

REGULATION NAME	REGULATIONS RELATING TO ACADEMIC STAFF GRIEVANCE AND DISCIPLINARY PROCEDURES
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SECTION 1 – GENERAL PROVISIONS AND APPLICATION

Purpose

- 1.1 These Regulations set out the bases and proceedings relevant to academic staff Grievances and discipline at McGill University (hereinafter “the University”).

Scope

- 1.2 These Regulations apply to members of academic staff governed by the:
- Regulations Relating to the Employment of Tenure Track and Tenured Academic Staff;*
 - Regulations Relating to the Employment of Librarian Staff.*
- 1.2.1 These Regulations also apply to members of full-time ranked academic staff who are not nil-salary appointments and who are governed by the *Regulations Relating to the Employment of Contract Academic Staff.*

SECTION 2 – DEFINITIONS

For the purpose of these Regulations, the following definitions shall apply:

- 2.1 “**Academic Duties**” means:
- for tenure track and tenured academic staff: the academic duties set out in the *Regulations Relating to the Employment of Tenure Track and Tenured Academic Staff;*

- b. for librarians: the academic duties set out in the *Regulations Relating to the Employment of Librarian Staff*;
 - c. for ranked contract academic staff: the academic duties set out in the *Regulations Relating to the Employment of Contract Academic Staff*;
- as complemented by the Staff Member's letter of appointment.

- 2.2 “**Administrative Measure**” means a measure meant to support appropriate administrative management of a function or a unit or to ensure the safety and integrity of the University community or the adequate delivery of its academic mission. Examples of Administrative Measures include: appointing a mentor to the Staff Member, limiting or modifying supervisory privileges over students and trainees, requiring regular substance abuse testing, requiring updating of skills or training and education on relevant topics.
- 2.3 “**Advisor**” means an active member of the University community who is a member of academic staff and who has agreed to act in an advisory capacity to a Party to proceedings described in these Regulations, without financial compensation or any other remuneration. Such individuals shall act in accordance with these Regulations and are deemed, in so doing, to perform part of their Academic Duties.
- 2.4 “**Complaint**” means an allegation brought in writing by a Staff Member against the University under Section 6, at Stage 1 or Stage 2 of Grievance proceedings.
- 2.5 “**Days**” means working days, which excludes weekends, statutory holidays, and other days during which the University is closed.
- 2.6 “**Department**” means departments, institutes, schools, and Faculties without departments, including the University Libraries.
- 2.7. “**Department Chair**” means chairs of departments and directors of institutes and schools.
- 2.8 “**Disciplinary Grievance**” means a grievance procedure initiated by a Staff Member following the imposition of a Disciplinary Measure pursuant to Section 9 of these Regulations.
- 2.9 “**Disciplinary Measure**” means written document identified as a reprimand, a Suspension without pay, or a dismissal.
- 2.10 “**Grievance**” means a Complaint advanced by a Staff Member against the University under Section 6.
- 2.11 “**Just Cause**” means:
- a. neglect of or persistent failure to maintain reasonable performance of Academic Duties taking into account the pattern of such activities within the Staff Member's Department and Faculty and the stage of the Staff Member's academic career; or
 - b. misconduct sufficient to justify disciplinary measures.
- 2.12 “**New Evidence**” means evidence that could not have been known to or was not accessible to the Staff Member, using due diligence, at the time of the President's review under Section 8.14 of these Regulations.
- 2.13 “**MAUT**” means McGill Association of University Teachers.
- 2.14 “**Party**” or “**Parties**” means the Staff Member who:
- is subject to a disciplinary process;
 - advances a Complaint;
 - files a Grievance or a Disciplinary Grievance; or
 - engages in Arbitration.

Within these Regulations, a “Party” also includes the Respondent.

- 2.15 “**Respondent**” means a person in authority at the University who:
- a. is the object of a Grievance under Section 6; or
 - b. issued a disciplinary measure that is the subject of a Disciplinary Grievance under Section 9.
- 2.16 “**Staff Member**” means a member of the University’s academic staff to whom these Regulations apply pursuant to Section 1.2 and 1.2.1.
- 2.17 “**Suspension**” means an interruption in one’s service to the University and the withdrawal of University privileges, including the right to be present on University premises and pursue one’s academic duties. A Suspension without pay is a Disciplinary Measure. A Suspension with pay is an Administrative Measure.

SECTION 3 – General

Notices

- 3.1 Any notice or decision that shall be communicated under these Regulations may be delivered:
- a) by email; or
 - b) by mail to the Staff Member’s office at the University or the Staff Member’s known residence.

The notice or decision shall be deemed to have been received as follows: in the case of email, on the day following the day on which it was sent; and in the case of mail, five days after it was expedited.

Advisors

- 3.2 Parties to all proceedings addressed by these Regulations have the right to be accompanied and counseled by an Advisor. Advisors are not, however, considered Parties in these proceedings.
- 3.3 An Advisor shall be accorded full respect by the University’s administrative officers. An Advisor shall also be held to the requirements of these Regulations and to the general standards of integrity and decorum that attend to University governance and proceedings.

Submissions and Filings

- 3.4 Parties to proceedings covered by these Regulations shall file and receive submissions and relevant documents electronically.

Academic Freedom

- 3.5 These Regulations shall not abridge the [University’s Statement of Academic Freedom](#).

Secretary-General Support

- 3.6 The Secretary-General shall provide support to all hearings and meetings of Committees and Subcommittees established by these Regulations.

SECTION 4 – Power to Delegate

- 4.1 All references in these Regulations to a dean, the President, and the Secretary-General include their authorized delegates, unless otherwise indicated.

- 4.2 Notwithstanding Section 4.1:
- a. A delegation of the President's duties under Section 8 shall occur in writing.
 - b. The President may not delegate duties or authority related to the dismissal of a Staff Member described in Section 8.

