proposal would then be considered by the Governing Council for approval, on February 17, 2011.

**FINANCIAL AND/OR PLANNING IMPLICATIONS: N/A**

*Proposed Changes to the Composition Requirements of the Academic Appeals Committee*

**RECOMMENDATION:**

Be it Recommended to the Governing Council

THAT the proposed revised *Terms of Reference* of the Academic Appeals Committee (AAC) be approved, effective March 1, 2011; and

THAT a review of the composition change of the AAC, to be conducted by the Office of Appeals, Discipline, and Faculty Grievances by June 30, 2013, be approved.

**TERMS OF REFERENCE  
ACADEMIC APPEALS COMMITTEE  
(Proposed Revisions - January 2011)**

**1. MEMBERSHIP**

**1.1 Composition\***

- at least 7 teaching staff members
- at least 3 students
- at least five appointed Chairs, all of whom shall be legally qualified, and one of whom shall be designated Senior Chair

**Deleted:** at least 2 lay members (drawn from amongst the government appointee, alumni and administrative staff members of the Governing Council) ¶

A majority of the members of the Academic Appeals Committee [the “Committee”] must be members of the Governing Council\*\*, and such members must be a majority at all appeal hearings and meetings at which final decisions are taken on behalf of the Governing Council. The duties of the Senior Chair shall be as indicated herein, and additionally, as specified by the rules passed by the Academic Appeals Committee itself.

When deemed necessary by the Senior Chair of the Committee, in order to satisfy the requirements of composition and quorum for an appeal hearing, additional members may be co-opted by the Senior Chair, from amongst members of the Governing Council. The Chair of the Academic Board must approve co-opted members from outside the Council. The Chair of the Academic Board may also appoint for temporary periods an Interim Chair to chair individual hearings.

**1.2 Term**

Terms shall be for one year, commencing July 1, and may be renewed.

**2. FUNCTION**

**2.1** To hear and consider appeals made by students against decisions of faculty, college or school councils (or committees thereof) in the application of academic regulations and requirements and to report its decisions, which shall be final, for information to the Academic Board. The name of the appellant shall be withheld in such reports.

**2.2** To advise the Committee on Academic Policy and Programs from time to time on policy with respect to academic appeals throughout the University and on divisional appeal procedures.

**2.3** To determine detailed procedures in its own operations.

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\* Pursuant to By-law Number 2 of the Governing Council, the Chairman and Vice-chairman of the Governing Council, the President and the Chancellor are *ex officio* voting members of the Committee. The Secretary of the Governing Council is an *ex officio* non-voting member of the Committee.

\*\* Governing Council shall appoint Governing Council members of the Committee. Academic Board shall appoint non-Governing Council members of the Committee, including the Chairs. The Academic Board shall designate the Senior Chair.

### 3. PROCEDURES

#### 3.1 Appeal hearings

3.1.1 Appeals shall be heard by a panel of ~~three~~ Committee members provided that at least one student member and at least ~~one~~ teaching staff member ~~is~~ present, and that a majority of those present are members of Governing Council.

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3.1.2 The appeal hearing shall be conducted by the Chair. The Chair shall be counted as one of the ~~three~~ required panel members. In the event that none of the Chairs is able to act, the Chair of the Academic Board may appoint an Interim Chair, who shall be legally qualified, to conduct a hearing. In that event, the Interim Chair shall be counted as one of the ~~three~~ required panel members.

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3.1.3 Decisions with respect to the final disposition of an appeal will be carried by a simple majority of the panel hearing the appeal.

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3.1.4 The Chair conducting an appeal shall determine all questions of law. However questions pertaining to the interpretation of University policies shall be determined by a simple majority of the panel hearing the appeal.

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3.1.5 An appellant must have completed all levels of appeal open to him or her at the divisional level before filing a Notice of Appeal with the Committee.

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3.1.6 An appeal to the Committee shall, except in exceptional circumstances, be commenced by filing a Notice of Appeal in accordance with the rules of the Academic Appeals Committee no later than 5:00 p.m. on the ninetieth (90<sup>th</sup>) calendar day after the date of the decision from which the appeal is being taken. Where this deadline falls on a day when the University is closed, the deadline shall be deemed to fall on the next regular business day of the University at 5:00 p.m.

3.1.7 The Chair may refuse to give formal hearing to an appeal on the grounds that it is not within the jurisdiction of the Committee.

3.1.8 The panel of the Committee hearing an appeal may dismiss an appeal (by unanimous decision) after considering the written submissions, on the grounds that there is no real case for an appeal. Such appeals might be described in legal terms as frivolous or vexatious.

3.1.9 The procedures for hearings required by the *Statutory Powers Procedure Act*, R.S.O. 1990, c. 22, as amended, are followed (in view of the fact that this is the final appeal body). The Committee may modify these rules provided that they continue to conform to the minimum requirements of the *Act*. Any such changes must be reported to the Academic Board for information.

### **3.2 Policy meetings**

In this section, “Terms of Reference” means any document setting out the guidelines for the composition and procedures of a divisional academic appeal body or the Academic Appeals Committee of Governing Council.

**3.2.1** The Committee meets, as deemed necessary by the Senior Chair or one of the other Chairs acting as his or her delegate, to consider proposals concerning policies and procedures governing academic appeals at the divisional level and at the Governing Council level.

**3.2.2** Policy meetings may be called in the following circumstances:

- (i) where significant changes are proposed to the Terms of Reference of a divisional academic appeal body;
- (ii) where a division intends to enact completely new Terms of Reference for a divisional academic appeal body where none had existed previously;
- (iii) when proposed changes to the Terms of Reference of a divisional academic appeal body may be contrary to the *Guidelines for Academic Appeals Within Divisions*;
- (iv) to consider or recommend changes to the Terms of Reference of the Academic Appeals Committee of Governing Council; or,
- (v) when, in the opinion of the Senior Chair, or delegate, a policy meeting is required to deal with any other matter.

**3.2.3** The quorum for policy meetings is 6, excluding the Chairs, at least 3 of whom must be teaching staff members and at least 1 of whom must be a student. Motions in such meetings will be carried by a simple majority. The Chairs each have a vote in such meetings.

**3.2.4** At the conclusion of a policy meeting, the Committee shall report its advice and recommendations for consideration in the following manner:

- (i) For items considered under 3.2.2(i), (ii) and (iii), the Committee shall report to the Committee on Academic Policy and Programs;
- (ii) For items considered under 3.2.2(iv), the Committee shall report to the Academic Board; and,
- (iii) For all other items considered under 3.2.2(v), the Senior Chair or delegate, acting with the advice of the Secretary of the Governing Council, shall determine the appropriate body for reporting purposes.