

CAUT Bargaining Advisory

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Introduction:

Decisions on contract renewal and tenure determine whether an individual will have a career while promotion determines what kind of a career it will be. A survey of collective agreements, meanwhile, demonstrates a wide variety of approaches to these critical career decisions. There is perhaps no area in greater need of review than our renewal, tenure and promotion articles. That review begins at the most basic level.



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Defining Tenure in Employment Terms

Tenure has traditionally been understood as a protection for academic freedom. Although CAUT has always recognized and defended academic freedom for all members of the academic community regardless of their employment status, the job security associated with tenure remains a primary defense. The era of collective bargaining, however, has altered the equation. Because separate, stand-alone, academic freedom clauses cover all members,¹ the tenure article need only define tenure as a change in employment status. Acadia, Prince Edward Island and Wilfrid Laurier provide good examples of such language.

[Acadia] 10.04 Appointment with Tenure

Appointment with tenure means permanency of employment up to retirement, subject to the right of the Board to dismiss for just cause in accordance with the relevant provisions and procedures of this Agreement.²

[UPEI] E.2.1 Definitions

a) Tenure means appointment without term, the right of a Faculty Member not to be dismissed except for just cause. Such appointments shall be subject to layoff or termination only in accordance with this Agreement.³

[Wilfrid Laurier] 15.1.2 Tenure signifies the right of a Member to permanency of appointment which may be terminated only through:

- (a) resignation;*
- (b) retirement;*
- (c) reasons of program redundancy as provided for under Article 23 or financial exigency as provided for under Article 24;*
- (d) dismissal for just cause as provided under Article 26.⁴*

In each of these examples the essential employment nature of tenure, that it constitutes a continuing appointment without term, is clear. Each, however, goes on to specify how such appointments may be terminated. Such additions often simply repeat other clauses of the agreement such as the discipline clause which protects all members, whether tenured or not, against dismissal except for just cause.⁵ Dealing with dismissal as a discipline issue provides better protection for all members; mention of dismissal in the tenure clause should as a result explicitly cross reference the discipline clause of the agreement as is the case with the Wilfrid Laurier language.

An equally important employment issue related to tenure is layoff. Collective agreements should already contain language which states that no employee may be laid off except as a result of financial exigency⁶. Many agreements also include a program redundancy clause, but associations should strive to ensure that redundancies result in transfers rather than lay-offs.⁷ Your tenure clause would only have to include a protection against lay-off if your agreement were otherwise silent on the issue. The best option in all cases would be to

negotiate strong program redundancy and financial exigency language, and then cross reference these clauses in the tenure article.

Both renewal and tenure involve academic assessments, and associations must ensure that inappropriate budgetary or disciplinary concerns do not influence the decision. Career decisions evaluate performance of scholarly duties; discipline involves not performance but “wrong-doing.” For this reason the discipline clause should contain a clear statement that *“disciplinary processes shall be distinct from academic assessment processes”*⁸ and that *“the fact that a disciplinary action has been imposed . . . cannot, in itself, be considered in the assessment of a Member.”*⁹ CAUT policy is equally clear that *“Budgetary considerations are not valid reasons for non-renewal”*¹⁰ For the same reason there should be no limit on the proportion of tenured members. The Ottawa agreement is explicit on this point: *“There shall be no restriction on the number or proportion of faculty members at Ottawa, or in any subdivision thereof, who may be granted tenure.”*¹¹

A second, and far more common, approach to protecting our members is to ensure that the procedural clause requires all recommendations and decisions to be based solely on the criteria identified in the agreement.¹² Ottawa goes the furthest on this point. In addition to instructing decision-makers to base their consideration “solely on” the agreement, Article 5.2.1.2 (e) concludes that the *“recommendation or decision shall be favorable when the criteria of the agreement which apply to the member as well as the other considerations set forth in this agreement have been met.”*¹³ Although such procedural statements should prevent inappropriate budgetary or disciplinary considerations entering into the decision-making process, additional explicit statements in the tenure and promotion clauses reinforce the point and help avoid errors.

The Nature of “Probation”

Having defined tenure in employment terms the agreement must then specify the criteria for its granting. The search for criteria begins with an understanding of the unique problems associated with academic work, particularly as it relates to the unusual use of the term “probationary appointment” in the academy.

In general employment practice an initial, relatively short, probationary period allows an employer to evaluate the performance of a new employee within the context of that particular work environment. Among arbitrators, as Brown and Beatty observe, there exists *“a firm consensus that, from the very nature of a probationary period, such persons cannot expect the same protection from a “just cause” clause.”*¹⁴ Tenure-track employees, by contrast, hold renewable limited-term appointments and as such should enjoy the same “just cause” protections against dismissal as continuing employees.¹⁵ The use of the term “probationary” rather than the longer, but more accurate, “renewable limited-term” appointment runs the risk of significant confusion on this issue.

In virtually all employment situations probation involves persons recently hired and lasts for a relatively short period. Probationary periods lasting more than six months are rare. The exception is post-secondary education where what is often called “probation” lasts a minimum of four, and more typically five to six years. Understanding why “probation” last such an extra-ordinarily long time is critical to formulating collective bargaining provisions governing both renewal and tenure.

