



MRFA
MOUNT ROYAL
FACULTY ASSOCIATION

Grievance Policy

Category: Executive Board Representation

Date last Revised: August 24, 2021

I. Overview

This policy details each step of the grievance process and the related concerns around Duty of Fair Representation, Confidentiality, Conflicts of Interest, and training.

II. Duty of Fair Representation

The Alberta Labour Relations Board “Bulletin #18—The Duty of Fair Representation” states:

“Unions have a large amount of discretion when they deal with grievances. For example, unions may settle or drop grievances even if the affected employee disagrees. To counterbalance this power, the *Labour Relations Code* requires unions to fairly treat all members of a bargaining unit. . . . This duty of fair representation requires unions to exercise this power in good faith. This usually means unions must carefully examine grievances. The union must also consider the significance of the case and its consequences for the union and the employee. The representation by the union must be fair, genuine and not merely apparent. The union must act with integrity and competence as well as without serious or major negligence. The union must act without hostility towards the employee. This also means the union’s decision must not be arbitrary, capricious, discriminatory or wrongful.”¹

- i. The Association, and no person acting on behalf of the Association, shall deny an employee or former employee who is or was in the bargaining unit the right to be represented fairly by the Association with respect to the employee’s or former employee’s rights under the Collective Agreement. This duty of fair representation includes that:
 - a) The Association must avoid ill will;
 - b) The Association must not discriminate;
 - c) The Association must not be arbitrary.
- ii. Conduct in the processing of grievances shall be reasonable, equitable, and carried out in good faith. The Association must avoid superficial consideration of grievances and must not arbitrarily ignore a meritorious grievance or process; however, individual members do not have an absolute right to advance grievances past Step 1.
- iii. Members of the Grievance Committee shall act in accordance with the Grievance Procedure article of the current Collective Agreement, the Grievance Committee article of the Bylaws, and this Policy.
- iv. The Association, through the President, shall seek legal advice at or in advance of any stage of the grievance process where consultation with legal counsel is deemed appropriate by the President in consultation with the Labour Relations Officer, the Senior Grievance Officer, the Grievance Committee or the Executive Board.

¹ Alberta Labour Relations Board. “Information Bulletin #18. The Duty of Fair Representation.” Rev. January 15, 2015. www.alrb.gov.ab.ca/bulletins/18bulletin.html.

III. Confidentiality in the Grievance Process

- i. Confidentiality benefits the grievance process and therefore all members of the bargaining unit and the Association as a whole. It ensures that members feel free to discuss with the Association all aspects of their concerns without fear that the information will be improperly disclosed. An assurance of confidentiality encourages honesty and candour in members so that the Association can provide good advice and effectively defend the Collective Agreement.
- ii. The Association owes a duty of confidentiality to members who bring forward complaints about possible grievances. All communications between the Association and the member that relate to the complaint must not be disclosed outside of the Association, including to the University, without the consent of the member, and only in accordance with this Policy and Appendix I. All communication related to grievances must originate in a confidence that it will not be disclosed. Members must be informed that, for a grievance to proceed, relevant information will have to be discussed with the University, and that if the matter is decided by an arbitrator all relevant aspects of the case typically will become part of the public record, including searchable arbitration decision databases.
- iii. Confidentiality does not preclude the sharing of relevant information, as needed, within the Association by those with grievance-handling authority. This is inclusive of the Executive Board, the Grievance Committee, members of the Association's professional staff and legal counsel.
- iv. Confidentiality does not preclude that, as the grievance unfolds, less sensitive information, such as the date of the violation, the articles violated and the current status of the grievance, is typically released to the broader bargaining unit as the part of the Association's legal duty of fair representation and political responsibility to provide information on its activities.
- v. Should a member communicate a threat of violence, especially where there is a clear risk to an identifiable person or group of persons of serious bodily harm or death and the danger is imminent, the Association must balance the duty of confidentiality with the importance of protecting the safety of others. Any such threat, and no other information gathered by the Association in the course of the assisting a member, shall be reported in accordance with the law to the proper authorities and the intended victims. If time permits, the Association's President, Senior Grievance Officer, professional staff and legal counsel shall confer on the proper course of action.

