

Article 19

DISCIPLINARY MEASURES AND NON-DISCIPLINARY RELIEF FROM DUTIES

INTRODUCTION

- 19.01 An ASM may be disciplined only for just and reasonable cause. Such disciplinary action shall be reasonable and commensurate with the seriousness of the violations.
- 19.02 The causes for discipline shall include, but are not limited to: gross misconduct; an immediate threat to the University's employees, students or physical facilities; misrepresentation of credentials; persistent neglect of duty; failure to maintain an acceptable standard of competence and performance in duties appropriate to the appointment; or malicious damage to University property.
- 19.03 The only disciplinary measures that may be taken by the University are the following:
- (a) a letter of warning or reprimand;
 - (b) suspension without loss of pay;
 - (c) suspension with loss of pay;
 - (d) dismissal.
- 19.04 Except for action taken under Clauses 19.12 to 19.16:
- (a) when the University decides that an investigation is not required, disciplinary action shall be initiated within thirty (30) days of the date the University knew, or ought reasonably to have known, of the occurrence of the matter giving rise to the discipline.
 - (b) when the University decides that an investigation is required that might lead to the imposition of discipline, the ASM shall be notified in writing of the alleged infraction within twenty (20) days of the date the University knew, or ought reasonably to have known, of the occurrence of the matter which might give rise to the discipline. The notification in writing of the alleged infraction shall include a clear statement of the alleged infraction(s) and a summary of the information surrounding the allegation(s) that the University had when it decided that an investigation was necessary. The notification shall also include copies of all documentation, if any, that led to the decision to investigate. The investigation shall be confidential and conducted in such a way as to balance the need for a fair investigation with the rights to privacy of the person(s) accused and the person(s) making the allegation(s). The ASM shall be notified of the result of the investigation within fifty-five (55) days of the first notice.
 - (c) when a complaint is made by a student concerning the actions of an ASM who is currently teaching the student complainant, the date on which the University knows, or ought reasonably to know, of the matter giving rise to the discipline may, at the University's discretion, be deemed to be the last day on which the marks for courses in the current semester are scheduled to be submitted to the Registrar. If the University has exercised this option, the University shall take no disciplinary action or any action that may lead to discipline until after the last day in which marks for courses in the current semester are scheduled to be submitted to the Registrar.
- 19.05 Any disciplinary action taken under this Article shall remain confidential until the time limit for submitting a grievance regarding the imposition of that discipline has passed. If a grievance is submitted, the disciplinary action shall remain confidential until the grievance is resolved, or the arbitration decision is received by the Parties.
- 19.06
- (a) Neither medical disability nor illness shall be cause for reprimand, suspension or dismissal.
 - (b) If an ASM has been disciplined for an incident they claim resulted from medical disability or illness, they shall so notify the University. In such cases, the University may require the ASM to provide a medical certificate from a physician of their choice. The physician shall be requested to advise whether

medical disability or illness might reasonably have caused the incident which led to the initiation of disciplinary action, and if so, recommend whether the ASM should be placed on sick leave. If the University challenges the physician's assessment, the advice of a second physician of the University's choice shall be obtained. If these two physicians disagree, a third physician acceptable to the Association and the University shall be consulted and their opinion shall stand. The ASM shall not unreasonably refuse to be examined by a physician.

- (c) The ASM shall allow the University, and, as part of an application for Long Term Disability Insurance the University's insurers, access to the necessary medical information to confirm the medical disability or illness. This medical information shall remain strictly confidential. If the medical examination substantiates the ASM's claim that medical disability or illness caused the incident which led to the initiation of disciplinary action, any disciplinary action that has been taken shall be rescinded and, in accordance with the physician's recommendation arising from the medical examination, the ASM shall accept sick leave or shall continue or resume their duties.
- (d) When one (1) or more physicians' assessments are sought in accordance with Clause 19.06(b), the University shall be deemed to have known of the occurrence of the matter as of the date of receipt of the final physician's assessment. If the University continues with discipline after receiving the physicians' assessments, the time permitted in Article 20 for the Association to file a grievance shall begin from the time the University notifies the ASM of its intention to continue discipline following receipt of the final physician's assessment.
- (e) Once the physicians' assessments relating to a specific incident have been received in accordance with this Clause, the ASM cannot request a further investigation based on a defence of medical disability or illness, except as part of a grievance resolution or because substantive new information regarding the disability or illness has become available.