The Nature of Scholarship

Although academic staff are “employees,” they are rarely supervised nor are they assigned specific tasks. Compared with other professionals the academic “apprenticeship” of doctoral, and often post-doctoral, studies is, meanwhile, exceptionally long. This extended and extensive training develops the capacity for *independent* scholarship,¹⁶ yet at this stage our scholarship remains supervised. The primary employment question posed by the tenure decision is whether the individual’s potential demonstrated during supervised doctoral and post-doctoral studies has been realized through the creation of a record of *independent* scholarship. Renewal should be based on evidence of progress toward establishing a record of independent scholarship: tenure will be granted when a record of independent scholarship has been established.

A record of independent scholarship, meanwhile, requires considerable time: far more time than is normally accorded a “probationary” employee in other sectors. There is a general consensus in Canada that four to six years is an appropriate period, the last two of which should be at the institution granting tenure. Independent scholarship, meanwhile, involves, in the words of CAUT *Policy Statement on the Nature of Academic Work*, both

*the pursuit of knowledge and its dissemination and application through activities such as research, teaching, public lectures, conference communications, publications, professional practice, the building of library collections, the provision of mediated access to information, artistic production and performance, and service.*¹⁷

A renewal or tenure assessment must look at the full range of workload issues not simply a particular project or some subset of the academic job such as peer-reviewed publications. The appropriate criteria, then, for both renewal and tenure should be “satisfactory performance,” “meets expectations”, or some equivalent.

The Burden of Proof

In post-secondary institutions the burden of proof for renewal, tenure and promotion has traditionally fallen on the member. In grievance/arbitration the employee presents evidence that the entitlement has been earned. The employer in turn is only obligated to be reasonable in the evaluation of that evidence. This makes sense in the case of promotion where performance

expectations go well beyond “satisfactory” but creates difficulties in the case of renewal and tenure.

Tenure-track appointments involve an implicit commitment to on-going employment; if one does one’s job, one keeps one’s job. A negative renewal or tenure decision, meanwhile, terminates employment: effectively the employee is dismissed for unsatisfactory performance. In the absence of explicit language to the contrary, the burden of proof when a renewal or tenure decision is grieved will always be on the member despite the fact that in all other cases of dismissal the burden of proof is on the employer who must show cause.

On this point the Queen’s agreement is instructive. Article 30.6.2 explicitly shifts the burden of proof in renewal cases to the employer.

*In a decision about Renewal, there shall be a presumption in favour of Renewal. In order to refuse an appointment, the University must be able to demonstrate that the weight of evidence is in favour of non-Renewal.*¹⁸

CAUT recommends similar language be used in renewal, tenure and all other cases involving loss of employment.¹⁹

Criteria for Tenure

Mount Saint Vincent has, no doubt, one of the shorter tenure clauses:

*A candidate for tenure shall provide evidence of satisfactory teaching performance, ongoing involvement and achievement in individual or joint scholarly activity and/or professional activity appropriate to her rank, and participation in internal and external collegial service.*²⁰

Alberta uses very different wording but comes to the same conclusion.

*The decision to award tenure shall be based on an indication that the staff member is and will in future be capable of contributing effectively as a staff member given the performance, while on probation, in the responsibilities of a staff member.*²¹

Despite their brevity both agreements cover the essentials.

Most agreements, however, go a bit further in describing criteria. The Winnipeg agreement, for example, states:

A Member shall be awarded tenure, pursuant to Clause 23.26, if he/she:

(a) is a member of the teaching/counseling staff and holds the academic rank of Assistant Professor or above; and,

(b) holds a doctorate or the degree considered to be terminal in his/her discipline; except that research and/or other scholarly work which is available for peer review and which represents a contribution to the Member's discipline or profession shall be reviewed and if comparable shall compensate for lesser degree qualifications; and,

(c) has provided evidence of satisfactory performance of his/her teaching/professional responsibilities which, in the case of Faculty Members and those Counselors who teach courses, may include but not necessarily be limited to peer evaluations, a Teaching Portfolio and/or the results of Senate-approved Course/Instructor evaluations carried out by students; and,

(d) demonstrates satisfactory progress in research or other scholarly activities (as defined in Clause 24.23 (a) that are in addition to the doctoral thesis or the equivalent, carried out concurrent with or subsequent to the thesis, with the understanding that publications emanating from the doctoral thesis or from work done in connection with the degree considered terminal in the discipline shall be considered as work in addition to the thesis or the terminal degree requirement; and,

(e) has accepted and discharged reasonable administrative responsibilities within the University community.²²

The advantage of the Winnipeg clause is that it speaks to the issue of the evidence to be used in the assessment. Art. 25.17 (c), for example, explicitly mentions peer evaluation and a Teaching Portfolio²³ in addition to student questionnaires.

In the academy we have little choice but to use descriptors such as “satisfactory.” Care must be taken, however, to avoid the difficulties surrounding the use of terms like “average” or “exceptional” performance. Despite both the appeal and the widespread commitment to “excellence,” this too is a word with problematic implications when used as a standard in a summative review. The advantage of the Mount Saint Vincent, Alberta, or Winnipeg language is that it describes the task: “ongoing involvement in . . . scholarly activity,” or “progress in research . . . in addition to the doctoral thesis.”

