

Terms of Reference
Ad hoc Grievance and Discipline Committee
University of Prince Edward Island Faculty Association

1 General

- 1.1 There shall be an ad hoc committee of the Executive Committee of the UPEIFA known as the Grievance and Discipline Committee (hereinafter referred to as the Committee) which shall be governed pursuant to the Collective Agreements in force and the provisions of these Terms of Reference.
- 1.2 The Committee shall consist of at least five (5), but not more than eight (8), members (hereinafter referred to as Committee Members) appointed for two-year, renewable terms that begin on July 1, staggered such that not more than half of the appointments expire in any one year.
- 1.3 To create this Committee, one-half of the initial appointments shall be for one-year terms with the remainder being for two-year terms. All subsequent appointments shall be for two-year terms pursuant to Article 1.2.
- 1.4 One Committee Member shall be appointed Chief Grievance Officer of the Association by the Executive Committee for a two-year, renewable term. The Chief Grievance Officer shall chair the Committee.
- 1.5 All appointments, and renewals of appointments, shall be made by the Executive Committee, at the discretion of the Executive Committee.
- 1.6 Normally, no member of the Executive Committee, including the President, shall sit on the Committee.
- 1.7 The quorum for all meetings of the Committee shall be at least one half of the total number of Committee Members.
- 1.8 Questions arising at the Committee shall be decided by a simple majority of votes, with any question failing in the case of a tie vote. The Chief Grievance Officer shall have the full right to vote on all questions and issues at all Committee meetings.
- 1.9 All other matters of procedure of the Committee shall be determined by the Committee.
- 1.10 The Committee and the Chief Grievance Officer shall be directly responsible to the Executive Committee.
- 1.11 All Committee Members shall be indemnified by the Association for all legal costs and claims for damages incurred as a consequence of their actions carried out on behalf of the Association as long as such actions were taken pursuant to the Collective Agreement in force, the provisions of these Terms of Reference and the manual referenced in Article 2.2.2.

2 Committee Role and Functions

- 2.1 The Committee shall be responsible for Association activities that arise out of the Grievance, Arbitration and Discipline sections of the Collective Agreements in force.
- 2.2 Pursuant to the Collective Agreements in force and the provisions of these Terms of Reference, the Committee shall have the following functions:

- 2.2.1 To determine, distribute and maintain a manual of procedures which shall be necessary for the Association and any member of its bargaining units (hereinafter referred to as BU Member) to follow if they wish the assistance of the Association with regard to grievances, arbitrations and disciplinary matters;
 - 2.2.2 To determine, distribute and maintain a manual of procedures to be followed by Committee Members in carrying out the role and functions of the Committee ;
 - 2.2.3 To hear complaints of BU Members or groups of BU Members and to advise them as to their rights and the grievability, or other remedies, of their complaints;
 - 2.2.4 To hear complaints of the Executive Committee and to advise it as to its rights and the grievability, or other remedies, of its complaints;
 - 2.2.5 To represent the Association in any disciplinary process initiated by the Employer against any BU Member;
 - 2.2.6 To represent any BU Member in any disciplinary process initiated by the Employer when requested to do so by the BU Member;
 - 2.2.7 To report to the Executive Committee any situation which, in the opinion of the Committee, violates a Collective Agreement;
 - 2.2.8 To conduct preliminary investigation of all complaints fairly, without discrimination and in a non-arbitrary fashion.
 - 2.2.9 To recommend to the BU Members involved in individual or group grievances, any action to be taken, pursuant to the Grievance, Arbitration and Discipline sections of the Collective Agreement in force;
 - 2.2.10 To recommend to the Executive Committee in Association grievances, any action to be taken, pursuant to the Grievance, Arbitration and Discipline sections of the Collective Agreement in force;
 - 2.2.11 To negotiate with the Employer the resolution of grievances and disciplinary matters;
 - 2.2.12 To recommend to the Executive Committee any negotiated settlement of Association grievances and disciplinary matters; and
 - 2.2.13 To identify and recommend to the Executive Committee, on the basis of its experience, areas of the Collective Agreements in which improvements should be sought in negotiations.
- 2.3 In carrying out its functions, the Committee shall, at all times, provide fair representation for the Association and its BU Members, pursuant to the Collective Agreement in force and the provisions of these Terms of Reference.
 - 2.4 Committee Members shall make themselves familiar with the requirements of procedural fairness, the procedures pursuant to Articles 2.2.1 and 2.2.2, the Collective Agreements in force and any applicable legislation; and shall carry out its activities in a manner consistent with these.
 - 2.5 Any Committee Member may be called upon to act as a Grievance Officer at any time, pursuant to the Collective Agreement in force and the provisions of these Terms of

