

Grievance Approval and Appeal Policy

This policy replaces the previous *Grievance or Dismissal Arbitration Decision Process Policy* and the *Grievance Appeal Process – Non-Arbitration Level Policy*

Approved: April 30, 2019

There are three main types of grievances that may go to arbitration:

- A) grievances related to policy matters;
- B) grievances related to dismissal of academic staff members; and
- C) grievances related to individual members or groups of members (other than dismissal).

I. Grievance Approval Authority

A) Grievance Related to Policy Matters

1. Grievances related to violations of the Collective Agreement, other agreements, University Policies, or other matters may be filed by a Grievance Advisor or an appropriate Officer, following consultation with the Executive Director. Whether the Grievance Advisor or another Officer signs the grievance letter would depend upon the nature of the grievance matter (e.g. matters related to bargaining might be signed by the Principal Negotiator).
2. The Grievance Advisor (or Officer) shall report on the filing of such a grievance related to policy matters at the next regular meeting of the Executive Committee.
3. Unless otherwise determined by the Executive Committee, the Grievance Advisor (or Officer) shall make all decisions related to the grievance up to the arbitration level, with the concurrence of the Executive Director, and subject to the provisions of the Approval Authority Policy. Where the Grievance Advisor (or Officer) and the Executive Director do not agree (on arguments, information to be disclosed, remedies, or other matters), the issue shall be determined by the Executive Committee. The Grievance Advisor (or Officer) and Executive Director may consult with the Executive Committee at any time.
4. When a grievance has been denied by the Governors of the University of Calgary at the highest level before arbitration, the Grievance Advisor (or Officer) shall make a decision as to whether to recommend to the Board of Directors that the grievance should be taken to arbitration.
5. If the Grievance Advisor's (or Officer's) recommendation is to not pursue the matter to arbitration, and the Executive Director concurs, the grievance may be withdrawn. The decision should be communicated to the Executive Committee at the next regular meeting.
6. If the Grievance Advisor (or Officer) and Executive Director disagree, the matter shall be referred to the Executive Committee which may choose to withdraw the grievance or to

recommend to the Board of Directors to proceed to arbitration. If they choose to make a recommendation to the Board of Directors, the Executive Committee may choose to assign another Officer to act as Grievance Advisor for the matter or to ask the Executive Director to take on this role.

7. The decision to proceed to arbitration shall be determined by the Board of Directors, based on a recommendation from the Grievance Advisor (or Officer) or the Executive Committee. In making this decision, the Board may weigh the importance of proceeding to arbitration against the costs involved in taking such action.
8. Any costs associated with taking a grievance on a policy matter to arbitration shall be taken from the General Reserve Fund. However, if the matter meets the criteria for funding from the Strike Fund, the CAUT Defence Fund, or the CAUT Academic Freedom Fund, the funding shall come from those sources first.
9. There may be cases where a grievance on a policy matter is filed based on an individual case which is anonymized to protect the confidentiality of the individual. In such cases, if the Grievance Advisor declines to proceed to arbitration, the matter will be subject to appeal by the member in accordance with Section II below.

B) Grievance Related to Dismissal of Academic Staff Members

1. In all cases of dismissal, the Grievance Advisor assigned to the case shall normally file a grievance if requested to do so by the member.
2. In the case where a Grievance Advisor files such a grievance, it shall be reported at the next meeting of the Executive Committee; however, the name of the academic staff member will normally be withheld until the question of proceeding to arbitration arises.
3. The Grievance Advisor shall make all decisions related to the grievance up to the arbitration level, with the concurrence of the Executive Director. Where the Grievance Advisor and the Executive Director do not agree on any matter related to the case, they shall consult with legal counsel, the President, or any other Officer regarding the case.
4. The final decision to proceed to arbitration shall be determined by the Grievance Advisor, subject to appeal by the academic staff member in accordance with Section II below. When the Grievance Advisor decides to proceed to arbitration on a dismissal matter, it shall be reported in-camera at the next meeting of the Board of Directors.
5. Costs associated with the arbitration shall come from the General Reserve Fund.