SECTION 5 – Committee and Subcommittee on Staff Grievances and Disciplinary Procedures

Committee on Staff Grievances and Disciplinary Procedures

- 5.1 There shall be a Committee on Staff Grievances and Disciplinary Procedures (“Committee”) to hold hearings on Grievances and disciplinary measures. Said Committee shall consist of 8 members with a term of 3 years commencing on the 1st of September. Appointed members may remain in their role beyond their term if there is an insufficient number of new Committee members to replace them.
- 5.2 To be eligible to serve as a member of the Committee, a Staff Member shall be a tenured member of the full-time academic staff who is available to serve for the full term of the appointment.
- 5.3 Prior to March 1st each year, the Secretary-General shall request from the President of MAUT and the President a slate of names consisting of at least one and a half times the number of vacancies on the Committee to be filled that year.
- 5.4 The President of MAUT and the President shall submit the slate of recommended names to the Secretary-General for consideration by the Senate Nominating Committee. From this slate, the Senate Nominating Committee shall select the persons to recommend to Senate to fill the vacancies. Reasonable efforts shall be made to achieve gender representation as well as representation from a diverse range of Faculties and disciplines when recommending and appointing members to the Committee. At least 3 members of the Committee shall be fluent in French.
- 5.5 The Senate Nominating Committee shall select the persons to serve as Chair and Vice-Chair, each for a three-year term, from nominated or serving members of the Committee.
- 5.6 The nominees to the Committee thus selected shall be submitted to Senate and Board of Governors for approval. In the event of rejection of the panel in whole or in part by Senate or the Board of Governors, the procedure set out in Sections 5.3 to 5.5 shall recommence.
- 5.7 Members of the Committee shall, prior to hearing their first case, undergo relevant training.
- 5.8 The Committee on Staff Grievances and Disciplinary Procedures shall report annually to Senate and to the Board of Governors on the administration of the procedures described here.

Subcommittee

- 5.9 A Grievance or Disciplinary Grievance under these Regulations shall be heard by a Subcommittee.
- 5.10 A Subcommittee struck to hear a Grievance shall have jurisdiction to recommend a remedy susceptible to implementation in accordance with University regulations and policies. A Subcommittee shall not have jurisdiction to interpret the law, nor may the Subcommittee recommend a remedy akin to an award in damages.
- 5.11 The Subcommittee shall be composed entirely of members of the Committee on Staff Grievances and Disciplinary procedures and shall include:
- a. the Chair or Vice-Chair;

- b. one member selected by the President; and
 - c. one member selected by the Staff Member who has filed a Grievance or a Disciplinary Grievance.
- 5.11.1 The Committee members nominated by the President and Staff Member shall not be entitled to know the identity of the nominator.
- 5.12 In the event that a vacancy occurs in the Subcommittee, the Party who nominated the member in respect of whom such vacancy occurred shall forthwith nominate a replacement. In the event that the vacancy occurs in respect of the Chair or Vice-Chair, the one shall replace the other, if available; if not available, the replacement shall be chosen by a draw by the Chair from amongst the remaining members of the Committee.
- 5.13 Should a member of the Subcommittee be required to cease serving before a hearing on the merits of the Grievance takes place, a new member shall be appointed to the Subcommittee based on the process set out at s.5.12. That new member will be provided all relevant written documentation and shall be given a reasonable time to review this material before the hearing takes place.
- 5.14 Should a member of the Subcommittee be required to cease serving after a hearing on the merits of the Grievance takes place, a new member shall be appointed to the Subcommittee. In such cases, the Chair shall have the authority to decide whether the Subcommittee shall recommence its proceedings on the merits after the Chair receives and considers written submissions from the Parties on whether or not the proceedings on the merits should begin anew.
- 5.15 No member of the Committee on Staff Grievances and Disciplinary Procedures shall sit as a member of the Subcommittee if that member:
- a. is a member of the same Faculty as either Party; or
 - b. is in a conflict of interest as specified in the University's *Regulation on Conflict of Interest*.

SECTION 6 – Grievances: Grounds and Procedures

- 6.1 Staff Members who believe that they:
- a. have been unfairly treated by the University in regard to the interpretation or application of University or Faculty policy insofar as it relates to the Staff Member's academic career and working conditions; or
 - b. have been subjected to arbitrary, discriminatory, or unreasonable actions by the University, either by act or omission;
- may initiate a Complaint.
- 6.1.1 At any stage, the Parties may agree to settle the Grievance.
- 6.2 The following are specifically excluded from the purview of this Section:
- a. any matter relating to reappointment or tenure;
 - b. Disciplinary Measures, which are subject to the grievance procedures set out at Section 9;
 - c. Administrative Measures when imposed at the same time as Disciplinary Measures, in which case Administrative Measures are also subject to the grievance procedures set out at Section 9;
 - d. any complaint against:

- an action or a policy or regulation of the Board of Governors or Senate;
 - an action or decision of any Committee of the Board of Governors or Senate; or
 - an action or decision of any Committee or person appointed to review or investigate a specific matter pursuant to a policy or regulation of the Board of Governors or Senate;
- e. any complaint against the composition, proceedings, or recommendations of a Statutory Selection Committee constituted under article 3.4.3 of the University Statutes or any recommendation made by the President pursuant to said article; or
- f. any decision made pursuant to the *Regulations on Retirement of Academic staff*.

Stage 1

- 6.3 Subject to sections 6.3.3 to 6.3.6, a Complaint made pursuant to Section 6.1 shall be communicated in writing to the Department Chair within 20 Days from the date on which the act or omission that gives rise to the Complaint occurs or becomes known to the Staff Member. The Staff Member shall clearly indicate in this communication that the matter is a Complaint under these Regulations, and a Stage 1 meeting is requested. The Staff Member may communicate such Complaint in English or in French.
- 6.3.1 The Department Chair shall meet with the Staff Member within 10 Days of receipt of the communication referred to in Section 6.3. Before this meeting takes place, the Staff Member and the Chair shall inform the other, via the Secretary-General, of the name of any Advisor who will be present. They shall use their best efforts to resolve the Complaint within 10 Days of such meeting. On the 10th Day following the meeting between the Staff Member and the Department Chair if no resolution is reached, the Complaint is deemed unresolved.
- 6.3.2 Proceedings in Section 6.3 and 6.3.1 shall be referred to as Stage 1.
- 6.3.3 Where a Staff Member is appointed to a Faculty without Departments, or where the Chair is the object of a Staff Member's Complaint made pursuant to section 6.1, the Complaint shall be addressed to the Staff Member's dean. Furthermore, in such cases, the Stage 1 meeting shall occur with the Staff Member's dean according to the process set by Sections 6.3 and 6.3.1.
- 6.3.4 Where a dean is the object of the Staff Member's Complaint made pursuant to section 6.1, the Complaint shall be addressed to the Provost and Executive Vice-President (Academic) ("Provost"). Furthermore, in such cases, the Stage 1 meeting shall occur with the Provost according to the process set by Sections 6.3 and 6.3.1.
- 6.3.5 Where the Provost is the object of the Staff Member's Complaint made pursuant to section 6.1, the Complaint shall be addressed to the President. Furthermore, in such cases, the Stage 1 meeting shall occur with the President according to the process set by Sections 6.3 and 6.3.1.
- 6.3.6 Where the President is the object of the Staff Member's Complaint made pursuant to section 6.1, the Complaint shall be addressed to the Chair of the Board of Governors. Furthermore, in such cases, the Stage 1 meeting shall occur with the Chair of the Board of Governors according to the process set by Sections 6.3 and 6.3.1.

