

9. GRIEVANCE AND ARBITRATION

9.1 General

9.1.1 The parties to a grievance shall be the Grievor and the University. The Grievor may be an individual Member, a group of Members, or the Association.

9.1.2 The University and the Association agree to use every reasonable effort to encourage informal and prompt resolution of grievances. There shall be no discrimination, harassment, coercion, or reprisals of any kind practised against any person involved in the grievance process.

9.1.3 Members who are party to a grievance, or are likely to be, are entitled to seek assistance from the Association at both informal and formal stages of the grievance. Members are entitled to be accompanied by a UW colleague provided by the Association or of their own choosing for advice and assistance at all stages in the grievance process.

9.1.4 No minor violation or irregularity due to clerical, typographical or similar technical error in the grievance process shall prevent the substance of a grievance from being heard and judged on its merits, nor shall it affect the jurisdiction of the Arbitrator or Tribunal as the case may be.

9.2 Individual and Group Grievances

9.2.1 An individual grievance is a grievance against the University initiated by an individual Member. A group grievance is a grievance against the University initiated by two or more Members and involving the same dispute with the University; if an affected Member does not wish to be party to a group grievance, that shall not preclude the remaining Members from proceeding.

9.2.2 A dispute arising out of the interpretation, application, administration, or alleged violation of UW Policies and established practices, this Agreement, or other agreements between the University and the Association may be the subject of an individual or group grievance and, subject to the terms of this Article, may be taken to arbitration.

9.2.2 Established practices are those practices which are identifiable, certain, known and in force as at September 1, 1997, or such other practices as the Parties may identify. The onus to show that such a practice exists rests upon whomever seeks to rely upon that practice.

9.2.3 An allegation that a Member (or group of Members) has been disciplined without just cause, or treated in a manner which is arbitrary, unreasonable, discriminatory or in bad

faith, may be the subject of an individual (or group) grievance and, subject to the terms of this Article, may be taken to arbitration.

9.2.4 Notwithstanding [9.2.2](#) and [9.2.3](#), no matter which may be the subject of procedures set out in either [Policy 76](#), Faculty Appointments or [Policy 77](#), Tenure and Promotion of Faculty Members concerning promotion, tenure, or probationary-term reappointment may be the subject of grievance or arbitration under this Article, except that an alleged failure by the Tenure or Promotion Appeal Tribunal or the FTPC (in the case of probationary-term reappointment) to comply with such procedures may be the subject of an individual grievance and, subject to the terms of this Article, may be taken to arbitration (see [9.6.7](#)).

9.2.5 Annual performance evaluations and selective increments, and denial of sabbatical leaves are not normally grievable except under [9.2.2](#) or [9.2.3](#).

9.2.6 Failure to reappoint a Member with a definite term appointment is grievable only with respect to the notice period.

9.3 Association Grievances

9.3.1 An Association grievance is a grievance against the University initiated by the Association. The grievance shall be authorized by the Board of Directors of the Association and shall be presented by the Association President (or her/his delegate).

9.3.2 The Association shall be entitled to grieve the interpretation, application, administration or an alleged violation by the University of UW Policies and established practices, this Agreement, or other agreements between the University and the Association, insofar as it directly affects the Association as an organization or the Association's role as defined in this Agreement.

9.4 Grievance Process

9.4.1 **Pre-Grievance Stage.** Member(s) should first present a potential grievance orally and informally at the lowest administrative level having the authority to dispose of it. This will usually be the Department Chair or equivalent. Members are encouraged to seek the assistance of the Association and/or the Conflict Management and Human Rights Office in an attempt to settle the potential grievances informally. For potential Association grievances, the Association President should discuss the issues with the Vice-President, Academic and Provost and, when mutually agreeable, bring the issues to the Faculty Relations Committee, in an attempt to settle them informally. The use of informal means to resolve a dispute does not, without the written consent of the potential grievor and the Vice-President, Academic & Provost (VPA&P), extend the time available to commence the formal grievance process.

9.4.2 A formal grievance must be submitted within two months from the date of the event on which the grievance is based, or from the date on which the Grievor knew or should have known of the event, whichever is later. The grievance shall be in writing, signed by the Grievor, and shall specify the matters in dispute, the Policies or Articles alleged to have been violated, and the remedy sought.

