

Complete Policy Title:
**Code of Conduct for Faculty and
Procedure for Taking Disciplinary
Action**

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DUTIES AND RESPONSIBILITIES OF FACULTY MEMBERS

1. Unless stated otherwise in the letter of appointment (and/or the annual contract, if applicable), faculty members have obligations to McMaster University in three areas: (a) teaching; (b) research, scholarly, or creative activities; and (c) university service.
 - a. Each faculty member is responsible for teaching effectively and in a conscientious manner. Without limiting the generality of this requirement, faculty members
 - will follow Senate and Graduate Council policies regarding course outlines, and will inform students of assignments and methods of evaluation;
 - will make themselves accessible to students for consultation, for instance, by posting and maintaining reasonable office hours;
 - will adhere to the published time-table in all but exceptional circumstances, and will take reasonable and appropriate steps to inform both students and the University of any necessary cancellation and rescheduling of instruction; and
 - will be conscientious in grading student assignments and commenting on theses in a timely fashion, and will adhere to the schedules for submission of grades and evaluations by Departments, Faculties, and the School of Graduate Studies.
 - b. Each faculty member will devote a reasonable proportion of time to research, scholarship, or creative work. All faculty members will make the results of such work accessible to their peers in the scholarly community, and, where appropriate, to the general public, through publications, lectures, and other means.
 - c. Each faculty member is responsible for participating in the life of the University, in its governance and administration. They will normally do so through participation in committees of the University, and/or by accepting a fair and reasonable share of the administrative responsibilities in their Department, their Faculty, and the University.
 - d. Each faculty member is responsible for conducting himself or herself in a professional and ethical manner towards colleagues, students, staff, and other members of the University community. Without limiting the generality of the foregoing, faculty members at McMaster University
 - will not infringe the academic freedom of their colleagues;
 - will not discriminate against any member of the University community on grounds prohibited by Ontario Human Rights Code;
 - will observe appropriate principles of confidentiality, particularly regarding students;

- will, in their published work, whenever it is appropriate, indicate publicly the assistance of academic colleagues or students;
- will disclose conflicts of interest or other circumstances which may reasonably introduce or appear to introduce bias into any academic or administrative decision to which they may be a party; and
- will observe all of the published rules and policies of the University and its legislative bodies.

PROCEDURES FOR TAKING DISCIPLINARY ACTION

2. The procedures below describe four stages of disciplinary action, one or more of which might be initiated against faculty members who fail to meet their responsibilities as academic members of the University. It is envisaged that these disciplinary procedures will most often be applicable in the realms of teaching, research and university service, (e.g., repeated below par performance in regard to career progress merit, repeated refusal to accept committee responsibilities and the like). Should the Chair decide that the case falls within the jurisdiction of another University policy (such as human rights, sexual harassment, research ethics, and consulting), the procedures set out in those policies shall apply.
3. In the spirit of the Senate-approved "Terms of Reference for Department Chairs" it is also envisaged that in most cases the Department Chair will be the initiator of the disciplinary actions described below.
4. Whenever questions arise, either within or outside the Department, about the behaviour of a faculty member, the Department Chair should be so informed and he or she must take appropriate steps to satisfy him/herself that there is a problem, including talking with the faculty member on an informal basis, with a view to resolving the problem.
5. In certain situations, such as where the issue involves the conduct of the Department Chair or where the Department Chair is in a conflict of interest, it may be appropriate for the Faculty Dean to initiate the disciplinary procedure.
6. If at any stage in these procedures, the Faculty Dean feels compromised by an earlier involvement (e.g., if the Chair consults the Dean early in the process), the Dean shall appoint a delegate to carry out his or her responsibilities in Stage 3.

STAGE 1

7. When the Department Chair concludes that the behaviour or negligence of a departmental colleague requires correction and the application of this Code of Conduct, the Chair will so inform the colleague in writing and will invite the person concerned to discuss the problem with the Chair. The Chair should also invite a senior departmental colleague to be present, and the department member concerned shall be free to invite a faculty colleague also to be present.
8. On this occasion, the Chair will inform those present of the problem and of his/her proposals for its correction.
9. The Chair will make a note of the views expressed by those present on the matter under consideration and of the corrective measures which the faculty member is required to take. The Chair will also indicate a deadline by which he/she expects to see an improvement or issue a warning about the consequences of the inappropriate behaviour being repeated.
10. A copy of the Chair's note, with these details, shall be given to the faculty member concerned. The Chair will keep his/her note separate from the faculty member's personal file in the Department. Should the faculty member concerned refuse to cooperate or be present for these proceedings, they will continue nevertheless.

