

# HISTORIC BREAKTHROUGH

## Article 7, Grievance and Arbitration

## Process of the Memorandum of Agreement

It is normally a huge challenge to have the Administration even agree to open up a part of the MoA to amendments at all; the amount, size, and significance of the amendments here are *monumental*.

# What was involved? Analysis

## It took 5+ years to surface and then overcome systemic problems:

- o The Administration refused most of UTFA's efforts to have the Grievance Review Panel (GRP) appropriately representative of UTFA's membership, adding many months to approval processes
- o The Administration resisted UTFA's efforts to be an equal partner in the development of the GRP (e.g., while both parties had to agree in advance on potential panelists, in practice the Administration wanted nominations/invitations to those panelists to come only from the Administration, underscoring existing biases)
- o The Administration, unilaterally and without warning, refused to schedule future arbitration hearings until the GRP was *fully* populated (despite having the Chair and more than enough panelists confirmed to hear cases), leading to multi-year delays
- o The Administration persistently resisted UTFA's efforts to hold them to agreed-to grievance timelines in the Memorandum of Agreement (MoA)

# What was involved? Analysis

## **UTFA's coordinated strategy to demonstrate that the grievance process was broken:**

- o UTFA assertively and consistently pushed back, insisting that the Administration abide by the grievance timelines they had agreed to in the MoA;
- o When the Administration failed to meet those timelines, UTFA systematically advanced grievances to the next step in the process (as is our right)
- o UTFA advanced an historic number of grievances to Step 4/GRP (currently 27)
- o UTFA insisted that only non-Association members can address our members' formal grievances
- o UTFA's President insisted that the University President directly intervene when we met with impasses
- o UTFA built ongoing awareness of issues through two-way member communication

**Significant gains like this take an *extraordinary* amount of time, continuous and tenacious effort, and work from the President, the Vice-President, Grievances, the Legal & Advice Team, UTFA administrative staff, and ultimately the UTFA Negotiating Team.**

# Significant Gains

| <b>Before</b>   | <b>After</b>   |
|---|--|
| <p>Overall:</p> <p>An archaic, unbalanced, uncollegial grievance process, within which the Administration could not be held to account and UTFA members had among the weakest workplace protections in the sector</p> | <p>Overall:</p> <p>A modern, professional, neutral, mediation/arbitration process consistent with common practice across the academic sector, within which more accountability is possible</p> |

# Significant Gains: Arbitrators

| Before   | After   |
|--|---|
| <p>Step 4 grievances were heard by a Grievance Review Panel (which was all but impossible to jointly populate), chaired by a professional arbitrator</p> | <ul style="list-style-type: none"><li>● A Chief Arbitrator (Eli Gedalof) and Deputy Chief Arbitrator (TBD) to hear Association grievances</li><li>● A pool of professional arbitrators (Eli Gedalof, Lindsay Lawrence, Jasbir Parmar, Mark Wright, Sheri Price, William Kaplan) to hear individual and group grievances</li><li>● <b>The powers of these arbitrators will be the same as those conferred upon arbitrators or boards of arbitration under the Labour Relations Act</b></li><li>● Processes and timelines to agree on the Deputy Chief Arbitrator, to add to the pool of arbitrators, to choose an arbitrator outside of the pool where warranted, and to overcome disagreements between the parties</li><li>● <i>NOTE: Two Association grievances (SETs and Divisional Guidelines) will be heard by the GRP at UTFAs request</i></li></ul> |

# Significant Gains: Improved Timelines and Efficiencies

| Before  | After  |
|---|--|
| <p>A backlog of grievances to be heard (and resultant delayed justice and outcomes for our members)</p> | <ul style="list-style-type: none"><li>● 66 pre-scheduled arbitration dates to clear the backlog</li><li>● Pre-scheduled future arbitration dates: a total of 48 days per year (including 18 days per year with the Chief Arbitrator and 5 days with each of the 6 arbitrators in the pool)</li><li>● An agreement that arbitration hearing dates are to be scheduled within 9 months of the date the grievance is referred to arbitration</li><li>● The right to pause grievance timelines in July and August (if not unreasonable) to account for research and vacation schedules</li></ul> |