IV. Conflict of Interest

- i. Members of the Grievance Committee and the Executive Board shall avoid actual or perceived conflict of interest and disclose actual or perceived conflicts to the Grievance Committee as a whole. In the event of a conflict of interest, a Grievance Committee member shall recuse themselves from any deliberation or votes of the committee or from representing the grievor at any step of the Grievance Process.
- ii. Whenever possible, a grievance officer should not represent a grievor from their home department or a department to which they are cross-appointed.
- iii. Executive Board Process for actual or perceived conflict of interest or apprehension of bias:

1. Individual board members are responsible for consistent assessment of their own experiences and biases as they act in the role of board member. A conflict of interest arises when a person is unable to make a fair assessment, or at least an assessment that will be perceived as fair, on an issue if they stand to gain or lose personally from the decision. The concept of personal gain or loss includes the gain or loss of a spouse or other person so close to the decision maker that the decision maker indirectly benefits or loses.
2. Bias or the apprehension of bias concerns whether or not an individual can make a fair decision based on the facts before them or whether their decision will always be biased toward a particular result due to their relationships or their entrenchment of position on an issue related to the Collective Agreement. An Executive Board member or a staff member of the Faculty Association who will represent the member who is in jeopardy must ask themselves if they feel that they cannot act fairly and in the best interests of the Faculty Association. The best interests of the Faculty Association include providing fair representation to the member in jeopardy.
3. No part of the duty of fair representation requires the people acting for the Association (whether staff or Executive Board members) share the same views with the member, their position or their conduct. Specifically, holding views or conducting research in areas that diverge or conflict with the member does not necessarily mean that there is an *a priori* conflict of interest. Similarly, being a member of a racialized or other equity seeking groups does not constitute a conflict of interest or bias
4. The Association's duty to provide fair representation means that it must represent the member fairly, without bias, without discrimination, and in a manner that is not arbitrary. To meet this obligation the Association has a duty to:
 - a. Hear and document the member's concern;
 - b. Conduct a fair investigation of the member's concerns to ascertain whether a violation of the Collective Agreement has occurred;
 - c. Communicate clearly with the member in regard to the Association's duty of fair representation and with respect to any decision regarding the Association's decisions about the case and member representation.

In the event that the Association determines that no breach of the Collective Agreement has occurred, members must have a chance to respond to the evidence that the union is considering that does not support the member's position.

- iv. Executive Board members must recuse themselves from any discussion or decision on an issue in which they understand themselves to be in conflict of interest or biased.
 1. If Executive Board members are unsure whether or not they are in conflict of interest, biased or whether a reasonable apprehension of bias exists, they will disclose the grounds for their apprehension of bias to the Executive Board for its consideration.
 2. The Executive Board will make a determination based on the Board member's disclosure about whether a conflict of interest, bias or that a reasonable

apprehension of bias exists and suggest the Member recuse themselves. If necessary, the Board may by resolution vote to recuse the member from discussion and decision on the issue in question.

- v. Where a member alleges a conflict of interest or apprehension of bias on the part of an Executive Board member(s) exists, the member may submit that concern in advance in writing to the SAFRO and the member for consideration of the Executive Board, outlining the reasons for their concern, or at a meeting prior to considering the matter may raise a question with the Chair about a potential conflict or bias.
 - 1. The Board Member must consider the submission/question and make a decision as to whether or not they are in a conflict of interest, biased or that a reasonable apprehension of bias exists and recuse themselves if so.
 - 2. If the decision maker decides not to recuse themselves, the Board may vote to recuse them based on the substance of the allegations forwarded by the member.

V. Issues Relating to Conflicting Members' Interests

- i. Where a grievance or potential grievance concerns members or groups of members with contrary interests, and where it is possible that the Association may need to provide confidential advice, assistance or representation to members with contrary interests, the Association shall plan for the partitioning of representational responsibilities at the outset, wherever possible.
- ii. Normally, the President shall coordinate the partitioning of representational responsibilities.

