

LAURENTIAN UNIVERSITY FACULTY ASSOCIATION

POLICY PAPER - GRIEVANCES

1.0 REPRESENTATION

1.1 Position Statement:

In situations involving any potential and actual grievance resulting from violations of the Collective Agreement, Federal or Provincial law, violations of past practice in the workplace or violations of employee=s rights, LUFA undertakes to fairly, genuinely, promptly and with integrity, represent each and every individual member, groups of members and/or the collective membership of the Association in situations where it is deemed able and proper to do so by the Grievance Committee of the LUFA Board of Directors and with the approval of the Board where such approval is required.

1.2 Principles Governing the Duty of the Association to Fairly Represent its Members:

1.2.1 The power conferred on the Association to act as representative for the employees in the bargaining unit entails a corresponding obligation on the Association to fairly and properly represent all employees comprising the unit.

1.2.2 The representation by the Association must be fair, genuine and not merely apparent, undertaken with integrity and competence, without serious or major negligence and without hostility towards the member(s).

1.3 Caveat - Fair Representation:

In order to ensure that all potential grievance complaints are dealt with in a fair and expeditious manner, the Chief Steward, the Steward involved and the Grievance Committee must be in a position to show:

1.3.1 That a thorough investigation of the facts has been conducted and that the informal stage of the process has been promptly and exhaustively pursued notwithstanding any Aworking days@ provision contained in the Collective Agreement.

1.3.2 That internal procedures were correctly followed in the processing of each grievance (see below for Grievance Processing and Decision Procedure).

1.3.3 That LUFA Officers worked, or attempted to work, within the time limits specified in the Collective Agreement.

- 1.3.4 That where deemed necessary, LUFA sought informed legal advice and relied on that advice.
- 1.3.5 That Grievors are advised of meetings which might affect them whether or not they are permitted to attend those meetings.
- 1.3.6 That insofar as was possible, written records of all meetings, interviews, discussions and all other activities or episodes having to do with the issue under investigation were maintained.

1.4 Conflict of Interest & Bias - Definition, Legal Considerations & Guidelines in the Representation of Members:

1.4.1 Definition:

A conflict of interest@ occurs where,

- i) a person has a duty to fairly decide or vote on an issue, and,
- ii) there is a reasonable presumption that the person stands to be benefitted or harmed from a certain resolution of the issue (CAUT, 1991)

1.4.2 Example Instances:

Situations where conflicts of interest arise include, but may not be confined to (CAUT, 1991), instances where the decision makers or voters on issues relating to grievances, or other Association matters:

- i) stand to benefit or be harmed financially;
- ii) have families or close friends who stand to benefit or be harmed financially;
- iii) have careers or reputations which stand to be advanced or retarded;
- iv) have reputations regarding previous actions which stand to be advanced or retarded;
- v) are known rivals of persons who might be benefitted or harmed by a decision or outcome;
- vi) will or probably will be subject to a decision made by the person whose case is being heard or decided;
- vii) were benefitted or harmed by decisions made by the person whose case is being heard. (CAUT, undated)

1.4.3 Declaration of Conflict of Interest:

It is the duty of any voting or non-voting Member of the Association Board, the Executive Committee and/or the Grievance Committee and any other person who may be present at any discussion of any grievance or potential grievance who:

- i) believe that they themselves have an interest in that grievance of a nature reflected in the instances set out in 1.4.2 or
- ii) who believes that another voting or non-voting Member or any other person who may be present at such discussion has such an interest, to declare such interest.

1.4.4 Processes for Dealing with Conflict of Interest Declarations:

Where any conflict of interest or potential conflict of interest declaration is made by any voting, non-voting member or other person pursuant to 1.4.2 & 1.4.3 above, then that individual should:

- i) abstain from discussion of the matter under consideration except where invited to do so by the Chairperson of the meeting at the request of any member of the meeting on points of clarification, or,
- ii) in the case of voting members, abstain from any vote or straw vote taken in that matter, and
- iii) shall take no part in any negotiations or decision-making with any party involved in that grievance or potential grievance.

1.4.5 Any member of the Association Board of Directors or Grievance Committee may propose that the member(s) in conflict absent themselves from the meeting for the duration of discussion of the matter in hand. Unless the member(s) voluntarily elect to absent themselves from the meeting for the duration of the discussion of that matter then such a motion must be seconded and discussed according to the Association=s rules of order.

The member(s) concerned shall have the right to speak to and discuss the proposition before any vote is taken.

On a majority vote of the meeting, the Chair shall either request the concerned individual to leave the meeting or to remain, whichever may be the case. If the individual has left voluntarily or leaves as a result of a vote, the Chair shall ensure that the member is invited to return on conclusion of discussion of the matter in hand.