STAGE 2

11. Should the Chair have cause to believe that the problem continues after the deadline indicated during the initial discussion (Stage 1), the Chair shall draw up a formal letter of warning to the faculty member concerned. This letter shall state the nature of the unacceptable behaviour, take note of the previous discussion, describe the course of action that must be followed by the faculty member, and establish a new deadline. The Chair shall make clear to the faculty member concerned that should there be no improvement or correction by the new deadline, the Chair will refer the matter to the Dean of the Faculty (Stage 3).
12. The Chair shall send the letter by registered mail to the faculty member concerned and shall invite him or her to respond in writing.
13. A copy of the Chair's letter, with any response, shall be placed in the faculty member's personal file in the Department.
14. Should the faculty member involved refuse to cooperate or to be present, the process will continue in his/her absence and the Chair shall take whatever action he/she considers appropriate and so inform the faculty member.

STAGE 3

15. If the deadline stipulated in Stage 2 passes without, in the Chair's judgment, the problem being corrected, the Chair shall inform the Faculty Dean of the situation.
16. The Dean will invite the Chair, the faculty member concerned and an adviser of the latter's choice to discuss the matter. The Dean may also invite other University officers (e.g., Dean of Graduate Studies, Vice-President [Research], Director of Personnel Services) to be present, if he/she deems their presence would be relevant or appropriate.
17. If, after hearing from both parties, the Dean decides that the complaint lacks merit, she/he will inform both parties in writing and will instruct the Department Chair to destroy any relevant letters placed in the concerned faculty member's file.
18. If the Dean decides that the matter should be pursued, he/she may write one final letter of warning to the faculty member concerned or refer the matter to the Provost.
19. Should the Dean decide on a letter, this must clearly restate the nature of the unacceptable behaviour or negligence, indicate the steps necessary for its correction, and stipulate a deadline by which time the correction must be evident.
20. Should the Dean conclude, after the deadline has passed, that the problem still remains, she/he shall inform the faculty member concerned in writing that the matter is being referred to the Provost.
21. As in previous stages, Stage 3 will proceed even in the absence or non-cooperation of the concerned faculty member.
22. When the Dean refers a disciplinary matter to the Provost, either in lieu of the letter referred to in Stage 3, or because the deadline stipulated in Stage 3 has passed without, in the Dean's judgment, the problem being corrected, he or she shall provide the Provost with copies of all previous correspondence on the matter and shall also copy the letter of referral to the faculty member concerned. The letter of referral shall include a recommendation with respect to the disciplinary action the Dean believes should be taken against the faculty member.

STAGE 4

FACULTY DISCIPLINE BOARD AND DISCIPLINE TRIBUNAL

23. There shall be a Faculty Discipline Board, consisting of twelve tenured faculty members at the rank of professor. Members of the Board shall be appointed by Senate for staggered three-year terms, once renewable, effective July 1.
24. If the Dean refers the matter to the Provost under the provisions of Stage 3,
- i. the Provost shall proceed to establish a Faculty Discipline tribunal in accordance with the stipulations of clauses 26 and 28 below; and
 - ii. the Provost shall send a copy of the "Guidelines Concerning the Appointment and Department of Observers at Faculty Disciplinary Hearings" (Appendix B) to the faculty member concerned and request his or her consent to the presence of an Observer, as provided for in clause 29 below. If the faculty member consents, the Provost shall notify the McMaster University Faculty Association of its right to send an Observer, as specified in clause 29, and the Association shall inform the faculty member and the Secretary of the Senate who the Observer will be.
25. The Provost, upon receiving from a Faculty Dean a letter of referral concerning a disciplinary matter (see clause 22), shall give the faculty member concerned an opportunity to respond in writing to the letter of referral.
26. The Provost shall also forward to the Dean and the faculty member (the parties to the Hearing) a list of the members of the Faculty Discipline Board and they shall be given the opportunity to express to the Provost, in writing, any objections they may have concerning any members of the Board. After careful consideration of any such objections, the Provost shall select the members of the Discipline Tribunal from among the members of the Board, in accordance with the requirements of clause 28. The Provost shall also designate which of the Board members shall serve as Chair of the Discipline Tribunal.
27. When the Provost has decided upon the members and the Chair of the Discipline Tribunal, he or she shall so inform the Tribunal members, the parties to the Hearing and the Secretary of the Senate.
28. The Discipline Tribunal shall consist of three members of the Faculty Discipline Board who do not have a conflict of interest; at least one of the three shall be from outside the Faculty of the person who is the subject of the Hearing.
29. Subject to the agreement of the faculty member who is the subject of the Hearing, the McMaster University Faculty Association shall be permitted to send an Observer to the Hearing described in clause 30. The Observer shall be

entitled to receive all the documentation available to the faculty member concerned, subject to the consent of the faculty member. Such an Observer shall be non-participating and subject to the "Guidelines Concerning the Appointment and Department of Observers at Faculty Disciplinary Hearings" (Appendix B).

