

Workshop on the Grievance Process
11 January 2013

Agenda

10:30: Introductions

In which the set-up, purpose, and goals of the workshop will be outlined, and we will take the time to (re)introduce ourselves to one another.

10:45: Understanding the grievance process

In this section of the workshop, we will outline the grievance process as outlined in the Collective Agreement and distinguish different types of grievances and other dispute resolution mechanisms. The goal, by the end of this portion of the workshop, is to have you understand what a grievance is and is not, as well as how grievances function.

11:30: Break

11:45: Grievance scenarios

We will break into groups in order to examine scenarios in which a member of the Association may consider filing a grievance. Key to this section will be not only identifying potential violations of the Collective Agreement, but also understanding the process that would be followed should a deemed violation become a grievance.

12:30: Lunch

Part One: Introductions

The following excerpts from the Post-Secondary Learning Act of Alberta are included here in order to help you understand how, legislatively, Mount Royal University and the MRFA are constituted in Alberta legislation. Particularly important is section 90, which notes that “the *Employment Standards Code* and the *Labour Relations Code* do not apply to . . . the academic staff members of a public post-secondary institution.” The significance of this is that the Collective Agreement is the sole document which governs the work of MRFA members.

POST-SECONDARY LEARNING ACT

Division 2 Campus Alberta

Publicly Funded Post-secondary System

Definitions

102.1 In this Division,

- (a) “approved program of study” means a program of study approved in accordance with the regulations;
- (b) “publicly funded private college” means a resident private college that receives a grant made by the Minister under the Government Organization Act and offers an approved program of study.

Six sector system

102.2(1) The publicly funded post-secondary system consists of the following 6 sectors:

- (a) Comprehensive Academic and Research Institutions;
- (b) Baccalaureate and Applied Studies Institutions;
- (c) Polytechnical Institutions;
- (d) Comprehensive Community Institutions;
- (e) Independent Academic Institutions;
- (f) Specialized Arts and Cultural Institutions.

(2) The Lieutenant Governor in Council may make regulations assigning

- (a) each public post-secondary institution to a sector of the publicly funded post-secondary system, and
- (b) publicly funded private colleges to the Independent Academic Institutions sector of the publicly funded post-secondary system.

Sector roles

102.3(1) An institution in the Comprehensive Academic and Research Institutions sector

- (a) may provide approved programs of study that lead to the granting of the following:
 - (i) baccalaureate, master’s and doctoral degrees;
 - (ii) diplomas;
 - (iii) certificates,

- (b) may conduct pure research and applied research and foster innovation, and
- (c) may conduct scholarly research.

(2) An institution in the Baccalaureate and Applied Studies Institutions sector

- (a) may provide approved programs of study that lead to the granting of the following:
 - (i) diplomas;
 - (ii) certificates;
 - (iii) applied degrees;
 - (iv) baccalaureate degrees,
- (b) may provide university transfer programs,
- (c) may conduct applied research and foster innovation, and
- (d) may conduct scholarly research related to approved programs of study provided by the institution that lead to the granting of baccalaureate degrees.

(3) An institution in the Polytechnical Institutions sector

- (a) must provide courses or programs of instruction or training in accordance with section 45(1),
- (b) may provide approved programs of study that lead to the granting of the following:
 - (i) diplomas;
 - (ii) certificates;
 - (iii) applied degrees;
 - (iv) baccalaureate degrees,

Academic staff

84(1) In this section and in sections 85 to 92, “agreement” means an agreement between the board and an academic staff association under section 87.

(2) The board of a public post-secondary institution other than Banff Centre shall employ any persons it considers necessary to serve as academic staff members at the public post-secondary institution.

(3) A board shall, subject to any existing agreement,

- (a) determine the remuneration of academic staff members,
- (b) prescribe the duties of academic staff members, and
- (c) prescribe the term of employment and the terms and conditions of employment of academic staff members.

Academic staff associations

85(1) The Lieutenant Governor in Council shall by order establish an academic staff association for each public post-secondary institution other than the Banff Centre.

(2) Each academic staff association is a corporation with the name given to it by the Lieutenant Governor in Council and consists of the academic staff members of the public post-secondary institution.

(3) Each academic staff association shall have the exclusive authority, on behalf of the academic staff members, to negotiate and enter into an agreement with the board of the public post-secondary institution.

Academic staff association executive

86(1) The business and affairs of an academic staff association shall be managed by an executive, the members of which shall be elected by the academic staff members.