VI. Handling of Grievances

- i. The grievor shall be provided updates at each step or decision point within the grievance process by the Senior Grievance Officer or designee. Updates shall include any decisions made by the Association, the reasons for the decision, and any applicable deadlines within the collective agreement. When applicable, the update shall include a copy of the Statement of Grievance. Where the grievor is the Association, updates shall be provided to the Executive Board by the Senior Grievance Officer.
- ii. The Grievance Committee shall review the outcomes of grievances (whether settled, withdrawn or won/lost at arbitration) and make recommendations, intended to prevent similar grievances, to the Executive Board regarding administration of the Collective Agreement and to the Negotiating Committee regarding changes to the Collective Agreement.
- iii. Records of all grievance-related documents shall be retained by the Association in accordance with the Records Management Policy, and using its Labourware system. The Labourware system shall be used in the routine management of grievance handling tasks for all extant grievances.
- iv. Notwithstanding that the President is normally the initial point of contact for members regarding the Collective Agreement, concerns or complaints that may relate to potential grievances which are relayed to the Association shall be referred to the LRO, SGO or designate. The LRO, SGO or designate shall contact the potential grievor as needed.
- v. At the request of the potential grievor, the LRO, SGO or designate shall meet with the potential grievor to discuss the potential grievor's concerns and to give information

regarding the grievance process. This meeting may also be used to determine if the grievance process is the most appropriate way to address the member's concerns.

VII. Step 1

- i. The Association's overarching goal at Step 1 is satisfactory resolution of the grievance and the gathering of evidence.
- ii. It is the responsibility of the individual grievor or grievors to request a Step 1 meeting with the appropriate Dean and the President of the Association.
- iii. Once a Step 1 meeting is requested, the SGO or designate shall attend the Step 1 meeting to represent the interests of the Association and its members, and to participate in making reasonable attempts to resolve the grievance, in accordance with Article 20.2.1.2 of the Collective Agreement
- iv. The LRO, SGO or designate may request advice from the Grievance Committee regarding how best to resolve a grievance at Step 1
- v. The role of the Labour Relations Officer (LRO),² Senior Grievance Officer (SGO) or designate at Step 1 includes providing information to grievors and potential grievors, including about their rights and responsibilities regarding the grievance process, investigating the grievance, and acting to represent the interests of the Association and its members³ at Step 1 meetings.
- vi. After the Step 1 meeting, the LRO, SGO or designate shall file a Step 1 report advising that the grievance has been resolved or that the grievance remains unresolved and could be advanced to Step 2.

VIII. Step 2

- i. Advancing Grievances to Step 2

The Grievance Committee shall review the Step 1 report and make a decision whether or not to advancement of a grievance to, Step 2. This decision shall only be taken after a thorough investigation and consideration of the criteria listed below.

- ii. Initiation of Grievances at Step 2

The Grievance Committee may recommend that the Executive Board of the Association initiate a grievance at Step 2

1. This decision shall only be taken after a thorough investigation and consideration of the criteria listed within below.
2. The authority to initiate such a grievance rests with the Executive Board of the Association

- iii. Criteria of a Thorough Step 2 Investigation

1. A recommendation or decision on advancement of a grievance to, or initiation of a grievance at, Step 2 shall only be taken after a thorough investigation.

² The Labour Relations officer will fulfill all responsibilities as outlined in this policy with the exception of representing members in Step 1 Meetings.

³ The LRO, SGO or designate must be mindful of the interests and rights of the grievor, but also those of the Membership more generally and the Chair if present.

