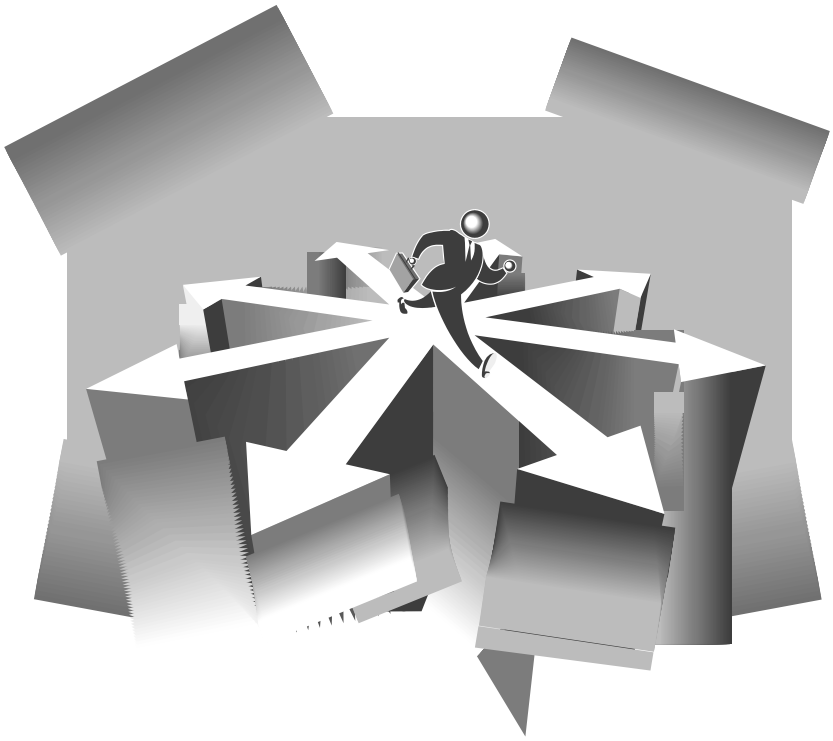
ROLE OF THE FACULTY ASSOCIATION

GRIEVANCE COMMITTEE



Revised January 1985
April 1988
September 2002
November 2004
January 2012
January 2021

ROLE OF THE GRIEVANCE COMMITTEE

The Grievance Committee plays an important role in the Faculty Association. Its five members are approved by the membership-at-large at the Fall General Membership Meeting. Committee members normally participate for a two year term. The Committee members usually meet once a week, for approximately two hours, to discuss and decide on grievances that are brought forward by individuals, groups or the Association. The Grievance Committee normally seeks agreement with Administration to have a moratorium on grievances throughout the months of July and August.

The Grievance Committee receives the Step 1 Report from the grievance officer and must initially decide whether to support the grievance to steps 2 and 3 in the hope of a negotiated settlement. Then, that failing, it must judge whether the probability and the potential benefits of a favourable decision in mediation or arbitration would outweigh the expense and potential adverse effects of an unfavourable decision. The Grievance Committee must take account of the effect of a grievance on the individual member as well as the Association membership as a whole.

In its deliberations, the Association Grievance Committee should analyze the grievance in the manner recommended for Grievance Officers. By doing so, the Committee will be in a better position to assess the chances of a favourable decision in mediation or arbitration, in light of available evidence. For example, if a grievance is based purely on an alleged breach of past practice or on an implied term of the Collective Agreement, it may be rather difficult to win in arbitration and the Association may find it wiser not to risk an adverse arbitral award in the particular case. In some cases, settlement might better be sought through other channels such as Faculty Council, Senate, mediation or direct appeal to the Board of Governors.

ASSESSING THE IMPORTANCE OF AN INDIVIDUAL GRIEVANCE

The Grievance Officer presents a written account of the facts and arguments of an unresolved case (Step 1 report) to the Association Grievance Committee. Sometimes the grievor presents information to the Grievance Committee. This is necessary because the Grievance Committee must decide what recommendation(s) it will make.

