

## The Grievance Process

There are three stages to the grievance process for academic staff (faculty, librarians, and archivists):

- informal inquiry,
- Step 1 (University-QUFA internal meeting to resolve the conflict), and
- Step 2 (arbitration).

These stages are described below. The process is similar at Queen's School of Religion.

There are several people within QUFA who have varying degrees of contact with the inquirer or grievor and knowledge of the issues. Fuller explanations are included in the sections dealing with each stage below.

QUFA staff members, and the Grievance Officer in particular, have direct contact with the inquirer or grievor throughout all stages. Volunteer members on the Grievance Committee are made aware of some of the cases in progress, but they normally have no contact with the grievor. The Executive Committee may be aware of a few issues that are of significance to the union or that exemplify problems of a systemic nature. Very rarely are the Grievance Committee and the Executive Committee made aware of a grievor's identity, except if a case is being considered for arbitration (Step 2). Once a matter goes to arbitration, the grievor's identity is no longer confidential.

QUFA staff sign a confidentiality agreement in acknowledgement of the liberal access they have to information of extremely sensitive issues. The Grievance Committee and the Executive Committee members are also made aware of the need for confidentiality when discussing grievance matters. Contact information for QUFA staff is found at the end of this document. The names of the Grievance Committee and Executive Committee members can be found on the QUFA Web site, at <http://qufa.ca/governance/qufolks.php>.

Individuals from Queen's University Administration may have knowledge of the inquirer or grievor and the issue(s). See below. Communication, exchanges of information, and any offers of settlement between QUFA and Administration are kept confidential and

are without prejudice. “Without prejudice” means that the agreement does not set a precedent for the future, just an agreement about a particular situation.

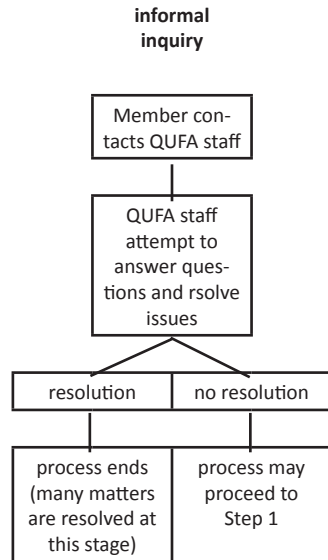
At any stage of the processes described below up until an arbitration hearing has been completed, the matter can be settled informally, or it can proceed formally by way of a memorandum of agreement between the parties. Alternatively, the parties could agree to settle or mediate an aspect of the case and proceed with others.

It is worth noting that some grievors may feel that a “day in court” is the only way to achieve justice, that settling is tantamount to giving in or to losing. This is not so. Lawyers know that it is usually preferable to consider an outcome that is crafted by the people involved as there is greater scope for an imaginative agreement. Those involved have a greater understanding of the potential implications of what could be agreed to, and there is a modicum of control that does not exist in an adversarial (arbitration or court) process. That said, sometimes the adversarial route must be taken.

### **Informal Inquiry (Article 19.3)**

A Member may seek informal settlement on his or her own. It is wise to contact QUFA staff for assistance at the outset, or later as the need arises. If QUFA staff become involved in any issue that requires more than a quick response by e-mail or phone, they will discuss with you what such involvement means, and you will be asked to review an agreement about carriage of and confidentiality during a grievance.

QUFA will act on a Member’s behalf only if a Member has personally asked QUFA staff for advice with an inquiry or complaint and



*mediation may occur at any point in the process*

has directed QUFA staff to take action. QUFA staff will provide advice but also respect a Member's wish to discuss a matter but not take action.

If contacted, QUFA staff will attempt to answer questions and resolve issues brought to them in a low-key and expeditious manner. Sometimes this necessitates contact with Queen's or QTC senior administrative offices, particularly the Faculty Relations Office for Queen's, which is found within 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 Collective Agreement on behalf of the employer. It is also the office most often implicated in the CA provision that says that communication, exchanges of information, and any offers of settlement between QUFA and University Administration are kept confidential and are without prejudice.