Reference, especially in cases where the Chief Grievance Officer is unavailable to act or is in a situation of conflict of interest, or where multiple BU Members require individual representation with respect to the same matter.

- 2.6 The Committee shall meet regularly, at least once a month, to hear reports from the Chief Grievance Officer and other Committee Members acting as Grievance Officers on the number, nature and status of current grievances and disciplinary matters, and shall provide counsel to the Chief Grievance Officer and other Committee Members with respect to recommendations, decisions, actions and strategies to be taken.

3 Authorities

- 3.1 The Committee shall serve at the pleasure of the Executive Committee which reserves the right to dismiss any Committee Member for cause.
- 3.2 In all cases, the Executive Committee shall have the authority to decide whether a matter shall proceed to arbitration.
- 3.3 In the case of individual or group grievances, the Committee, in consultation with the individual BU Member or group of BU Members, shall have the authority, subject to Section 9 (Appeals), to decide whether a matter shall proceed to grievance, to establish the terms of redress for the grievance and to reach settlement with the Employer pursuant to the Collective Agreement in force and the provisions of these Terms of Reference.
- 3.4 In the case of Association grievances, the Executive Committee shall have the authority to decide whether a matter shall proceed to grievance, to establish the terms of redress for the grievance and to determine whether a proposed final settlement in a matter shall be agreed to with the Employer pursuant to the Collective Agreement in force and the provisions of these Terms of Reference.
- 3.5 In the case of disciplinary matters, the Executive Committee shall have the authority to determine whether a proposed final settlement in a matter shall be agreed to with the Employer.
- 3.6 The Committee shall have the authority to decide the specific actions and strategy to be taken in investigating and pursuing a grievance or disciplinary matter, pursuant to the Collective Agreement in force and the provisions of these Terms of Reference.
- 3.7 The Committee may sub-delegate its functions and powers to a BU Member in cases where it deems necessary with the approval of the Executive Committee.
- 3.8 The Committee shall have independent access to the Canadian Association of University Teachers (CAUT) and the Association's legal counsel.

4 Role of the Chief Grievance Officer

- 4.1 The Chief Grievance Officer shall act as the Chair of the Committee.
- 4.2 The Chief Grievance Officer shall represent the Committee in all dealings with the Executive Committee.
- 4.3 The Chief Grievance Officer, or designate, shall have the authority to give and receive notices for and on behalf of the Association, or its BU Members, in the case of grievances and disciplinary matters.

4.4 The Chief Grievance Officer shall oversee the workload of the Committee pursuant to Article 2.5 and Section 11. Normally, the Chief Grievance Officer shall undertake a lead and larger role in handling and processing all grievances and disciplinary matters pursuant to Article 2.5 and Section 11.

5 Committee Budget

5.1 The Committee shall have an annual budget with which to carry out its normal activities. Any extra-ordinary expenses shall receive the prior approval of the Executive Committee.

5.2 The Committee may not make any commitment for financial or legal aid to any BU Member or other individuals involved in a grievance or disciplinary matter.

6 Duty to Fair Representation

6.1 The power conferred on the Association to act as representative for its BU Members entails a corresponding obligation on the Association to fairly and properly represent all BU Members.

6.2 The representation by the Association must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence and without hostility toward BU Members.

6.3 To ensure fair, just and reasonable treatment for all BU Members, there shall be no discrimination practised with respect to any BU Member on the basis of age, race, colour, ethnicity, national origin, philosophical, political or religious affiliation or belief, sex, sexual orientation, marital status or physical disability.