- 19.07 If an ASM goes on sick leave in accordance with a physician's recommendation, as set out in Clause 19.06(c), the ASM shall receive benefits in accordance with the sick leave provisions of Article 22.
- 19.08 Letters of warning or reprimand shall be clearly identified as being disciplinary measures, shall contain a clear statement of the reasons for taking this action, and shall be delivered by the University in a manner that provides proof of receipt, either by means of a receipt signed by the individual ASM so named in the letter, or in the presence of a witness other than the person delivering the letter. Further proceedings shall not commence until the Administrative Head has proof of delivery.

SUSPENSION

- 19.09 When the University intends to suspend an ASM with or without loss of pay as a form of discipline, the University shall provide written notification of the dates of commencement and termination of the suspension and of the reasons for the suspension to the ASM. Such notification shall be delivered by the University in a manner that provides proof of receipt, either by means of a receipt signed by the individual ASM so named in the letter, or in the presence of a witness other than the person delivering the letter. Further proceedings shall not commence until the Administrative Head has proof of delivery.
- 19.10 If suspension with loss of pay is proposed, the case shall then be treated as an unresolved grievance which has been processed through Step 2, in accordance with Article 20 of this Collective Agreement. If, within twenty (20) days of receipt of the written statement of reasons for the proposed suspension, the Association gives notice to arbitrate, the procedures in Clauses 20.07 to 20.16 shall be followed.
- 19.11 Only if the Association then fails to give notice to arbitrate within twenty (20) days or if the grievance, if one is filed, is denied at arbitration may the University implement the suspension.

DISMISSAL FOR CAUSE, PART A

- 19.12 When the President and the appropriate Dean, or equivalent, have determined that there is cause to justify their recommending that an ASM be dismissed for persistent neglect of duties or for failure to maintain an acceptable standard of competence and performance in duties appropriate to the appointment, they shall forthwith notify the ASM of their intentions.

- 19.13 Notwithstanding the generality of Clause 19.12, where the cause is based on gross incompetence or gross and persistent neglect of duty, termination of the appointment of an ASM shall be initiated no sooner than twelve (12) months following the issuance to the ASM of a letter of warning or reprimand in accordance with Clause 19.08.
- 19.14 The President and the appropriate Dean, or equivalent, shall invite the ASM to meet with them in an attempt to settle the matter, and the President shall simultaneously inform the Association of their intention to hold the meeting, and notify the ASM that they may be accompanied and assisted by a representative of the Association. They may also be accompanied and assisted by another person of their choice.
- 19.15 If the meeting fails to settle the matter, the President shall inform the Association and the ASM of their intention to recommend the dismissal of the ASM, with a detailed written statement of reasons.
- 19.16 The case shall be treated as an unresolved grievance which has been processed through Step 2, in accordance with Article 20 of this Collective Agreement. If, within thirty (30) days of receipt of the written statement of reasons for recommending dismissal, the Association gives notice to arbitrate, the procedures in Clauses 20.07 to 20.16 shall be followed. Only if the Association does not give notice to arbitrate within thirty (30) days or if the grievance is denied at arbitration may the President transmit their recommendation for dismissal to the Board. The ASM shall continue to receive salary and benefits in accordance with Article 32 of this Collective Agreement until the Board has approved this recommendation from the President to dismiss.

DISMISSAL FOR CAUSE, PART B

- 19.17 When the President has determined that there is cause to justify their recommending that an ASM be dismissed for a reason other than those specified in Clause 19.12, they shall forthwith notify the ASM of their intentions with a written statement of reasons.
- 19.18 If, within twenty (20) days of receipt of the written statement of reasons for recommending dismissal, the Association files a grievance, the case shall be treated as an unresolved grievance which has been processed through Step 2, in accordance with Article 20 of this Collective Agreement. If a grievance is filed, the following procedures shall apply:
- (a) A single arbitrator shall be utilized, and both Parties shall expedite the hearing.
 - (b) The University shall pay the ASM's salary and benefits until the decision of the arbitrator is received or for a period of four (4) months from the appointment of the arbitrator, whichever is the lesser.
 - (c) If the pay of an ASM is interrupted because the time limit in Clause 19.18(b) above has been reached, the ASM shall be deemed to be on leave without pay until the arbitration award is received by the parties.
 - (d) If the grievance is allowed at arbitration, but the decision is received after the four (4) month period referenced in Clause 19.18(b) has expired, the University shall pay the ASM's salary and the University's share of benefits for the period between the end of the four (4) months and the date the decision is received.
- 19.19 When a grievance involving Dismissal for Cause, Part B is filed, and the grievance is denied at arbitration the President may transmit their recommendation for dismissal to the Board. The ASM shall continue to receive salary and benefits in accordance with Article 32 of this Collective Agreement until the Board approves this recommendation from the President to dismiss or until the four (4) month period referenced in Clause 19.18(b) has expired, whichever is the lesser.
- 19.20 The Parties agree that in order to expedite the hearing, the arbitrator shall be chosen according to the procedures in Article 20, with the proviso that the arbitrator chosen shall agree to render the decision as expeditiously as possible.
- 19.21 If no grievance is filed, the President may transmit their recommendation to the Board. The ASM shall continue to receive salary and benefits in accordance with Article 32 of this Collective Agreement until the Board approves this recommendation from the President to dismiss.