Stage 2

- 6.4 If there is no resolution at Stage 1, the Staff Member may, within 10 Days of the date on which the Complaint was deemed unresolved under Section 6.3.1, submit the Complaint in writing to the Staff Member's dean. The Staff Member shall clearly indicate in this communication that the matter is a Complaint under these Regulations, and a Stage 2 meeting is requested.

- 6.4.1 The Dean shall meet with the Staff Member within 10 Days of receipt of the communication referred to in Section 6.4. Before this meeting takes place, the Staff Member and Dean shall inform the other of the name of any Advisor who will be present. They shall use their best efforts to resolve the Complaint within 10 Days of such a meeting. On the 10th Day following the meeting between the Staff Member and the Dean, if no resolution is reached, the Complaint is deemed unresolved.
- 6.4.2 Proceedings in Section 6.4 and 6.4.1 shall be referred to as Stage 2.
- 6.4.3 Where a Staff Member is appointed to a Faculty without Departments, or where a dean, the Provost, or the President is the object of a Staff Member's Complaint made pursuant to section 6.1, there shall be no Stage 2 meeting. In such cases, if following the Stage 1 meeting, the Complaint is not resolved, the Staff Member may file a Grievance.

Filing a Grievance

- 6.5 If there is no resolution at Stage 2 (or at Stage 1 for cases where the Staff Member is appointed in a Faculty without Departments or where the Chair, a dean, the Provost, or the President is the object of a Staff Member's Complaint made pursuant to section 6.1), the Staff Member may, within 10 Days of the date on which the Complaint was deemed unresolved, submit a Grievance to the Secretary-General.
- 6.6 The object and content of the Grievance shall be the same as the Complaint presented at Stages 1 and 2.
- 6.6.1 When filing or responding to a Grievance, the Parties may submit, in accordance with Section 7.2.1, new documents and materials not produced during the Stage 1 and 2 meetings provided that these relate to the object and the content of the Grievance. All such documents shall be transmitted to the Parties and to the Subcommittee by the Secretary-General.

Delays

- 6.7 The delays provided for in ss. 6.3.1 and 6.4.1 may be extended by up to 15 Days upon agreement by both parties in writing. Such agreement shall be communicated to the Secretary-General.
- 6.8 Where no Stage 1 or Stage 2 meeting was held because either Party declined to appear or because a Party failed to appear despite reasonable efforts by the other to hold a meeting, the meeting will be deemed to have taken place at the date proposed by the Department Chair or the Dean, as the case may be.
- 6.9 Delays are suspended during the months of July and August unless the Parties otherwise agree.

SECTION 7 – Grievance Hearings

- 7.1 Grievances shall be heard by a Subcommittee of the Committee formed pursuant to the procedures prescribed in Section 5.
- 7.2 The Grievance shall be filed by the Staff Member with the Secretary-General, using the form(s) provided for that purpose, and shall include:
- a written statement of Grievance, including the naming of a Respondent, and the grounds listed in section 6.1 on which the Grievance is based, describing relevant facts and the dates and outcome of the Stage 1 and Stage 2 meetings;
 - a copy of the regulations, rules or policies alleged to have been breached;
 - the name and position of any witness(es) that the Staff Member intends to call if a hearing is held; and

- a description of the remedies sought.
- 7.2.1 All documents and written evidence in support of the Grievance, as well as the Complaint presented at Stages 1 and 2 and responses provided at Stages 1 and 2, if any, shall be appended to the Grievance.
- 7.3 Upon receipt of the Grievance materials submitted under Section 7.2 and 7.2.1, the Secretary-General shall send them forthwith to the Respondent.
- 7.4 A Subcommittee shall be formed pursuant to Section 5.11 within 10 Days of the submission of a Grievance under Section 7.2. The Secretary-General shall thereafter inform the parties to the Grievance of the composition of the Subcommittee. Upon being informed of the Subcommittee's membership, the Parties may, within five further Days, signal any concerns related to conflicts of interest, addressing these in writing to the Secretary-General, who shall make a determination about how to proceed with due regard to preserving the integrity and fairness of the process.

Determination of Preliminary Questions

- 7.5 Before a Grievance may proceed to a hearing on the merits, the Subcommittee shall make a preliminary determination on the following questions:
- a. whether delays established in Section 6 were respected;
 - b. whether the Grievance names the appropriate Respondent;
 - c. whether the subject-matter of the Grievance falls within the purview of a Grievance pursuant to section 6;
 - d. whether the Staff Member has previously submitted a Grievance addressing the same claim(s) and if such previous Grievance was dismissed by a Subcommittee under these Regulations; and
 - e. any other preliminary matter.
- 7.5.1 In order to know whether, pursuant to Section 7.5(d), the Staff Member has previously submitted a Grievance addressing the same claim(s) decided by a Subcommittee, the Subcommittee Chair shall consult with the Secretary-General. Any information provided by the Secretary-General shall be shared with the Subcommittee and the parties, for the purpose of making a determination under Section 7.5.
- 7.6 Where the Subcommittee finds:
- pursuant to Section 7.5(a) that the delays established by Section 6 were not respected;
 - pursuant to Section 7.5(c) that the subject-matter of the Grievance does not fall within the purview of a Grievance under these Regulations; or
 - pursuant to Section 7.5(d) that the Staff Member has previously submitted a Grievance addressing the subject-matter of the Grievance and such previous Grievance has already been dismissed by a Subcommittee under these Regulations
- the Subcommittee shall dismiss the Grievance without a hearing on the merits.
- 7.7 The Respondent shall have 15 Days from receipt of the Grievance materials described in Section 7.2 to file with the Secretary-General a written submission on the questions for preliminary determination indicated in Section 7.5.
- 7.7.1 Once the Secretary-General has received submissions on questions for preliminary determination from the Respondent under Section 7.7, the Secretary-General will provide a copy of the same to the Staff Member who will have five Days to submit a response to the Secretary-General.
- 7.8 Once the Secretary-General has received the documents under Sections 7.2, 7.7, and 7.7.1 the Secretary-General will submit these documents to the Subcommittee.