1.4.6 Conflict of Interest Assessment Committee:

If member(s) are discovered to have potentially been in conflict of interest in a grievance matter subsequent to any decision(s) made or vote(s) taken in respect of that matter and in which the member(s) participated, then the situation will be assessed by at least two independent parties agreed to between the Association Executive and the member(s) concerned. The Assessment Committee should seek to establish:

- i) the full circumstances surrounding the subject member=s position in the matter before, during and subsequent to the decision(s) made or vote(s) taken, from which any conflict of interest may be determined;
- ii) the degree to which the member or members were aware of their conflict position prior to and at the time of the decision-making or vote and subsequent to such decision-making or vote;
- iii) any explanation by the member for any non-disclosure of any potential conflict of interest;
- iv) the effects or potential effects of the possible conflict on the outcome of the grievance;
- v) conclusions as to:
 - a) whether or not any conflict of interest was present at any point during the processes to the point in time where it became known;
 - b) the degree to which any such conflict of interest existed and the member=s awareness of it;
 - c) the likely effect of the conflict, if any, both on the matter at hand and on the integrity of the Associations and its members;
 - d) recommendations as to any corrective action which may be needed to offset any negative impact on the matter at hand or on the integrity of the Association and its Members.

2.0 ROLES AND DUTIES

2.1 The Chief Steward:

2.1.1 Roles:

In conjunction with the Directors/Stewards, the Chief Steward forms the link between individual Members and the Association Grievance Committee. In issues arising from the Collective Agreement or other sources, the Chief Steward is also the link between the individual member and the University Administrators as well as the link between the Grievance Committee and the University Administrators.

Whilst this does not preclude informal contact between individual Members of the bargaining unit and administrators, the Association must guard against Aprivate@ arrangements which may prejudice the interests of any individual Member and/or the membership at large. (See also conflict of interest guidelines in 1.4 above).

2.1.2 Duties:

There are three basic duties which should be performed by the Chief Steward:

- i) **Dissemination of Information:**
It is the duty of the Chief Steward to ensure that members are

knowledgeable about, and understand, their rights and duties under the Collective Agreement, Federal and Provincial law, and within the Association;

The Chief Steward should also keep the Grievance Committee informed of the views and concerns of the Membership.

- i) **Dealing with Grievances:**
The principal duty of the Chief Steward is to manage and aid in the investigation of grievances through both the informal and formal stages of the settlement discussion; where necessary, preparing and presenting formal grievances in accordance with Step No. 1, Article 8.3, 8 a) of the Collective Agreement.

- iii) **Contract Negotiation:**
The Chief Steward should record any deficiencies in the Collective Agreement for use in future contract negotiations and should promptly bring such deficiencies to the attention of the Chief Negotiator.

2.2 The Stewards:

2.2.1 The Composition of the LUFA Steward Body:

The LUFA Stewards shall be the members of the Board of Directors with the exception of the members of the Executive Committee.

2.2.2 Duties and Responsibilities of the Directors/Stewards:

The Directors/Stewards shall represent and assist Members of their specific employee group in grievances. The Directors/Stewards shall report to the Chief Steward. A Director/Steward shall not represent a Member from their own academic school/department.

The specific duties and responsibilities of the Stewards shall be those set out in the Steward Handbook and it is the responsibility of Stewards to familiarize themselves with the provisions of the Collective Agreement as from time to time amended.

2.3 The Grievance Committee:

2.3.1 The Composition of the Committee:

For the purposes of this section, the Grievance Committee of the LUFA Board of Directors shall be comprised of the Chief Steward, the President of LUFA or a designate, the LUFA Steward body including the Steward who has assumed responsibility for the inquiry into a specific issue for which a grievance may be pursued. The Committee will normally be chaired by the Chief Steward.