(2) The academic staff association shall, with the approval of the academic staff members, make bylaws governing its affairs, and those bylaws shall contain provisions governing at least the following matters:

- (a) the election of members of the executive of the academic staff association;
- (b) the number of persons and the officers of which the executive is to consist, and their duties, powers and remuneration;
- (c) the calling of general and special meetings of the academic staff association and of the executive;
- (d) the conduct of business at the meetings referred to in clause (c), including the number constituting a quorum at a meeting and the method of voting;
- (e) the charging of membership fees and the amount of those fees;
- (f) the acquisition, management and disposition of property of the academic staff association;
- (g) the audit of accounts;
- (h) the manner of making, altering and rescinding bylaws;
- (i) the preparation and custody of
 - (i) minutes of meetings of the academic staff association and of the executive, and
 - (ii) books and records of the academic staff association;
- (j) the time and place at which the minutes, books and records of the academic staff association may be inspected by members.

Academic staff agreements

87(1) The board and the academic staff association of a public post-secondary institution shall enter into negotiations for the purpose of concluding or renewing an agreement.

(2) An agreement must be in writing.

(3) An agreement between the board and the academic staff association of a university shall, with respect to the employment of academic staff members, contain provisions respecting at least the following matters:

- (a) establishment of salary rate and wage rate schedules for the purpose of setting the salaries or wages payable;
- (b) procedures respecting the settlement of differences between the parties arising from the interpretation, application or operation of the agreement;
- (c) procedures respecting the negotiation of future agreements.

(4) An agreement between the board and the academic staff association of a public college shall, with respect to the employment of academic staff members, contain provisions respecting at least the following matters:

- (a) terms and conditions of employment;
- (b) teaching responsibilities;
- (c) vacation leaves, leaves of absence and sick leaves to be allowed;
- (d) salaries and remuneration to be paid and the establishment of salary and wage schedules for that purpose;
- (e) procedures respecting the settlement of differences between the parties arising from the interpretation, application or operation of the agreement;
- (f) conditions and procedures governing reassignment, suspension or dismissal by the board;
- (g) procedures respecting the negotiation of future agreements, including procedures for the final resolution, by compulsory binding arbitration, of disputes that may arise during the negotiation of future agreements.

(5) An agreement between the board and the academic staff association of a technical institute shall, with respect to the employment of the academic staff members, contain provisions respecting at least the following matters:

- (a) the establishment of salary rate and wage rate schedules for the purpose of setting the salaries or wages payable;
- (b) procedures for fixing sick leave, vacation leave, leave of absence or other leave to be allowed;
- (c) procedures for determining conditions governing probation, term of employment, performance review, promotions, reassignment of duties, suspension and dismissal;
- (d) procedures respecting the settlement of differences between the parties arising from the interpretation, application or operation of the agreement;
- (e) procedures respecting the negotiation of future agreements, including procedures for the final resolution, by compulsory binding arbitration, of disputes that may arise during the negotiation of future agreements.

(6) An agreement is binding on

- (a) the board,
- (b) the academic staff association, and
- (c) the academic staff members.

(7) Where a public post-secondary institution is established after the coming into force of this Act, the provisions referred to in subsection (3)(c), (4)(g) or (5)(e), as the case may be, must include procedures for the final resolution, by compulsory binding arbitration, of disputes that may arise during the negotiation of agreements.

Compulsory binding arbitration

88(1) Where a dispute that arises during the negotiation of an agreement under section 87 cannot be resolved by the board and the academic staff association of

- (a) a public college,

(b) a technical institute, or
(c) a public post-secondary institution established after the coming into force of this Act,
the board or the academic staff association shall refer the dispute to compulsory binding arbitration.

(2) Where a dispute that arises during the negotiation of an agreement under section 96 cannot be resolved by the board and the graduate students association of a university, the board or the graduate students association shall refer the dispute to compulsory binding arbitration.

Execution of agreements

89(1) When the terms and conditions to be included in an agreement have been settled, the board and the academic staff association shall sign the agreement.

(2) No member of the academic staff is required to sign an agreement that has been entered into on the member's behalf by the academic staff association.

Application of labour law

90 The *Employment Standards Code* and the *Labour Relations Code* do not apply to the initial governing authority, the members of the board when acting in their capacities as members of the board, the graduate students association or the graduate students of a university employed by the board as instructional staff, or the academic staff association or the academic staff members of a public post-secondary institution.