On this point faculty would do well to pattern themselves on our librarian colleagues. The Concordia agreement, for example, recognizes that for its librarians “the granting of tenure is a confirmation of a person's competence and commitment to the creative task of higher education.”²⁴ Article 19.08 then goes on to state

The following two (2) criteria constitute the principal and essential grounds on which tenure consideration shall be based:

i) the candidate's professional competence and promise as manifested in contribution to the direct and indirect services to users provided by the Library (see Article 15.01.3).

ii) the candidate's professional competence and promise as manifested by advanced degrees, evidence of research and/or scholarly activities, and continuing professional development and productivity (see Article 15.01.4).

Language such as this alerts peer committees and administrators to the underlying purpose of the evaluation. In this way “satisfactory” or “meets expectations,” have more precise and less arbitrary meaning.

Criteria for Renewal

If the period required to establish a record of independent scholarship is five years, the initial contract could be a single five year contract followed by a tenure decision. Having shorter renewable contracts puts the member at a higher risk in the event the renewal decision is negative, yet this potential disadvantage is more than offset by the advantage to both the employer and, more particularly, the employee of constructive feedback. Natural justice and due process requires that the employee be made aware of the standard against which they will be measured and that they be given the opportunity to meet that standard. The evaluation associated with renewal can facilitate this.

Article 15.12.2 of the Saskatchewan agreement, for example, mandates an annual meeting with tenure-track members “to discuss the employee's progress in meeting the approved departmental or College standards for the award of tenure.” This meeting generates a written “Progress towards Tenure” report, and protects the member's right to respond to that report. The agreement goes on to state that “If deficiencies are noted, the statement shall identify the relevant categories of the standards and shall suggest steps that the employee may take to rectify such perceived deficiencies.”²⁵

The Prince Edward Island agreement mandates similar assessments for its librarians. Article E.7.8.1 requires the University Librarian to “meet with all new probationary Librarians within two (2) months of the commencement of his or her appointment, to explain to him or her, the criteria and procedures of permanency consideration, and to determine when normal consideration for permanency should occur.” The University Librarian is further required to “encourage Librarians to start collating all relevant documentation for their permanency file as provided for in this Agreement” and “shall, as part of the annual review, discuss the progress of the permanency file with the Librarian.” This wording directly address the natural justice issue of informing the member of the standard and giving the member the opportunity to meet that standard.

Criteria for Faculty Promotion

Promotion from Lecturer to Assistant Professor is, in almost every case, automatic with the attainment of the doctorate or recognition of its equivalent. Promotion to Associate and

later Full typically requires five and ten years experience respectively as well as a doctorate or its equivalent. In addition to these credential and experience minimums, promotion involves some level of scholarly performance which goes beyond simply doing one's job. There remains the question of whether there should be two, three or, in the case of librarians, four levels of meritorious performance.

Historically the criteria for tenure and promotion to Associate have been very similar and often rely upon qualifiers such as "good," as opposed to "satisfactory," to describe the difference in expectations. Interpreting and applying such qualifiers to teaching, research and service in individual cases often create difficulties which outweigh any advantage in keeping tenure and promotion to Associate distinct. The result is two patterns of dealing with promotion to Associate. In one model promotion becomes automatic with the granting of tenure, in the second promotion to both Associate and Full involve performance expectations greater than those expected of tenured academic staff. There are arguments to be made for both approaches; the choice largely depends upon the local situation associations face.

In the first model Assistant Professor is treated as an appropriate rank for the "tenure-track" period in which the member works to establish a record of independent scholarship. Once such a record has been established tenure is granted together with promotion to Associate which becomes the "career rank" associated with ongoing independent scholarship. At Wilfrid Laurier, for example,

*The criteria for promotion to Associate Professor are the same as those for granting tenure. Consequently, when a Member holding the rank of Assistant Professor is granted tenure, the individual shall be promoted to the rank of Associate Professor.*²⁶

Similarly, Concordia provides promotion with tenure.

*14.04.1 Upon the granting of tenure, which normally occurs during the fifth (5th) year, faculty members who hold the rank of Assistant Professor shall be promoted to the rank of Associate Professor.*²⁷

Queen's takes a different approach to the same end. Article 30.6.6 states that "for Members in Tenure-track appointments the criteria for the granting of Tenure shall apply"²⁸ for promotion to Associate. Art. 13.09 of the Alberta agreement refers to "standards for the award of tenure and concurrent designation as associate professor."²⁹

A second approach is to keep the tenure and promotion decisions separate and distinct. In this case the tenure decision essentially means that the individual has demonstrated the ability to do their job on an ongoing basis. The promotion to Associate involves recognition that individual performance goes beyond satisfactory performance. The negotiator's problem is how to describe that difference in collective agreement language which can be understood, interpreted and applied consistently and fairly.

