

## ARTICLE 9

### MODIFIED TO:

1. GIVE CARRIAGE RIGHTS TO YUFA
2. UPDATE LIST OF ARBITRATORS
3. DELETE COMPLAINTS FILED BY THE EMPLOYER
4. DELETE GRIEVANCES FILED BY THE EMPLOYER

### Grievance and Arbitration

- 9.01 The Employer and the Association agree to encourage the prompt and amicable resolution of complaints and the fair and expeditious resolution of grievances arising from the administration of this Agreement and from the performance of the parties, and the employees under it. The parties agree to be bound by and give prompt and full effect to decisions arrived at under the procedures detailed below, except in those cases where a further stage in the procedures may be invoked.
- 9.02 Except as otherwise specified in this Agreement, the procedures detailed hereunder shall be the sole method for the resolution of complaints or grievances arising from the interpretation and application of this Agreement. There shall be no discrimination, harassment, or coercion of any kind practised against any person who elects to use these procedures.
- 9.03 **The Association shall have carriage of all grievances from Stage One onwards. The Employer shall deal only with the Association with respect to a grievance.**
- 9.04 All communications between the parties required by these grievance and arbitration procedures shall be delivered by either Canada Post, or University campus delivery or, where appropriate, by email.

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### Definitions

- 9.05 Any of the time allowances set out in this Article may be extended by mutual agreement.
- 9.06 A grievance shall be defined as any difference arising out of the interpretation, application, administration, or an alleged violation of this Agreement, which cannot be resolved informally. It is understood that disputes solely over the merits of an academic judgement are not grievable nor is the Employer's invocation of the dismissal procedure in Article 15 of this Agreement.
- 9.07 The categories of grievance under this Agreement are:

- (a) an individual grievance initiated by the Association on behalf of an individual employee;
- (b) a group grievance initiated by the Association on behalf of a group of employees;
- (c) a policy grievance by the Association, on its own behalf.

- 9.08 (a) Normally every reasonable attempt shall be made to utilize the Complaint Stage. However, group grievances may at the option of either party, or by agreement of both, proceed directly to Stage One:
- (b) The following disputes will normally proceed directly to Stage One, and may, at the option of the grieving party, proceed directly to arbitration:
- (i) policy grievances;
  - (ii) grievances respecting the denial of tenure or continuing appointment.
- (c) If a grievance has not been resolved at Stage One, the grieving party may proceed directly to arbitration.

- 9.09 The parties agree to the establishment of the following committee as an internal mechanism for dispute resolution.
- (a) The Dispute Resolution Committee shall be constituted within thirty (30) days of the signing of this Agreement, and shall comprise two members appointed by the Employer, and two members appointed by the Association. The parties to the Agreement shall also select and agree on an additional two members who shall be Co-Chairpersons of the Committee. All members of the Dispute Resolution Committee shall be members of the York University community. Should a member of the Committee resign for any reason, the party designating that person shall designate a replacement within twenty-one (21) days.
- The two Chairpersons, if otherwise members of the bargaining unit, shall be excluded from the bargaining unit for the period of their terms of office. The Chairpersons shall receive a reduction of a least one-third of their normal teaching loads during their terms of office.
- The parties agree that a three hour block of time twice each month shall be regularly scheduled for the Committee to hear disputes. The parties agree that only members who agree to set aside a scheduled three (3) hour block of time twice each month shall be appointed to the Dispute Resolution Committee. The cost of support staff and operating supplies for the Dispute Resolution Committee shall be borne equally by the parties.
- (b) The Committee shall meet to consider all grievances presented to it. By agreement the parties may decide that a single Chairperson or a

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(iii) grievances as in clause 9.07(g) at the option of the Employer.¶
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Subcommittee of three (a Chairperson and a nominee of each party) may be a more appropriate body to mediate a dispute.

- (c) The parties shall make every reasonable attempt to agree on what relevant material/documentation, if any, they are going to submit to the Committee including, subject to the provisions of Article 22, any relevant and appropriate material from a personnel file.
- (d) The whole Committee, including the two Chairpersons, shall adopt by unanimous decision of all of its members its own rules of procedure and evidence, which shall be fair and equitable and designed in accordance with Articles 1.01 and 1.02.
- (e) Normally the **Association representative, the grievor, Dean/Principal/University Librarian or designate** will attend the meeting of the Dispute Resolution Committee.

**Deleted:** Grievors shall have the right to be present at any hearing, to represent themselves or to be represented by the Association, or by another party of their choice or by the Employer, as appropriate.

### Complaint Stage

- 9.10 Any complaint may be presented and discussed informally between an employee and his/her Dean/Principal/University Librarian or designate or the Vice-President Academic.

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A representative of the Association may represent the employee if the employee so wishes. If the complaint is resolved at this stage, the agreed resolution of the matter shall be reduced to writing by the Dean/Principal/University Librarian or designate within fourteen (14) days of the meeting at which the complaint is presented, and the complainant shall confirm in writing within seven (7) days his/her acceptance of the resolution. A copy of the agreed resolution shall be mailed to the Association.