Continuation of dispute settlement provisions

91 The provisions that were contained in an agreement pursuant to section 87(3)(b), (4)(e) or (5)(d) or the provisions of the regulations under section 92, as the case may be, apply to a difference arising between a board and an academic staff association during the period between the date of termination of an agreement and the date of entry into a new agreement as if the agreement had remained in effect.

Model dispute settlement provisions

92 If an agreement concluded or renewed under section 87(1) does not contain provisions respecting the matters set out in section 87(3)(b), (4)(e) and (g), (5)(d) and (e) or (7), as the case may be, the agreement is deemed to contain the provisions set out in the regulations in respect of which the agreement is silent.

Part Two: Understanding the Grievance Process

The following pages document how the grievance process functions through the Collective Agreement, noting the differences between individual grievances, policy grievances, and ethics complaints.

Administration of the Collective Agreement

Chairs have a responsibility to ensure that processes in the Collective Agreement, such as those for full-time faculty appointment and workload allocation and for contract faculty appointment, reappointment and workload allocation, are adhered to in their department.

An equally important role of Chairs is to inform members of the department about provisions in the Collective Agreement which may apply to them. Some of the articles on which the MRFA has provided information to members recently are:

- the procedures for annual and mid-term tenure evaluations (Articles 10.4 and 10.5 and the UTPC Tenure and Promotion Brochure, 2012)¹;
- compassionate leave with pay, for which full-time and contract faculty are equally eligible (Article 17.3);
- contract faculty are eligible for an honorarium for service activities such as department or discipline planning meeting and attending Faculty Council and GFC meetings as an elected member (MOU Regarding Funding for Part-time Opportunities for Service on page 125).

What is a Grievance?

A grievance (Article 20.1) is a difference arising with respect to:

- the interpretation, application or operation of the Collective Agreement; or
- a contravention or alleged contravention of the Collective Agreement; or
- whether a difference of either of the above two types can be the subject of a grievance between the parties to the Agreement and not otherwise covered by other procedures in the Agreement.

Some of the aforementioned other procedures in the Agreement for dealing with such differences are:

- the University Appeal Committee (Article 11.6.4), whose decision on an appeal of denial of promotion is final;
- the workload appeal procedure, which results in a decision that is final and binding with respect to an appeal filed by an employee, Chair or administrator dissatisfied with a workload assignment, including any reassigned time approved or denied (Article 14.12);
- the Joint Committee for the Review and Interpretation of the Collective Agreement, which may authoritatively interpret the Collective Agreement when a question of interpretation is jointly referred to it by the President of the MRFA and the Provost and Vice-President, Academic (MOU on pages 109-110).

¹ All references to the Collective Agreement refer to the 2011-2012 agreement; however, the language regarding the grievance procedure has been updated to reflect the changes implemented in the agreement ratified in November 2012.

There are situations in which a potential grievor alleges that a wrong has been done, but there is no basis for a grievance. These often stem from situations in which the Agreement delegates recommending or decision-making authority, for example to the Standing Part-time Committee or the Tenure and Promotion Committee. In such cases, an alleged bad decision made in good faith cannot be the basis for a grievance; it must be proven that the decision was arbitrary, discriminatory, or in bad faith.

On the other hand, anything related to the workplace is potentially the subject of a grievance, regardless of whether it is addressed in the Collective Agreement. For example, employers have a common law obligation to maintain a workplace which is free of harassment and failure to do so can be grieved.

The Grievance Procedure

The grievance procedure is a dispute resolution mechanism. Neither the MRFA nor the University consider it to be an adversarial process. If a contravention of the Agreement has occurred, the objective is not to assign blame, but rather to generate the outcome that would have been had the contravention not occurred.

The Association has a Duty of Fair Representation to its members. We must be fair and thorough in investigating grievances, and seek legal opinion as necessary. We should have written procedures for handling grievances, give these procedures to the grievor, and follow them consistently. The Duty of Fair Representation requires that the Association represent its members in good faith, but it does not prevent the Association from finding against the grievor.

The President of the MRFA serves as the grievance officer, i.e. the President is the first point of contact for members who wish to discuss an issue which may result in a grievance and the President acts for the Association at Step 2 of the grievance procedure. A newly created position in the MRFA Executive – Vice-President, Policy – may become the initial contact person for members. Contract faculty may approach the Part-time Member Representative initially, and occasionally other members of the Executive may serve as the first point of contact. We have established a grievance sub-committee of the Executive, currently consisting of the President, Vice-President Negotiations, Vice-President Policy, and Part-time Member Representative, to advise the President on grievances. Decisions regarding advancing a grievance are made by the MRFA Executive on behalf of the Association.