PROCEDURES FOR DISCIPLINARY HEARINGS

- a. The principles and procedures described in Appendix A shall apply to all proceedings before a Faculty Discipline Tribunal. Discipline Tribunals shall not be charged with investigative duties.
- b. At the Hearing, the onus shall be on the Faculty Dean to adduce evidence to satisfy the Discipline Tribunal that the alleged unacceptable behaviour or negligence has occurred.
- c. Parties to the Hearing may be advised or represented by a friend, colleague, or legal counsel (see also clause 35).
- d. Administrative support from the Discipline Tribunal will be provided through the Office of the Senate Secretariat.

DISCIPLINE TRIBUNAL DECISION

30. The Discipline Tribunal shall report in writing to the Provost within 120 days of being struck, except in extraordinary circumstances or unless circumstances clearly warrant a longer period.
31. The report shall be copied to the parties to the Hearing, to those members of the Faculty Appointments Committee not involved in the Hearing, and to any other individuals the Discipline Tribunal deems appropriate.
32. The report shall include:
 - a. the membership of the Discipline Tribunal;
 - b. the background of the case, including the nature of the alleged unacceptable behaviour or negligence;
 - c. a summary of the cases of the parties to the Hearing;
 - d. the Tribunal's majority findings [This section shall clearly indicate which allegations(s) of unacceptable behaviour or negligence is (are) supported and which is (are) not]; and
 - e. the Tribunal's majority recommendation(s) and the reasons for the recommendation(s).

33. The Discipline Tribunal may recommend:

- a. that no disciplinary action against the faculty member is warranted; or
- b. such disciplinary action as the Discipline Tribunal deems appropriate.
Such disciplinary action may include, but is not limited to:
 - i. instruction to the appropriate administrative officers and/or committees that they take the findings of the Discipline Tribunal into consideration when the individual is next considered for career progress/merit increases;
 - ii. instruction to the appropriate administrative officers and/or committees that they take the findings of the Discipline Tribunal into consideration when the individual is next considered for promotion, if applicable;
 - iii. a recommendation to the President that the faculty member be suspended, with or without pay, for a specified period, in accordance with relevant University policies;
 - iv. a recommendation to the President that the appropriate procedures for removal be initiated, in accordance with existing University policies.

The disciplinary action recommended by the Discipline Tribunal should be proportional to the severity of the unacceptable behaviour.

It is expected that the Tribunal will reach a unanimous or a majority decision regarding the disciplinary action to be recommended. If it cannot, then the following procedure shall be followed. Two members of the Discipline Tribunal, neither of whom is the Chair, shall each submit in writing to the Chair of the Tribunal the disciplinary action he or she believes is appropriate. The Chair shall select one of the two proposals as the Tribunal's recommendation.

34. If no disciplinary action is recommended by the Discipline Tribunal, the Tribunal shall decide what portion of any reasonable legal expenses incurred by the faculty member shall be borne by the University.
35. Decisions of the Discipline Tribunal are binding and cannot be appealed.
36. Within ten days from receipt of the report from the Discipline Tribunal the Provost shall, if the Tribunal has recommended disciplinary action, forward the report to the President.
37. The President, upon receipt of the Discipline Tribunal's report, shall promptly implement the recommendations of the Tribunal, as appropriate within the terms of existing University policies and/or contractual obligations.

CONFLICT OF INTEREST

38. The Faculty Dean and the Provost shall undertake to avoid conflicts of interest at the respective levels of these proceedings. Any changes required to preserve arm's length dealing supersede the requirements of these procedures. Should the Faculty Dean or Provost not be at arm's length from the matter under these proceedings, the Dean of Graduate Studies shall act for the Dean and the Vice-President (Research) shall act for the Provost. Should the Dean of Graduate Studies or Vice-President (Research) not be at arm's length, the President shall appoint a Faculty Dean not otherwise involved in the proceedings to serve in his or her place.