NON-DISCIPLINARY RELIEF FROM DUTIES

19.22 An ASM may be immediately relieved from duties if either:

- (a) the actions of the ASM constitute a serious danger to life or limb; or
- (b) the actions of the ASM constitute a serious and willful danger to the University's physical facilities.

19.23 No ASMs shall be relieved from duties without the prior invocation of Clause 19.22 of the Collective Agreement. In the event that Clause 19.22 is invoked, at that time the University shall provide the ASM and the Faculty Association (MUNFA) with a summary of the information and copies of all documentation, if any, that it had that led to the decision to invoke Clause 19.22. Such notification shall not in itself constitute a disciplinary measure.

19.24 If the University invokes Clause 19.22 and relieves an ASM from their duties, the University shall inform only those students, staff and faculty directly affected of any new teaching arrangements without reference to the reasons for such arrangements.

19.25 During the period of such relief from duties, the ASM shall continue to receive normal salary, salary increases and benefits.

DISCIPLINARY RELIEF FROM DUTIES AND BANNING FROM THE WORKPLACE

19.26 ASMs shall only be subject to disciplinary relief from duties that includes an order that the ASM stay away from the workplace until further notice as follows:

- (a) (i) The University has initiated an investigation against an ASM that may lead to discipline being imposed, and the presence of the ASM at the workplace during the investigation might place the health, safety, or security of people at risk, or place the safety or security of the University premises at risk; or,
 - (ii) The University has given notice to an ASM and the Association of its intention to suspend an ASM without pay, or of its intention to recommend that an ASM be dismissed for cause, and the presence of the ASM in the workplace during the period leading up to the disposition of the matter might place the health, safety, or security of people at risk, or place the safety, or security of the University premises at risk;
- (b) Campus Enforcement and Patrol (CEP) shall be notified of the disciplinary relief from duties that includes a ban from the workplace, and shall be responsible for enforcing it;
- (c) The ASM and the Association shall be notified of the disciplinary ban, and the reason(s) that led to the decision to invoke it;
- (d) The Association may make a written request, with reasons, for the University to review the decision to impose the disciplinary relief of duties that includes a ban from the workplace, no sooner than five (5) days after the date of its imposition. When such a request has been submitted, the University shall review the decision to impose the disciplinary relief of duties that includes a ban from the workplace, and issue a decision on the review no later than twenty (20) days from the date of the request for the review. If the Association wishes to submit relevant documentary evidence to support its request to lift the disciplinary relief of duties that includes a ban from the workplace, the Association shall do so within five (5) days of the date of the review request. Following a review, if the University is satisfied that the presence of the ASM at the workplace no longer places the health, safety, or security of people at risk, or no longer places the safety or security of University premises at risk, the University shall lift the disciplinary relief of duties that includes a ban from the workplace. In all instances, the ASM and the Association shall be notified of the review decision and the reasons that led to the decision;
- (e) For the purposes of this Clause, workplace is defined as any property under the control of the University where normal university business is being carried out or conducted, but does not include the General Hospital or Janeway Hospital sections of the Health Sciences Centre.

CRIMINAL CHARGES AND CONVICTION

- 19.27 An action of an ASM may result in disciplinary action or criminal action or both. A criminal charge or conviction is not in and of itself grounds for discipline or dismissal. Any disciplinary action which follows from the events that give rise to the charge or conviction shall be subject to all the protections of this Collective Agreement.
- 19.28 In the event that an ASM is accused of an offence which requires a court appearance, they shall be granted leave of absence without loss of benefits, and pay, to which they would otherwise be entitled, for the actual time of such an appearance. In the event that the accused ASM is jailed awaiting a court appearance, they shall receive leave without pay. The ASM shall have the option of taking annual vacation leave to which they are entitled in lieu of all or part of the leave without pay.
- 19.29 If an ASM is incarcerated following conviction, and the University does not elect to discipline the ASM, they shall be granted leave of absence without pay for a maximum period of two (2) years. The ASM shall have the option of taking annual leave to which they are entitled in lieu of all or part of the leave without pay.
- 19.30 As far as circumstances allow, including the outcome of disciplinary action that the University might take, an ASM who has been charged or convicted shall continue to pursue their normal University duties.
- 19.31 The University shall encourage and participate in a professionally recognized and managed rehabilitation programme for an ASM who has been convicted. Participation shall include permitting the ASM to return to employment, adjusting course scheduling or workload to permit rehabilitation, and other related accommodations for a reasonable period of time. Participation may, at the discretion of the University, include direct financial support for a rehabilitation programme.

