



## The Grievance Process

Members who have a grievance follow a process that is outlined in the Collective Agreement

Please see Article 19 of the Queen's-QUFA Collective Agreement for technical details about the grievance process. This *QUFA Infosheet* attempts to explain the process in more detail, using less formal language.

### General Principles and Definitions

A “**grievance**” is simply a dispute that arises when there is a difference of interpretation or an abrogation of the Collective Agreement (CA), the contract governing terms and conditions of employment for Queen's Faculty, Librarians, and Archivists, or when relevant legislation has been abrogated (Employment Standards Act, Human Rights Code). There are three steps, including “informal inquiry,” which are explained in later sections of this *QUFA Infosheet*. There are different types of grievances depending on who files them and on whose behalf they are filed. Grievances may be filed for single Members by those Members or by QUFA, for groups of Members by those Members or by QUFA, by QUFA for the bargaining unit as a whole, or by Queen's University as the Employer.

Members may file grievances with or without the participation of QUFA. If a Member files a grievance on their own, they are said to “**have carriage**” or control over the grievance.

Member grievances can proceed through to the end of the first formal step, Step 1, problem-solving within the University. If the grievance is not resolved at Step 1, it can only proceed to Step 2, Arbitration, if QUFA assumes carriage or responsibility for the grievance. QUFA can also be involved from the first inquiry and assume carriage of any formal grievance from the outset. When QUFA is involved from the outset, QUFA has carriage.

QUFA's counterpart in Queen's Administration is the **Faculty Relations Office**, which is found in the Queen's Office of the Provost and Vice-Principal (Academic). The Faculty Relations Office is the Queen's administrative office responsible for labour relations with academic staff, and as such is involved in negotiating and administering the CA on behalf of the Employer. It is the office we deal with throughout the grievance process.

Some parts of grievance proceedings are characterized as “**without prejudice**.” That means that what is said is not binding on future proceedings. It is often useful to have conversations “without prejudice” so that people can brainstorm and problem-solve without risk of committing to a course of action.

Grievances often result in written resolutions. These are often characterized as “**without precedent**,” which means that what is agreed to does not establish a

precedent or new rule that can be relied on in future situations with similar characteristics. As grievances are often about individual concerns, their resolutions don't always make sense for broader application, and so “without precedent” is used to limit applicability.

All grievance matters are treated **confidentially**. All exchanges of information with the Employer are to be treated as confidential by the grievor, by QUFA, and by the Employer (Article 19.1.2). QUFA advisors, staff, and volunteers are committed to maintaining the confidentiality and privacy of Members who come to QUFA for assistance. QUFA staff may share information among themselves to ensure high-quality responses, but QUFA volunteers, including those on the Grievance Committee, do not normally know the identity of grievors until a grievance moves to the final stage, Arbitration. There is more information about these stages and their implications for grievors below.

### Stages of Dispute Resolution

There are three stages to the grievance process for QUFA Members:

- Informal Inquiry,
- Step 1 (Management-QUFA negotiations to resolve the conflict), and
- Step 2 (Arbitration before an external labour arbitrator).

There is also the option to mediate a settlement or resolution to the grievance. Both parties must agree to this for it to happen, and it would normally involve a third-party mediator working with the parties to find common ground. Often, before arbitrations begin, the arbitrator will offer to act as mediator before the formal hearing begins. Once the hearing begins, mediation is normally no longer possible.

### *Informal Inquiry (Article 19.3)*

Members can, with or without QUFA's involvement, seek to resolve disputes informally. Members are welcome to contact QUFA for advice even if they wish to attempt informal resolution on their own. QUFA advisors will generally respect a Member's wishes about QUFA's role at this stage, so Members are encouraged to seek advice whether or not they want direct intervention.

If contacted, QUFA staff will attempt to answer questions and resolve issues brought to them. Sometimes this necessitates contact with Queen's senior administrative offices, particularly the Faculty Relations Office. Resolution may also necessitate the involvement of colleagues. Because of the confidential nature of the grievance process, QUFA will let you know if it is necessary to involve others so that you may decide whether to continue with your query or complaint.