In its deliberations, the Grievance Committee should assess the importance of an alleged grievance, to both the Association membership and the University administration by examining the factors outlined below as to:

1. whether there has been a violation of the collective agreement;

2. legal duty of fair representation;

3. economic significance for the individual;

4. political significance within the Association or the University community or administration;

5. labour relations significance;

6. substantive significance;

7. academic significance;

8. chance of success.

1. Violation of the Collective Agreement

If a serious or flagrant violation of the collective agreement has been committed, this will

weigh heavily on a decision to arbitrate even though economic, substantive and other factors are not particularly significant.

2. Duty of Fair Representation

In the Province of Ontario, there is a statutory duty of fair representation. Such duty applies with respect to all members of the bargaining unit, not merely to members of the Association. Essentially, this means that the Grievance Committee should be conscious of the duty of fair representation when it decides whether or not to take a grievance to arbitration.

3. Economic Significance

Economic significance apples to the amount of financial benefit or loss at stake for the grievor or group of grievors. If a grievance has insignificant economic implications, it is a factor which will be taken into consideration in determining whether and to what extent that grievance will be pursued.

4. Political Significance

Political significance within the Association refers to the importance attached to the issue by the membership or by a section of the membership. For example, a grievance involving a breach of academic freedom would have substantial and broad political significance. Other issues, such as a dispute over rights to engage in outside consulting might involve a narrow but significant section of the membership. The Association requires solid membership support to function effectively, and the leadership must take care not to cause internal divisions due to unresolved grievances.

5. Labour Relations Significance

Labour relations significance concerns the importance of the grievance with respect to relations between the Association and the administration. Bargaining does not stop with the signing of

a Collective Agreement, but is a continuous process. Accordingly, for strategic labour relations reasons, resorting to mediation or arbitration may be necessary to discourage the University from attempting to erode each member's rights during the life of the Collective Agreement. In this regard, it is important to remember that if the Association is aware of violations of the Collective Agreement but does nothing and tacitly condones the violations, an arbitrator may deny a subsequent grievance on the issue.

6. Substantive Significance

Substantive significance refers to the importance and extent of the objectives sought over and above financial benefits. For example, a grievance may be arbitrated in order to compel the University to comply with evaluation procedures specified in the Agreement. The full substantive significance may include not only the direct effect of winning the grievance, but the establishment of the principle that procedures must be followed. The Association must measure substantive significance by looking beyond the specific benefits that will accrue to the individual grievor.

7. Academic Significance

Academic significance is essentially a subset of substantive significance, but is worth special attention. Certain grievances may have academic implications beyond the particular case in question and such implications should carry considerable weight in the Association's decision whether or not to carry a grievance to arbitration.

8. Chances of Success

In addition to assessing the importance of the grievance in the context of the eight factors set out above, the Grievance Committee must also assess the probability of a favourable decision in arbitration. To do this, the Committee must gauge the strength of the evidence available

and the nature of previous arbitral decisions on similar cases, particularly the decisions of the authoritative arbitrators. In some instances, the Grievance Committee uses the services of a legal counsel to secure a legal opinion on the case before making a recommendation to proceed.

Within the foregoing list, there may be countervailing factors, and the Grievance Committee must weigh their relative importance to assess whether arbitration should be pursued, a compromise negotiated, or the matter dropped. If a decision is made not to pursue the grievance, it is the Association's right to make such a decision, as the Association carries a grievance as of Step 1 in the process. Naturally, the Association's decision will be influenced by the importance of the grievance to the individual grievor, but this should not be the sole decisive factor. The decision to take an individual or group grievance to mediation or arbitration rests with the Association Executive. This decision is to be made after considering the recommendation of the Grievance Committee. An adverse decision can be appealed to the Faculty Council by the member or group making the grievance.

The following excerpts concerning the Grievance Committee are from the Constitution and Bylaws of the Faculty Association:

ARTICLE VIII **PERMANENT COMMITTEES/TEAMS**

B Grievance Committee

VIII.4 (a) The Grievance Committee shall consist of

(i) the Vice-president, Grievance, as Chairperson having a one year term, elected in accordance with Bylaw 8 A;
(iii) four other members, each having a two year term, elected in accordance with Bylaw 8 B.