- 7.9 The Subcommittee shall have 20 Days from the date of receipt of materials from the Secretary-General in accordance with Section 7.8 to make a determination on preliminary questions. That decision shall either:
- a. Accept the Grievance in its current form and refer the matter for a hearing on the merits, to be heard by the same Subcommittee that rendered a decision on preliminary questions. In such cases, the Subcommittee shall communicate the order of proceedings for the hearing with its decision. The Subcommittee may provide direction to the Parties about the matters on which they should concentrate at the hearing;
 - b. Request the Staff Member to clarify or recast the Grievance, for example, by indicating that a new Respondent should be named, and refer the matter for a hearing on the merits in line with Section 7.9(a);
 - c. Dismiss the Grievance, in accordance with Section 7.6, in which case there shall be no hearing on the merits, in which case the Subcommittee will provide reasons; or
 - d. Partially accept the Grievance, dismissing parts covered by section 7.6 and referring those remaining to a hearing, as described in Section 7.9 (a).
- 7.10 In rendering a preliminary determination under Section 7.9, the Subcommittee shall not hold a hearing.
- 7.11 The Secretary-General shall communicate forthwith the Subcommittee's decision under Section 7.9 to the Parties.
- 7.12 The preliminary determination is confidential. No stenographic record or recording of the Subcommittee's proceedings shall be made.
- 7.13 Where the Subcommittee refers the Grievance to a hearing on the merits, the Respondent shall have 15 Days to file with the Secretary-General written submissions on the merits of the Grievance. The Respondent's submissions shall include the name and position of any witness(es) that the Respondent intends to call at the hearing. Once received, the Secretary-General shall submit forthwith this response to the Staff Member and the Subcommittee.
- 7.14 The Subcommittee's decision under Section 7.9 shall be final and shall not be subject to appeal.

Notice of Hearing

- 7.15 Where a decision of the Subcommittee under Section 7.9 refers the Grievance to a hearing on the merits, a hearing date shall be set by Secretary-General after reasonable consultation with the Parties and the members of the Subcommittee. The Secretary-General shall communicate a notice of hearing to the Parties and their Advisors, if any, confirming the date, time, and place for the hearing, with a copy to the members of the Subcommittee.
- 7.16 The Secretary-General shall make available to the Parties and to the Subcommittee all documentation to be considered by the Subcommittee as soon as it becomes available.

Witnesses

- 7.17 Subject to Sections 7.18 and 7.20, Parties to the hearing may call witnesses who may have knowledge or factual information relevant to the Grievance.
- 7.18 Unless specifically authorized by the Chair of the Subcommittee, the witnesses called at the hearing may only be those named by the Staff Member in accordance with Section 7.2 and the Respondent in accordance with Section 7.13.
- 7.19 The Parties are responsible for ensuring that their witnesses are present to provide oral evidence on the required hearing date.

7.20 The Advisor to either Party may not be called as a witness at the hearing.

Hearing Procedures

7.21 A hearing occurs in person or, at the discretion of the Subcommittee Chair and in consultation with the Parties to the hearing and the Secretary-General, by videoconference.

7.22 A hearing may not proceed without the three Subcommittee members present.

7.23 If either Party fails to attend the hearing without an explanation that is reasonable in the opinion of the Chair, the Subcommittee may proceed in that Party's absence.

7.24 The Subcommittee shall provide an opportunity for the presentation of oral evidence and closing statements by each Party. Advisors may speak only with the Chair's permission.

7.25 Either Party may put questions to each other and to witnesses (both their own and the other Party's). With the permission of the Chair, Advisors may also ask questions.

7.26 Subcommittee members may put questions to the Parties and to witnesses.

7.27 The Subcommittee shall consider only those grounds raised in the Grievance.

7.28 The Subcommittee may permit evidence that has not been shared between the Parties or with the Subcommittee before the hearing to be adduced at the hearing only if relevant to the grounds of the Grievance and to clarify facts that are not evident from the Party's submissions.

7.29 The Subcommittee may not seek or consider evidence without the Parties' knowledge.

7.30 The hearing and the deliberations are confidential. No stenographic record or recording of the Subcommittee's proceedings shall be made.

7.31 The hearing is closed and observers are not permitted. Except for the Parties themselves, witnesses are excluded from the hearing before and after they testify.

7.32 Once the hearing has concluded, the parties may not submit new evidence or arguments.

Burden and Standard of Proof

7.33 The burden of proof shall fall upon the Staff Member who advances the Grievance.

7.34 The Subcommittee's decision as to whether the Grievance is founded is based on a balance of probabilities.

Decision of the Subcommittee

7.35 The Subcommittee shall produce a written report setting out its findings of facts, decision, and recommendations as soon as reasonably possible, and at the latest 20 Days after the hearing.

7.36 The Subcommittee's report shall be based on all relevant evidence, and written and oral arguments, submitted by the Parties before and during the hearing.

7.37 The decision of the Subcommittee shall be by simple majority.

7.38 The Subcommittee's report shall be submitted by the Chair of the Committee to the Secretary-General who shall send it to the President for implementation according to the President's best

judgement. The Secretary-General shall also send a copy of the Subcommittee's report to both Parties.

- 7.38.1 The Subcommittee's report is advisory in nature and is not binding on the President. The President may decline to implement the Subcommittee's decision and recommendations if the President is of the opinion that these are not capable of implementation or if their implementation would run counter to the best interests of the University. If the President declines to implement the decision and recommendations in whole or in part, the President shall provide written reasons to the Parties and to the Chair of the Committee within 30 Days of receiving the Subcommittee's report. Where the President declines to implement the decision and recommendations of the Subcommittee, in whole or in part, the President may implement any other measures the President deems appropriate.
- 7.38.2 Where the Respondent to a Grievance is the President, the Chair of the Board of Governors shall have the role and responsibilities otherwise ascribed to the President in Sections 7.38 and 7.38.1.
- 7.39 The Secretary-General shall retain a copy of the Subcommittee's report, along with the full record of the Grievance, in its records for the University for no more than five years.