C) Grievance Related to Individual Members or Groups of Members (other than dismissal)

1. In any case where a member or group of members has alleged a violation of the Collective Agreement, University Policy, or other matter where a grievance is appropriate, the Executive Director shall assign the case to a Grievance Advisor.

2. The Grievance Advisor shall make all decisions related to the grievance up to the arbitration level, with the concurrence of the Executive Director. Where the Grievance Advisor and the Executive Director do not agree on any matter related to the case, they shall consult with legal counsel, the President, or any other Officer regarding the case (as appropriate).
3. The Grievance Advisor has the authority not to file a grievance in the first place, in appropriate circumstances. The Grievance Advisor shall consult the grievor before making this decision and shall notify the grievor of the decision, and shall inform the grievor in writing of his/her rights under this process. Should the grievor wish to appeal this decision, they may do so in accordance with Section II below.
4. When a grievance has been denied by the Governors of the University of Calgary at the highest level before arbitration, the Grievance Advisor shall make a decision as to whether to recommend to the Board of Directors that the grievance should be taken to arbitration. The Grievance Advisor shall consult the grievor before making this decision and shall notify the grievor of the decision.
5. If the Grievance Advisor recommends against proceeding to arbitration, the grievor(s) may appeal the recommendation as per the process in Section II below.
6. If the Grievance Advisor recommends in favour of proceeding to arbitration, the matter shall be considered by the Board of Directors who shall make a final determination. The Board shall consider:
 - The Association's duty of fair representation;
 - The impact of the decision on the Faculty Association, the Collective Agreement and the individual;
 - The cost of pursuing the case in relation to what can be achieved in pursuing the case; and
 - The grievor's rights under the *Alberta Human Rights Act* and any other relevant employment-related statutes and the extent to which those rights were respected during the grievance process.
7. If the Board of Directors seems inclined to decline the Grievance Advisor's recommendation, or if they determine that they need more information, they shall pause in their discussions and invite the grievor(s) to meet with the Board before they make a final determination. In such a situation, the Association shall make every effort to address timeline issues as identified in Section II below.
8. If the Board of Directors has invited the grievor(s) to appear before them, the Executive Director shall notify the grievor(s) of the meeting date and time at which the grievor(s) may make their representations; the Executive Director shall give the grievor(s) a minimum of one week's notice of the meeting. The Executive Director shall provide the grievor at this time with any written material related to this matter that has circulated to the Board.
9. When considering an arbitration issue, the Board of Directors shall follow its normal rules in terms of membership, quorum, staff assistance and conflict of interest. The Executive

Director and professional staff of the Association are entitled to be present as non-voting members of the Board, and normally they should be present to act as resources in the discussion of the case. The previous involvement in the case of the Executive Director and, where relevant, other professional staff, shall not result in their being excluded on the basis of conflict of interest. However, they have an ethical obligation to be balanced when contributing to the discussion and to provide honest and fair-minded information to the Board of Directors.

10. The Chair has the authority to determine the process of the hearing and discussion, and to maintain order in the proceedings. All representations shall be respectful in nature.
11. Each voting member of the Board of Directors, including the Chair, has one vote. Should the Grievance Advisor be a voting member of the Board of Directors, they shall be included in the vote. For a decision to take the case forward to arbitration to have effect, it must be approved by a majority of those voting members who are present.
12. The decision of the Board shall be transmitted by the President to the grievor in writing within a reasonable amount of time.
13. The record of the decision shall consist of any written material provided to the Board members, the in camera minutes of the portion of the meeting relating to this issue, and the letter to the grievor setting out the decision. All other temporary notes made by members shall be shredded.
14. Should the matter proceed to arbitration, the costs shall come from the General Reserve Fund.