# Significant Gains: Improved Timelines and Efficiencies

| Before                  | After   |
|-------------------------|---|
| Step 1: 20 working days | <ul style="list-style-type: none"><li>● Step 1: <b>10 additional working days</b> (thus 30 working days “after the grounds for the grievance were known or ought reasonably to have been known” to bring a concern forward)</li></ul>                                   |
| Step 2: 10 working days | <ul style="list-style-type: none"><li>● Refer to Step 2: status quo (or, if not heard at Step 1, <b>30 additional working days</b>, to 40), <b>and an explicit meeting timeline</b> (must be held within 15 working days of receipt of the written grievance)</li></ul> |
| Step 3: 14 working days | <ul style="list-style-type: none"><li>● Refer to Step 3: <b>One additional working day</b> (thus 15 days following receipt of the Step 2 decision), <b>and an explicit meeting timeline</b> (15 days as above)</li></ul>  |
| Step 4: 15 working days | <ul style="list-style-type: none"><li>● Refer to Arbitration: status quo</li></ul>  |

# Significant Gains: Other Efficiencies

| <b>Before</b>   | <b>After</b>  |
|---|---|
| <p>No process for dealing with bias and obvious or potential conflicts of interest.</p> | <p>Grievances involving allegations of workplace harassment, workplace violence or discrimination, or where there is a reasonable apprehension of bias, or conflict of interest on the part of the person who would normally hear the grievance, the grievance is to be filed at the next step in the grievance process or be heard by an alternate decision-maker.</p> |



# Significant Gains: Other Efficiencies

| Before   | After  |
|--|--|
| <p>Official grievances heard by other members of UTFA</p> <p>(or significant delays when UTFA properly insists that grievances be heard by a member of the Administration that is excluded from UTFA membership)</p> | <p>Only a person whose position is <i>excluded</i> from membership in the Association can address <i>formal</i> grievances</p> |

# Significant Gains: Other Efficiencies

| <b>Before</b>   | <b>After</b>   |
|---|--|
| <p>Written grievance decisions by the Administration could simply say “denied,” making it very difficult for grievors and UTFA to work collegially to resolve the underlying concerns, or to understand and try to address any misunderstandings or differences in interpretation of policy at the next step of the grievance process</p> | <p>Written grievance decisions by the Administration must include reasons for the decision</p> |

# Significant Gains

## In return for the significant gains:

- 1) **UTFA agreed to minor extensions to grievance timelines\* for the Administration:**
  - An additional 10 working days to respond to Step 1 grievances (from 30 to 40 working days)
  - An additional 3 working days to schedule a Joint Committee meeting to discuss an Association grievance (from 12 to 15 working days)
  - An additional 8 working days to provide written responses to Association grievances (from 7 to 15 working days)

\* UTFA also communicated clearly to the Administration that it is our position that they have explicitly agreed that these are *reasonable* timelines for their responses, and thus we intend to move grievances to the next step if they fail to meet these timelines.

# Significant Gains

**In return for the significant gains:**

**2) UTFA agreed to have a small number of Academic Administrative positions excluded from Association membership (Article 13 of the MoA):**

- Positions that carry out academic labour relations responsibilities, (i.e., negotiations, discipline, grievances and arbitration), will now be excluded from UTFA because they are *de facto* representing the power and interests of the Administration
  - 8 individuals that hold positions such as Vice-Dean, Faculty, Associate Dean, Faculty, and Deputy Chief Librarian

We have also agreed to processes for determine potential exclusions for newly created positions / for any restructured positions, and to overcome any disagreements on an expedited basis.

**Motion passed at UTFA January 30, 2025 Council Meeting:**

That UTFA Council ratify the amendments to Article 7, Grievance and Arbitration Procedure, and Article 13, Association Relations, of the Memorandum of Agreement (MoA) between the Governing Council of the University of Toronto and the University Toronto Faculty Association (UTFA), as presented.