

## What is a Grievance?

Article 19 of the Collective Agreement sets out the grievance and arbitration process. It states, "A grievance is any dispute or difference arising out of the application, interpretation, administration, or alleged violation of the provisions of the [Collective] Agreement."

Every inquiry or complaint that comes to the attention of QUFA is a potential grievance. Even inquiries that may seem minor have the potential to become significant. QUFA staff may call "grievance" anything from an informal inquiry to a formal complaint that must be resolved through arbitration. You should not be concerned, therefore, if QUFA staff refer to your matter as a grievance even if you think it is just a simple inquiry. It just means that they are treating your matter seriously, not that you have unwittingly launched a formal grievance (explained below and more fully in the document "The Formal Grievance Process").

QUFA assumes that you wish to resolve your matter expeditiously and with as little friction as possible. You may be working at Queen's for many years, and the sooner you come to QUFA with your concern, the better. QUFA will do its best to answer your questions or address your concern quickly. 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.

Another important note is the confidentiality of the process. The grievance process is a confidential process until arbitration, should the process go that far. The arbitration itself is a hearing that is open to the public, and an arbitrator's rulings are public documents. Before that stage, the identity of the complainant is known only to a limited number of people within QUFA, and that normally includes the QUFA Grievance Officer, Administrative Officer, and Member Services Officers. The facts of any case are presented to the Grievance Committee without naming the complainant unless the complainant indicates otherwise. All communications between the complainant and QUFA staff are confidential and shared only among the QUFA staff to allow for sharing of expertise and experience. All communications with the University Administration are subject to prior approval by

the complainant and are similarly subject to confidentiality restrictions.

The union owes a duty of fair representation (DFR) to Members, and this 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 the union (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 Ontario Labour Relations Board.

To reiterate, the grievance process can be anything from a simple inquiry to a formal matter that progresses to a Step 1 meeting, possibly mediation, arbitration (Step 2), and possibly judicial review (where the court can review the decision making process at arbitration, a rare step with very narrow scrutiny).

### **Whom Does QUFA Represent?**

Grievances can be filed by an individual Member, a group of Members, QUFA on behalf of an individual Member or a group of Members, or the employer (Queen's University or Queen's School of Religion Administration). Who files will be a matter of strategy, preference, or fact. 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 only has jurisdiction to deal with issues that arise out of the Collective Agreement. If the issue cannot be tied to a provision of the Collective Agreement, QUFA might still be able to make an inquiry, but has no power to go further. The same applies to Queen's policies and procedures where QUFA has no jurisdiction.

As well, QUFA cannot and does not mediate disputes between Members; the union can only handle complaints against the employer, Queen's University or Queen's School of Religion (please note that QSR processes may vary slightly than those described in this

document, but the principles still apply). It is the responsibility of the employer to ensure that the workplace provide adequate facilities and support to enable Members to fulfill their academic responsibilities.

Heads of academic departments at Queen's are also QUFA Members (Article 41). QUFA will advocate on the side of the Head when a Head makes a complaint against those in the University Administration hierarchy. If a QUFA Member who is not a Head makes a complaint against the actions of a departmental Head, however, then QUFA will look at the substance of the complaint to guide its actions. If the complaint is about the Head as a colleague, then this is a Member-to-Member complaint and QUFA cannot mediate. If the complaint is about the Head acting as someone with delegated supervisory responsibilities, however, QUFA will advocate on the side of the QUFA Member who is not the Head. This recognizes the fact that the Head in such a case is acting in a management role on behalf of the University Administration.

In cases where it is difficult to determine whether QUFA can legitimately take on a case, the Grievance Committee will review the situation and make a determination.

It is also important to note that QUFA must always keep in mind its union responsibility of looking to the greater good of the bargaining unit as a whole and not simply what is best for the individual Member. QUFA is not, therefore, an advocate for an individual in the same way a lawyer would be.

