

Policy on Grievances and Arbitration
Osgoode Hall Faculty Association (OHFA)
Approved by Membership (20 May 2015)

Preamble

This Policy is to guide OHFA as it administers the Collective Agreement, including the grievance and arbitration procedures as outlined in Article 9 (Grievance procedure) and Article 10 (Arbitration procedure). The Policy is to be administered consistently with the Collective Agreement, the OHFA Constitution & Bylaws and the Labour Relations Act of Ontario.

1. Definitions

“Association” means the Osgoode Hall Faculty Association (Definitions section of the Collective Agreement).

“Complainant(s)” means a Member or Members seeking resolution of a complaint through the Complaint procedure (Article 9.05).

“Employer” means The Board of Governors of York University (Definitions).

“Executive” means the Executive of the Association.

“Group grievance” means a grievance initiated by the Association on behalf of a group of Members (Article 9.06).

“Individual grievance” means a grievance initiated by the Association on behalf of an individual Member (Article 9.06).

“Member(s)” means a Member or Members of OHFA.

“Policy grievance” means a grievance by the Association that may involve a matter of general policy or of general application of the Collective Agreement (Article 9.07).

2. Grievance Officer

2.1. The Executive shall appoint one of its members as the Grievance Officer. The Grievance Officer shall:

2.1.1. be responsible for the initiation, conduct and disposition of grievances, except as otherwise provided in this Policy;

2.1.2. seek the Employer’s agreement to extend timelines as per Article 9.04(c) as required at the discretion of the Grievance Officer.

- 2.1.3. seek advice from counsel and CAUT as required at the discretion of the Grievance Officer;
- 2.1.4. ensure that Member(s) who wish the Association to file a grievance on her, his, or their behalf, or on whose behalf an individual or group grievance is filed, are informed of relevant developments and consulted before making major decisions about the initiation, conduct or disposition of a grievance;
- 2.1.5. inform Members about appeals available to them under this Policy;
- 2.1.6. keep adequate records of all grievances in the Association's files; and
- 2.1.7. perform such other duties as the Executive may from time to time determine.
- 2.2. The Grievance Officer may, and on matters of serious importance shall, seek input and advice from the Grievance Committee and from other members of the Executive.
- 2.3. If the Grievance Officer is unable to act for reason of conflict of interest or for any other reason, the Executive shall designate another member of the Executive as ad hoc Grievance Officer (See Section 7 (Conflict of Interest)). If all members of the Executive are unable to act for reason of conflict of interest or for any other reason, the Executive may appoint another Member as ad hoc Grievance Officer.

3. Grievance Committee

- 3.1. The Executive shall appoint a Grievance Committee of three Members who are not members of the Executive. Members of the Grievance Committee shall be appointed for renewable one-year terms. There is no limit to the number of times a member's term may be renewed.
- 3.2. The Grievance Committee shall:
 - 3.2.1. advise the Grievance Officer on matters he or she refers to it and assist the Grievance Officer in considering and determining the initiation, conduct and disposition of all grievances and potential grievances.
 - 3.2.2. meet as required in the view of the Grievance Officer or when requested by a member of the Grievance Committee.

