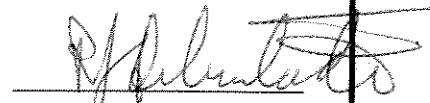


Approved by the  
Grievance Review Panel  
November 4, 2002

  
Chair

November 4, 2002

### **INTERIM RULES OF THE GRIEVANCE REVIEW PANEL, 2002**

#### **General Principles**

1. These Rules replace the Rules approved by the Grievance Review Panel on October 15, 1987.
2. The Grievance Review Panel (the Panel), as established by the Memorandum of Agreement, is composed of seven members of the faculty and one librarian, and is appointed by the President of the University after consultation with the University of Toronto Faculty Association (the Faculty Association). The terms shall be for two years, with half of the membership completing their terms each year. Vacancies on the panel shall be filled by the President after consultation with the Faculty Association. The objective of the Panel is to decide grievances fairly, according to the terms and spirit of the Memorandum of Agreement. Its procedure will be as informal as the requirements of procedural fairness, the preferences of the parties, the nature of the case, and the governing law permit. Informal procedures are the most appropriate way to decide grievances while respecting the values and purposes of the University and preserving collegial relationships.
3. The following Rules are intended as procedural guides and are not to be regarded as fixed and inviolable. These Rules shall be interpreted and applied so as to produce the fairest, most expeditious and least expensive determination of every grievance on its merits. Any procedural issue not covered by these Rules shall be resolved by analogy to these Rules, consistent with the above principles.
4. These Rules are made pursuant to the provisions of the *Arbitration Act, 1991*, as varied or excluded by the Memorandum of Agreement. If any inconsistency arises between these Rules and the *Act* as so varied, the *Act* as so varied shall prevail.

5. Where questions of procedure arise for determination by the Panel, those questions may be determined by the Chair of the Panel.
6. Any time limits specified in these Rules may be extended by mutual consent of the parties to a grievance, or by the Panel, if the Panel is satisfied that no party's position has been substantially prejudiced by any delay. Any extension of time may be granted before or after the expiry of that time.
7. The Panel may, in consultation with the parties to the Memorandum of Agreement, appoint counsel to advise it and any Committee, and may appoint alternate counsel to advise a Committee as required. Counsel may attend hearings and may assist the Panel or a Committee in its deliberations, provided that decisions of the Panel or a Committee shall be made by those bodies. Rules 16, 17 and 18 below also apply, with necessary changes in wording, to counsel advising a Committee hearing a grievance.

#### **Commencement of Arbitration Proceedings**

8. If a faculty member or a librarian, a group of faculty members or librarians, or the Faculty Association (all included under the term "the grievor") has presented a grievance to the Vice-President and Provost according to the Memorandum of Agreement, and it is not satisfied with the decision of the Vice-President and Provost, the grievor may present the grievance to the Panel by giving notice to the President of the University and the Chair of the Panel within fifteen (15) working days of receiving the decision of the Vice-President and Provost.
9. The notice shall contain:
  - (a) the name and address of the grievor,
  - (b) the details of the grievance,
  - (c) a statement of the issue in dispute,
  - (d) a statement of the remedy sought by the grievor.
10. The President or any other official of the University designated by him or her (the administrative official) may represent the University.
11. The administrative official shall give a response to the grievance to the grievor and to the Chair of the Panel within fifteen (15) working days of receipt by the President of the notice as specified in Rule 6 above.

12. The response shall contain:
  - (a) the name and address of the administrative official,
  - (b) a statement of the issues in dispute and,
  - (c) a statement of the resolution and disposition sought by the University.
13. The Chair of the Panel shall refer the grievance for hearing upon receipt of the response from the administrative official. If no response is provided within the time specified or any extension thereof, the grievance shall be referred to arbitration upon the expiry of the time.
14. The Chair of the Panel shall set a time, place and date for the hearing, taking into account the convenience of the parties and the other circumstances of the grievance, and shall notify the grievor and the administrative official of the arrangements.
15.
  - (a) The grievance shall be heard by a Committee of the Panel appointed by the Chair and, subject to sub-rule (c) below, composed of at least three members of the Panel.
  - (b) Subject to sub-rule (c) below, the Committee shall choose one of its members to act as Chair (Committee Chair), and, if the Committee does not choose a Chair, the Chair of the Panel shall appoint one.
  - (c) The Panel may appoint an individual from outside the University to serve as Committee Chair, if it concludes that it is in the best interests of the grievor and the University to do so, provided that the grievor consents to this appointment.
  - (d) Questions of procedure which arise during the hearing may be delegated by the Committee to the Committee Chair.
16. Upon appointment to a Committee, a Panel member shall disclose to all parties any circumstances of which he or she is aware that may give rise to a reasonable apprehension of bias. A member of a Committee who, during the arbitration hearings, becomes aware of circumstances that may give rise to reasonable apprehension of bias shall promptly disclose them to all the parties.
17. A party who wishes to challenge a member of the Committee on the grounds that circumstances exist that may give rise to a reasonable apprehension of bias shall do so forthwith upon becoming aware of those circumstances. The challenge shall be heard by the Committee, including the member challenged.

18. The parties may agree to remove the challenged member, the challenged member may resign, the Committee may remove the challenged member, or the Committee may find that there exists no reasonable apprehension of bias.
19. Where a Committee member's mandate terminates within the meaning of section 14 of the *Arbitration Act, 1991*, the Chair of the Panel shall appoint another member of the Panel to replace that Committee member. If a Committee member's mandate terminates after the hearing has begun, the Chair of the Panel shall solicit the submissions of the parties on how to proceed in replacing the Committee member. Where a Committee member's mandate expires after the hearing has begun only by reason of the expiry of his or her term of appointment to the Panel, the term of the appointment shall be extended until the jurisdiction of the Committee is fulfilled.