These procedures are deemed an informal grievance process. The length of time it takes can vary, depending on the nature of the issue, the information required, and the willingness or ability of the Employer to resolve the situation. The hope is always to reach a mutually agreeable resolution in a relatively contained manner without the need to resort to the next step, and some matters are resolved at this stage. If resort to the formal grievance process is necessary, however, please be aware that a

**notice of intention to grieve** must normally be filed with Faculty Relations **within 15 working days** of an event, transaction, decision, or the end of a set of circumstances giving rise to the complaint. There is some time leeway if an informal process was begun or if the grievor did not know about the circumstances right away, but timing is still important.

Informal resolution proceedings are without prejudice to subsequent formal grievance proceedings should those become necessary.

### *Step 1 (Article 19.4)*

Step 1 begins the formal grievance process. It is a mechanism internal to the University and can be launched by a Member individually, Members in a group, by QUFA, or by the Employer. If Member-driven, QUFA may assume carriage of the grievance or not, depending on strategy, preference, or facts of the case. Once QUFA has assumed carriage of the grievance, then QUFA must take the lead. If QUFA does not assume carriage of a grievance, then the Member retains control of the grievance up to the end of the Step 1. Unless explicitly agreed to at the outset, whenever QUFA becomes involved, it is presumed that QUFA has assumed carriage of the matter.

To indicate that a Step 1 meeting is necessary, a written Notice of Intention to Grieve must be filed with the Associate Vice-Principal (Faculty Relations) in the Office of the Provost and Vice-Principal (Academic). Appendix B in the CA shows what information must be included in the Notice of Intention to Grieve. If QUFA has assumed the grievance, then QUFA staff will file the Step 1 Notice.

Step 1 involves a closed door, "off the record" meeting with the following people normally in attendance: the grievor, the administrators whose actions are grieved against, a QUFA staff representative, a QUFA

Grievance Committee representative, a Faculty Relations representative, and the Provost as the senior administrator who has decision-making power to reverse or uphold the decision(s) that led to the launching of the grievance.

The order of proceeding in Step 1 meetings can vary, but generally conforms to the following pattern. The Associate Vice-Principal (Faculty Relations) introduces the fact of the Step 1, explaining that there may or may not be resolution at the end of the meeting. Then, the grievor is asked to give details of the complaint. QUFA staff may give a brief introduction before the grievor relates his or her story. This is followed by open discussion in which either party may seek additional information or propose solutions. At the end of the meeting, the parties decide whether a resolution can be reached or not, or whether another meeting is justified.

At this meeting, possibilities for resolution of the dispute are explored. To have the freedom to have a free and frank discussion, discussions are not recorded and are not foundational to future proceedings. For both sides, the meeting is confidential and without prejudice. Usually, only the outcome is officially recorded, but even that may remain confidential. The goal is to reach a mutually agreeable solution and to remove as many barriers as possible that could hinder this goal. If the process is flawed, or should it become clear that no resolution is possible, any person at the meeting can pause or stop the proceedings.

If a resolution is reached, then a Memorandum of Settlement (MOS) will be drafted with the details and signed. If no resolution is reached, then a memorandum will be signed indicating that agreement could not be reached at the meeting. If there is no resolution, then either another

meeting will be scheduled to continue the discussion or the decision-maker (the Provost) will consider what was presented, make a decision, and will send that written decision to the parties and the grievor at a later date.

If no resolution is reached at the Step 1, there is the possibility of **mediation** before deciding whether to proceed to Step 2, but only if both sides are willing. The outcome of mediation could be a MOA with settlement details, or a MOA that specifies that no agreement could be reached.

If the Step 1 does not produce a satisfactory resolution, the grieving side can decide to dispute the Provost's decision by taking the matter to the next stage, which is called Step 2 or **Arbitration**.

A Member may not proceed to Step 2 independently. Only QUFA, on behalf of a Member or on its own, may take this next step. In other words, QUFA must assume carriage of the grievance at this stage if it hasn't already done so.

At this stage, the grievance becomes less confidential, and the Grievance Committee will learn the identity of the grievor(s) because it will be asked to consider the question of whether QUFA should take the grievance to Arbitration. The Grievance Committee hears the facts of the case and makes a recommendation to the Executive Committee to pursue the grievance through external arbitration or not. The Executive Committee must approve the move to Step 2 because it requires a greater expenditure of resources and so must be seen to be in the best interests of a Member or Members in general. Please see the "Policy for Taking Grievances to Step 2" on the QUFA Web site.<sup>1</sup>

QUFA takes seriously the notion of reasonable apprehension of bias, and so vets both the Grievance and Executive committees in the interests of a fair decision-making process.