QUFA may also contact other employer offices to get information, clarify process, etc. Sometimes, it is easier for a Member to get information from an employer office (for example, personal information from Human Resources) and the Member will be advised when that is the case. 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.

The Grievance Committee is made aware of some of the issues of particular inquiries and grievances--such as those that might benefit from their input, those that might illustrate campus-wide trends, or those that should be taken to Step 1--but the inquirer's or grievor's identity is not revealed.

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 without the need to resort to the next step. Happily, many 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 fifteen (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(s) did not know about the circumstances right away, but timing is still important.

### **Step 1 (19.4)**

Step 1 begins the formal grievance. 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 (take charge of) the grievance or not, depending on strategy, preference, or fact. Once QUFA has assumed the grievance, then QUFA must take the lead. If QUFA does not assume a grievance, then the Member

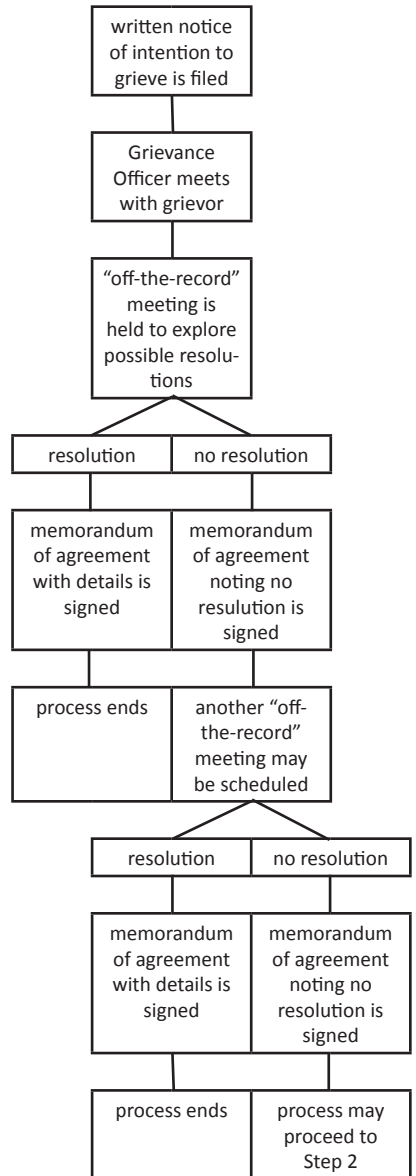
retains control of the grievance up to the end of the Step 1. Unless explicitly agreed to otherwise at the outset, whenever QUFA becomes involved, it is presumed that QUFA has assumed the matter.

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), the representative of the University Administration. Appendix B in the Collective Agreement 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 and the Grievance Officer will meet with the grievor prior to the Step 1 meeting to discuss issues and details and answer questions in preparation for the meeting.

Step 1 involves a closed door, “off the record” meeting with the following present: the grievor, administrators whose actions are grieved against, QUFA staff representative if QUFA is involved, 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.

All possibilities are explored. To have the freedom for a free and frank discussion, negotiations are not recorded nor is the discussion brought forward into future proceedings. For both sides, the discussion is confidential, without prejudice, and 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 things become too difficult or untenable, any person at

**Step 1**



the meeting can call for a pause or a halt in the proceedings. A simple statement that a grievance exists is not prevented by the confidentiality provisions of the current Collective Agreement.

The order of proceeding in Step 1 meetings can vary, but it generally follows the following pattern.

The Associate Vice-Principal (Faculty Relations) introduces the fact of the Step 1, explaining that there might be resolution at the end of the meeting or there might not be.

To explain: If a resolution is reached, then a memorandum of agreement will be drafted with the details and signed. If no resolution is reached, then a memorandum will be signed indicating that outcome. Further, if there is no resolution, then either another meeting will be scheduled 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.

After the Associate Vice-Principal has introduced the Step 1, the grievor is then asked to give details about the complaint. Often the Grievance Officer will give a brief introduction before the grievor relates his or her story. Subsequently, there is a discussion with questions for additional information and proposed solutions. At the end of the meeting, the parties decide whether a resolution can be reached right away or not. The parties then sign the appropriate memorandum.