Many agreements rely on ambiguous and difficult to interpret qualifiers such as “good” “above average,” “outstanding” or the ubiquitous but ill-defined “excellent.” Precisely because “good” and “excellent” is in the eye of the beholder, such qualifiers are prone to arbitrary application. No doubt this contributes to the difficulty dealing with promotion grievances at arbitration. We would be wise to approach the problem from a different angle concentrating for the moment on promotion to Full Professor.³⁰ In the vast majority of cases promotion to Professor involves external peer evaluation. Understanding why this is the case will help inform collective agreement language.

As we have seen, the tenure-track and tenure process involves the question of whether or not the individual has established a record of independent scholarship. External peer assessment is not required to establish this. Promotion requires scholarly performance that goes beyond satisfactory performance of one’s job; external peer assessment allows us to measure whether or not performance contributes to scholarship in general not just to scholarship within the institution. Some associations have used this consideration to write promotion criteria. Laurentian, for example, requires that research output makes “*a recognized contribution to the scholarly field or professional activity concerned. This work must be judged by four (4) external referees.*”³¹ The Ottawa agreement takes the same approach, although it is more explicit. At Ottawa a member’s research performance is expected to

(ii) have contributed, since the member's appointment or promotion to the rank of associate professor, continuously and significantly to the expansion of knowledge in the member's area of specialization, to literary or artistic creation, or to the advancement of a profession;

*(iii) have had a significant and valuable impact on the field as recognized both at the University of Ottawa and elsewhere, it being understood that this recognition must be confirmed by at least 3 of the 4 outside evaluators.*³²

One might argue that terms such as “significant and valuable” remain as subjective as “good” or “excellent.” Although there may be some truth to this, such terms lend themselves more easily to adjudication when decisions are grieved. For this reason such descriptors are to be preferred.

This approach can be enhanced by adding to the agreement separate clauses which define ranks. This is the approach taken in Article 12 of the Saint Mary’s agreement.

12.1.11 Assistant Professor

An Assistant Professor is a member of a Faculty of the University who shall ordinarily have the following minimum qualifications:

(a) A doctoral degree;

(b) Aptitude for teaching university students.

The doctoral requirement may be waived if the Candidate has a record of suitable teaching, scholarship as defined in Article 1.1(n); or, in lieu of such a record, has professional qualifications and experience to enable him/her to make an appropriate academic contribution to the University.

12.1.12 Associate Professor

An Associate Professor is a member of a Faculty of the University who shall ordinarily have the following minimum qualifications:

- (a) A doctoral degree;*
- (b) Successful experience in university teaching;*
- (c) A significant record of scholarship as defined in Article 1.1(n).*
- (d) A satisfactory record of service to the University, the profession, and the community, as defined in article 8.4.12 and 11.1.14.*

12.1.13 Professor

A professor is a member of the Faculty of the University who:

- (l) has achieved recognition as an outstanding scholar combined with a record of very good teaching and has a satisfactory record of service to the University, the profession, and the community, as defined in articles 8.4.12 and 11.1.14.³³*

Those associations like Wilfrid Laurier, Concordia, Queen's and Alberta which make promotion to Associate automatic with the granting of tenure need not go beyond the general criteria for Professor to meet the essential requirements of the collective agreement. The difficulty comes for those associations which keep tenure and promotion to Associate separate. In these cases preference should be given to task descriptors rather than qualifiers such as "good" for Associate and some version of "excellent" for Professor. The difficulty comes in finding appropriate descriptors which clearly distinguish between three levels of performance. In such cases it is best to rely upon local practices which have come to have currency with internal peer committees.

Criteria for Librarian Promotion

Historically post-secondary administrators considered librarians support staff and often used job descriptions and promotion criteria similar to other non-academic employees. The organization of librarians into academic staff associations was to a very large extent a struggle to have the academic status of our librarians recognized and appropriately valued. This has meant that job descriptions which identified specific tasks, such as managing a particular collection, and promotion criteria that then added increasing levels of supervisory responsibilities have given way to promotion criteria which more closely parallel faculty. The central concern is the clear recognition of the scholarly component of the job while recognizing that professional practice holds a greater significance for librarian scholarship than is usually the case with faculty.

Mount Saint Vincent, for example, describes "*scholarly and/or professional activity*" of librarians in ways which could apply equally to faculty. Article 21.31, for example, states that

Materials that may be presented as evidence of scholarly achievement, refereed or non-refereed, shall include complete copies of the following:
- monographs;

- working papers;
- case studies;
- chapters in books;
- research reports and briefs to government or other agencies;
- papers in conference proceedings;
- papers presented at conferences and meetings;
- computer software and documentation;
- audio-visual productions and materials;
- book reviews.³⁴

Article 21.32 then defines professional activity as

the application of academic approaches for the advancement of a profession or field of professional practice. Such applications may include:

21.32.1 the dissemination of information to the professional field in written form (e.g. briefs, technical reports, directories, newsletter entries, information sheets etc.);

21.32.2 the development of specialized training materials;

21.32.3 the development of materials and methodologies for the practice of the profession (e.g. textbooks, curricula, software, assessment tools);

21.32.4 substantive contributions to professional organizations (e.g. major involvement in development of codes of ethics, policy and legislation for the regulation or practice of the profession)

This language parallels very closely the language used to describe the activities of faculty³⁵ and in turn facilitates the negotiator's job crafting language on promotion criteria.