2.3.2 Duties and Responsibilities of the Committee:

- i) The Committee shall administer and monitor the grievance and arbitration procedures in accord with the Collective Agreement and shall conform to, and be bound by, the normal LUFA rules of procedure;
- ii) The members of the Committee shall endeavour to give fair and effective representation to all LUFA bargaining unit members in accordance with the LUFA Position Statement as set out in 1.1 above and with Section 68 of the Ontario Labour Relations Act which states that AA trade union.....shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of its members@;
- iii) In its deliberations, the Grievance Committee should assess the importance of a grievance to both the Association membership and to the University administration by examining such factors as:
 - a) whether the issue in question violates one or more of the provisions of the Collective Agreement, Federal or Provincial law, past practice or employee rights;
 - b) whether there has been a serious injustice;
 - c) legal duty of fair representation;
 - d) economic significance for the individual;
 - e) political significance within the Association or the University community or administration;
 - f) labour relations significance;
 - g) substantive significance;
 - h) chance of success and economic significance for the Association.
(CAUT, 1991)
- iv) The Committee shall report to the Board of Directors through the Chief Steward at each meeting of the Board and shall include in its report a summary of all outstanding complaints and grievances;
- v) With the exception of the Chief Steward, and/or the Steward responsible for investigating a specific issue, no member of LUFA, the LUFA Board or LUFA Executive will communicate with any member of the administration about any specific issue pertaining to any grievance or potential grievance unless requested to do so by the Chief Steward or the Committee.

All grievance matters discussed or referred to in the Grievance Committee, in the Executive Committee or the Board of Directors meetings shall be held in the strictest of confidence and shall not be discussed with any person outside of the Officers and Members of the Board of Directors of LUFA at any stage.

- 2.3.3 Grievor members will not normally be permitted to attend meetings of the Grievance Committee but may be invited to make presentations to the Committee

at the behest of the Committee or at their own request. In any event, grievor members will not be permitted to remain in the committee meeting during substantive discussion of the issues pertaining to their case. The Grievor may, however, nominate a faculty member of LUFA who is willing to act as a Grievor's friend to represent his or her interests at Committee meetings. Any such member will have no voting rights in the Committee.

2.3.4 The Grievance Committee shall meet at least bi-weekly. An agenda for the meetings will be circulated in advance by the Office Administrator.

3.0 DEFINITIONS AND FORMS OF GRIEVANCE

3.1 Definition:

3.1.1 A grievance is any dispute or difference arising out of the application, administration, interpretation, or alleged violation of the provisions of the (Collective) Agreement, Federal or Provincial law, violations of past practice or violations of employee's rights.

3.2 Forms of Grievance:

3.2.1 Three generally recognized forms of grievance are dealt with here:

- i) Individual grievances taken up by the Association on behalf of a Member or group of Members;
- ii) Association, or Policy grievances pursued by the Association on behalf of the membership-at-large, and,
- iii) Grievances against the Association taken up by the Board of Governors of Laurentian University.

3.2.2 Recording of Meetings/Discussions:

All meetings and discussions which take place in connection with any party in any form of grievance and concerning any specific grievance issue must be recorded by the Steward and/or the Chief Steward.

4.0 THE GRIEVANCE PROCESS & DECISION PROCEDURE - INDIVIDUAL/GROUP COMPLAINTS

4.1 Informal Resolution:

4.1.1 LUFA is made aware of the fact that an individual Member has a problem of concern and this is brought to the attention of a Steward. The Chief Steward may be approached directly if the faculty member wishes. The grievance will then normally be assigned to one of the Stewards in consultation with the Member.

The Chief Steward will be kept aware of the progress of all grievances and potential grievances.

4.1.2 The Steward will discuss the matter with the member to obtain a clearer understanding of the subject of concern to the Member. At this stage the Grievor shall supply the following:

- i) A written statement of the problem and the circumstances leading to it, including date(s) and time(s) of occurrence/when the issue first came to the Member=s notice. As much relevant documentation as may exist should also be gathered at this point;
- ii) A written understanding of what the Member views as an acceptable solution at that time and consent allowing the Steward, Chief Steward, the Grievance Committee and advisors access to the Member=s Personnel File and any other documents pertinent to the grievance;
- iii) The Steward will begin the written recording of the complaint by entering the required information including full details of all the Steward=s investigation and interviewing of witnesses in the specific grievance issues, as per the ALUFA Grievance Investigation Report@ (Appendix I);

4.1.3 The Chief Steward and the Steward will then make an assessment of whether the matter is grievable and make a preliminary determination of the relevant articles of the Collective Agreement.

4.1.4 The Member will be informed of the Chief Steward and Steward=s assessment. If there is sufficient time, and if the matter is grievable, an effort will be undertaken by LUFA to resolve the situation informally. Step 1 of the Grievance Procedure set out in the Collective Agreement, as may be from time to time amended, allows 30 working days for the informal stage issue resolution process.

4.1.5 Through informal discussion with the concerned Dean/Director of Library, the Director of Academic Staff Relations, or other relevant administrator, the Steward will attempt to resolve the issue. If some accommodation is proposed, the Steward would inform the Grievor, and, if the Grievor accepts the proposed resolution, the case is closed. Signed acceptance of the proposed resolution must be obtained from the Grievor.

4.2 Formal Grievance - Step 1

4.2.1 If agreement cannot be reached informally, or if the arrangement is not acceptable to the Member, the issue will then be brought to LUFA Grievance Committee.