A potential grievor may attempt to resolve the issue informally with the Chair, often after receiving advice from the Association, before initiating a grievance. The steps in the grievance procedure for individual grievances (Article 20) are as follows:

Step 1: Grievor meets with Chair and Dean

- within ten working days of knowledge of the act causing the grievance, the individual grievor or grievors discuss the matter with the Chair and Dean, with a view to making reasonable attempts to resolve the grievance

- this has to be interpreted as the meeting is requested within ten working days
- even so, this time limit can be tight for a member deciding whether to proceed with a formal grievance, particularly if there has been an attempt at informal resolution
- any time limit can be extended by mutual agreement (see the Collective Agreement for the times stipulated in the other steps)
- the grievor is entitled to have a member of the Association attend the meeting with the Chair and Dean as a support person
- the Association's role at Step 1 is to provide advice and support, and to ensure that there is due process, but not to be an advocate
- in order to better understand the issues, the President of the MRFA may interview the Chair and/or the Dean
- failing resolution within twenty working days, the grievance may be advanced to Step 2 by the grievor (this is known as the grievor having carriage to Step 2)
- CAUT argues that the Association should have carriage because the purpose of a grievance is to ensure that the Collective Agreement is being adhered to, not to resolve personal disputes which might be caused by other factors; however, grievor carriage provides an opportunity for the grievor's case to be heard at Step 2 in instances where the grievor believes an injustice has been done, even though the Agreement may not have been violated

Step 2: President of the MRFA and the Provost and Vice-President, Academic

- the Association on behalf of the individual grievor or grievors states the grievance in writing, including the remedy sought, to the Provost and Vice-President, Academic or designate and the President of the Association or designate
- these two representatives meet and attempt to resolve the grievance
- their decision must be one of the following:
 - a settlement, in which case the Provost and Vice-President, Academic or designate and the President of the Association or designate shall be jointly responsible for implementing the settlement; or
 - a report with a partial settlement and a recommendation to the Board and the Association that the grievance proceed to Step 3; or
 - a report that they are unable to resolve the grievance and a recommendation to the Board and the Association that the grievance proceed to Step 4
- note that a settlement may consist of a finding that the Collective Agreement has not been contravened
- a recommendation to proceed to Step 4 is included as one of the possible outcomes for cases in which there is an irreconcilable disagreement at Step 2 or where it is believed that the ruling of an external arbitrator is required

Step 3: Internal Grievance Committee

- a grievance committee consists of two nominees of the Board and two nominees of the Association
- the committee is provided with the Step 2 report and with any other documents relevant to the grievance

- it begins its work with the partial settlement in the Step 2 report, but may develop a resolution that diverges from it as a consequence of its investigation of the grievance
- the decision of the grievance committee shall be either a settlement of the grievance, agreed to by a majority of the committee, or a statement that it is unable to resolve the grievance
- where the grievance committee has settled the grievance, the Provost and Vice-President, Academic or designate and the President of the Association or designate shall be jointly responsible for implementing the settlement
- where the grievance committee has been unable to resolve the grievance, the grievance shall proceed to Step 4

Step 4: Referral to arbitration

- failing resolution, the grievance may, within 20 days of receipt of the decision of the grievance committee or of a Step 2 report recommending that the grievance proceed to Step 4, be referred by either the Association or the Board to an external arbitration board
- an arbitration board consists of a nominee of the Association, a nominee of the Board, and a chair, either mutually agreed to by the two nominees or appointed by the Chairman of the Labour Relations Board
- although an arbitration board may reinstate an employee who has been suspended or dismissed, the range of remedies is otherwise more limited than in an internal process because arbitrators are not part of the university's decision making processes
- legal fees and arbitration board expenses make arbitration costly
- the Duty of Fair Representation does not create an obligation for the Association to take a grievance to arbitration; legal advice based on pertinent case law and the seriousness of the issue must be considered in making the decision

Individual Grievances versus Policy Grievances

The above procedures are for grievances in which a member of the Association brings a dispute regarding interpretation, application, operation, or alleged contravention of the Collective Agreement to the MRFA. However, grievances may also be initiated by the MRFA or by the Board. These are called policy grievances. The most recent example is the scheduling grievance. A policy grievance commences at Step 2.