SECTION 8 – Disciplinary Measures and Procedures

Requirement of Just Cause and Burden of Proof

- 8.1 No Disciplinary Measure shall be imposed against a Staff Member without Just Cause, and the burden of proving such Just Cause, on a balance of probabilities, shall fall upon the University.
- 8.2 No disciplinary proceedings may be initiated against a Staff Member by reason of a physical or emotional disability, if such a Staff Member has been accepted under the Long-Term Disability Plan in respect of such disability.
- 8.3 Nothing in Section 8 shall in any way derogate from the residual powers of the President to initiate disciplinary action against a Staff Member for Just Cause, as set out in the current iteration of the University Statutes or regulations. If the President initiates disciplinary action, such action shall follow the procedures prescribed by Section 8 of these Regulations, with the necessary procedural adjustments.

Suspension Pending Investigation

- 8.4 Notwithstanding the procedures set out in Section 8 of these Regulations, where a Staff Member is judged by the President to be a serious threat to the security of the University or the safety of its community, or where the Staff Member's continued presence threatens to compromise an investigation process, the Staff Member shall immediately be suspended with pay from the University until the completion of disciplinary procedures, or completion of such investigation, as the case may be.

Right to a Disciplinary Meeting

- 8.5 If a dean becomes aware that there may be Just Cause to impose a disciplinary measure, the Dean shall so notify the Staff Member in writing, explaining in sufficient detail the basis for the Dean's belief. This notice shall be provided within a reasonable delay, and no more than 20 Days after the Dean became aware of the most recent incident that may provide Just Cause. This notice shall state that, before the Dean decides whether to impose or recommend a disciplinary measure, the Staff Member has the right to attend a disciplinary meeting with the Dean to discuss the matter, accompanied by an Advisor. Before this meeting takes place, each Party shall inform the other of the name of any Advisor who will be present.

- 8.6 The purpose of a disciplinary meeting is to provide the Staff Member with an opportunity to be heard in relation to the facts and circumstances that led the Dean to believe there may be Just Cause to impose a disciplinary measure.

A Dean's Imposition of Disciplinary or Administrative Measures

- 8.7 If, following a disciplinary meeting, a dean considers there to be Just Cause, the Dean may, within 10 Days following the disciplinary meeting, impose or recommend a Disciplinary Measure.
- 8.7.1 Where no disciplinary meeting was held because the Staff Member declined to appear or because the Staff Member failed to appear despite a dean's reasonable efforts to hold a meeting, the Dean may proceed to impose a Disciplinary Measure or recommend to the President that a Disciplinary Measure be imposed.
- 8.8 Following a disciplinary meeting, a dean may take Administrative Measures. This is the case regardless of whether the Dean decides to impose or recommend a disciplinary measure. An Administrative Measure may be imposed for a maximum term of one year, which may be extended or renewed following a review by the authority that imposed the measure. Such review shall include an opportunity for the Staff Member to make representations and be heard on the matter.
- 8.9 The Dean's decision in regard to a Disciplinary Measure imposed or recommended shall reflect the principles of proportionality and gradation in sanctions (i.e., that the nature of the disciplinary measure is proportionate to the misconduct, taking into account aggravating and attenuating factors).
- 8.10 Where the Dean is of the view that discipline is warranted, the Dean may impose the following sanctions:
- a. letter of reprimand; and/or
 - b. Suspension without pay of up to 6 months.
- 8.11 Where the Disciplinary Measure imposed is a letter of reprimand, the letter shall be so designated. A copy of this letter shall be kept in the Staff Member's personnel file. It shall be expunged from the file at a date stated in the letter, no longer than 5 years after the letter's date.
- 8.11.1 Where the Disciplinary Measure imposed is a Suspension without pay, the Dean shall send a notice to this effect in writing to the Staff Member. This notice shall expressly stipulate the start and end dates of the Suspension without pay.
- 8.12 A Staff Member who receives a dean's letter of reprimand or notice of Suspension without pay may, within 10 Days of receiving the letter of reprimand or notice of Suspension without pay, file a Disciplinary Grievance under Section 9.

Dean's Recommendation of Dismissal

- 8.13 If a dean believes, following the disciplinary meeting provided for by Section 8.5, that dismissal is warranted, the Dean shall so notify the Staff Member that a recommendation for dismissal will be made to the President. The Dean shall make this recommendation in writing, with substantive reasons. It shall be sent to the President with a copy to the Staff Member.
- 8.14 The President shall, on receipt of a dean's recommendation of dismissal of a Staff Member, review the matter and provide the Staff Member with the opportunity for a meeting. Before this meeting takes place, each Party shall inform the other of the name of any Advisor who will be present.
- 8.14.1 When the President's review under Section 8.14 has been completed, the President shall either:

- a. Decide against the Dean's recommendation of dismissal and decide against the imposition of disciplinary measures. The President shall notify the Dean and the Staff Member to this effect and expunge the record of the case; or
- b. Impose a letter of reprimand and/or a Suspension without pay and notify the Staff Member and the Dean to this effect; or
- c. Notify the Staff Member and the Dean in writing that the President is tending toward a decision to dismiss the Staff Member.

8.14.2 In making a decision under Section 8.14.1, the President may take Administrative Measures.

8.14.3 A Staff Member who receives a letter of reprimand or a notice of Suspension without pay from the President under Section 8.14.1 (b) may, within 10 Days of receiving the letter of reprimand or notice of Suspension without pay, file a Disciplinary Grievance under Section 9.

8.14.4 A Staff Member who receives a notification from the President that the President is tending toward a decision to dismiss under Section 8.14.1(c) may, within 10 Days of the date of the notification, request via the Secretary-General that the matter be submitted to an Advisory Committee to the President. In such instances, the process set out below [Sections 8.14.6ff] shall apply.

8.14.5 Where the Staff Member has not, within 10 Days of the date of a notification under Section 8.14.1(c), requested that the matter be submitted to the Advisory Committee to the President, the President shall make a final decision about whether to dismiss the Staff Member, and so notify the Staff Member in writing.

Advisory Committee to the President ("Advisory Committee")

8.14.6 The Advisory Committee's mandate shall be to review documents submitted by the President, as described in 8.14.15, and to provide the President with its opinion as to whether dismissal is warranted in the circumstances.