II. Grievance Appeal Process

Preamble: This process is intended to allow a grievor to appeal the decision of the Grievance Advisor that their grievance should not be taken any farther through the grievance process or to otherwise request a review of a Grievance Advisor's actions with respect to a grievor's or potential grievor's rights under the Collective Agreement. It should be noted that there are timelines in the Grievance Procedures in the Collective Agreement that may affect the handling of this process. The Faculty Association will make every effort to meet all such timelines, to schedule the meetings in such a way as to ensure that those timelines are met, and to request extensions where that is not possible (e.g. where the grievor has not notified the Executive Director of their intent to appeal in a timely way.) However, the Faculty Association cannot guarantee that all requested extensions will be agreed to by the Governors.

1. When the Grievance Advisor makes a decision not to pursue a member's grievance as far as it may be pursued under the *Collective Agreement*, the grievor has the right to appeal the decision, provided they notify the Executive Director of the decision to appeal within one week of receiving notification of the Grievance Advisor's decision. Following such notification, the Executive Director has the obligation to set up an Appeal Committee in accordance with Clauses II.3 to II.6. Unless exceptional circumstances exist, the Faculty Association must maintain the grievance that is subject to an appeal until the appeal is

disposed of by the Appeal Committee. If a grievance has not yet been filed, the Faculty Association must obtain an extension to file from the employer or, if that is not possible, must file the grievance for the purposes of preserving the grievor's rights if he/she is successful.

2. If the grievor does not notify the Executive Director of their wish to appeal within one week of receiving the Grievance Advisor's decision, the decision of the Grievance Advisor is normally final. Both the Grievance Advisor and the Executive Committee have the authority to waive this time limit. A waiver may be granted retroactively if called for by extraordinary circumstances. If a grievor asserts that their failure to notify the Executive Director of their wish to appeal within one week is related to a ground protected by the *Alberta Human Rights Act*, the Grievance Advisor and the Executive Committee must consider the grievor's assertion and, if they agree that a duty to accommodate exists, they must allow the grievor to file a late notice to appeal unless doing so represents an undue hardship.
3. The Appeal Committee shall consist of at least four members of the Board of Directors. It shall normally include all available members of the Executive Committee plus one non-Executive member from the Board of Directors, chosen by lot in the same way as substitutes are chosen (see below). If one or more Executive Committee member(s) is in a conflict of interest or otherwise unable to attend, and the membership of the Appeal Committee from the Executive Committee thereby falls below 3, substitutes shall be chosen by lot from among the Board of Directors members who are available and not in a conflict of interest. Both voting members and non-voting members who have previously been voting members shall be included. For greater clarity, a conflict of interest for a voting Committee member shall include having been involved in the grievance process previously, including the decision not to pursue the grievance.
4. The Executive Director shall appoint an Appeal Committee Chair, normally a person with significant grievance experience, from the members of the Appeal Committee. If there is no member of the Appeal Committee with significant grievance experience, the Executive Director may appoint any member of the Board with the necessary experience as the Appeal Committee Chair, without otherwise changing the membership of the Appeal Committee.
5. The Executive Director shall attend all meetings of the Appeal Committee as a non-voting resource person. However, the Executive Director has an ethical obligation to be balanced when contributing to the discussion and to provide honest and fair-minded information to the Appeal Committee. The Executive Director may bring another professional staff member to the Appeal Committee as an additional resource person where that person has been involved in the case. The previous involvement in the case of the Executive Director and, where relevant, other professional staff, shall not result in their being excluded on the basis of conflict of interest. All factual information shared with the Appeal Committee about the Appeal must be shared with the grievor and the grievor must have an opportunity to comment on that information prior to the Appeal Committee determining the outcome of the Appeal. The Appeal Committee must base its decision on the information provided.