We have already noted Saint Mary's agreement which defines ranks;³⁶ a similar approach works equally well for librarians. In most institutions there are four librarian ranks with specific experience requirements similar to faculty ranks. Librarian I in the vast majority of post-secondary institutions in Canada is an entry level position. To cite the Dalhousie agreement, Librarian I is an appropriate rank "for a new graduate in Library Science and for a beginning professional librarian."³⁷ Often described as "probationary," promotion from Librarian I to Librarian II is in most cases automatic with the accumulation of experience and satisfactory performance. In the words of the Mount Saint Vincent agreement, the candidate must provide

*evidence of satisfactory performance of library duties appropriate to the number of years of her professional experience, ongoing involvement and achievement in individual or joint scholarly activity and/or professional activity appropriate to her rank, and participation in internal and external collegial service. Evidence of additional academic qualifications or administrative service may be presented for consideration.*³⁸

The Mount Saint Vincent agreement then modifies this language to describe the criteria for

Librarian III and Librarian IV. All ranks are expected to show “ongoing involvement in individual or joint scholarly and/or professional activity,” but Librarian III requires that this activity “has culminated in publication or an appropriate form of communication,” while Librarian IV requires the results of this activity to be “recognized as a significant contribution to the profession of librarianship.”³⁹ The parallel to academic rank criteria is immediately apparent, and this underlines the scholarly as well as professional nature of librarianship in post-secondary institutions.

De-privileging Research

Universities have, not without reason, been accused of neglecting teaching while emphasizing research in the narrower sense of discovery research and peer-reviewed publications. Unfortunately our collective agreements do appear to value research at the expense of teaching.

The Laurentian and Ottawa criteria cited above refer to the evaluation of research output; in both cases the agreements add satisfactory performance in teaching and services to the criteria for promotion. While promotion clearly demands a level of performance beyond that required for tenure, it is unreasonable to expect an individual to excel in all aspects of their job. To avoid privileging research at the expense of teaching and service agreements must provide appropriate language which ensures balance between different aspects of the job. Wilfrid Laurier, for example, provides that

15.7.8 A recommendation for promotion from Associate Professor to Professor usually requires that a Member's scholarly or creative achievements be of sufficient significance to be recognized outside of as well as within the University community, but notwithstanding the provisions above, sustained excellence in teaching and/or academic service, together with a satisfactory record of scholarly or creative work, shall make a Member eligible for promotion to Professor.⁴⁰

Both the Laurentian and Ottawa agreements include similar statements.

Wilfrid Laurier, Laurentian and Ottawa are not alone. Most agreements try to provide some promotion equivalence between “research” and “teaching,” yet the details frequently belie the intention. This results from two primary problems: the commitment to external peer review and the placing of the bar for promotion on the basis of teaching higher than the bar for promotion on the basis of research.

The use of external peer evaluation in promotion to Full and often Associate Professor is virtually universal in Canada. Research output, often in the form of published monographs, papers and reports, readily lends itself to external review. External evaluators, however, receive no information about teaching and only rarely will they have even minimal first hand knowledge of teaching. They are as a result in no position to comment in any way on a candidate's teaching accomplishments. Teaching, in turn, is rarely evaluated meaningfully.

Internal peer committee's and decision-makers seldom have any information beyond student opinions expressed in untested student questionnaires. All of these factors ensure that far more weight is given to publications and papers than to teaching in the decision-making process.

A second difficulty involves the near ubiquitous use of the terms "excellent" or "outstanding" to describe the level of teaching required for promotion. These are terms which by their very nature are difficult to interpret consistently. In too many cases "excellent" has come to mean "the rare few who are demonstrably outstanding." This is clearly a far higher standard than the "valuable contribution to scholarship" used as the standard for research accomplishments. The effect, despite the best intentions of many academics, is to make promotion on the basis of research output the norm, and promotion on the basis of teaching all but unknown.

Negotiators must constantly remind themselves that the activity being evaluated is scholarship – the pursuit of knowledge and its dissemination. Publications, teaching and professional practice are simply three among many ways of decimating knowledge. Most agreements in Canada state that promotion can be based *either* on a high level of research and satisfactory teaching *or* a high level of teaching and a satisfactory level of research. Agreements which promise to treat teaching and research equally will fall short of this objective so long as evaluations continue to privilege research. If we are to continue to rely upon peer review we must construct some means for peers to properly review teaching.

External Review: Another Caveat to be Avoided

Although external peer assessment has become an integral part of the promotion process in Canada, negotiators need to remind themselves that peer review is never perfect and promotion remains an employment issue. Such decisions must be subject to grievance/arbitration and as such must clearly be employer decisions. Care must be taken to limit the external assessment process to its proper role of providing information. The language used in both the Laurentian and the Ottawa agreements cited above could needlessly complicate the grievance arbitration process if interpreted too narrowly. Does the Laurentian statement that "*this work must be judged by four (4) external referees*" imply that all four must recognize the contribution of the member? Does the Ottawa statement that the significance of a member's work must be "*confirmed by at least 3 of the 4 outside evaluators*" mean that the promotion automatically fails if only two "confirm" even in cases where internal peers unanimously recommend in favour of promotion? Care should be taken that external peer evaluations are treated for what they are; individual reports and assessments designed to help inform an internal decision making process. External assessments should be neither decisions nor recommendations.