2. In formulating a recommendation or decision, criteria to be considered include:
 - a. Breach of the Collective Agreement: terms (express or implied) violated with sufficient validity. Validity means under the language of the Agreement, and based on the available evidence of what has occurred as determined through thorough investigation by the Association
 - b. Significance of breach:
 - Significance to and consequences for the grievor. Note: the grievor does not have an absolute right to advancement (or not) but the grievor's wishes should be taken into account.
 - Significance to and consequences for the Association
 - c. Consideration of past practice around the advancement of similar grievances
 - d. Any other interests of the Association (e.g. listed as objectives or as part of our Code of Ethics in our Bylaws), whether contrary or otherwise
- iv. Documentation
 - a. The LRO, SGO or designate shall convey the Grievance Committee's decision, in writing, to the grievor(s), along with reasons for the decision
 - b. Should the Grievance Committee decide to advance the grievance to Step 2, the LRO, SGO or designate shall follow the Step 2 procedures as outlined in the Collective Agreement article 20.2.2
 - c. The President or designate shall provide a copy of the Step 2 report to the grievor, and a copy of this report shall be filed in MRFA records, normally by the LRO.
 - d. Step 2 statements of grievances in writing shall follow a common format, to be maintained, reviewed and amended from time to time by the Grievance Committee.
- v. After the Step 2 meeting (Article 21.2.2.4), the LRO, SGO or designate shall file a Step 2 report advising:
 - a. that the grievance has been resolved (Article 20.2.2.4.1), or
 - b. that the grievance has reached a partial settlement and that the grievance proceed to Step 3 (Article 20.2.2.4.2), or
 - c. that the grievance remains unresolved and that the grievance proceed to Step 4 (Article 20.2.2.4.3).

IX. Step 3

- i. The Association's Responsibilities at Step 3 includes the following:
 - a. The Grievance Committee shall recommend appointment of nominees to the joint committee. Appointment shall be made by the Executive Board.
 - b. The Grievance Committee shall advise the Association members of the committee as required
 - c. The LRO, SGO or designate shall file the Step 3 report and shall provide an update to the grievor.
- ii. After the Step 3 meeting/process, the Association's nominees shall file a Step 3 report advising:
 - a. that the grievance has been resolved (Article 20.2.3.4), or
 - b. that the grievance remains unresolved and that the grievance proceed to Step 4 (Article 20.2.3.6).

X. Step 4

- i. The Association shall, through the President, request a written legal opinion on the merit of the grievance.
- ii. The Grievance Committee shall formulate a recommendation on whether or not the grievance should be advanced to Step 5. This recommendation will be given to the Executive Board for Consideration. The criteria to be considered by the Grievance Committee shall include:
 - a. Reports from prior steps of the grievance process.
 - b. The written legal opinion on the merit of the grievance,
 - c. Breach of the Collective Agreement: terms (express or implied) violated with sufficient validity. Validity means under the language of the agreement, and based on the available evidence of what has occurred as determined through thorough investigation by the Association
 - d. Significance of breach
 - Significance to and consequences for the grievor (Note: the grievor does not have an absolute right to arbitration (or not) but the grievor's wishes should be taken into account)
 - Significance to and consequences for the Association
 - e. Likelihood of success at arbitration
 - Including with respect to potential remedies
 - Including with respect to timeliness of decision
 - f. Risks from advancing to arbitration and/or from potential loss at arbitration
 - To the grievor
 - To the Association and our members collectively, etc.
 - Note: arbitral decisions are publicly-searchable documents that include the name(s) of the grievor(s), the findings and decisions of the arbitrator, establish precedent, etc.
 - g. Consideration of past practice around the advancement of similar grievances
 - h. Any other interests of the Association (e.g. listed as objectives or as part of our Code of Ethics in our Bylaws), whether contrary or otherwise
- iii. The Executive Board shall review the Grievance Committee's recommendations and make the final decision regarding if the grievance will proceed to Step 5. It shall consider criteria that include all of the above, as well as:
 - a. Resources required, including estimated cost and Contingency Fund balance, and other consequences for the Association
- iv. The President shall convey the Executive Board's decision, in writing, to the grievor(s).

XI. Step 5

- i. Prior to the arbitration hearing, the Association shall, through the President, request a written legal opinion. This shall include, at a minimum, a request for an opinion on:
 - a. The merit of the grievance (if different from stated merit at Step 4)
 - b. The likelihood of success at arbitration
 - c. The risks of proceeding with arbitration
 - d. Any other relevant factors from a legal perspective
- ii. The Executive Board shall determine whether it wishes to proceed with a one-person

or three-person arbitration board, and its nominee(s).