If no resolution is reached at the Step 1, there is always the possibility of mediation before deciding whether to proceed to Step 2, but only if both sides are willing. Like negotiation, mediation is usually not recorded except for the outcome. That outcome could be a memorandum of agreement with settlement details, or it could be a memorandum of agreement that specifies that no agreement could be reached. Sometimes, there is agreement to continue to arbitration.

Frequently, no resolution is reached at the end of the Step 1 meeting, and so a memorandum of agreement recording this lack of resolution is signed by the Administration, QUFA, and the grievor. It is then up to the Provost to render a decision in writing. Either side can decide to dispute the 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, or the employer may take this next step. At this stage, the grievance must become public. At this stage, the Grievance Committee will learn the identity of the grievor(s). In rare instances, the Grievance Committee may ask grievor(s) to present their case to the Committee to aid in making a decision on whether to take a matter to Step 2.

## Step 2 (19.5)

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

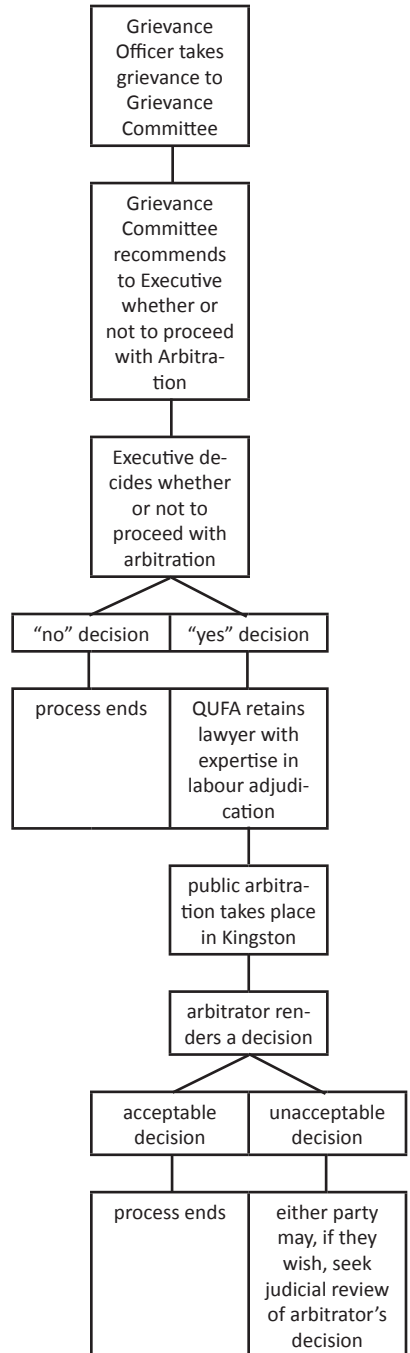
To reiterate, only the union or the employer, the parties to the Collective Agreement, can take a case to Step 2, not Members. The parties have responsibilities to the individuals involved, but also to the organization as a whole, and so a decision to take a matter to arbitration always involves a discussion of the costs and benefits of taking this next step.

Arbitration is a hearing rather than a meeting and is adversarial with litigation lawyers employed. The hearing is open to the public, and an arbitrator's rulings 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 grievor be successful.

Not all grievances can proceed to arbitration, even those where there is a good chance of QUFA winning. This is due to the cost, the limited nature of remedies, and uncertainty of outcome. The Executive Committee will decide whether to proceed to Step 2 after receiving information and advice from the Grievance Committee and the Grievance Officer.

Arbitration costs begin at approximately \$30,000 and are borne by the Faculty Association. They include preparation for the hearing as well as costs associated with the actual hearing day(s).