Care must also be taken in the choice of external evaluators. At Laurentian two of the four external referees "*may be nominated by the candidate*."⁴¹ Ottawa provides a further protection. In addition to suggesting names of persons the member considers qualified to assess scholarly performance the member can

. . . through the dean, submit to the FTPC:

(a) a list of persons who, in her opinion, may be prejudiced or otherwise not qualified to evaluate her scholarly activities;

(b) an indication of areas of expertise which would be appropriate for persons chosen to evaluate her scholarly activities;

(c) an indication of areas of expertise which would not be appropriate for persons chosen to evaluate her scholarly activities.⁴²

Such limitations speak directly to the fairness of the evaluation process.

Timelines

Most procedural requirements designed to protect and promote natural justice and due process apply in all career decisions. For this reason CAUT recommends that procedures be outlined in a separate, stand-alone, procedural article⁴³. Some procedural concerns such as establishing timelines, however, must be tailored to the individual case. Timelines are particularly important in renewal and tenure decisions since negative decisions terminate employment, and the member must be provided with reasonable notice of termination.

The overwhelming number of limited-term, tenure-track appointments in Canada end either on April 30 or June 30. Six-months notice – a not unreasonable period given the academic labour market – would require that decisions be taken by October 31 or December 15 respectively. Anything less would severely restrict the member's effort to secure alternate academic employment⁴⁴. The deadline for applications, meanwhile, must provide adequate time for applications to be processed.

Some associations explicitly spell out timelines. Such is the case with Art. 31.19.1 of the Cape Breton agreement:

31.19.1 The Timetable for consideration of renewal and tenure shall be as follows:

May 30 Peer Review Committee is constituted

October 1 Deadline for submission of applications for tenure and renewal to Chair of the Committee, Department Chair and notification to the Dean

October 1-21 Committee meets to determine and inform candidates if additional material is needed

October 21 Department's recommendation to the Chair of the Committee; copies to candidate and Dean

November 1 Dean's recommendation to Chair of the Committee; copy to candidate

November 10 Response by candidate to Department and/or Dean's

recommendation

January 10 Committee's proposed recommendations to candidates

January 17 Candidate's response to the Committee

January 24 The Committee meets to consider candidate's responses

January 31 President receives the recommendations of the Committee, the Department and the Dean

February 15 President informs candidates of decisions.⁴⁵

New Brunswick takes a similar approach: Art. 25B.02 provides a table outlining the process.⁴⁶

Faculties with Departments	Assessment Other Than Promotion to Professor	Promotion to Professor
Employee's submission of information to the Dean	September 1	July 1
Academic Department recommendations to the Dean	October 15	October 31
Faculty recommendations to the Vice-President (Fredericton) OR Vice-President (Saint John) as Appropriate	November 30	December 15
Vice-President (Fredericton) OR Vice-President (Saint John) recommendations to Vice-President responsible for final decision	December 15	January 15
Vice-President responsible for final decision conveys written decision to Employee	February 15	March 15

Unfortunately neither New Brunswick nor Cape Breton provides six-months notice for negative renewal or tenure decisions.

Collective agreements need not be this detailed so long as they ensure that decisions are reached in a timely fashion. Bishop's specifies the academic term during which the decision must be made.

7.09 Member holding a first probationary appointment under 6.01Bi shall be considered for re-appointment during the first semester of the third year of this appointment. A Member holding a first probationary appointment under 6.01Bii shall be considered for reappointment during the first semester of the second year of this appointment.

7.10 A Member re-appointed under 7.09 above or hired under 6.01Biv shall be considered for tenure in the second semester of the second year of their three-year probationary appointment. A Member holding an appointment under 6.01Biii shall be considered for tenure in the second semester of the third year of their four-year probationary appointment. If tenure is to be awarded, it shall be effective from the 1st of July following the decision.⁴⁷

Although specific deadlines for each stage of the process are not essential, particular attention must be paid to due process requirements. Article 7.06 of the Bishop's agreement addresses this issue:

e) The EC shall give seven (7) days notice in writing to the Member concerned that his/her case of re-appointment, tenure, promotion and periodic evaluation is to be considered by the committee with a statement of the nature of the case.

A Member has then the right to meet with the EC prior to its preliminary decision.⁴⁸

Such clauses ensure that the member is informed and has the time to present his/her case. These clauses also have clear educative value for both applicants and decision-makers while at the same time keeping the decision-making process on track.

Enforcing deadlines

Deadlines are meaningless unless enforced, yet enforcement will always be problematic. Administrators and associations need to remind themselves that the member, not the employer, shoulders the greater risk. If the deadline for application were fixed and immutable, a member's forgetfulness and/or carelessness could terminate a career. Alternatively, employers suffer no adverse impact when deadlines are missed unless the agreement explicitly provides some penalty.