- a. The expertise of the nominee(s) shall be considered in light of the grievance.
 - b. In the case of grievances involving Academic Freedom, denial of tenure, peer evaluation and other academic matters, the Executive Board shall endeavor to identify potential nominees with experience in post-secondary education and labour relations
- iii. The Grievance Committee shall provide support, as required, to legal counsel to prepare for the arbitration hearing

XII. Reporting to the Membership and to the Executive Board

- i. The Labour Relations Officer and/or the Senior Grievance Officer shall report to the Association's Membership during the academic year:
 - a. As necessary at scheduled Regular Meetings of the Association
 - b. By providing a summary report at the Annual General Meeting of the Association
- ii. Reports to the Membership should adhere to the principles of confidentiality such that no mention is made of:
 - a. The department and the faculty from which the grievance originated
 - b. The name of the grievor(s), the Chair or the Dean
 - c. The gender of the grievor(s), the Chair or the Dean
 - d. Any other details which would identify the grievor
- iii. Reports to the Membership should, wherever possible, include:
 - a. The number of grievances brought forward and/or advanced during the period of the report
 - b. The Step for each grievance
 - c. Article(s) in the Collective Agreement referenced in the grievance
 - d. How each of the aforementioned articles were contravened (nature of violation)
 - e. The nature of the resolution
- iv. Regular grievance reports shall also be provided by the Senior Grievance Officer to the Executive Board, as part of the in-camera portion of the Executive Board meetings.

XIII. Grievance Committee Training

The Association shall make provisions for annual training of Grievance Committee members with respect to the grievance process and equity, diversity and inclusion matters, and for other interested members of the Association as appropriate. The Association shall also endeavour to provide supplementary grievance-related training or professional development where appropriate, and the Grievance Committee shall assist in identifying potential areas of development, and potential training or professional development opportunities.

XIV. Related Policies

- Confidentiality Policy

XV. Appended Documents

- Conflict of Interest Checklist
- Waiver of Association Representation

**Conflict of Interest and Apprehended Bias
Self-Assessment Checklist (Policy Appendix)**

Do I stand to gain or lose economically/professionally/academically/personally as a result of the outcome of this decision? YES / NO

Does anyone with whom I have a close relationship stand to gain or lose economically/professionally/academically/personally as a result of the outcome of this decision? YES / NO

If the answer is yes to either of the above questions, a Board member should recuse themselves on the basis of a real or perceived conflict of interest. If you have answered no, continue to next questions.

Do my personal/professional/academic relationships leave me unable to represent the member in jeopardy fairly and in a manner that is not arbitrary? YES / NO

Do my public statements on an issue related to the Collective Agreement or about a person indicate an entrenchment of position that leaves me unable to represent the member in jeopardy fairly and in a manner that is not arbitrary? YES / NO

If the answer is yes to either of the above questions, a Board member should recuse themselves on the basis of bias, real or apprehended conflict of interest.

If unsure, outline the case to the Executive Board in writing and submit to the Senior Administrative and Faculty Relations Officer who shall bring it to the Executive Board to consider in closed session.

Waiver of Association Representation

Purpose	This waiver documents the decision of an MRFA member to waive their right to have an Association representative present during a meeting. A copy of this signed form shall be submitted to the MRFA immediately upon a meeting being scheduled.
Scope	“An Employee shall have the right to have a member of the Association Executive present at any meeting that the Employee believes might be the basis of discipline.” A member may waive their right to Association representation for any meeting “that the Employee believes might be the basis of discipline.”
Date	February 26, 2020

I hereby waive my right to Association representation during a meeting scheduled to take place on _____ . I understand that this is a waiver for this scheduled meeting only, and that I “shall have the right to have a member of the Association Executive present at any [future] meeting that [I believe] might be the basis of discipline.” By signing this waiver, I do not waive my rights to disclose the details of this scheduled meeting to a representative of the Association.

Name (please print)

Appointment Category

Signature

Date