### **How to Initiate an Inquiry**

Any bargaining unit member can approach QUFA with an inquiry or complaint, whether he or she has voluntarily signed up to be Members of QUFA (the union) or not.

A simple inquiry is often best handled by a telephone conversation or short e-mail. When a situation starts to become more complicated, however, it is best that the Member submit a written description (electronic or paper) to QUFA staff to ensure greater accuracy of detail and to preserve the characterization of the inquiry or complaint from the Member's perspective. Staff's notes from a long phone call can often contain inaccuracies or omit important details, potentially causing delays and frustration, so writing down inquiries or complaints is advised.

An informal inquiry can be made and a Step 1 (below) can be requested by the Member alone, by QUFA on behalf of Members, by QUFA alone, or by the employer (Queen's or QSR Administration). For ease of explanation, the following describes the procedure involving a grievance on behalf of a Member, but a similar process applies in other situations.

## Who Assists You?

### a) QUFA Staff

A Member who brings a concern to QUFA is entitled to have it dealt with seriously and in confidence. QUFA staff assist with the pursuit of inquiries or complaints and often consult with each other to make sure that Members get the best advice possible. Depending on the nature of the inquiry or complaint, one QUFA staff may be better suited to the referral. Because of the confidential nature of the grievance process, QUFA staff 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 Officer is a QUFA staff member whose primary role is investigating and assessing individual complaints arising under the Collective Agreement, and who makes recommendations to the Grievance Committee and to the Executive Committee about whether to carry grievances forward to arbitration. To accomplish this, the Grievance Officer meets with Members, liaises with University Administration and QUFA legal counsel, and obtains input from the Grievance Committee. QUFA Grievance Officers used to be volunteers.

Many of the grievance issues that come before the Grievance Officer and other QUFA staff are dealt with informally, at least initially. Frequently, that necessitates communication with the Office of Faculty Relations or other senior University administrators. The University will then likely seek further information from relevant University personnel. The University is aware that this is confidential information, but Members should know that several people within the organization may be aware of the attempt to resolve the issue, but only those necessary to do so.

If an informal complaint becomes a formal grievance and proceeds to Step 2 (arbitration), then the Grievance Officer takes on an advisory role to QUFA's outside legal counsel who specializes in litigation. QUFA's outside legal counsel handles the formal arbitration process.

### b) Grievance Committee

The Grievance Committee is a standing committee of the QUFA Executive. It is composed of a minimum of five elected QUFA Members, the Grievance Chair, the QUFA President (ex-officio) (or Vice-President as delegate if the President cannot attend), the Grievance Officer, and the Administrative Officer. Other QUFA staff may attend as needed. The President/Vice-President and QUFA staff are non-voting members. As much as possible, Committee members should represent the academic and cultural multiplicity of the University, and they should also be knowledgeable about diversity issues and the Collective Agreement processes.

Once a month, the Grievance Committee discusses policy issues, cases that would ben-

efit from wider consultation, and situations as they arise on campus that have the potential to trigger future grievances. The Committee monitors informal complaints, formal grievances, and other issues for the purpose of identifying systemic discrimination and deficiencies in the Collective Agreement, and to ensure that the Collective Agreement is being respected. Typically, cases are brought to the attention of the Committee without revealing the identity of the Member unless the Member indicates otherwise.

Without breaching confidentiality or jeopardizing the anonymity of potential grievors, the Committee brings policy issues of general concern to the attention of both Council and Executive. For example, sometimes issues that arise in the Grievance Committee are referred to the Joint Committee to Administer the Agreement (JCAA) because they have broader applicability and are essentially interpretations of the Collective Agreement. Recommendations from the Grievance Committee to the QUFA Executive for proceeding to arbitration normally require that the identity of the Member be known.

The Grievance Chair reports formally twice annually on the Grievance Committee's activities to the Executive, Council and the General Membership.

#### c) [QUFA Executive Committee](#)

QUFA Executive Committee members are not given any substantive information about particular grievances and grievors unless being required to decide whether a case ought to proceed to arbitration or for any other action that requires the expenditure of QUFA funds.