4.2.2 Grievor Members must submit to the Committee through the Steward acting on

their behalf before or at the time of the committee meeting at which their grievance is to be considered:

- i) A review and amendment, if appropriate, of the situation statement originally submitted as required in 4.1.2 i) above;
- ii) An affirmation, in writing, that they wish to proceed with Step 1 of the Grievance Procedure in the Collective Agreement;
- iii) A clear indication, in writing, that if necessary, the Member wishes LUFA to proceed to Step 2, a Joint Grievance Committee hearing, as set out in the Collective Agreement;
- iv) A response to any legal opinion submitted by CAUT or any other source at any stage in these proceedings;
- v) An indication from the Administration if an attempt at mediation would be acceptable to them;
- vi) A clear statement in writing as to whatever responses of the Administration are acceptable to the Member including the Member's amenity to an attempt at mediation.

4.2.3 At this point the Committee may consider if the circumstances warrant the employment of a professionally certified and independent, labour Mediator of good standing, to attempt to resolve the issue.

4.2.4 The Committee will decide on a majority vote whether a formal grievance is to be pursued. In considering the pursuit of a formal grievance, the decision criteria set out in Section 3.0 will apply added to which the Committee should consider:

- i) That the matter must be grievable;
- ii) That informal resolution was not achieved;
- iii) That the Member wishes to pursue a formal grievance; and/or
- iv) That LUFA wishes to pursue a formal grievance even though the Member may not wish to; i.e., where the infringement of a Member's rights may presage the infringement of other persons' rights.

4.2.5 It will be the responsibility of the Chief Steward and the Steward to communicate the Grievance Committee's decision to the Grievor Member in writing as per the LUFA Grievance Record form (Appendix 1).

4.2.6 If it is the decision of the Committee that a formal grievance will be pursued, it will be the responsibility of the Chief Steward and the Steward to put the formal grievance into writing following the accepted format. The grievance document would normally be presented to the University Board's designated representative prior to the elapse of the 30-working-days time bar at Stage 1 of the Grievance Procedure set out in the Collective Agreement.

Should an impending elapse of the 30-days time bar endanger the possibility of a formal grievance, LUFA may file the grievance on behalf of the Member to avoid the time bar elapse and the attempt, or continue to attempt, to seek an informal resolution to the matter.

- 4.2.7 If, for whatever reason, the Committee is unable to reach a decision regarding the pursuit of a formal grievance, the case at issue must be brought before the next scheduled meeting of the Board of Directors for direction. In exceptional situations a Special Meeting of the Board should be convened. In this situation a formal grievance must be served in conformance with 4.2.4 above.

4.3 Joint Grievance Committee - Step 2:

- 4.3.1 The decision to proceed to a Step 2 - Joint Grievance Committee (JGC) hearing shall be taken by the Board on a majority vote. Through the Chief Steward, the Committee will bring to the Board a comprehensive review of the grievance in question, a recommendation as to a course of action and all file material relevant to that grievance including estimates of projected costs to the Association.
- 4.3.2 After the Chief Steward has concluded the presentation, the Board shall undertake a thorough discussion of the grievance following which the Board will vote on the decision to move Step 2 forward or not to move Step 2 forward.
- 4.3.3 In formulating its decision, the Board shall act in a careful, fair and objective manner having regard for:
- i) the significance of the grievance and its consequences for the Grievor(s) and,
 - ii) the legitimate interests of the Association in terms of the financial cost of a JGC hearing, the requirement to protect the Collective Agreement, the reputation of the Association and the interests of all Members.

The Board will also consider the criteria set out in 4.2.4.

- 4.3.4 After the vote has been concluded, a numerical record of the vote shall be kept, together with a written record of reasons for the decision. The Chair will ask any dissenting members if they require that their dissenting vote(s) be recorded and if they wish their reasons for so dissenting to be recorded.

4.4 Arbitration Hearing - Step 3:

- 4.4.1 The decision to proceed to a Step 3 - Arbitration Hearing shall be taken by the

Board on a majority vote. Through the Chief Steward, the Committee will bring to the Board a comprehensive review of the grievance in question, a report on the Step 2 Joint Grievance Committee outcome, a recommendation as to a course of action and all file material relevant to that grievance, including estimates of projected costs to the Association.

4.4.2 The procedure as set out in 4.2.2 through 4.2.4 above is to be followed.

5.0 THE GRIEVANCE PROCESS & DECISION PROCEDURE - ASSOCIATION (POLICY) GRIEVANCE

5.1 Definition of an Association (Policy) Grievance:

An Association, or APolicy@ grievance (See 3.2.1 above) is one pursued by the Association in objection to any action, or intended action, taken by the Administration which affects the general application of the Collective Agreement thereby potentially or actually affecting Members of the bargaining unit directly or indirectly.