9.4.3 Formal grievances shall be submitted to the VPA&P (Stage 1, see [9.5](#)) except that, where the grievance is against a direct decision or administrative action of the VPA&P, the Vice-President, University Research or the President, the grievance shall proceed directly to arbitration (Stage 2, see [9.4.5](#) and [9.6](#)).

9.4.4 Grievances not resolved at Stage 1 may be taken to arbitration. At the sole choice of the Grievor, the grievance may be taken to an internal Tribunal (see [9.7](#)) or to an external Arbitrator (see [9.8](#)), except that, grievances under [9.2.4](#), Association grievances and grievances against dismissal for cause shall be heard by an external Arbitrator. The choice between an internal Tribunal and external Arbitrator shall be irrevocable, and in no case shall a grievance be taken to both.

9.4.5 For grievances which proceed from Stage 1 to Stage 2, the written notice of intent to proceed to arbitration must be submitted within one month of the receipt of the written decision terminating Stage 1 (see [9.5.2](#)). For grievances which proceed directly to arbitration, submission of a formal grievance serves as the written notice of intent to proceed to arbitration, and the submission deadline of [9.4.2](#) applies.

9.4.6 Notice of intent to proceed to arbitration is submitted to the Chair of the Faculty Grievance Committee (FGC), who shall ensure that the VPA&P and the Association President have copies. The FGC Chair shall establish a Tribunal or arrange, in accordance with [9.8](#), for an Arbitrator to hear the grievance.

9.4.7 For individual and group grievances, the internal Tribunal or external Arbitrator may grant Intervenor status to the Association at its request.

9.4.8 The parties may agree in writing to waive any step in the grievance procedure and/or to extend any specified time limits.

9.5 **Formal Grievance - Stage 1: Administrative Review**

9.5.1 Not later than one month after receipt of a formal grievance, the VPA&P or delegate shall meet with the Grievor and shall attempt to resolve the grievance. If a settlement is reached, it shall be put in writing and signed by the VPA&P and the Grievor, and with the permission of the Grievor, a copy shall be sent in confidence to the Association President. Such a settlement shall not constitute a precedent to be used against the University, the Association, or individual Members.

9.5.2 If no settlement is reached within two months after receipt of the grievance, the VPA&P shall provide the Grievor with a written decision and reasons within the following two weeks. The written decision shall either be hand-delivered to the Grievor, or delivered by registered mail to the Grievor's last known address(es). On receipt of the written decision, the Grievor becomes entitled to proceed to arbitration (Stage 2). For an individual or group grievance, the decision shall be promptly sent to the Association President.

9.6 Formal Grievance - Stage 2: Arbitration

9.6.1 Notwithstanding the report of any committee or other body, all grievances taken to arbitration shall be heard de novo by the Arbitrator or Tribunal.

9.6.2 The arbitration hearing normally will be held within one month after the appointment of a Tribunal, or within two months after the appointment of an Arbitrator. Internal and external arbitration hearings and decisions will be open to the public unless one of the parties requests otherwise, in which case the Tribunal or Arbitrator shall decide. For arbitrations in which the Association is not directly involved, the Association shall be allowed to send an observer to any in camera proceedings if the Grievor does not object.

9.6.3 The internal Tribunal shall determine its own rules of procedure and evidence, which shall be in accord with principles of natural justice and the Ontario Statutory Powers Procedure Act. At a Tribunal hearing, the parties may be accompanied by a UW colleague for advice and assistance. Assistance in this respect means that a colleague may assist in presenting a case, if necessary, but in no way will supplant the Grievor's responsibility to participate in her/his own grievance hearing. The parties may present arguments and submissions, and may call, examine, and question witnesses. A complete audio recording of the hearing shall be kept and made available to both parties.

9.6.4 The external Arbitrator shall determine her/his own rules of procedure and evidence which shall be in accord with principles of natural justice. The powers of the Arbitrator are as defined under the Ontario Labour Relations Act, as amended from time to time. At a hearing before the Arbitrator, the parties may be represented by counsel, the Association, or a UW colleague. The parties may present arguments and submissions, and may call, examine, and question witnesses.

9.6.5 Witnesses shall be informed of their legal rights under the Canada Evidence Act and the Ontario Evidence Act.

9.6.6 The Tribunal or Arbitrator shall not have authority to amend, modify, or act inconsistently with this Agreement or with UW Policies. The Tribunal or Arbitrator shall not award punitive damages.