### *Step 2 (Article 19.5)*

If the QUFA Grievance Committee and Executive believe that an issue was not properly or adequately resolved, then they can take the matter to the next step, Arbitration. This is Step 2 in the CA.

Arbitration is a hearing rather than a meeting, and is adversarial, usually with litigation lawyers employed by both sides. The hearing is open to the public, and an arbitrator's rulings, like judges', are public documents. An arbitration feels like a courtroom proceeding. The decision-maker is a professional arbitrator who may or may not have any knowledge of what it is like to work in a university, and who has limited remedies that he or she may impose should the grievance be successful.

Not all grievances proceed to Arbitration. Some of the reasons QUFA may decide not to take a grievance forward include:

- there are already or have recently been similar grievances moved to Arbitration such that more in the same vein may not be necessary;
- the evidence is not clear or sufficient;
- an Arbitration proceeding is disproportional to the severity or importance of the breach or action giving rise to the grievance;
- there is no remedy, or the only available remedy involves harm to QUFA Members;
- the interests of the wider Membership would not be served were we to "win" such a grievance;
- the grievance cannot be "won," and/or the risk of "losing" is too great to the individual or to the Membership.

Arbitration costs are borne by QUFA and can be quite high. They often include paying professional litigators to prepare for the hearing as well as costs associated with the actual hearing day(s). The arbitrator's fees are shared with the University.

Remedies at Arbitrations are limited, and are often either financial compensation or a direction to repeat a CA process that is found to have been faulty. Creative solutions do not come out of Arbitrations. For example, a Member who has experienced difficulty at work resulting in grievable disputes with the Employer may benefit from a complex reorganization of their work assignment over a period of time to resolve the dispute. An arbitrator may uphold the grievance and order that the rules of the CA are observed, but he or she is unlikely to award a specific and complex resolution of the Member's problem. For that reason, a good settlement before Arbitration is usually preferable to "winning" at Arbitration, and might indeed be a better "win" for the Member, as it can be more nuanced.

Given this, the exercise of QUFA's right to proceed to Arbitration is normally reserved for the most serious of cases (again, please refer to the "Policy for Taking Grievances to Step 2"), and in each case, the QUFA Executive Committee must weigh all factors in reaching a decision about whether to proceed.

If the decision is taken to proceed to Arbitration, QUFA will normally retain a lawyer who has skill and expertise in presenting cases to an adjudicator in a labour-law setting. QUFA will send the lawyer any evidence it has in connection with the grievance. The lawyer will likely ask questions of QUFA, the grievor, and any potential witnesses. The lawyer will put together a legal argument on behalf of the grievor and provide evidentiary materials to the lawyer for the

Employer. The lawyer for the Employer will do likewise.

The arbitration hearing will take place in Kingston, and a professional arbitrator will sit in judgement of the proceedings (see Article 19.6 and Appendix C of the CA). In attendance will be lawyers hired by each side, advisors from the parties (Union and Employer), the various actors to the grievance (grievors, persons being grieved against, witnesses), and any supportive family or friends the grievor may wish to have in attendance. It is an open hearing, and others might also attend.

On the first day of Arbitration (and there are usually multiple days scheduled), preliminary issues are dealt with, such as setting the scope of the hearing. There is often a last-minute attempt to settle the dispute before the formal hearing begins. If both parties agree, the arbitrator may act as a mediator and try to bring the sides to agreement. Generally, if settlement is possible, it will be accomplished this first day. If a settlement is achieved, a MOA will be produced outlining the terms, and the arbitrator will be seized with helping the parties to ensure that the settlement is acted upon.

If the parties decline to attempt to settle, or if the arbitrator's efforts aren't successful in bringing them to agreement, the formal hearing will commence. Each side will present evidence, both written and verbal, following which the arbitrator will render a written decision. This process often takes months and sometimes years.

### **After Step 2**

If the arbitrator exceeds his or her powers or makes a mistake in how the circumstances were assessed (these rules fall within the ambit of administrative law), then either party may seek judicial review of the decision. This is a review of the

process by justices on the Ontario Supreme Court, and the question of whether the arbitrator followed the rules in arriving at the decision. It is not a review of the substance of the case.