5.2 Reporting & Informal Resolution:

5.2.1 When a situation which may have the potential for becoming a Policy grievance comes to the attention of any Director, Officer or Steward of the Association, or any Committee of the Association, or any member of the Association, the Member or Association Committee Chair shall bring this to the attention of the Chief Steward. The Chief Steward should inform the President of LUFA that such a situation has arisen and that a preliminary investigation is being undertaken.

5.2.2 The Chief Steward will make a preliminary investigation of the circumstances surrounding the situation in a similar manner to the process set out in Section 4.1 above and fully documenting all aspects of the enquiry. The Chief Steward and President have the discretion to attempt an informal clarification and/or resolution of the situation at this time.

5.2.3 It will be the responsibility of the Chief Steward in consultation with the Grievance Committee, to identify which Articles of the Collective Agreement, Federal or Provincial law, past practice, or employee rights are threatened by Administration=s actions and to determine the nature of the threat to the bargaining unit members at large.

5.2.4 The results of the Chief Steward=s inquiry should be brought to the Grievance Committee at the first available opportunity. It is the responsibility of the Grievance Committee to hear the report of the Chief Steward, to fully discuss the situation and to make recommendations on further action in the form of formal

motions and based on a majority vote of members of the Grievance Committee. Such courses of action may include, but not necessarily be confined to:

- i) further investigation by the Chief Steward including seeking legal advice;
- ii) continuing attempts by the Chief Steward and/or President to seek an informal resolution to the situation;
- iii) identify acceptable resolution outcomes to the situation;
- iv) developing a formal recommendation to the Board of Directors on the question of proceeding to Step 1 of the Grievance process issuing a formal grievance.

5.2.5 Having regard to the 30-day limit to the period allowed for the resolution of the situation by informal means, nothing here shall preclude the Chief Steward from issuing a Formal Grievance notice on the Administration in order to meet the time constraint. This should normally be done in consultation with the President, and where possible, members of the Executive Committee.

5.3 Formal Grievance - Step 1, Step 2, and Step 3:

The procedures set out in Section 4.2 through 4.4 should be followed in Policy (Association) grievances.

6.0 GRIEVANCES PURSUED BY THE BOARD OF GOVERNORS AGAINST LUFA

6.1 Decisions and Procedures:

6.1.1 Complaints by the Administration which may lead to a formal grievance by the Board of Governors should normally be received by the President and the Chief Steward together from the Vice-Presidents (Academic) on behalf of the Administration. The complaint should be recorded in detail. **No oral or written responses should be made to the Administration or any other party in regards to the complaint.** The Administration should be informed that the matter will be investigated and a response made in due course.

The President and/or the Chief Steward will have the sole responsibility for communicating with the Administration on matters pertaining to the complaint.

6.1.2 The matter will immediately be brought before a meeting of the Grievance Committee; if necessary, a special meeting of the Committee will be called for. The Grievance Committee shall be responsible for:

- i) receiving the complaint from the President and/or Chief Steward;
- ii) based on the evidence available at that point, assess the nature of the

- complaint and, thus, its potential gravity;
 - iii) forming a Stewards Committee whose responsibilities will be to support and assist the Chief Steward in his/her investigations into the complaint. The size of the Committee will be determined by the Grievance Committee in consultation with the Chief Steward.
- 6.1.3 As complete an investigation as is possible will be conducted by the Stewards Committee, including legal assessment(s) as to the veracity of the complaint and possible consequences. The results and findings will be brought back to the Grievance Committee by the Chief Steward and by a date initially set by the Committee having regard for the 30-day time limitation on settlement by informal means.
- 6.1.4 Based on the Grievance Committee discussions of the situational evidence and any legal advice and recommended resolution strategies, the President and/or the Chief Steward will proceed to attempt to resolve the matter informally where any such resolution is deemed appropriate.
- 6.1.5 The results of the informal discussions will be reported to the Grievance Committee as soon as is possible following the conclusion of discussions with the Administration. Following which, the Grievance Committee, through the Chief Steward, will bring a full report to the Board together with whatever recommendations the Grievance Committee is making based on formal motions and majority votes. Based on these recommendations and commentary by the President and the Chief Steward, it will be the responsibility of the Board to advise the President and the Chief Steward on any required courses of action and any possible disbursement of necessary financing. Such advice and use of resources to be the subject of formal motions and decided on majority votes.