## Step 2



Remedies at arbitrations are limited and are often either money-based or a direction to repeat properly the process that was faulty enough the first time to bring the parties to the arbitration. Creative solutions do not come out of arbitrations. For example, if an arbitrator decides that a tenure process was faulty, the arbitrator will likely give a directive that the tenure review process be repeated, perhaps with different personnel, rather than simply granting tenure. A good settlement is usually preferable to “winning” at arbitration, and might indeed be a better “win” for the Member as it can be more nuanced and take into account the expertise and knowledge of those negotiating the terms. Given all this, the exercise of QUFA’s right to proceed to arbitration is normally reserved for the most serious of cases. Of primary importance are job threatening decisions taken by the employer. Secondary are cases that raise issues of (in no particular order) a serious violation of non-discrimination or academic freedom provisions, excessively punitive action against Member(s), and policy interpretations of the Collective Agreement that significantly threaten its integrity. Finally, there is the possibility of taking forward cases that involve relatively minor abuse of management rights and other unique or anomalous situations. In each case, the QUFA Executive Committee must weigh all factors in reaching a decision about whether to proceed to Step 2.

If a decision is reached to proceed to arbitration, QUFA will 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 important to the hearing to the lawyer for the other side. The lawyer for the other side will do likewise.

The arbitration hearing will take place in Kingston and a professional arbitrator will sit in judgment of the proceedings (see Article 19.6 and Appendix C of the Collective Agreement). In attendance will be lawyers hired by each side to present the case at the arbitration hearing, advisors from the parties (union and employer), the various actors to the grievance (grievors, persons being grieved against, witnesses), and often any supportive family or friends the grievor may wish to have in attendance. Each side will present its case and will have a chance to question the other side and its witnesses, and the arbitrator is allowed to ask questions for clarification.

Frequently, preliminary issues must be dealt with, such as a narrowing of the issues or a last minute attempt to settle. This may take one or more days. If a hearing commences, the parties will present their evidence, both written and verbal, and the arbitrator will render a decision. This process will take months; sometimes, it takes years.

## **After Step 2**

If the arbitrator’s decision exceeds the powers given or the arbitrator makes a mistake in how the circumstances should have been assessed (these rules fall within administrative

law), then either party may seek judicial review of the decision. This is not an appeal, but rather a review by justices on the Ontario Supreme Court of the process and whether the arbitrator followed the rules in arriving at the decision. It is not a review of the substance of the issue(s).

## **Duty of Fair Representation**

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

74. 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.

This is a procedural right rather than a right to a particular outcome. It may be that a Member is 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 also necessary to keep in mind that QUFA represents the whole Membership, so that sometimes the best interests of the bargaining unit as a whole might override the best interests of a particular Member.

If a Member believes QUFA has not represented him or her fairly as per the Duty of Fair Representation, the Member may file a complaint with the Labour Relations Board.

## **QUFA Records**

QUFA staff record queries and complaints for statistical purposes and for notes should the matter take on greater significance. For most queries, there is a simple notation in a user-limited electronic file identifying the date, topic, and who contacted QUFA. If needed, a paper file is created and kept in a locked drawer in the QUFA office. The file will include printed electronic material and hand written notes as well as materials received in paper form. Only QUFA staff have access to these electronic and paper records. Correspondence between Members and QUFA staff is private and considered confidential by the University, and this includes e-mail.

If a matter proceeds to Step 1, evidence from the file will be shared with the Faculty Relations office, and they in turn will share them with the others in attendance at the Step 1. Members will have a chance to review those materials before they are sent. If a matter proceeds to Step 2, the QUFA lawyer will have access to all materials in the file. In addition to confidentiality, there is also something called solicitor-client privilege. The Law Society of Upper Canada describes it this way, and as a consequence, some issues and documents may be presented at the arbitration and not others:

Privilege is an evidentiary rule of law that refers to the legal right of an indi-

vidual to withhold information from an opposing party, a court, a tribunal, and investigations, including law enforcement officials. Privilege excludes from evidence certain communications, including those between a lawyer and client that occurred

- for purposes of obtaining legal advice (i.e. lawyer-client privilege)
- for the purpose of anticipated or pending litigation (i.e. litigation privilege), or
- during the course of mediation or negotiations to settle a legal dispute (i.e. settlement privilege)

(<http://rc.lsuc.on.ca/jsp/kt/loadKnowledgeTreeAnswerPage.do?levelId=14&sublevelId=47&questionId=277>)

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

### **QUFA Staff**

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