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9.11 Any complaint may be presented and discussed informally between the Dean/Principal/University Librarian or designate and the Vice-President Academic, and an employee. A representative of the Association may represent the employee if the employee so wishes. If the complaint is resolved at this stage, the agreed resolution of the matter shall be confirmed in writing by the employee within fourteen (14) days of the meeting at which the complaint is presented and the Dean/Principal/University Librarian or designate shall confirm in writing within seven (7) days his/her acceptance of the resolution. A copy of the agreed resolution shall be mailed to the Association. Whether or not the matter is resolved, the decision of the employee shall be conveyed in writing to the Dean/Principal/University Librarian or designate within fourteen (14) days of the meeting at which the complaint is presented.

### Stage One

- 9.11 Subject to Article 9.08, the Association may, within twenty-one (21) days of the date of the act or omission giving rise thereto, or of the date on which the complainant first knew or ought reasonably to have known of such act or omission, present the Dean/Principal/University Librarian or designate with a written grievance, containing a clear and concise statement of the facts surrounding the grievance, the specific Article(s) of the Agreement involved (although an incorrect or incomplete reference will not invalidate the grievance), the relief requested, and the results of the Complaint Stage or the reasons for bypassing the Complaint Stage. The Dean/Principal/University Librarian or designate shall reply in writing within fourteen (14) days of his/her receipt of the written grievance.

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(a) Where, pursuant to Article 9.08, the Association has elected to proceed directly to Stage One, it shall present the Dean/Principal/University Librarian or designate with a written grievance, containing a clear and concise statement of the facts surrounding the grievance, the specific Article(s) of this Agreement involved (although an incorrect or incomplete reference will not invalidate the grievance), or the reasons for bypassing the previous stage(s), and the relief requested.

(b) Policy grievances not resolved at Stage One, may proceed directly to arbitration.

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### Stage Two: Dispute Resolution

9.12 Subject to Article 9.08, disputes which have not been resolved at the Complaint Stage or at Stage One shall be submitted to the Dispute Resolution Committee (DRC) within fourteen (14) days of the written response in Articles 9.10 or 9.11. The parties agree to inform the DRC as to the type of dispute resolution forum requested. The type of dispute resolution forum shall be either mediation or a formal deliberation but not both unless the parties agree to use both processes.

If the parties are unable to agree on which type of dispute resolution to use, the grieving party shall decide and shall inform the DRC as to the type of dispute resolution.

#### MEDIATION

(a) The DRC shall attempt to mediate between the parties and to fashion a settlement agreeable to both. Within fourteen (14) working days of being informed of a dispute, the DRC shall convene the parties to ascertain the nature of the dispute, and to discuss informally a settlement. If a settlement is not reached within fourteen (14) days of the hearing, the grieving party may proceed to arbitration as per Article 9.14.

In fashioning a settlement, the DRC shall be guided by the principles in Articles 1.01 and 1.02. The DRC may directly approach the parties in any way it sees fit in order to expedite the settling of any dispute it is mediating. Settlements reached as a result of this process shall be without prejudice to the rights, obligations, practices, policies and interpretations taken or advanced by either party in other past, present or future disputes or at subsequent stages of the dispute in question. Settlements reached shall be applicable solely to the particular complainant(s) and the circumstances of the subject dispute and shall not serve as the basis of any other complaint or claim filed by the complainant(s) or any other person(s).

#### FORMAL DELIBERATION

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¶ 9.13 Subject to Article 9.08 the Dean/Principal/University Librarian or designate may within twenty-one (21) days of the date of the act or omission giving rise thereto, or of the date which the Employer first knew or ought reasonably to have known of such act or omission, present the employee and the Association with a written grievance, containing a clear and concise statement of the facts surrounding the grievance, the specific Article(s) of the Agreement involved (although an incorrect or incomplete reference will not invalidate the grievance), the relief requested, and the results of the Complaint Stage or the reasons for by-passing the Complaint Stage. The employee/Association shall reply in writing within fourteen (14) days of his/her receipt of the written grievance. ¶

<#>Where, pursuant to Article 9.08, the Dean/Principal/University Librarian or designate has elected to proceed directly to Stage One, she/he shall present the employee and the Association with a written grievance, containing a clear and concise statement of the facts surrounding the grievance, the specific Article(s) of this Agreement involved (although an incorrect or incomplete reference will not invalidate the grievance), the relief requested and the reasons for bypassing the Complaint Stage. ¶ <#>If a 9.07(f) dispute has not been resolved at Stage One, the Dean/Principal/University Librarian may proceed directly to arbitration. ¶

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- (b) The DRC shall commence its deliberations within the fourteen (14) working days of being informed of a dispute. The DRC shall receive the grievance in writing, which shall contain a full and detailed statement of the facts surrounding the grievance, and shall include a copy of the written grievance submitted at Stage One, a statement of the specific Article(s) of the Agreement involved, a statement of the remedy sought, and a statement as to why the disposition of the grievance offered at Stage One is unsatisfactory. Within twenty-one (21) days of its initial meeting on the grievance in question, the Committee shall communicate its decision, in writing, to the Employer, the Association, and the grievor(s). The Committee shall give reasons for its decisions based on its interpretation of the relevant clauses of the Collective Agreement.