Ethics Complaints

As described above, a grievance is an alleged contravention of the Collective Agreement. An ethics complaint, on the other hand, is a complaint filed under Article 17 of the MRFA Bylaws which alleges that the standards of professional conduct articulated in our Code of Ethics (Article 16 of the Bylaws) have been breached. While ethics complaints are entirely separate from the grievance process, there is the potential for these different processes to be confused as both are methods of resolving (different types of) workplace disagreements.

Part Three: Grievance Scenarios

The following scenarios are not actual cases; they are based on common concerns and/or situations that arise at MRU. You will want your Collective Agreements handy as you work through how the MRFA might approach each of these situations.

Case 1

Winnie was hired into the new Teaching-Scholarship-Service work pattern in a department in the Faculty of Arts effective August 15, 2009. She was a gifted teacher and during her probationary period won an SAMRU E-award for teaching excellence and was nominated for the MRFA Teaching Award. She was also heavily involved in service, including serving two years as the MRFA representative on the Board of the MRU Child Care Centre, where her two children attended. However, Winnie found that she did not have sufficient time for scholarship and elected to extend her probationary period for an additional year. When it came to her final tenure review and recommendation in the winter semester of the sixth year, she had presented her research three times at the department's colloquia series, presented papers at four conferences, edited a book-length collection of essays, published a book review in an academic journal, and submitted three papers to peer-reviewed journals, only one of which had been accepted. This gave her eleven examples of scholarship at levels 1 and 2 in the Faculty of Arts scholarly results chart, and only five are required. But at least one example from the types of scholarship at level 3 is also required and, alas, Winnie did not meet this standard; the paper in the peer-reviewed journal was her only scholarly work at level 3 and two (2) papers are required for a level 3 result.

Winnie's Tenure and Promotion Committee argued that the edited book and the book review should be counted as level 3 scholarship and recommended that she be granted tenure. However, the Dean recommended against tenure and so did the University Tenure and Promotion Committee. On June 14, Winnie received a letter from the President stating that she would be released effective June 15.

How should this case be resolved?

Case 2

Ralph has enjoyed a long teaching career at Mount Royal. One afternoon in the hallway outside the Chair's office, he got into a discussion with a colleague regarding a course they both taught. The discussion became heated and quickly escalated into a shouting match, during which Ralph's colleague accused him of being an opinionated right-wing radical who was poisoning the minds of his students. Ralph cried out, "I'm going to grieve you," turned, and marched off to the Faculty Association's office.

How should this case be resolved?

Case 3

Danielle had been a part-time instructor in the Department of Mythology for many years. She would occasionally be out of town for a few days during the semester to work on a consulting contract. During these periods, she would arrange for a replacement instructor whom she would pay out of her own pocket. One semester when she was out of town for a two-week contract, the new Chair noticed the replacement instructor at the photocopy machine. Not recognizing this person, the Chair inquired and learned the whole story. The Chair went to the Dean and the Dean immediately terminated Danielle's part-time contract.

Danielle came to the Association and argued that she should be reinstated based on past practice. She and other part-time instructors had often arranged for their own replacements with the tacit approval of previous chairs. Indeed, this was the way she had first started teaching in the Department. Furthermore, part-time teaching doesn't pay enough and she must do consulting work to earn sufficient income.

How should this case be resolved?

Case 4

A new part-time instructor taught 96 SICH in the fall semester and 192 SICH in the winter semester. He was allocated 144 SICH in his third semester, but was denied benefits by Human Resources. The Collective Agreement stated that, "A part-time employee employed as an instructor who has had an average teaching load per semester of one hundred forty-four (144) scheduled instructional course hours or more during Fall and Winter semesters in a continuous twelve (12) month period shall be eligible for benefits at the beginning of appointment in the third (3rd) consecutive semester providing the part-time instructor carries a teaching load of ninety-six (96) scheduled instructional course hours or more in the third (3rd) consecutive semester."

The instructor met with the benefits administrator in Human Resources and pointed out that $(96 + 192) / 2 = 288 / 2 = 144$ and so he had taught an average of 144 SICH in his first two semesters. The benefits administrator asserted that he had not taught an average of 144 SICH in the first semester and, therefore, was not eligible because he had not taught an average of 144 SICH or more in each of the first two semesters. The member then went to the Association.

How should this case be resolved?