

Membership Representation Preamble

A primary responsibility of the Faculty Association is the representation of the interests of the members of the academic staff in disputes relating to the collective agreements. A summary of the activity in this regard is set out below. Individual members have a personal responsibility in all cases, but they are entitled to seek advice and assistance from the officers and staff of the Faculty Association. The assistance may extend to advocacy and, from time to time, to acting as agent on behalf of staff members.

The role of the Faculty Association is governed by the duty of fair representation. The duty of fair representation may be defined as the responsibility to act in a manner that is neither arbitrary, discriminatory, nor in bad faith. Representation shall not be capricious or superficial, and shall be based on full investigation. The member shall be kept informed of actions and reasons for actions.

The scope of the representation includes, but is not limited to, representations before:

- Deans and other administrative officials;
- Vice-Presidents, especially with regard to Agreement-related matters involving questions about the assignment and performance of responsibilities, supplementary professional activity, sabbatical and other leaves, vacations, charges of unacceptable academic performance, and discipline matters;
- Investigating authorities in allegations leading potentially to discipline; and
- Arbitration tribunals.

Representation Decisions and Appeal Policy

The UPEIFA recognizes its duty of fair representation and undertakes to represent its members fairly, in good faith, and without discrimination. There will be situations when the UPEIFA must, for specific reasons, make the decision not to represent a member on a particular matter, or to cease to represent a member in a particular matter.

The Chief Grievance Officer (CGO) may make the decision not to represent a member in a particular matter or to cease to represent a member in a particular matter in any of the following circumstances:

- The matter which the member is bringing forward is not within the ambit of the collective agreement, or the matter is not one that would be arbitrable;
- A grievance on the matter lacks merit and is not likely to succeed at arbitration;
- The member has acted in an abusive manner toward their UPEIFA representative or toward UPEIFA staff;
- The member repeatedly refuses to follow reasonable advice given by their UPEIFA representative;

- The member refuses to accept a settlement agreement or an accommodation plan which is judged to be, taking into account all the circumstances of the case, reasonable and acceptable by the UPEIFA;
- The member has a duty to cooperate with the UPEIFA but fails to do so;

or other reasons deemed sufficient by the President, the CGO, the Executive Director, or the Executive Committee (EC).

The Preliminary Decision

Preliminary decisions regarding the decision not to represent a member or a particular matter or cessation of representation of a member or on a particular matter will be made by the Executive Director in consultation with the CGO.

Should a preliminary decision be made by the Executive Director not to represent or to discontinue representation of a member on a particular matter, the matter will be forwarded to EC for their consideration and decision.

After reviewing the written or oral recommendation of the Executive Director, or their designated Grievance Officer(s), the EC will make one of the following decisions:

- a) Agree with the preliminary decision not to represent or to discontinue representation
- OR
- b) Disagree with the preliminary decision, in which case representation of the member will proceed.

The EC shall provide the member with a written record of the decision. If the EC agrees with the preliminary decision, the letter will also include instructions for appealing the decision.

Appeal of the Preliminary Decision

The member will have the right of appeal to a sub-committee of the Executive Committee (the Appeal Committee)

Process

Should a member wish to appeal the preliminary decision, the member must notify the UPEIFA President, in writing, within 10 working days of the date of the letter from the EC. The same process shall apply should the Executive Director or CGO wish to appeal the decision of the EC.

The Appeal Committee shall be made up of three members of the Executive selected by the Executive who have not been involved in the member's representation up to that point, and who do not have another conflict (e.g., work in the same department as the member, related to the member).

The Appeal Committee will choose a chair from amongst its members.

The Appeal Committee will conduct a hearing where they will hear from the member and/or the member's representative, and from the CGO and/or the Executive Director or designate and/or legal counsel.

The hearing will be scheduled as soon as possible following the member's notification of appeal to the President. Reasonable notice will be given to the parties.

The member may bring their representative to the hearing. Any costs incurred for representation will be the responsibility of the member.

Hearing participants may provide the Chair of the Appeal Committee with written submissions. In order to be considered, these submissions must be provided to the Chair at least 2 working days prior to the hearing and provided to each party.

The Appeal Committee is not bound by rules of evidence or procedures applicable to courts of law. All hearing and decisions of the Appeal Committee are guided by and in accordance with principles of natural justice and procedural fairness. The Chair shall make procedural rulings including rulings on extensions of time limits.

The hearing format shall be as follows:

- a) UPEIFA presentation: maximum 60 minutes
- b) Member's presentation: maximum 60 minutes
- c) UPEIFA rebuttal: maximum 30 minutes
- d) Member's rebuttal: maximum 30 minutes
- e) Questions from the Appeal Committee.

The Appeal Committee may provide an oral decision at the conclusion of a deliberation period following the hearing. The Appeal Committee will provide its decision along with brief written reasons to the member, the CGO, the President, and the Executive Director normally within 5 working days of the hearing.

The decision of the Appeal Committee is final and binding and not subject to further appeal.

The Chair of the Appeal Committee shall report the outcome of the hearing to the Executive Committee.