8.14.7 The President shall not be bound by the opinion of the Advisory Committee.

8.14.8 The Advisory Committee shall be composed of three tenured members of the academic staff who have had past experience as academic administrators in the role of Vice-President, Provost, Associate Vice-President, Associate Provost, Dean, Chair or Associate Dean, appointed by Senate upon the recommendation of the Senate Nominating Committee.

8.14.9 Prior to March 1st each year, the Secretary-General shall request from the President of MAUT and the President a slate of names consisting of at least twice the number of vacancies on the Advisory Committee to be filled that year.

8.14.10 The President of MAUT and the President shall submit the slate of jointly recommended names to the Secretary-General for consideration by the Senate Nominating Committee. From this slate, the Senate Nominating Committee shall select the persons to recommend to Senate to fill the vacancies.

8.14.11 Members of the Advisory Committee serve for a three-year term.

8.14.12 The President shall select a Chair from among serving members of the Advisory Committee. The President's selection of the Chair shall be made and communicated to the Advisory Committee members once the Advisory Committee membership is approved by Senate.

- 8.14.13 All members of the Advisory Committee shall sign a confidentiality agreement whereby they shall keep confidential any information to which they have access through this process.
- 8.14.14 The Advisory Committee shall not hold a hearing.
- 8.14.15 There shall be no witnesses and no evidence presented, other than the documents submitted to the Advisory Committee by the President, which shall include all materials that the Dean consulted in making a recommendation and that the President consulted in coming to a decision tending toward dismissal, including documents that the Staff Member submitted in the course of the investigation. The documents so submitted shall include all documents provided to the President by the Dean and by the Staff Member. All such documents shall be transmitted to the Staff Member at the same time as they are submitted to the Advisory Committee.
- 8.14.16 No additional evidence shall be presented or considered by the Advisory Committee except for New Evidence, if any.
- 8.14.17 The Advisory Committee shall invite the Staff Member to a meeting to respond to questions, in person, arising from the documents submitted. The Staff Member shall be free to accept or decline the invitation. If the Staff Member accepts to appear before the Advisory Committee, the Staff Member has the right to be accompanied by an Advisor.
- 8.14.18 The Staff Member shall be provided at least 5 Days' notice of the date set for the meeting with the Advisory Committee. Failure by the Staff Member to meet with the Advisory Committee at the date set by the Advisory Committee shall be interpreted as evidence that the Staff Member has declined the invitation.
- 8.14.19 The Advisory Committee's review shall be restricted to documents submitted by the President and the responses to its questions provided by the Staff Member.
- 8.14.20 Following its consideration of the documents and responses to any questions it has put to the Staff Member, the Advisory Committee shall provide the President, via the Secretary-General, with a written report, with a copy to the Staff Member. The Advisory Committee's report shall contain: its opinion about whether dismissal is warranted, clear and substantive reasons, and the facts on which such reasons are based. It shall also include a copy of any document and/or New Evidence that it may have allowed the Staff Member to put before it.
- 8.14.21 The Advisory Committee shall present its report, via the Secretary-General, to the President within 30 Days of having been invited to advise the President.
- 8.14.22 The Secretary-General shall retain a copy of the Advisory Committee's report in its records for the University for no more than five years.
- 8.14.23 The President shall make a decision within 15 Days upon receiving the Advisory Committee's report. The President shall either:
- a. Impose a letter of reprimand and/or a Suspension without pay of up to six months, and will notify the Staff Member and the Dean to this effect; or
 - b. Notify the Staff Member and the Staff Member's Dean in writing that the Staff Member is dismissed, stating substantive reasons for the dismissal. The date on which the dismissal takes effect shall be specified in the letter, and shall be 10 Days from the date of the letter. The Staff Member's salary and benefits will terminate from the date specified.
- 8.14.24 In making a decision under Section 8.14.23(a) or (b), the President may take Administrative Measures.

- 8.14.25 A Staff Member who receives a letter of reprimand or a notice of Suspension without pay from the President under Section 8.14.23 (a) may, within 10 Days of receiving the letter of reprimand or notice of Suspension without pay, file a Disciplinary Grievance under Section 9.
- 8.14.26 Within 10 Days of receipt of notification of dismissal under Section 8.14.5 or Section 8.14.23(b), the Staff Member may request arbitration under Section 10.

SECTION 9 – Disciplinary Grievances

- 9.1 Disciplinary Grievances shall be heard by a Subcommittee of the Committee formed pursuant to the procedures prescribed in Section 5.
- 9.2 A Staff Member who has been subject to discipline in the form of a reprimand or Suspension without pay may, within 10 Days of receiving the notice of discipline, file a Disciplinary Grievance to the Secretary-General using the form(s) provided for that purpose. The Disciplinary Grievance shall:
- state the Staff Member’s rank, Department, Faculty, and contact information;
 - succinctly set out the facts and grounds for contesting the disciplinary measure imposed by a dean or the President;
 - state the name and position of any witness(es) that the Staff Member intends to call if a hearing is held; and
 - append a copy of letters or notices received from the Dean and/or the President regarding disciplinary measures, together with any supporting documentation on which the Staff Member intends to rely at the hearing.
- 9.3 Upon receipt of the Disciplinary Grievance submitted under Section 9.2, the Secretary-General shall send the Disciplinary Grievance forthwith to the Respondent.
- 9.4 The Subcommittee shall be formed pursuant to Section 5.11 within 10 Days following the submission of the Disciplinary Grievance under Section 9.2. The Secretary-General shall thereafter inform the Parties to the Disciplinary Grievance of the membership of the Subcommittee. Upon being informed of the Subcommittee’s membership the Parties may, within five further Days, signal any concerns related to conflicts of interest to the Secretary-General, who shall make a determination about how to proceed, having due regard for preserving the integrity and fairness of the process.

Determination of Preliminary Questions

- 9.5 Before a Disciplinary Grievance may proceed to a hearing on the merits, the Subcommittee shall make a preliminary determination as to whether the Disciplinary Grievance complies with the requirements of Section 9.2.
- 9.5.1 In making a preliminary determination under Section 9.5, where the Subcommittee finds that the Staff member did not respect the delay set by Section 9.2, the Subcommittee shall dismiss the Disciplinary Grievance without referring the matter to a hearing on the merits.
- 9.6 The Respondent shall have 15 Days from receipt of the Disciplinary Grievance in accordance with Section 9.3 to file with the Secretary-General a written submission on the questions for preliminary determination.
- 9.7 Once the Secretary-General has received the written submission on the questions for preliminary determination from the Respondent under Section 9.6, the Secretary-General will provide a copy of the same to the Staff Member who will have five days to submit a response to the Secretary-General.