APPENDIX A

PROCEDURAL RULES FOR A DISCIPLINARY HEARING

1. The Statutory Powers Procedure Act, R.S.O. 1990, (SPPA) establishes minimum rules by which certain tribunals must proceed, to ensure that the rules of natural justice have been observed. These rules are divided into two separate parts: (1) persons whose rights are to be affected by the decision being taken have a right to be heard before that decision is taken, and (2) a person has the right to have his or her case decided by an unbiased decision-maker.
2. Faculty Discipline Tribunals established under this policy must incorporate these principles in their procedures in order to satisfy the requirements of being fair to the parties before them.
3. Because the SPPA provides fundamental rules, rather than a detailed set of procedures for the conduct of hearings, tribunals have some discretion to establish the actual manner in which the hearing will be conducted. However, nothing in this document should be interpreted to mean that the parties involved have given up any rights under the SPPA.
4. All Discipline Tribunals convened under this policy shall follow the procedures detailed below.

PARTIES TO A HEARING

5. Parties to Hearings shall include:
 - a. the Faculty Dean who referred the matter to the Provost; and
 - b. the faculty member who is the subject of the Dean's referral (hereinafter called "the respondent").

HEARINGS

6. Hearings are normally open to the public, but any party to the Hearing may request a closed Hearing. The possible disclosure of certain matters may indicate the need for a closed Hearing, such as matters of public security, intimate financial or personal details, or other matters that may have a substantially adverse effect on the interest of any person or on the public interest.

If a request by a party or the parties to the Hearing to close the Hearings is made prior to or during the hearing of a case, the Chair of the Discipline Tribunal shall close the Hearing for the purpose of discussing the request. After listening to the

arguments for closing, the Tribunal shall decide whether, in accordance with Section 9(1) of the Statutory Powers Procedure Act, sufficient cause for closing exists. If not, the Hearing will be re-opened.

7. An attempt shall be made to schedule the Hearing(s) at a time and place convenient for the Discipline Tribunal and for the parties to the Hearing. However, any party whose reasons for absence are not considered valid by the Discipline Tribunal Chair, or whose absence may cause unreasonable delay, shall be notified that the Tribunal will proceed in the party's absence.
8. The Hearing(s) shall be commenced as soon as possible following the appointment of the Discipline Tribunal. Each party to the Hearing shall be sent a Notice of Hearing.
9. Prior to the Hearing, members of the Discipline Tribunal shall be provided with the letter of referral from the Faculty Dean to the Provost, together with all attachments, and with the written response (if any) from the respondent.
10. Parties to the Hearing shall be given the opportunity to submit written or other documentary evidence prior to the Hearing and any such evidence shall be made available or be accessible to the members of the Discipline Tribunal and to all parties prior to the Hearing.
11. Members of the Discipline Tribunal must not hear evidence or receive representations regarding the substance of the case other than through the procedures described in this Appendix.

THE ORDER OF THE HEARING

12. a. The Chair's opening statement shall:
 - i. identify the parties,
 - ii. identify the nature of the case, and
 - iii. list the evidence already before the Discipline Tribunal.
- b. The Faculty Dean is the first party heard.
 - i. This party's opening statement shall contain a brief description of his/her case, including what he/she believes is the faculty member's alleged unacceptable behaviour.
 - ii. This party will then present his/her evidence relating to the alleged unacceptable behaviour, which may include any or all of the following:
 - a. his/her oral testimony;
 - b. oral testimony of his/her witnesses; and

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- c. documents or other written evidence in support of this testimony.
 - iii. Questioning of this party and his/her witnesses by the Respondent and/or by the Discipline Tribunal occurs at the close of each person's testimony.
 - c. The Respondent then presents his/her case.
 - i. The opening statement of the Respondent shall contain:
 - a. a brief reply to the first party's claims; and
 - b. the main arguments of his/her defense.
 - ii. The Respondent will then present his/her evidence to support his/her defense, which may include any or all of the following:
 - a. his/her oral testimony;
 - b. oral testimony of his/her witnesses; and
 - c. documents or other written evidence in support of this testimony.
 - iii. Questioning of the Respondent and his/her witnesses by the first party and/or by the Discipline Tribunal occurs at the close of each person's testimony.
 - d. The Faculty Dean has the right to offer testimony and call witnesses or other evidence in reply to the issues raised in the Respondent's case. Only arguments or evidence related to evidence of the Respondent can be introduced by the Faculty Dean at this stage.

AFTER THIS POINT IN THE HEARING, NO NEW ARGUMENTS OR EVIDENCE MAY BE INTRODUCED.
 - e. The parties are entitled to make closing arguments, and to summarize briefly the main points of their cases, in the following order:
 - i. Faculty Dean,
 - ii. Respondent,
 - iii. Faculty Dean.
 - f. The Discipline Tribunal may alter the order described in sub-sections (a) to (e) above in the interest of fairness to any or all of the parties.