### Stage Three

- | 9.13 Within fourteen (14) days of receipt of the formal deliberation report of the DRC by all parties concerned, representatives of the Association shall meet with the President or designate to discuss the report, and to determine its acceptance or rejection.

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### Stage Four: Arbitration

- | 9.14 (a) In the event that a grievance is not resolved either at Stage Two DRC – Mediation or at Stage Three – the grieving party shall, within fourteen (14) days of either the mediation meeting or Stage Three, inform the other party of its intention to proceed to arbitration. Where, pursuant to Article 9.08, the party or parties have elected to proceed directly to arbitration or pursuant to Articles 9.12(b) or 9.14(b) to arbitration directly from Stage One, the grieving party shall, within twenty-one (21) days, present the other party with written notification of its election. Such notification shall contain a full and detailed statement of the facts surrounding the grievance, the specific Article(s) of this Agreement involved (although an incorrect or incomplete reference will not invalidate the grievance), and the relief requested.
- (b) Within twenty-one (21) days of receipt of such notice by either party, the President or designate and a representative of the Association shall meet to establish an arbitration board, including the naming of nominees, to hear and decide upon the grievance. Normally, the arbitration board shall comprise three (3) members, one appointed by the Employer, one appointed by the Association and the third, chosen from the panel in Article 9.17 below, who shall be Chairperson of the board.

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9.15 The parties hereby authorize and appoint the following persons to serve as arbitrators on a rotating basis for the duration of this Agreement: *Owen Shime, Martin Teplitsky, Pamela Picher, Russell Goodfellow, Gerald Charney, William Kaplan, and Kevin Burkett, Pamela Chapman, Christopher Albertyn, Mary Lou Tims, and Stephen Raymond* or others as agreed to by the parties.

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9.16 The foregoing arbitrators shall serve singly (as per Clause 9.19 below) or as Chairperson of a three (3) person board, according to the order in which they are listed. If an arbitrator is not available within a reasonable period of time, but in any case not to exceed two (2) months, the next arbitrator in order shall be selected, and so on until one (1) of the arbitrators is available. For the next arbitration thereafter, the arbitrator who was listed after the arbitrator last selected shall be next in sequence of selection. By mutual consent, however, any listed arbitrator may be selected out of turn. If, in any case, none of the arbitrators are available within a reasonable time, which shall not exceed six (6) weeks, an arbitrator outside the panel shall be chosen by mutual consent. If such agreement cannot be promptly reached, an arbitrator shall be appointed by the Minister of Labour for the Province of Ontario. It is agreed, however, that any of the above names may be struck from the list during periods when no arbitrations are pending by either party on one (1) month's notice, provided that the parties have agreed mutually upon a replacement. No person may be appointed an arbitrator who has been involved in an attempt to negotiate or settle the grievance in question.

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9.17 By mutual agreement, the parties may decide that the grievance is to be decided by a single arbitrator, the arbitrator to be chosen in accordance with clause 9.18.

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9.18 In the case of three-person arbitration boards, the decision of the majority shall be the decision of the board, and where there is no majority decision, the decision of the Chairperson shall be the decision of the board. The decision of the arbitrator or the arbitration board shall be final and binding on the parties.

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9.19 In the case of a three-person arbitration board, the Employer and the Association shall each bear the costs of the arbitrator appointed by it, and the parties shall share equally the costs of the Chairperson. In the case of a single arbitrator, the parties shall share equally the costs of the arbitrator.

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LIMITS ON ARBITRATORS

9.20 Except as specifically limited by the terms of this Agreement, the arbitrator or arbitration board shall have jurisdiction to determine grievances,

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including any question as to whether a matter is arbitrable. With regard to matters of appointment, tenure/continuing appointment, transfer from one stream to another, or promotion, disagreements concerning solely the merits of an academic judgement shall not be grieved and arbitrated.

The arbitrator or arbitration board shall have power to fashion the remedy he/she/it deems appropriate except insofar as such remedial powers are specifically limited by the terms of this Agreement. The arbitrator or arbitration board shall not have the power to change this Agreement, or to alter, modify, or amend any of its provisions. Nor shall the arbitrator or arbitration board have the power to give any decision inconsistent with the terms of this Agreement, provided he/she/it shall not be barred on the basis of a technical irregularity from hearing a grievance and rendering an award. Remedial powers of the arbitrator or arbitration board with respect to appointment, tenure/continuing appointment, or promotion shall be limited as set out in clauses 12.18, 12.19, 12.27, 13.03, 13.04, 13.08, and 13.09.

#### **Time-Limits**

- | 9.21 The parties agree that the grievor shall be expected to act in accordance with the time-limits set out in this Article, and that failure by the grievor so to act shall result in a requirement for the grievor to explain at the subsequent stage of the procedure the reasons for failure to abide by the agreed time-limits.

Failure by the non-grieving party to respond in accordance with the time-limits set out for each of the stages of the grievance procedures shall entitle the grievor to carry the grievance to the next stage. The parties shall, however, have the right by mutual agreement in writing to extend the time-limits fixed in both the grievance and arbitration procedures.

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