Summative evaluations often begin with a member application. Art. 22.4.5 in the University of Northern British Columbia agreement, for example, puts the onus on the member who "*shall submit all necessary documentation to the Faculty Member's Dean no later than the Tuesday after Labour Day of the academic year during which the consideration [for tenure] will take place.*"⁴⁹ To reduce the vulnerability of the member associations could require the employer to notify the member of either renewal or tenure and invite an application. The agreement should require the employer to be proactive and notify the member at the beginning of each year of eligibility.

The agreement, meanwhile, should make it clear that the decision-making procedure can proceed in the absence of an application unless the member informs the employer of their intention to resign at the end of their current contract. In the case of tenure, most agreements will set a maximum period at the end of which a member must be considered for tenure. Victoria, for example, provides that "*A full-time Assistant Professor with eligibility for tenure must be considered*

for tenure not later than the sixth year in this rank at the University.”⁵⁰ The association must, meanwhile, ensure that the member is held harmless by an employer failure to meet a deadline.

In labour relations, employer silence at the end of a “probationary” period automatically converts the probationary appointment into a more permanent appointment. In this context an argument can be made that the same principle ought to apply in the academy. A missed deadline, effectively employer silence, would represent a failure to show cause. This would be the case if the burden of proof were shifted to the employer. (See above) So long as the burden of proof remains on the member, other protections must be considered should the employer fail to meet a deadline.

Realistically, associations should focus attention on extended periods of employment as an appropriate protection for member rights. Victoria, for example, provides that any member denied tenure during the final year of eligibility “*shall be offered a terminal appointment for one year.*”⁵¹ The Bishop’s agreement cited above requires the decision to be made during the third year of a four-year limited-term contract. Both agreements effectively eliminate the need for a penalty in the event of a missed deadline. If the additional year would be proposed as a penalty for a missed deadline associations should expect the employer’s counter that should the delay be caused by the member the deadline for a decision would automatically be extended without penalty.

Deadlines for promotion are less critical. Negative decisions in these cases do not result in loss of employment or any other entitlement except in the rare case of members caught at a salary ceiling for rank. Moreover, promotion files frequently involve external peer evaluations where delays are often beyond the control of either party. To ensure that justice delayed does not result in justice denied negotiators need to provide collective agreement language to ensure that late decisions take effect retroactively.

Conclusion

There is a long tradition which pre-dates academic collective bargaining which sees renewal, tenure and promotion as essentially academic decisions. As academic associations began to certify and bargain in ever increasing numbers they continued to draw a distinction, in line with equally entrenched traditions of bicameral and collegial governance, between “academic” and “employment” matters. The former were left to Senate and the latter became subject to negotiations between the association and the Board of Governors. In the process many associations left renewal, tenure and promotion criteria to Senate and, as a result, outside the ambit of the collective agreement. No doubt renewal, tenure and promotion must rely on academic assessment of scholarly work, yet it is equally true that member’s employment status and opportunity for career advancement remains fundamental employment concerns. CAUT cannot too strongly advise all associations to ensure that the procedures and the criteria governing renewal, tenure and promotion be subject of the collective bargaining process. This is the only way to enforce fair and equitable treatment of

our members through procedures which respect and promote due process and natural justice in employment practices. Only through incorporating renewal, tenure and promotion procedures in the agreement can we maintain the value of academic judgments and peer review without sacrificing the member's rights to fair, consistent and equitable treatment.■

Endnotes

1. See CAUT, *Model Clause on Academic Freedom*, (November, 2007).
2. Collective Agreement between the Board of Governors of Acadia University and the Acadia University Faculty Association, (July 1, 2003 – June 30, 2007). Hereafter AUFA.
3. Collective Agreement between the University of Prince Edward Island Board of Governors and the University of Prince Edward Island Faculty Associations, Bargaining Unit #1, (Expires June 30, 2010). Hereafter UPEIFA.
4. Agreement between Wilfrid Laurier University and Wilfrid Laurier University Faculty Association for Full-time Faculty and Professional Librarians, July 1, 2005 to June 30, 2008. Hereafter WLUFA.
5. See Art. 14, AUFA, and Art. F.6, UPEIFA.
6. See CAUT, *Model Clause on Financial Exigency*, (2006).
7. See CAUT, *Policy Statement on Program Redundancy* (2001) and CAUT, *Model Clause on Program Redundancy* (1999).
8. Discipline 7” Faculty Collective Agreement between the University of Western Ontario and the University of Western Ontario Faculty Association, July 1, 2006 - June 30, 2010. Hereafter UWOFA. Also see CAUT, *Bargaining Advisory: Discipline*, No. 20, May 2007, p. 5.
9. Article 56.1.2, This Framework Agreement is Made Between: The University of Victoria Faculty Association (hereinafter called the "Association") and The University of Victoria (hereinafter called the "University"), (September 1, 2004 -June 30, 2008), Hereafter UVicFA.
10. CAUT, *Policy Statement on Renewal of Tenure-track Appointments* (2004). In this context the principle applies equally to tenure which effectively renews the appointment contract on a continuing rather than a limited-term basis.
11. Article 25.1.4, Collective agreement between the University of Ottawa and the Association of Professors of the University of Ottawa, (1 May 2004 to 30 April 2008). Hereafter APUO.
12. See CAUT, *Bargaining Advisory: Procedural Fairness in Career Decisions*, No. 26, January 2008.
13. APUO.
14. D. J. M. Brown and D. M. Beatty, *Canadian Labour Arbitration*, Fourth Edition, Vol. 1, Commentary and Current Notes, (Aurora, Ontario: December 2006), p. 7-188.1.
15. CAUT policy states that “*termination of a contract before its expiry can only be for just and proper cause through procedures that have been negotiated with the academic staff association.*” CAUT, *Policy Statement on*