6. At the discretion of the Executive Director, one other staff member may be present to take notes of the proceedings. Otherwise, the Executive Director shall take the notes. These notes, as approved by the Appeal Committee, shall be the official notes.
7. The Executive Director shall notify the grievor of the date and time the Appeal Committee will be meeting to hear the appeal; the Executive Director shall give the grievor a minimum of one week's notice of the meeting. The Grievance Advisor shall provide the grievor at the time of notification (or, if not, at least one week before the meeting) with any written material related to this matter including but not limited to investigative material, statement by the employer regarding the grievance, and documents setting out earlier decisions of the Faculty Association in relation to the grievance, that the Grievance Advisor will be distributing to the Appeal Committee.
8. The grievor may present their case in writing and/or in person to the Appeal Committee. The grievor must supply any written material to the Executive Director for distribution to the Appeal Committee by noon at least two working days prior to the meeting of the Appeal Committee. The grievor may be accompanied by a member of the academic staff other than a current Faculty Association Board of Directors member; this person may assist the grievor in presenting their case. The Grievance Advisor will present their grounds for recommending against pursuing the grievance further and the grievor, if present, may also present their case for wanting the case to be pursued further. The Grievance Advisor may respond to the grievor's argument. The grievor, the Grievance Advisor and the members of the Appeal Committee will be given the opportunity to ask any relevant questions. The Appeal Committee is normally expected to provide the grievor the opportunity to respond to a position presented by the Grievance Advisor. The grievor, their advisor, and the Grievance Advisor will then absent themselves from the meeting and the Appeal Committee shall proceed to discuss and make a decision on the matter based solely on the evidence presented at the hearing. Where the grievor is unable to attend in person, the grievor may be allowed to attend through teleconferencing or other electronic means at the discretion of the Appeal Committee Chair.
9. The Chair has the authority to determine the process of the hearing and discussion, and to maintain order in the proceedings. All representations shall be respectful in nature. The Chair has the authority to vary or suspend any procedural rules, if, in his/her opinion, doing so is necessary to accommodate the grievor based on a ground protected by the *Alberta Human Rights Act* and would not represent an undue hardship to the Faculty Association.
10. Each member of the Appeal Committee, including the Chair, has one vote. For a decision to provide a remedy set out in s. 13 to have effect, it must be approved by a majority of those voting members who are present. The decision of the Appeal Committee is final and binding. Where there is not a majority vote, the default decision shall be to maintain the recommendation of the Grievance Advisor. The Appeal Committee must include in its deliberations consideration of the following:
 - The Association's duty of fair representation;
 - The impact of the decision on the Faculty Association, the Collective Agreement and the individual;

- The cost of pursuing the case in relation to what can be achieved in pursuing the case; and
 - The grievor's rights under the *Alberta Human Rights Act* and any other relevant employment-related statutes and the extent to which those rights were respected during the grievance process.
11. The decision of the Committee and its reasons for the decision shall be transmitted by the Chair to the grievor in writing within a reasonable period of time. Each member of the Committee shall indicate whether they agree or disagree with the written reasons provided to the grievor. If the Committee dismisses the grievor's appeal, its written decision and the reasons shall include a statement to the effect that the grievor has 45 days to pursue their duty of fair representation complaint at the Alberta Labour Relations Board.
 12. The record of the meeting shall consist of any documents provided to the Appeal Committee, the official notes, and the letter setting out the result of the appeal. All other temporary notes made by members shall be shredded.
 13. The Appeal Committee has the authority to do one or more of the following:
 - a) Order that the grievance be pursued further;
 - b) On the request of the grievor, order that a new person act as Grievance Advisor (the new Grievance Advisor shall be appointed by the Executive Director);
 - c) Order the Grievance Advisor, a new Grievance Advisor, or another appropriate person to reassess the grievance, with or without instructions from the Appeal Committee, based on the investigation as already completed;
 - d) Maintain the recommendation of the Grievance Advisor and disallow the appeal;
 - e) Approve other remedies as appropriate in the circumstances.
 14. In this policy, the "Grievance Advisor" means the academic staff member who has been handling the grievor's case for the Faculty Association. "Griever" includes a potential grievor, whose grievance the Faculty Association declined to pursue.
 15. If a grievor objects to the actions of the Grievance Advisor or another person acting on behalf of the Faculty Association, even in the absence of a formal decision not to pursue a grievance, the grievor may appeal the action using the above procedure. The Faculty Association shall process the appeal of the action as it would an appeal of a decision not to pursue a grievance, with any necessary modifications.