6.4 In order to show that all potential grievances and disciplinary matters are dealt with in a fair and expeditious manner, the Committee, through the Chief Grievance Officer, must be in a position to show:

6.4.1 That a thorough investigation of the facts has been conducted and that the informal stage of the process has been promptly and exhaustively pursued in an attempt to reach a resolution in the matter;

6.4.2 That internal procedures were correctly followed in the processing of each case;

6.4.3 That those involved worked, or attempted to work, within the time limits specified in the Collective Agreement in force;

6.4.4 That, where deemed necessary, those involved sought informed legal advice and relied on that advice;

6.4.5 That the Association or BU Members involved in grievance, arbitration or disciplinary matters were advised of meetings which might affect them whether or not they were permitted to attend those meetings;

6.4.6 That insofar as was possible, written records of all meetings, interviews, discussions and all other activities or episodes having to do with the issue under investigation were maintained.

7 Investigations

- 7.1 The Chief Grievance Officer and all Committee Members acting as Grievance Officers shall ensure that all matters of grievance, arbitration and disciplinary action are investigated and assessed fairly, without discrimination and in a non-arbitrary manner.
- 7.2 The Committee Member acting as a Grievance Officer in a matter shall be responsible for investigating and reporting the results to the Committee, along with a recommendation regarding the action(s) to be taken.
- 7.3 During the course of all investigations, the investigating Committee Member acting as a Grievance Officer shall:
 - 7.3.1 Hold at least one meeting with those involved to determine all of the relevant facts and to secure all relevant documentation;
 - 7.3.2 Interview or attempt to interview any relevant witnesses to the facts; and
 - 7.3.3 Maintain careful notes of interviews with those involved and relevant witnesses.

8 Reporting and Communication

- 8.1 At least monthly at meetings of the Executive Committee, the Chief Grievance Officer shall report the Committee's activity in person to the Executive Committee, or more frequently as requested by either the Chief Grievance Officer or the Executive Committee. Additionally, the Chief Grievance Officer shall submit a monthly written summary of this report to the Executive Committee. All reporting to the Executive Committee shall exclude any confidential personal information.
- 8.2 At all times, the Chief Grievance Officer shall maintain open, direct and timely communication with the Association's President regarding the activities of the Committee.
- 8.3 The Chief Grievance Officer shall provide a report for the Annual General Meeting of the Association. This report shall exclude any confidential personal information.
- 8.4 By June 30 of each year, the Chief Grievance Officer shall submit a written report of the Committee's activity in the previous year to the Executive Committee. This report shall provide summary information only as to the nature of cases, Collective Agreement violations involved, recommendations, actions, decisions, etc. This report shall exclude any confidential personal information.

9 Appeals

- 9.1 If a BU Member or group of BU Members disagrees with any action, decision or recommendation of the Committee, such action, decision or recommendation may be appealed to the Executive Committee.
- 9.2 Such an appeal shall be initiated immediately by the BU Member or group of BU Members involved through a written request sent to the President of the Association.
- 9.3 The BU Member or group of BU Members may appear before the Executive Committee to support the appeal request. However, the BU Member or group of BU Members shall not be entitled to be represented by outside counsel but may have present a person who is a member of the Association.

- 9.4 The Executive Committee shall make its decision on the appeal in a timely manner.
- 9.5 The decisions of the Executive Committee in matters of appeal shall be final.

10 Confidentiality

- 10.1 All matters handled by the Committee and the Executive Committee shall be treated with the strictest confidence in accordance with CAUT's *Policy Statement on Confidentiality in the Grievance Process*.