4. Individual and Group Grievances

4.1. Complaint stage

- 4.1.1. Members (i.e. “Complainant(s)”) are strongly encouraged to notify the Grievance Officer (or another member of the Executive if she or he is unable to contact the Grievance Officer) of circumstances potentially giving rise to an individual or group grievance as soon as reasonably possible after the circumstances have occurred or ought reasonably to have come to the Member’s attention.
- 4.1.2. Complainant(s) have the right to be represented by the Grievance Officer during the complaint stage and to be accompanied by the Grievance Officer at any meetings with the Employer.
- 4.1.3. If a complaint is resolved before the time for filing a grievance expires, the Complainant(s) shall inform the Grievance Officer as soon as reasonably possible and seek to finalize the resolution promptly, so as to preserve the Association’s ability to file a grievance should the resolution not be finalized before the time for filing a grievance expires.
- 4.1.4. Upon receiving notice of circumstances giving rise to a complaint, the Grievance Officer shall investigate the matter and shall decide as soon as reasonably possible whether to file a grievance. If the Grievance Officer needs to contact someone outside the Executive or the Grievance Committee to gather information about a complaint, he or she shall seek permission from the Complainant. If that permission is denied, the Grievance Officer will have to assess whether and how to take the complaint forward.
- 4.1.5. The Grievance Officer shall notify the Complainant(s) of the decision whether or not to file a grievance as soon as reasonably possible after the decision is made.
- 4.1.6. The Complainant(s) may appeal, to the other two members of the Executive as per Section 6 (Appeals), a decision by the Grievance Officer not to file a grievance, unless the Member’s own act or omission has made it impracticable to decide an appeal before the time to file a grievance has expired.

4.2. *Grievance stage*

- 4.2.1. Failing settlement or withdrawal of a grievance, the Executive shall decide whether to submit the grievance to arbitration as per Article 10.01 as soon as reasonably possible after the Employer’s decision on the grievance is given or is due. In reaching this decision, the Executive may consult with the Grievance Committee.
- 4.2.2. The Grievance Officer shall notify the Member(s) on whose behalf an individual or group grievance is filed of the decision whether or not to submit the grievance arbitration, as soon as reasonably possible after the decision is made.
- 4.2.3. Member(s) on whose behalf an individual or group grievance is filed may appeal, to the panel of Members described in Section 6 (Appeals), a decision by the

Executive not to submit the grievance in question to arbitration, unless the Member's own act or omission has made it impracticable to decide an appeal before the time to request arbitration has expired.

5. Carriage, Settlement and Withdrawal

- 5.1. The Association has carriage of all grievances against the Employer and has the power to settle or withdraw a grievance at any time and on any terms that satisfy its duty of fair representation.
- 5.2. Member(s) shall not deal directly with the Employer with respect to a grievance. If the Employer attempts to deal directly with a Member with respect to a grievance, the Member shall immediately notify the Grievance Officer.
- 5.3. Member(s) on whose behalf an individual or group grievance has been filed may appeal, to the Executive as per Section 6 (Appeals), a decision by the Grievance Officer to settle or withdraw the grievance. Any two Members may appeal, to the Executive, a decision by the Grievance Officer to settle or withdraw a policy grievance.

6. Appeals

- 6.1. The Member(s) permitted elsewhere in this Policy to appeal a decision by the Grievance Officer not to file a grievance, or to settle or withdraw an individual, group or policy grievance, shall give written notice of appeal to the Executive within one week of receiving notice of the decision being appealed.
- 6.2. An appeal from a decision not to file, or to settle or withdraw, an individual or group grievance shall be allowed unless the Executive agrees unanimously to dismiss it. An appeal from a decision not to file, or to settle or withdraw, a policy grievance shall be dismissed unless the Executive agrees by a majority vote to allow it.
- 6.3. If the time to take the action that is the subject of an appeal is about to expire and the appeal has not been decided, the Grievance Officer may deem the appeal allowed and act accordingly.
- 6.4. If one or both members of the Executive other than the grievance officer is unable to hear an appeal for reason of conflict of interest or for any other reason, the Executive shall appoint one or two *ad hoc* members to the Executive solely for purposes of that appeal, so that each appeal is heard by an Executive of three members including the Grievance Officer.
- 6.5. The Member(s) permitted elsewhere in this Policy to appeal a decision by the Executive not to submit a grievance to arbitration shall give written notice of appeal to the Executive within one week of receiving notice of the decision being appealed. The Member(s) and the Executive will then each choose a Member (not otherwise involved in the grievance) and the Members so chosen will choose a third Member to preside over

the appeal of the Executive's decision not to submit a grievance to arbitration. The resulting panel of three Members will then decide, within two weeks, whether to submit the grievance to arbitration. To avoid frustration of the appeal, if a Member of the panel was not chosen or the presiding Member of the panel was not agreed upon within ten days of the appeal being filed, the place of the relevant Member shall be filled by a Member (not otherwise involved in the grievance) to be selected at random—to the extent feasible, in the presence of the affected Member(s) and at least two members of the Executive—from a list of all Members at the time the appeal was filed, until the randomly-selected Member agrees to fill the place on the panel.