9.6.7 For a grievance under [9.2.4](#) where the Arbitrator finds for the Grievor, the case shall be sent back to the President for directed reconsideration. Notwithstanding [9.6.6](#), where a

negative tenure or probationary-term reappointment decision is involved, the end-date of the Member's probationary contract shall be extended to not less than one year from the date of the Arbitrator's decision.

9.6.8 The external Arbitrator's fees and expenses shall be shared equally between the parties to the arbitration, except that in the case of a grievance against dismissal for cause, these costs shall be paid entirely by the University. Costs of presenting a case shall be borne by the respective parties to the arbitration. The University shall provide meeting space on the University campus if such space is available and is requested by the Arbitrator.

9.6.9 If the grievance is settled without a formal decision by the Tribunal or Arbitrator, the settlement shall be put in writing and signed by the Grievor and the VPA&P. For an individual or group grievance, the VPA&P shall promptly forward a copy to the Association President in confidence. Such a settlement shall not constitute a precedent to be used against the University, the Association, or individual Members.

9.6.10 The final decision of the Tribunal or Arbitrator shall be in writing, supported by reasons. The decision and reasons shall be provided to the Grievor, the University, and the Association within a reasonable time, normally not more than two months after the close of hearings. The decision shall be binding on the Grievor and the University.

9.7 **Faculty Grievance Committee and Internal Tribunals**

9.7.1 The Faculty Grievance Committee (FGC) is composed of a Chair and six Members with tenured or continuing appointments, appointed jointly by the Association and University Presidents. Normally, the Chair shall be appointed for a two-year term and the other six members for overlapping three-year terms. All may be reappointed for additional terms, to a maximum of six consecutive years. The FGC shall agree annually upon an ordered list of its members.

9.7.2 Where a grievance is to be heard by an internal Tribunal, the FGC Chair normally shall chair the three-person Tribunal, and shall select the other two members in order from the ordered list of FGC members. In the event that the FGC Chair is not available to serve, or is disqualified, the FGC shall appoint another member to chair the Tribunal.

9.7.3 The FGC Chair shall inform the Grievor of the composition of the Tribunal. The parties may object to any member of the Tribunal on grounds of bias, reasonable apprehension of bias, or conflict of interest. The FGC (excluding the member challenged) shall consider and rule on such objections. If the challenge is upheld, another Tribunal member shall be selected.

9.7.4 The FGC and its Tribunals shall have access to independent legal advice paid for by the University, subject to reasonable limits on total costs. Counsel to the Committee shall not have represented or advised the University, the Association or the Grievor at any

time.

9.8 External Arbitrator Pool and Selection

9.8.1 An external arbitrator pool, consisting of an ordered list of at least six persons, shall be jointly appointed by the University and Association Presidents. The individuals normally are appointed for overlapping three-year terms, and may be reappointed for additional terms.

9.8.2 The individuals in the arbitrator pool shall serve as single arbitrators in rotation according to the order in which they are listed. If an arbitrator is unable to agree to the conditions below, the next person on the list shall be selected, and so on until one is available. Contact with members of the Arbitrator Pool shall be arranged through the FGC Chair. The person who appears on the list immediately after the last arbitrator selected shall be the next in the sequence of selection. However, by mutual consent in writing between the Grievor and the University President, a listed arbitrator may be selected out of turn.

The appointment of an Arbitrator shall be conditional upon the arbitrator agreeing that:

- (a) the arbitration shall commence within sixty (60) days;
the Arbitrator's final decision shall be delivered within sixty (60) days of the
- (b) completion of the evidence unless the Parties agree that the complexity of the evidence or issue(s), or other circumstances, warrants an extension of time; and
no bill shall be presented for payment by the Arbitrator until the final decision has
- (c) been delivered.

9.8.3 If none of the arbitrators in the Pool can or will act within the required time, an arbitrator not in the Pool may be selected by mutual agreement of the University and Association Presidents. If they are unable to agree on another arbitrator, the Presidents shall, within three weeks, ask the Ontario Minister of Labour to appoint a single arbitrator.

9.8.4 No person who is an employee or student of the University or a member of the University's Senate or Board of Governors, or who was so at the time the grievance was initiated, shall be appointed as an arbitrator.