(b) No more than two members of the Grievance Committee shall simultaneously serve on the Executive Committee.

(c) A member of the Grievance Committee shall not be eligible to serve as a Grievance Officer.

(d) The Chairperson of the Grievance Committee shall have full voting privileges in that Committee.

BYLAW 8 B
Election/Duties of the Grievance Committee

8.21 At least two members shall be nominated from the general membership by the Council elected in an even-numbered year. At least two other members shall be nominated from the general membership by the Council elected in an odd-numbered year.

8.22 The membership shall elect members to the Grievance Committee at the Fall General Meeting from among the nominees presented by Council. The Committee member's term of office begins immediately following the Fall General Meeting at which s/he was elected.

(a) The Grievance Committee shall review all formal grievances submitted in writing to the Faculty Association and determine the action to be taken to resolve the grievance within the Collective Agreement.

(b) The Grievance Committee may initiate the action it deems necessary except that

(i) recommendations of the Grievance Committee with respect to grievances deemed to be policy grievances shall be referred to the Council for its approval before proceeding;

(iii) all recommendations to go to arbitration must be approved by the Executive Committee. Should the Executive decide not to approve the recommendation, either the Grievance Committee or the grievor may appeal to Council.

(c) Appeals

(i) <u>to Executive Committee</u>

Should the Grievance Committee decide against taking action on a particular complaint that has been informally discussed at Step One of the Grievance Procedure or a grievance filed under the Collective Agreement, the complainant/grievor may appeal to the

Executive Committee by notifying the Association within seven working days of receiving the decision. The Vice-President, Grievance, or his/her delegate, shall explain the decision of the Grievance Committee to the Executive Committee. The complainant/grievor may make an oral and/or a written presentation to the Executive Committee. At the discretion of the complainant/grievor, he/she may be accompanied by an advocate during an oral presentation. The advocate shall be a member of the Association and shall enjoy all rights accorded to the complainant/grievor during the presentation. Prior to the presentation, the complainant/grievor, or his/her advocate, shall be privy to all documents that were available to the Grievance Committee when they rendered their decision on the complaint/grievance. Both the Vice-President, Grievance (or his/her delegate) and the complainant/grievor shall be present to respond to all questions raised. The complainant/grievor, the Vice-President, Grievance, or his/her delegate, and any members who took part in either the discussion or the voting on the matter at the Grievance Committee shall then withdraw from the room. The Executive shall continue its discussion and vote on the appeal by secret ballot. Members of the Grievance Committee who are on the Executive may participate in the discussion and may vote only if they did not take part in either the discussion or the vote on the matter at the Grievance Committee.

(ii) <u>to Council</u>

Should the Executive Committee decide not to proceed with the complaint or grievance under 8.22(b)(ii) or 8.22(c)(i), the complainant/grievor or the Grievance Committee may appeal to Council by notifying the Association within seven working days of receiving the decision. The Vice-President, Grievance, or his/her delegate, shall explain the decision of the Grievance and Executive Committees to Council. The complainant/grievor may make an oral and/or written presentation to Council. At the discretion of the complainant/grievor, he/she may be accompanied by an advocate during an oral presentation. The advocate shall be a member of the Association and shall enjoy all rights accorded to the complainant/grievor during the presentation. Prior to the presentation, the complainant/grievor, or his/her advocate, shall be privy to all documents that were available to the Grievance Committee when they rendered their decision on the complaint/grievance. Both the Vice-President, Grievance, or his/her delegate, and the complainant/grievor shall be present to respond to all questions raised. The complainant/grievor, the Vice-President, Grievance, or his/her delegate, and any members who took part in either the discussion or voting concerning the matter at either the Executive or Grievance Committee shall then withdraw from the room. The Council shall continue its discussion and vote on the appeal by secret ballot. Members of the Grievance Committee or the Executive may participate in Council's discussion and vote on an appeal of a decision taken at the Executive or Grievance Committees only if they did not take part in either the discussion or the vote on the matter at the Executive or Grievance Committees. For purposes of voting on the appeal, the quorum of Council members shall be taken from those members eligible to vote on this matter ((the full membership of Council = 39 minus the number of members of the Executive Committee

= 12) divided by three). The minimum number will therefore fluctuate around nine depending on the size of Council.