11 Conflicts of Interest

- 11.1 A conflict of interest is any situation in which there are interests which would be likely to affect, or may reasonably be seen to affect, the impartiality or judgment of, or advice given by, any person(s) in a matter involving a BU Member or group of BU Members.
- 11.2 When any Committee Member believes him/herself to be in a position of apparent conflict of interest s/he must consult with the Committee for its judgment as to whether a conflict exists, and is to excuse him/herself from all deliberations of the Committee regarding any matter where it is decided there is a conflict.
- 11.3 Should a Committee Member become either a party to a complaint, grievance or disciplinary action or the object of another complaint, grievance or disciplinary action, that Committee Member shall temporarily step down from the Committee until the matter is resolved.
- 11.4 If a member of the Executive Committee believes him/herself to be in a position of apparent conflict of interest with respect to the Executive Committee's involvement in a grievance or disciplinary action, s/he must consult with the Executive Committee for its judgment as to whether a conflict exists, and is to excuse him/herself from all deliberations of the Executive Committee regarding any matter where it is decided there is a conflict.
- 11.5 Normally, no member of the Committee or Executive Committee shall handle any matter or participate in the discussion of any matter related to grievance, arbitration or discipline where any BU Member involved is in the same academic unit as the Committee or Executive Committee Member.

12 Training

- 12.1 By September of each year, the Chief Grievance Officer shall make every attempt to ensure that Committee Members receive training in the role of grievance officers. At a minimum, this training should include participation in a Grievance Handling Workshop to be offered on campus by CAUT through arrangements made with CAUT by the Chief Grievance Officer.
- 12.2 The Chief Grievance Officer shall attend the Senior Grievance Officers Workshop organized annually by CAUT. As much as possible, the Chief Grievance Officer shall pass the information gained through this workshop on to the Committee Members.

13 Records Keeping

- 13.1 While respecting the requirement of confidentiality, it is the responsibility of any Committee Member acting as a Grievance Officer in any complaint, grievance or disciplinary action proceedings, whether formal or informal, to document thoroughly all matters and to maintain, with due care and in strictest confidence, up-to-date files.

- 13.2 The Chief Grievance Officer shall be responsible for the Association's official files with respect to the Committee's activities and shall ensure the strictest confidence with respect to these files.
- 13.3 As soon as is possible and in a manner consistent with the provisions of confidentiality and conflict of interest, all notes and files created and maintained by any Committee Member acting as a Grievance Officer shall be transferred to the Chief Grievance Officer for official filing.
- 13.4 Pursuant to Article 8.4, the Chief Grievance Officer shall ensure that an annual summary of the Committee's activity is filed with the Association.

CAUT's Policy Statement on Confidentiality in the Grievance Process

Preamble

- 1.1 This Policy Statement is for the use of Faculty Association members and staff who assist grievors during the grievance process.
- 1.2 Its purpose is to:
 - i. underscore the importance of the duty of confidentiality owed to a grievor by his or her Faculty Association representative; and
 - ii. provide guidance to the representative in those rare circumstances when the conduct of the grievor gives rise to a belief that the grievor may present a threat to the safety of others.
- 1.3 This Policy Statement:
 - i. defines the content of the duty of confidentiality;
 - ii. identifies the source of the duty; and
 - iii. describes the circumstances which may necessitate a breach of the duty and the appropriate course of conduct if such a situation arises.

The Duty of Confidentiality

- 2.1 An individual who advises or represents a grievor owes a duty of confidentiality to the grievor. All communications between the representative and the grievor that relate to the grievance must not be disclosed to a third party without the consent of the grievor. The duty is similar to the one owed by a solicitor to a client.
- 2.2 In most circumstances the burden of the duty of confidentiality will be carried by the individual member of the Faculty Association (the Grievance Officer, Shop Steward or Grievance Representative) assigned to represent a grievor. However, because the Faculty Association as a whole has responsibility for the handling of grievances, the duty also extends to the executive of the Association, the membership of the Grievance Committee and the Association's professional staff and legal counsel. Information about a particular grievance may be shared and discussed within this group as required, but must not be divulged outside of this circle.
- 2.3 The duty of confidentiality is for the benefit of the grievor. The duty ensures that the grievor feels free to discuss all aspects of his or her case with the representative without fear that the information will be disclosed. The social imperative behind this duty is the need for honesty and candour so that

the representative can properly advise the grievor and effectively present his or her case.