- 9.7.1 Once the Secretary-General has received the documents under Sections 9.2, 9.6, and 9.7 the Secretary-General will submit these documents to the Subcommittee.
- 9.8 The Subcommittee shall have 20 Days from the date of receipt of materials from the Secretary-General in accordance with Section 9.7 to make a determination on preliminary questions. That decision shall either:
- a. Accept the Disciplinary Grievance in its current form and refer the matter for a hearing on the merits, to be heard by the same Subcommittee that rendered a decision on preliminary questions. In such cases, the Subcommittee shall communicate the order of proceedings for the hearing with its decision. The Subcommittee may provide direction to the parties about the matters on which they should concentrate at the hearing; or
 - b. Dismiss the Disciplinary Grievance with reasons, in accordance with Section 9.5.1, in which case there shall be no hearing on the merits.
- 9.9 In rendering a preliminary determination to dismiss the Disciplinary Grievance under Section 9.8, the Subcommittee shall not hold a hearing.
- 9.10 The Secretary-General shall communicate forthwith the Subcommittee's decision under Section 9.8 to the Parties.
- 9.11 Where the Subcommittee refers the Disciplinary Grievance to a hearing on the merits, the Respondent shall have 15 Days to file with the Secretary-General written submissions on the merits of the Grievance. The Respondent's submissions shall include the name and position of any witness(es) that the Respondent intends to call at the hearing. Once received, the Secretary-General shall submit forthwith this response to the Staff Member and the Subcommittee.
- 9.12 The Subcommittee's decision under Section 9.8 shall be final and shall not be subject to appeal.

Notice of Hearing

- 9.13 Where a decision of the Subcommittee under Section 9.8 refers the Disciplinary Grievance to a hearing on the merits, a hearing date shall be set by Secretary-General after reasonable consultation with the Parties and the Subcommittee. The Secretary-General shall communicate a notice of hearing to the Parties confirming the date, time and place for the hearing, with a copy to the members of the Subcommittee.
- 9.14 The Secretary-General shall make available to the Parties and to the Subcommittee all documentation to be considered by the Subcommittee as soon as it becomes available.

Witnesses

- 9.15 Subject to Sections 9.16 and 9.18, Parties to the hearing may call witnesses who may have knowledge or factual information relevant to the Disciplinary Grievance.
- 9.16 Unless specifically authorized by the Chair of the Subcommittee, the witnesses called at the hearing may only be those named by the Staff Member in accordance with Section 9.2 and the Respondent in accordance with Section 9.11.
- 9.17 The Parties are responsible for ensuring that their witnesses are present to provide oral evidence on the required hearing date.
- 9.18 The Advisor to either Party may not be called as a witness at the hearing.

Hearing Procedures

- 9.19 A hearing occurs in person or, at the discretion of the Subcommittee Chair and in consultation with

the parties to the hearing and the Secretary-General, by videoconference.

- 9.20 A hearing may not proceed without the three Subcommittee members present.
- 9.21 If either Party fails to attend the hearing without an explanation that is reasonable in the opinion of the Chair, the Subcommittee may proceed in that Party's absence.
- 9.22 The Subcommittee shall provide an opportunity for the presentation of oral evidence and closing statements by each Party. Advisors may speak only with the Chair's permission.
- 9.23 Either Party may put questions to each other and to witnesses (both their own and the other Party's). With permission of the Chair, Advisors may also ask questions.
- 9.24 Subcommittee members may put questions to the Parties and to witnesses.
- 9.25 The Subcommittee shall consider only those grounds raised in the Disciplinary Grievance.
- 9.26 The Subcommittee may permit evidence that has not been shared between the Parties or with the Subcommittee before the hearing to be adduced at the hearing only if relevant to the merits of the Disciplinary Grievance and to clarify facts that are not evident from the Party's submissions.
- 9.27 The Subcommittee may not seek or consider evidence without the Parties' knowledge.
- 9.28 The hearing and the deliberations are confidential. No stenographic record or recording of the Subcommittee's proceedings shall be made.
- 9.29 The hearing is closed and observers are not permitted. Except for the Parties themselves, witnesses are excluded from the hearing before and after they testify.
- 9.30 Once the hearing has concluded, the parties may not submit new evidence or arguments.

Burden and Standard of Proof

- 9.31 The burden of proof shall fall upon the University.
- 9.32 The Subcommittee's decision as to whether the Disciplinary Grievance is founded is based on a balance of probabilities.

Decision of the Subcommittee

- 9.33 The Subcommittee shall produce a written report setting out its findings and decision as to whether the University has demonstrated Just Cause for discipline of the Staff Member, as well as its recommendation in accordance with Section 9.37.
- 9.34 The Subcommittee's report shall be based on all relevant evidence and written and oral arguments submitted by the Parties before and during the hearing.
- 9.35 The decision of the Subcommittee shall be by simple majority.
- 9.36 The Subcommittee shall produce its report as soon as reasonably possible, at the latest 15 Days after the hearing of the Disciplinary Grievance. The report shall be sent to the Staff Member, the Staff Member's dean and the President.
- 9.37 The Subcommittee shall, in its report, make one of the following recommendations:
 - a. that no disciplinary measure be imposed;
 - b. that an alternate disciplinary measure or measures be imposed; or

c. that the disciplinary measure or measures originally imposed be upheld.

9.37.1 In making its recommendation under Section 9.37, the Subcommittee shall be obliged to consider the disciplinary record of the Staff Member, if any, and to apply the principle of gradation in sanctions and proportionality (i.e. that the nature of the disciplinary measure is proportionate to the misconduct, taking into account aggravating and attenuating factors). In the event the Staff Member has a disciplinary record, it may be included by either Party or on request of the Subcommittee as evidence as part of the Respondent's response to the Disciplinary Grievance.

9.38 The Subcommittee may not recommend dismissal as a Disciplinary Measure.

9.39 The recommendation of the Subcommittee is advisory in nature and is not binding on the President.

9.40 The Secretary-General shall retain a copy of the Subcommittee's report, along with the full record of the Grievance, in its records for the University for no more than five years.