The following excerpts outline the steps of the Grievance Process from the 2021-2025 Collective Agreement. For the full content of the Grievance Article, please see Article 39 of the Collective Agreement.

39:06 Any complaint may be presented orally and discussed informally between the complainant and his/her Head; for a librarian member, with an Associate University Librarian or Law Librarian, as applicable. The complainant may request a representative of the Faculty Association to be present at this meeting.

The grievance procedure shall be as follows:

STEP I
When a member wishes to initiate a grievance, she/he shall notify the Faculty Association within fifteen (15) working days of the occurrence of the incident or the date when grounds for a grievance were known or should reasonably have been known by the grievor; or if an informal meeting has been held, within fifteen (15) working days of the informal meeting. Once the Faculty Association has been notified, a Step 1 meeting shall be held within twenty (20) working days to discuss the grievance, attended by the member, the Head (or, for a librarian member, an Associate University Librarian or the Law Librarian, as applicable), and a Grievance Officer appointed by the Faculty Association. In the event the grievance is not satisfactorily resolved at Step 1 the complainant grievor shall within ten (10) working days indicate in writing to the Faculty Association that she/he wishes to continue to Step 2. If the Faculty Association decides to continue to Step 2, a written grievance shall be forwarded to the Dean, University or Law Librarian as applicable.

STEP 2
The Dean, (University or Law Librarian, as applicable) shall meet with the grievor and her/his Association representative no later than ten (10) working days after receipt of the written grievance. Every reasonable attempt shall be made to resolve the grievance. In the event a settlement is reached at the meeting, it shall be immediately put to writing and signed by the Dean (or University or Law Librarian, as applicable) and the Faculty Association. In the event a settlement is not reached, the Dean shall, within five (5) working days of the meeting, indicate the status of the grievance in a memo to the Association's Vice-President, Grievance. The Faculty Association may forward a copy of the grievance to the Provost within fifteen (15) working days of the said meeting.

STEP 3
The Provost shall meet with the President of the Association, or her/his delegate, within ten (10) working days of receipt of the grievance. Every effort shall be made to resolve the grievance. The Provost shall provide a written response stating the disposition of the grievance within seven (7) working days of such meeting to the Faculty Association, with a copy to the grievor.

39:07 The identity of the member(s) who file individual and group grievances shall be kept confidential by the Provost, Dean(s), Heads, the Faculty Association and by those to whom it is necessary to communicate this information for the purposes of resolving said grievances.

39:08 Any recommendation for the resolution of a grievance by a Head or other member of the bargaining unit shall have no force and effect unless and until ratified in writing by the Dean(s), the University Librarian or the Law Librarian as the case may be.

39:09 The University undertakes to supply to the President of the Association a current list of delegates authorized to act for the Dean(s), the University Librarian, the Law Librarian or the Provost.

39:10 Should the grievance against the University involve a decision at Step 2, such grievance shall be commenced at Step 3; should the grievance against the University involve a decision at Step 1, such grievance shall be commenced at Step 2; grievance(s) contemplated by clauses 13:07 and 13:21 of this Agreement shall proceed directly to arbitration.

39:11 Should a grievance arise directly between the University and the Association, such grievance shall be commenced at Step 3.

39:12 The Association shall have the right to bring grievance(s) on behalf of groups of members commencing at Step 3; the University shall have the right to bring grievance(s) against groups of members commencing at Step 3 and against an individual member commencing at Step 1; nothing in this clause 39:12 shall preclude informal discussion prior to the lodging of the written grievance at Step 3.

Exclusions from the Grievance Procedure

39:13 The grievance and arbitration procedures under this Article shall not be available for resolution of disputes exclusively concerned with:

(a) dismissal for just cause under Article 29 of this Agreement;

(b) promotion, tenure and renewal of contract except as expressly provided in clauses 13:07 and 13:21 of this Agreement;

(c) financial exigency, except as expressly provided under Articles 15 and 16 of this Agreement.