### **Duty of Fair Representation**

The duty of fair representation (DFR) is described in the Ontario Labour Relations Act:

A trade union or council of trade unions, so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory, or in bad faith in the representation of any of the employees in the unit, whether or not members of the trade union or of any constituent union of the council of trade unions, as the case may be. (74)

This is a procedural right rather than a right to a particular outcome. A Member may be dissatisfied with the outcome of a grievance process, but that does not necessarily mean that QUFA acted in a manner contrary to the DFR provision. It is important to keep in mind that QUFA represents the whole Membership in its defence of the CA, so that sometimes the best interests of the bargaining unit as a whole will override the best interests of a particular Member, and sometimes QUFA and the Member will interpret "best interests" differently.

If a Member believes QUFA has not represented him or her fairly as per the DFR, the Member may file a complaint with the Ontario Labour Relations Board.<sup>2</sup>

### **Member/Grievor Responsibilities**

The grievance process takes time, and is limited in what can be addressed and what solutions can be found. It depends on the ability of QUFA advocates to make good arguments based on sound facts. It is part of

QUFA's labour relations with Queen's, and is thus based, in part, on building and maintaining trust between the parties. For all of these reasons, the process makes specific demands on Members.

Members have the right to the processes for grieving outlined in the CA, but should be prepared to be patient, as these take time. If a Member is unsure of why there are delays or if the delays are causing harm, please raise this with the QUFA advisor.

Labour disputes of any kind are infrequently "won"; both sides generally work for a resolution that is mutually palatable given the complexity of the case. As a union, QUFA's goal is to enable all parties to resume their working relationships, and that goal is not well-served by clear-cut punishment or humiliation of the erring party, no matter the gravity of the error. This can be frustrating for grievors.

Members must bring the whole story to their QUFA advisors as early in the process as possible. This often requires Members to trust QUFA staff with sensitive information. Withholding it does not help in the long run even if the information appears to be prejudicial to the Member's case. It is likely to come out during formal proceedings in any case, and if a Member hasn't been completely forthright, it may weaken the case or damage the Member's integrity.

Finally, Members should be prepared to take an active role at different stages of the process. Some of the essential work that Members do includes:

- compiling and sharing complete and accurate records (notes, e-mails, memos, etc.) of the events relevant to the grievance when asked;

- checking that the QUFA staff person handling the case is representing the facts accurately;
- coming to meetings prepared to discuss the issues at hand;
- being forthcoming with the QUFA advisor about any special needs or considerations (time restraints, health concerns, work demands, etc.) that may affect the process;
- maintaining strict confidentiality about the process and attendant documents to which the Member has access;
- being responsible to ask if anything is unclear and to read background information as requested.

If you have questions that are not answered here or that you feel are not being addressed by your QUFA advisor, you can raise them with QUFA elected officers such as the Chair of the Grievance Committee, the President, or Past President (who chairs the Staff Relations Committee).

#### QUFA Records

QUFA staff keep a record of Member concerns for statistical purposes and

as background should the matter take on greater significance. QUFA maintains an in-house, user-limited and password-protected electronic database to track inquiries and grievances. Sometimes, there is also a paper file that is kept in a locked drawer in the QUFA office. Only QUFA staff have access to these electronic and paper records. Correspondence between Members and QUFA representatives, including e-mail, is confidential if it is in connection with rights under the CA and conducted with the expectation of confidentiality. The University accepts and abides by this rule.

If a matter proceeds to Step 1, some evidence from the file will be shared with the Faculty Relations office, and they in turn will share it with the others in attendance at the Step 1 meeting. If a matter proceeds to Step 2, QUFA's legal counsel will have access to all materials in the file, and then the contents are protected by solicitor-client privilege and litigation privilege.

Communications with lawyers contracted by QUFA are protected by solicitor-client privilege, which is

explained by the Law Society of Upper Canada.<sup>3</sup>

QUFA records older than 10 years will usually be destroyed if no additional material is added to the same file.

#### QUFA Staff

**Leslie Jermyn** (Executive Director)  
**Ramneek Pooni** (Grievance Officer)  
**Susan Fitzgibbon** (Labour Relations Officer)  
**Rhonda Clark-George** (Administrative Assistant)  
**Elizabeth Polnicky** (Administrative Assistant)

#### Notes

<sup>1</sup><http://www.qufa.ca/member-services/grievances/>

<sup>2</sup><http://www.olrb.gov.on.ca/english/homepage.htm>

<sup>3</sup><http://www.lsuc.on.ca/with.aspx?id=2147497917>

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