THE EVIDENCE

13. Parties to the Hearing have the right to present evidence in support of their case to the Discipline Tribunal and to see any written or documentary evidence presented to the Tribunal.
14. The Discipline Tribunal has the power to require production of written or documentary evidence by the parties or by other sources.

WITNESSES

15. A person appearing before the Discipline Tribunal may be required to give evidence under affirmation or oath.
16. Parties to the Hearing have the right to call, question and cross-examine witnesses.
17. The Discipline Tribunal has discretion to limit testimony and questioning of witnesses to those matters it considers relevant to the disposition of the case.
18. Parties are responsible for producing their own witnesses and for paying the costs associated with their appearance before the Discipline Tribunal (see also, clause 35 in the main policy).
19. The Discipline Tribunal Chair has the power to compel a witness to attend, and parties may request the Chair's aid in this regard.
20. Witnesses normally are present in the hearing room only during the time they are testifying.

DELIBERATIONS BY THE DISCIPLINE TRIBUNAL

21. Following the formal Hearing(s), the Discipline Tribunal shall deliberate in closed session. The Tribunal shall have the right to engage independent legal counsel to aid it in internal legal discussions.

DISCIPLINE TRIBUNAL DECISION

See main policy, clauses 31 to 38.

APPENDIX B

GUIDELINES CONCERNING THE APPOINTMENT AND DEPARTMENT OF OBSERVERS AT FACULTY DISCIPLINARY HEARINGS

1. As described in clause 29 of the Code of Conduct for Faculty (referred to below as the "Procedures"), the McMaster University Faculty Association is permitted, subject to the consent of the faculty member who is the subject of the disciplinary hearing, to send an Observer to the hearing described in clause 30 of the Procedures.
2. *The function of the Observer is to allow the Faculty Association to monitor the workings of these Procedures.* It is the role of the Observer to comment in the Report on the adequacy of the procedures, with a view to making recommendations to improve relevant policies, not to comment in the Report on the conduct or the judgement of the tribunal.
3. As outlined in clause 24 (ii) of the Procedures, the Provost shall send a copy of these guidelines to the faculty member concerned when a Disciplinary Hearing is initiated and shall ask the faculty member in writing (with a copy to the McMaster University Faculty Association) whether the faculty member consents (a) to the presence of a Faculty Association observer, and (b) if so, to all the documentation being provided to the Observer. The Provost shall notify the Faculty Association and the Secretary of the Senate of the faculty member's response. If the faculty member consents to the presence of an Observer, the Association shall inform the faculty member and the Secretary of the Senate who the Observer will be.
4. The Observer does not attend on behalf of the faculty member. That function is fulfilled by counsel or by an agent chosen by the faculty member, if desired. Nor does the observer attend on behalf of the President of the University. The Observer nominated by the Faculty Association should be an active or retired member of the Association and should be at "arm's length" from the case.
5. The Observer must be familiar with the Code of Conduct for Faculty (including these guidelines) and should carry a copy of the document to the Hearing.
6. Seating arrangements at the Hearing are at the discretion of the Chair. The Observer may not speak without an invitation from the Chair.
7. The Observer shall be provided with all the documentation available to the faculty member, subject to the faculty member's consent. This documentation shall be considered confidential. It shall be surrendered to the Chair at the close of the Hearing.

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8. The Observer is not entitled to be present when the Discipline Tribunal members recess for discussion among themselves.
 9. The Observer shall receive a confidential copy of the document in which the Discipline Tribunal reports its decision to the Provost.
 10. After the Hearing is over, the Observer should ask the parties separately if they were satisfied with the procedures followed, and whether they wish to comment on them.
 11. The Observer shall then write a report of the proceedings for the President of the McMaster University Faculty Association using the attached form. The Observer shall limit comment to procedural matters and take care not to quote either from confidential documents or confidential utterances, unless it is absolutely necessary to do so to make a point concerning procedural issues. The Observer's report should include a statement of what proportion of the Hearing the Observer attended and a description of any comments on, or expressions of dissatisfaction with, the procedures by either party. The Observer's report should not be confidential, except that any quotations from confidential documents or confidential utterances should be confined to a confidential appendix to which only the Presidents of the University and of the Faculty Association should have access. If major procedural irregularities are noted by the Observer, the President of the Faculty Association should inform the President of the University.