Content of the Duty

- 3.1 The representative must keep all communications with the grievor, whether oral, written or electronic, in confidence. Inadvertent breaches of confidentiality can result from the discussion of cases in public locations and from lack of care:
- i. in the use of cellular phones, electronic mail and facsimile transmission machines;
 - ii. in the storage of documents (including computer disks and video tapes); and
 - iii. in the disposal of office waste.

Legal Foundation of the Duty

- 4.1 It is a general principle of law that a person who requests and receives information in conjunction with a promise of confidentiality may not use the information against the person who made the confidential communication.¹
- 4.2 Further, communications are privileged (protected from disclosure by law) if the following conditions are met:
- i. The communication must originate in a confidence that it will not be disclosed;
 - ii. The element of confidentiality must be essential to the full and satisfactory maintenance of the relation between the parties;
 - iii. The relation must be one which in the opinion of the community ought to be sedulously fostered, and
 - iv. The injury that would inure to the relationship by the disclosure of the communication must be greater than the benefit thereby gained for the correct disposal of the litigation.²
- 4.3 The grievor/representative relationship, and communications therein, have been held to meet these conditions.³ A representative can therefore claim privilege at an arbitration hearing and refuse to disclose the contents of discussions or correspondence with the grievor.

Breaching the Duty

- 5.1 The grievance process inherently involves conflict. The future of the grievor's career may be at stake. In these stressful circumstances it is not uncommon for a grievor to make inappropriate or abusive comments. These comments may very rarely include threats of physical harm or death against others.
- 5.2 Should the grievor threaten such violence, the representative must balance the duty of confidentiality with the responsibility to protect the safety of others. In *John Smith v. James Jones* [1999] S.C.J. No.15, the Supreme Court of Canada set out the factors to be considered in determining whether solicitor-client privilege should be set aside in the interest of protecting public safety. As the representative-grievor relationship is similar to the one between solicitor and client, *John Smith v. James Jones* provides direct guidance to a representative who, in the interests of public safety, is considering the disclosure of a threat made by a grievor.

The factors for consideration set out in *John Smith v. James Jones* are:

- i. Is there a clear risk to an identifiable person or group of persons?
- ii. Is there a risk of serious bodily harm or death?
- iii. Is the danger imminent?

The decision states that privilege should only be set aside where the facts raise real concerns that an identifiable individual or group is in imminent danger of death or serious bodily harm. The Court cautions that the facts should be carefully considered and notes that a statement made in a fleeting fit of anger will usually be insufficient to warrant disclosure.

- 5.3 Whether the duty should be breached is dependent on the circumstances of each particular case and is ultimately a matter of judgement. To assist in this exercise of judgement, a representative may wish to question the grievor about the meaning of the threat. The representative should, if possible, consult with the Association's executive, Grievance Committee, professional staff and legal counsel, all of whom are within the ambit of representative-grievor confidentiality.
- 5.4 If a decision is made to breach confidentiality:
- i. the confidential information must be relayed only to the proper authorities (for example the police or university security) and to the intended victim; and
 - ii. the disclosure must be limited to the threat itself and not include other information gathered by the representative in the course of assisting the grievor.

**Approved by the CAUT Academic Freedom & Tenure Committee, May 1999.
Approved by CAUT Council, November 1999.**

ENDNOTES

1. Slavutych v. Baker [1976] 1 S.C.R. 254
2. John Henry Wigmore, Evidence in Trials at Common Law, vol. 8 (McNaughton rev.)(Boston: Little, Brown and Company, 1961) at page 527. This is the "Wigmore Test", established by the noted American law professor and expert on evidence to determine if legal privilege should extend to a relationship. The test was adopted by the Supreme Court of Canada in R. v. Fosty [1991] 3 S.C.R. 263 (sub nom. R. v. Gruenke). Note the first criterion - that there must be an assurance that all communications within the relationship will be kept confidential. A prior indication by a representative to a grievor that certain communications (for example threats of violence) may be revealed undermines a claim for privilege.
3. Re British Columbia and B.C.G.E.U., Loc. 1103, (1990) 13 L.A.C. (4th) 190 and Re British Columbia and B.C.G.E.U., (1992) 28 L.A.C. (4th) 237