9.41 Upon receiving the Subcommittee's report, the President shall decide on one of the following outcomes:

- a) Impose no disciplinary measure and so notify the Staff Member and the Dean in writing, with all written documents pertaining to the case to be expunged from the record; or
- b) Confirm the disciplinary measure or measures originally imposed by the Dean or President and/or any other disciplinary measures recommended by the Subcommittee.

9.41.1 In making a decision under this Section, the President may also take Administrative Measures.

9.42 The President shall provide in writing a final decision, with substantive reasons, to the Staff Member, the Dean, and the Chair of the Committee within 10 Days of receiving the Subcommittee's report.

Section 10 – Arbitration

10.1 Where the President's final decision in a disciplinary matter is to dismiss a Staff Member, the Staff Member shall have 10 Days from receipt of the President's decision to give notice to the President, copied to the MAUT President, that the Staff Member wishes to proceed to arbitration.

Appointment of Arbitrators

10.2 The President and the MAUT President shall, within 10 Days of receiving the notice provided by the Staff Member under Section 10.1, jointly appoint one qualified arbitrator of unquestioned integrity and independence who may be called upon to perform the functions required in this Section.

10.3 The appointed arbitrator shall appear on the most recent annotated list of arbitrators published by the Minister of Labour from time to time.

10.4 The appointed arbitrator shall not be employed by the University.

Jurisdiction of the Arbitrator

10.5 The arbitrator shall have jurisdiction to:

- a. interpret and apply any Act, Regulation, Policy, or Regulation of the University to the extent necessary to resolve the matter submitted to arbitration, without however amending or modifying the content and spirit of such University policies and regulations;

- b. confirm, amend, or set aside the decision of the President and, if such is the case, substitute a decision that seems fair and reasonable, taking into account the circumstances concerning the matter;
- c. in the event the dismissal is found to be without Just Cause, order the reinstatement of the Staff Member, if appropriate in the circumstances;
- d. in the event the dismissal is found to be without Just Cause, fix the terms and conditions of payment of back pay including interest, if appropriate; and
- e. render any other decision, including provisional order, necessary to protect the rights of the Parties.

10.6 The arbitrator shall not have jurisdiction to consider a case where the Staff Member has filed a complaint or other recourse under the law against the University to a court, administrative body, or tribunal. Should that occur after an arbitration hearing has already begun, the arbitrator shall close the matter forthwith.

Submission to Arbitration

10.7 Within 15 Days of the notification by the Staff Member to use arbitration as provided for under these Regulations, the President and the Staff Member shall sign a formal submission to arbitration, setting out in summary the matters at issue.

Arbitration Fees and Expenses

10.8 In cases where the Staff Member is a member of MAUT, the arbitrator's fees and expenses shall be borne by MAUT and the University on an equal basis. MAUT shall not bear the cost of the arbitrator's fees or expenses where the Staff Member is not a MAUT member. In such cases, the Staff Member shall bear the cost of fees and expenses that would otherwise be covered by MAUT for an MAUT member.

10.9 In cases where the Staff Member is a member of MAUT, the legal fees for the Staff Member's representation at arbitration will be borne by MAUT. MAUT shall not bear the cost of legal fees of a Staff Member who is not a MAUT member. In such cases, the staff member shall bear the cost of such fees.

Arbitration Proceedings

10.10 Throughout arbitration proceedings, the Parties shall be entitled to representation by legal counsel and may have an Advisor present.

10.11 The arbitrator shall convene the hearing as soon as possible.

10.12 The arbitrator shall conduct the hearing in French or in English, depending on the preference of the Staff Member.

10.13 The arbitrator shall establish and conduct proceedings in accordance with the rules of procedural fairness. In any event the arbitrator shall:

- a. notify the Parties in writing of the time and place at which the arbitrator intends to hear the Parties;
- b. afford the Parties the right to appear in person with their representatives, state their case, adduce evidence with diligence, and examine and cross-examine witnesses;
- c. hold hearings *in camera* unless both Parties agree in writing that the hearings shall be open, and instruct all persons *in camera* to treat all evidence and proceedings as confidential;
- d. require each Party to make full disclosure of the relevant evidence upon which that Party intends to rely, in order to enable the other Party to make a fair and full answer to that evidence;
- e. require each Party to ensure the timely and diligent exchange of pertinent documents and

- disclosure of the identity of all witnesses;
 - f. have the power to proceed in the absence of a Party who, without reasonable excuse, fails to appear;
 - g. have the power to issue subpoenas; and
 - h. invite the parties to consider submitting joint admissions of facts in order to reduce the amount of time required for the hearing.
- 10.14 At the opening of the hearing, the Parties shall submit admissions as to all relevant facts and shall endeavour to reduce the number of contested facts.
- 10.15 A formal stenographic record of the proceedings may be kept at the expense of the University and made available to both parties and to the arbitrator.
- 10.16 The duration of an arbitration hearing shall not exceed 10 Days. If a Party wishes to extend the hearing beyond 10 Days, the arbitrator may extend the hearing up to 10 additional Days provided that the other Party consents. The Party requesting the extension shall pay the fee and expenses of the arbitrator for the period of the extension. If both Parties seek an extension to the hearing, the associated costs will be evenly shared.
- 10.17 The arbitrator shall review the question with due diligence and conclude the proceedings and render a decision as expeditiously as possible.
- 10.18 The arbitrator shall issue a final written decision that contains findings of fact, reasons, and conclusions. The arbitrator shall communicate the written decision to the President and to the Staff Member.
- 10.19 The decision of the arbitrator shall be final and binding.
- 10.20 There shall be no judicial review or appeal of the arbitrator's decision.

Section 11 – Effective Date, Transitional Provision, Review

- 11.1 These Regulations shall come into force on the day following their adoption by the Board of Governors.
- 11.2 These Regulations shall not apply to proceedings instituted before their coming into force. Consequently, any Complaint or Grievance in respect of which a Stage 1 meeting (in the case of Grievances), or any disciplinary measures and procedures initiated by a disciplinary meeting that has taken place prior to the adoption of these Regulations by the Board of Governors shall continue to be governed by the *Regulations Relating to the Employment of Academic Staff*.
- 11.3 These Regulations shall be reviewed at least once every five years by a working group that includes the Provost or the Provost's delegate, the Secretary-General, and two representatives of MAUT.

Legislative History:		
<i>Approved:</i>		
<i>Senate</i>	October 19, 2022	Minute IIB2
Executive Committee of the Board of Governors	October 27, 2022	Minute 6.1