Renewal of Tenure-track Appointments, Nov. 2004. A review of discipline clauses in collective agreements in Canada demonstrates that no distinction is drawn between tenured and tenure-track employees in post-secondary educational institutions.

16. Here defined as both the pursuit of knowledge and its dissemination through a variety of means including teaching.

17. CAUT, *Policy Statement on the Nature of Academic Work*, November 2005.

18. This Collective Agreement between Queen's University Faculty Association (hereinafter called the Association) and Queen's University at Kingston (hereinafter called the University), (7 May 2005 - 30 April 2008). Hereafter QUFA.

19. "Grievances involving the denial of tenure, failure to renew a tenure-track appointment, termination of a continuing appointment, failure to renew a renewable contract appointment, or termination of a contract appointment before it comes to term shall be treated as grievances involving dismissal." CAUT, *Model Clause on Grievance and Arbitration*, (November, 2007), Article 7.7.

20. Art. 20.42, Collective Agreement [Mount Saint Vincent] (1 July 2003 To 30 June 2007, Revised June 2005). Hereafter MSVUFA.

21. Art. 13.08, University of Alberta, Faculty Agreement, (1 July 1998-June 30 2006), Hereafter AAS:UA.

22. Art. 25.17, This Collective Agreement is between The University of Winnipeg Faculty Association and the Board of Regents of the University of Winnipeg, (April 1, 2002 - March 31, 2007). Hereafter UWFA.

23. Often referred to a "Teaching Dossier" at other institutions.

24. Article 19.01 (c), Collective Agreement between Concordia University and the Concordia University Faculty Association, (In effect until May 31, 2007) Hereafter CUFA.

25. Collective agreement between the University of Saskatchewan and the University of Saskatchewan Faculty Association. July 1, 2007- June 30, 2009. Hereafter USFA. These reports are "formative" in nature and as such the agreement prevents peer committees and decision-makers from using either the Progress Towards Tenure report or the member's response. Both the report and the member's response, however, can be used at the Renewals and Tenure Appeal Committee.

26. Article 15.7.6, WLUFA.

27. CUFA.

28. QUFA.

29. AAS:UA.

30. Many Associations add the adjective "Full Professor."

31. Article 2.20.1 (e) (ii), The Collective Agreement between the Faculty Association and the Board of Governors of Laurentian University, (July 1, 2005 — June 30, 2008). Hereafter LUFA.
32. Article 25.3.3.2 (c) (ii) and (iii), APUO.
33. Agreement between Saint Mary's University and Saint Mary's University Faculty Union, (September 1, 2006 to August 31, 2009). Hereafter SMUFU.
34. MSVUFA.
35. See Articles 20.26, 20.30, 20.31 and 20.32, MSVUFA, cited in CAUT, *Bargaining Advisory: Procedural Fairness in Career Decisions*, No. 26, January 2008.
36. See above.
37. Article 11.05, Collective Agreement Between Dalhousie University and Dalhousie Faculty Association. Hereafter DFA.
38. Article 21.40, MSVUFA.
39. Articles 21.44 and 21.48, MSVUFA.
40. WLUFA.
41. LUFA, Article 2.20.1 (e) (iii).
42. Art. 23.3.2.5, APUO. FTPC is the Faculty Teaching Personnel Committee.
43. CAUT, *Bargaining Advisory: Procedural Fairness in Career Decisions*, No. 26, January 2008.
44. The start date for most full-time tenure-track jobs will be May 1 or July 1. The deadline for applications for such jobs typically is the end of the previous December.
45. Collective Agreement between Faculty Association of University Teachers (FAUT) and Board of Governors University College of Cape Breton, (1 July 2002 to 30 June 2006). Hereafter CBUFA.
46. Collective Agreement between The University of New Brunswick and The Association of University of New Brunswick Teachers, (2005 2009). Hereafter AUNBT.
47. Collective Agreement for Association of Professors of Bishop's University Faculty, (July 1, 2003 - June 30, 2006). Hereafter APBU. Requiring the tenure decision to be made in the second term of the third year effectively gives the member 12 months notice if tenure is denied.
48. APBU. EC is the Evaluation Committee.

49. Faculty Agreement Between the Board of Governors, University of Northern British Columbia AND The University of Northern British Columbia Faculty Association, (July 1, 2006 - June 30, 2010). Hereafter UNBCFA.

50. Art. 16.2.1, 16.2.2 and 16.2.3, UVicFA. Associate and Full Professors must be considered not later than their fourth year.

51. Art. 16.4, UVicFA.