#### d) [Council Representatives](#)

Council Representatives may guide Members who approach them for assistance to speak to QUFA staff. Council Reps can give only very basic, non-interpretive advice about the Collective Agreement, since there might be interpretations of provisions that the parties to the Agreement (QUFA and the University administration) have arrived at and which might not be known by Council Representatives, or there might be some leeway in extenuating circumstances. It will be important to know these details when helping a Member. QUFA staff will either know or can find out these details for Members.

While Council Representatives may alert QUFA staff to the possibility that a Member might have a question or concern, Members must directly contact QUFA staff for assistance. QUFA staff can only take action if there is direct contact with and direction from the Member.

For reasons of confidentiality, Council Representatives will not be informed about any complaint or inquiry. Should the Member wish to inform the Council Representative of the status of his or her complaint or inquiry, they may do so.

## Grievance Process

A Member may seek informal settlement on his or her own. It may be wise to contact QUFA staff for assistance at the outset, or later as the need arises. If QUFA becomes involved, then the default position is that QUFA has assumed the case unless there is explicit agreement to the contrary.

QUFA staff will attempt to answer questions and resolve issues brought to them in an expeditious manner. Sometimes, this necessitates contact with Queen's administrative offices, particularly the Faculty Relations Office, which is found within the 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 University.) QUFA may also contact other Queen's offices to get information, to clarify the process, etc. Sometimes, it is easier for a Member to get information from a Queen's office (for example, personal information from Human Resources), and the Member will be advised. Resolution may also necessitate the involvement of colleagues; QUFA will let you know if it is necessary to involve others so that you may decide whether to continue with your inquiry or complaint.

This is called the informal grievance process. The length of time it takes can vary depending on the nature of the issue and the willingness or ability for the University Administration to resolve it. The hope is always to reach a mutually agreeable resolution without the need to resort to the next step.

The next step involves launching a formal grievance. Step 1 is a closed door, "off-the-record" meeting with the following present: the grievor, administrators whose actions are grieved against, QUFA 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.

If no resolution is reached at the Step 1 meeting, then the parties (QUFA or the University Administration) may decide to go to arbitration, or Step 2. Arbitration is a hearing rather than a meeting, anyone may attend, and it is adversarial with outside lawyers employed. 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; for example, the arbitrator may order that the University pay the grievor some money, or the arbitrator may direct the University to undertake a Collective Agreement process again but properly this time. An arbitrator will not make an academic decision.

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 a 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).

These formal processes are described in more detail in another document called “The Grievance Process.”

## **Possible Outcomes**

At any stage of the processes described above, up until an arbitration hearing has been completed, the matter could be settled informally or by way of a memorandum of agreement between the parties, or the parties could agree to settle or mediate an issue or some issues and proceed with others.

Some people believe that a “day in court” is the only way to achieve justice and that a settlement is tantamount to “giving in” or to losing. This is not so. 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 and the matter taken to arbitration.

The Member may also decide to withdraw or abandon a grievance after it has begun, and may direct QUFA staff to stop taking action. While it is normally the case that the grievance will not proceed any further even if QUFA has assumed the grievance, the Collective Agreement does allow for the possibility that QUFA proceed on its own without the Member(s) if a resolution would be beneficial for the QUFA Membership.

It is worth repeating that QUFA deals with complaints against the employer that arise out of the Collective Agreement, and that QUFA cannot act on complaints against other Members (with the exception of complaints against Heads of Units in some circumstances).

## **QUFA Staff**

Elaine Berman (Administrative Officer)  
Phil Goldman (Grievance Officer)  
Susan Fitzgibbon (Member Services Officer (Labour Relations))  
Ramneek Pooni (Grievance Officer)  
Rhonda Clark-George (Administrative Assistant)

*edited by Robert G. May (Communications Support Person, QUFA)*