

# Membership Representation Policy

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## *Membership Representation*

### *Preamble*

A primary responsibility of the Association is the representation of the interests of the members of the academic staff in disputes relating to the collective agreements (*Post-secondary Learning Act* 2003 §85(3)). A summary of the activity in this regard is set out below. Individual members have a personal responsibility in all cases, but they are entitled to seek advice and assistance from the officers and staff of the Association. The assistance may extend to advocacy and, from time to time, to acting as agent on behalf of staff members.

The role of the Association is governed by the duty of fair representation. The duty of fair representation may be defined as the responsibility to act in a manner that is neither arbitrary, discriminatory, nor in bad faith. Representation shall not be capricious or superficial, and shall be based on full investigation. The member shall be kept informed of actions and reasons for actions.

The scope of the representation includes, but is not limited to, representations before:

- Chairs, Deans and other administrative officials;
- Vice-Presidents, especially with regard to Agreement-related matters involving questions about the assignment and performance of responsibilities, supplementary professional activity, sabbatical and other leaves, vacations, charges of unacceptable academic performance, and discipline matters;
- Supervisors, FECs or equivalent, and GACs on matters of performance evaluation;
- Investigating authorities in allegations leading potentially to discipline; and
- Arbitration tribunals.

## *A. Assistance to Members*

A1 In seeking assistance, members are encouraged to approach the AASUA office.

A1.1 Matters involving the performance of duties and evaluation, questions of discipline, grievance, or other actions potentially leading to formal grievance or arbitration and any other matters arising out of the collective agreement will normally be dealt with by the Executive Director who normally assigns

the matter to a Labour Relations Officer.

- A1.2 The Executive Director shall notify the Chair of the Grievances Committee (GC) of any complaint the Executive Director believes may lead to a formal grievance.
- A1.3 All cases will be handled with complete confidentiality and consideration of grievance matters at Executive or at the Grievances Committee that involves the discussion of individuals shall be held *in camera*. The names of individuals and personal details are disclosed only as necessary for representation in a complaint resolution process or for seeking legal advice.
- A2 When a request for assistance from a member is received:
  - A2.1 The Executive Director shall review the request and deal with it as appropriate.
- A3 External legal counsel may be consulted by the Executive under its authority to manage the business and affairs of the Association.
- A4 The Association has carriage of all grievances. Should GC disagree with the preliminary decision of the Executive Director not to represent a member, or to discontinue representation of a member, the GC has the sole authority to decide whether a grievance shall be submitted. The GC may solicit the advice of external legal counsel respecting a potential grievance before making a decision. The final decision to advance a grievance to arbitration shall be approved by the Grievances Committee. Executive shall receive regular progress reports on work, and regular progress reports on the course and costs of any arbitration that it approves.
- A5 Where the member's complaint relates to a matter governed by or arising from the collective agreement, the following rules apply:
  - A5.1 In cases where the Association has the right to appeal (e.g., cases arising under Article 16 of the Faculty Agreement (Discipline)) and so decides, all expenditures will be at the discretion of the Association.
  - A5.2 In cases where the member personally has the right to appeal (e.g., cases arising under Article 14 (Unacceptable Academic Performance) or Article 15 (General Appeals Committee) of the Faculty Agreement and so decides, the Association does not have standing to initiate the process unless the member requests representation. Therefore, the Association will not provide financial and/or legal assistance to the member in the appeal, except in the following case:
    - A5.2.1 Where the Association determines that it shall act to discharge its duty of fair representation, or that the appeal

will set a precedent or concerns a principle of broad importance to the AASUA and its members, the Grievances Committee has the authority to approve legal assistance for and on behalf of the member. If the member or the Executive Director disagrees with a decision of the Grievances Committee, either may appeal the decision to the Executive which decision is final and binding.

- A6 Where a member's complaint may lead to a policy grievance, the following rules apply:
- A6.1 A policy grievance is defined as a complaint by the Association that an action of the employer (or its failure or refusal to act) is a violation of the collective agreement that could affect members who are covered by the collective agreement.
  - A6.2 The member shall bring forward their recommendation for the policy grievance to either the President or the Chair of the Grievances Committee. The President, Chair of the GC and the Executive Director shall discuss the matter and after reaching consensus, shall make a recommendation for a policy grievance to the Executive within two weeks of receiving the recommendation from the member. If consensus cannot be reached, this will be reported to the Executive.
  - A6.3 The President, Chair of GC or the Executive Director may bring a recommendation for a policy grievance to Executive at any time.

## ***B. The Use of External Legal Counsel for Grievances***

### *General Authority*

- B1 The Executive Director shall have authority to submit questions to the Association's external legal counsel appropriate to the circumstances, where such questions arise in the routine conduct of grievances.
- B2 The Executive Director shall have the authority to retain external legal counsel appropriate to the circumstances involving representation of members.

### *Legal Counsel Privately Retained by Members*

- B2 The Association will not provide financial support for legal counsel privately retained by members.
  - B2.1 The Association has carriage of all grievances arising from the collective agreement and the right to grieve on behalf of members as the exclusive bargaining agent; and the exclusive right to be the signatory on behalf of the member on any settlements or agreements

negotiated with the University.