- 6.6. In an appeal to either the Executive or the panel of Members described immediately above, the appellant Member(s) of the Association and the Grievance Officer (who, in an appeal to the Grievance Commission, shall be responsible for representing the views of the Executive) shall have the right to make submissions in writing. The Executive or the panel of Members, as applicable, may, at its discretion, hear from one or both of the parties orally. The appellant Member(s) may be supported by another Member in the course of the appeal.
- 6.7. The Executive or the panel of Members, as applicable, shall make every reasonable effort to decide an appeal before the time to take the action that is the subject of the appeal expires. The Executive or the panel of Members, as applicable, shall notify the Member(s) on whose behalf an individual or group grievance is filed and the Grievance Officer (who, in an appeal to the Grievance Committee, shall inform the other members of the Executive) of its decision in writing, with reasons, as soon as reasonably possible after the decision is made.
- 6.8. The disposal of an appeal by the Executive or the panel of Members, as applicable, is final and binding upon the Association and the Members.

7. Conflict of Interest

- 7.1. A conflict of interest is any situation in which there are interests that are likely to affect, or may reasonably be seen to affect, the impartiality or judgment of the Grievance Officer, another member of the Executive, a member of the Grievance Committee, or a Member on the panel described in Section 6 (Appeals).
- 7.2. For greater clarity, a conflict of interest does not arise solely because the interests of the Grievance Officer, another member of the Executive, a member of the Grievance Committee, or a Member on the panel described in Section 6 (Appeals) are or may be affected as a result of the individual being a bargaining unit member. The fact that a Grievance Officer has sought or received input or advice from other members of the Executive or from members of the Grievance Committee shall not, by itself, constitute a conflict of interest disqualifying such other members of the Executive or members of the Grievance Committee from hearing an appeal under this Policy.

- 7.3. A Grievance Officer, another member of the Executive, a member of the Grievance Committee, or a Member on the panel described in Section 6 (Appeals) shall recuse herself or himself from the consideration of any grievance with respect to which she or he has a conflict of interest.
- 7.4. Should the Grievance Officer, another member of the Executive, a member of the Grievance Committee, or a Member on the panel described in Section 6 (Appeals) become the Complainant in or the object of a grievance, that individual shall recuse herself or himself as Grievance Officer, member of the Executive, member of the Grievance Committee, or member of the panel described in Section 6 (Appeals), as applicable, for the purposes of that grievance until the grievance is resolved.

8. Confidentiality

- 8.1. The Association shall treat personal information about its Members obtained in the course of the grievance process as confidential, sharing it only with those who need to know. Those who may need to know such information as the process unfolds may include the Grievance Officer, the Executive, the Grievance Committee, the panel described in Section 6 (Appeals), the Association's counsel or staff, and the Office of Faculty Relations or other persons who may need to be contacted at the university to achieve resolution of the issue. Everyone to whom information is disclosed shall be informed of the requirement of confidentiality.
- 8.2. If the Association is assisting one of its Members, he or she shall provide all relevant information, whether favourable or unfavourable, so that the Association can put forward the best case possible.
- 8.3. Any Member involved in a grievance owes the Member who is affected by the grievance and the Association a duty of confidentiality and must keep all communications with the Member and the Association in confidence. While respecting the requirement of confidentiality, it is the responsibility of the Grievance Officer and the Executive to document thoroughly all matters and to maintain up-to-date files with due care and in strict confidence. As soon as possible, consistent with the provisions of this Policy regarding confidentiality and conflict of interest, all notes and files shall be transferred to a central file.