### **Evidentiary Issues**

20. A party requesting an Order for the detention, preservation or inspection of property and documents pursuant to section 18 of the *Arbitration Act, 1991* shall apply to the Committee or, if the Committee has not yet been appointed, to the Panel, with notice to the other party.
21. A party seeking the issuance of a notice requiring a person to attend and give evidence at the arbitration hearing shall provide the notice for signature. The notice may be signed by the Chair of the Panel or by any person designated by the Chair of the Panel to sign on his or her behalf.
22. The University may have confidential letters of reference and evaluations relevant to the grievance. Article 10 of the Memorandum of Agreement provides that the grievor may not examine these confidential letters. The grievor may request paraphrases of them from the administrative official. If a request is made, the University shall, within 15 working days of its receipt, give paraphrases to the grievor and give copies of the paraphrases and copies of the letters to the Chair of the Panel. These paraphrases shall give the reasoning and the conclusions of the letters, but shall not reveal the identity of the persons who wrote them. The Chair of the Panel shall direct a member of the Panel who is not a member of the Committee hearing the grievance to ensure that the paraphrases are reasonably accurate and comprehensive.
23. (a) The grievor may use any of the paraphrases referred to in rule 22 as evidence, and if he or she does, the administrative official shall give the letter from which the paraphrase has been made to the Committee and the Committee may consider it.

- (b) The administrative official may use any of the letters referred to in rule 22 as evidence. If he or she does, he or she shall give it to the Committee. If the grievor has already been given paraphrases, the administrative official shall indicate which of the letters has been given to the Committee. If the grievor has not already been given a paraphrase, the administrative official shall give a paraphrase of the kind required by rule 22 to the grievor and the Chair of the Committee, and the Chair shall ensure that it is reasonably accurate and comprehensive.
24. The University or the grievor may request that any documents or portions of documents that have been submitted to the Panel be marked confidential, to be used only in the context of the hearing; in such case, the documents or portions so designated shall not be used, copied, or released outside the hearing. In the event of a disagreement over the status of a document or portion thereof, the Panel shall determine the status having regard to the criteria set out for closing the hearing in Rule 26 below.

### **Conduct of the Hearing**

25. The Committee hearing a grievance may determine the procedure to be followed in the hearing, subject to these Rules, the Memorandum of Agreement and the *Arbitration Act, 1991*.
26. The Committee shall treat the parties to a hearing equally and fairly, and shall give each party an opportunity to present its case and to respond to the other parties' cases.
27. The Committee may rule on its own jurisdiction to conduct the arbitration or provide any remedy sought, either as a preliminary ruling, or as a part of an award. The Committee may determine any question of fact or law that arises during the arbitration.
28. The hearing will normally be open to the public. Upon the request of a party, the Committee may close all or part of a hearing to the public if:
- (a) matters involving public security may be disclosed; or
  - (b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public.

29. Other individuals, groups, or institutions may be made parties if, in the opinion of the Committee hearing the grievance, they have a sufficient and appropriate interest.

### **Awards**

30. The Committee hearing an arbitration shall decide all issues required to be resolved to settle the dispute. The decision of the Committee shall be unanimous, or shall be one reached by the majority of the Committee, provided that if there is no majority decision then the decision of the Committee Chair shall constitute a final and binding decision of the Committee. The decision of the Committee shall be communicated to the parties without disclosing whether the decision was unanimous, by majority, or by the Chair's decision, and shall show on its face only that it was a decision of the Committee. No minority or dissenting report shall be issued and the deliberations of the Committee shall be held in confidence. A copy of any award shall be delivered to each party.
31. The Committee may make one or more interim awards. The Committee may make more than one final award, disposing of one or more matters referred to arbitration in each award. The Committee may retain jurisdiction over any issues to be determined, and may remit such issues to the parties for negotiations with a view to settlement, or for further submissions, or both.
32. A Committee may, on its own initiative within thirty (30) days after making an award, or at a party's request made within thirty (30) days after receiving the award, correct typographical errors, errors of calculation and similar errors in the award, or amend the award so as to correct an injustice caused by an oversight on the part of the Committee.

### **Notices**

33. Notices and documents respecting grievances required to be given by the Memorandum of Agreement or these rules may be delivered to the following addresses:
- (i) the grievor: the address given in the notice initiating the grievance;
  - (ii) the President of the University: Simcoe Hall, 27 King's College Circle, University of Toronto, Toronto, Ontario, M5S 1A1
  - (iii) the administrative official: the address given in the response to the grievance;
  - (iv) the Chair of the Panel: Office of the Governing Council, Room 106, Simcoe Hall, 27 King's College Circle, University of Toronto, Toronto, Ontario, M5S 1A1.

**Mediation**

34. The Chair of the Panel may, on his or her own initiative or at the request of a party, attempt to assist the parties to reach a settlement of the grievance. The Chair may act himself or herself, unless he or she is a member of the Committee hearing the grievance, or may designate any other member of the Panel who is not a member of the Committee. With the consent of the parties, the Chair may appoint an independent mediator from outside the Panel. The person who performs this function shall not disclose any information about his or her function to the Committee, and shall be neither a compellable nor a competent witness in the hearing of the grievance.