B2.2 The Association has a legal obligation to continue to represent a member who has consulted with their own external counsel. The Association may choose to cooperate with external legal counsel retained by the member, subject to recovery of reasonable costs incurred in that cooperation.

B3 Costs of legal proceedings incurred by a member in litigation involving the University will not be supported nor paid by the Association.

### *C. Representation Decisions and Appeal Policy*

C1 The AASUA recognizes its duty of fair representation and undertakes to represent its members fairly, in good faith, and without discrimination. There will be situations when the AASUA must, for specific reasons, make the decision not to represent a member on a particular matter, or to cease to represent a member in a particular matter.

C1.1 The GC may make the decision not to represent a member in a particular matter or to cease to represent a member in a particular matter in any of the following circumstances:

- The matter which the member is bringing forward is not within the ambit of the collective agreement, or the matter is not one that would be arbitrable;
- A grievance on the matter lacks merit and is not likely to succeed at arbitration;
- The member has acted in an abusive manner toward their AASUA representative or toward AASUA staff;
- The member refuses to follow reasonable advice given by their AASUA representative;
- The member refuses to accept a settlement agreement or an accommodation plan which is judged to be, taking into account all the circumstances of the case, reasonable and acceptable by the AASUA;
- The member has a duty to cooperate with the AASUA but fails to do so;
- or other reasons deemed sufficient by the President, the GC, or Executive.

### *The Preliminary Decision*

- C2 Preliminary decisions regarding the decision not to represent a member or a particular matter or cessation of representation of a member or on a particular matter will be made by the Executive Director.
- C3 Should a preliminary decision be made by the Executive Director not to represent or to discontinue representation of a member on a particular matter, the matter will be forwarded to Grievances Committee (GC) for their consideration and decision.
- C4 After reviewing the written or oral recommendation of the Executive Director, or their designated Labour Relations Officer(s), the GC will make one of the following decisions:
- a) Agree with the preliminary decision not to represent or to discontinue representation
- OR
- b) Disagree with the preliminary decision, in which case representation of the member will proceed.
- C5 The Chair of the GC shall provide the member with a written record of the decision. If the GC agrees with the preliminary decision, the letter will also include instructions for appealing the decision.

### *Appeal of the Preliminary Decision*

- C6 When the GC agrees with the preliminary decision, the member will have the right of appeal to a sub-committee of the Executive (Appeal Committee).

### *Appeal of a decision of the Grievances Committee*

- C7 If a member or the Executive Director disagrees with a decision of the Grievances Committee, either may appeal the decision to the Appeal Committee.

### *Process*

- C8 Should a member wish to appeal the decision of the GC, the member must notify the AASUA President, in writing, within 10 working days of the date of the letter from the GC Chair. The same process shall apply should the Executive Director wish to appeal the decision of the GC.
- C9 The Appeal Committee shall be made up of three members of the Executive selected by the Executive who have not been involved in the member's

representation up to that point, and who do not have another conflict (e.g., work in the same department as the member, related to the member).

- C10 The Appeal Committee will choose a chair from amongst its members.
- C11 The Appeal Committee will conduct a hearing where they will hear from the member and/or the member's representative, and from the Chair of the GC and/or the Executive Director or designate and/or legal counsel.
- C12 The hearing will be scheduled as soon as possible following the GC's decision. Reasonable notice will be given to the parties.
- C13 The member may bring their representative to the hearing. Any costs incurred for representation will be the responsibility of the member.
- C14 Hearing participants may provide the Chair of the Appeal Committee with written submissions. In order to be considered, these submissions must be provided to the Chair at least 2 working days prior to the hearing and provided to each party.
- C15 The Appeal Committee is not bound by rules of evidence or procedures applicable to courts of law. All hearing and decisions of the Appeal Committee are guided by and in accordance with principles of natural justice and procedural fairness. The Chair shall make procedural rulings including rulings on extensions of time limits.
- C16 The hearing format shall be as follows:
  - a) AASUA presentation: maximum 60 minutes
  - b) Member's presentation: maximum 60 minutes
  - c) AASUA rebuttal: maximum 30 minutes
  - d) Member's rebuttal: maximum 30 minutes
  - e) Questions from the Appeal Committee.
- C17 The Appeal Committee may provide an oral decision at the conclusion of a deliberation period following the hearing. The Appeal Committee will provide its decision along with brief written reasons to the member, the Chair of the GC, the President, and the Executive Director normally within 5 working days of the hearing.
- C18 The decision of the Appeal Committee is final and binding and not subject to further appeal.
- C19 The Chair of the Appeal Committee shall report the outcome of the hearing to the Executive.
- C20 The Chair of the Grievances Committee, or delegated to the President, will report annually to Council aggregated data on complaints and grievances, and on appeals of the Grievance Committee's decisions heard by Executive. The data will include both the Article to which the complaint, grievance or

appeal pertains, and whether the originator of each appeal was the Executive Director or a Member.

*NOTE: This is intended to assist Council in establishing policies (Article 6.1.1) regarding member representation and to help the AASUA to meet its obligation to discharge its duty of fair representation.*