SEXUAL HARASSMENT

- 19.32 An allegation of sexual harassment against an ASM shall not be the subject of disciplinary action, except in accordance with the University-Wide Procedures for Sexual Harassment and Sexual Assault Concerns and Complaints, dated November 1, 2017, and attached to this Collective Agreement as Appendix C.
- 19.33 Any such disciplinary actions taken by the University against an ASM shall be subject to this Article, and may be grieved under Article 20.

GROSS MISCONDUCT IN ACADEMIC RESEARCH

- 19.34 Gross misconduct in academic research means:
- (a) fabrication, falsification, republication of one's own work without adequate acknowledgement of the original source, or plagiarism but not factors intrinsic to the process of academic research, such as honest error, conflicting data or differences in interpretation or assessment of data or of experimental design; or
 - (b) willful or deliberate destruction, or destruction resulting from the failure to take reasonable measures to ensure the safety, of one's own research data within a period of five (5) years after publication of the research results, or the deliberate tampering with or destruction of the research of another; or
 - (c) once the results of the research have been published, refusal without good and sufficient reason, to provide access to the data that resulted in the published document, for the purpose of verification by bona fide academic researchers for a period of five (5) years from the date of publication; or
 - (d) failure to respect agreements concerning privileged access to information or ideas obtained from confidential manuscripts or applications; or
 - (e) the use of unpublished scholarly work of others without their permission when that permission is explicitly required; or
 - (f) inaccurate attribution of authorship, including attribution of authorship to persons other than those who have made a substantial contribution to, and who accept responsibility for, the contents of a publication or document; or

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- (g) significant failure to acknowledge funding, sponsorship, or other assistance; or
 - (h) significant failure to comply with relevant federal or provincial statutes or regulations or national or international standards for the protection of researchers, human subjects, or the health and safety of the public, or for the welfare of laboratory animals, or significant failure to meet other legal requirements that relate to the conduct of research; or
 - (i) failure to reveal any relevant and substantial conflict of interest to the agencies funding the ASM's University research, to those who commission such research, to an editor or to an agency requesting the ASM to undertake reviews of research grant applications or manuscripts for publication, or to an agency requesting the ASM to test products, processes or services for sale or distribution to the public; or
 - (j) failure to reveal to the University any material financial interest, either by the ASM or a close relative, in a company that contracts with the University to undertake research, or to supply goods or services directly pertaining to the ASM's University research. Material financial interest includes ownership, substantial stock holding, a directorship, substantial honoraria or consulting fees but does not include routine stock holding in a large publicly traded company.
- 19.35 (a) Where appropriate, members of the University community are encouraged to resolve misunderstandings or disputes concerning gross misconduct in academic research informally.
- (b) All allegations of gross misconduct in academic research shall be made in writing, shall specify the misconduct alleged, and shall be signed and directed to the President. If in their judgment, based on the signed complaint, and, if requested by the President an interview with the complainant, there is sufficient substance to warrant formal investigation, the President shall notify the Association and the ASM who is the subject of the allegations, in writing that they are under investigation. Such notification shall be within twenty (20) days of receipt of the allegation. Otherwise, the allegations shall be dismissed, no action taken, and all related documentation destroyed.
- (c) The written notice shall include a copy of the signed allegations to allow the ASM who is the subject of the allegations an opportunity to respond and shall advise the ASM in writing of their right to be accompanied or represented as stated in Clause 19.36. Such notification shall be delivered by the University in a manner that provides proof of receipt, either by means of a receipt signed by the individual ASM so named in the letter, or in the presence of a witness other than the person delivering the letter. Further proceedings shall not commence until the University has proof of delivery. The investigation shall be confidential and conducted in such a way as to balance the need for a fair investigation with the rights to privacy of the person(s) accused and the person(s) making the allegation(s).
- 19.36 During the course of the formal investigation, the ASM named in the allegations or an ASM otherwise participating shall have the right to be accompanied by a person of their choice at any meeting in which they participate or is present, or to have such a person represent them at any meeting in which they would otherwise participate or be present.
- 19.37 The ASM named in the allegations shall be given a copy of the draft final Report stemming from the investigation, and will be given adequate opportunity to know any evidence presented in the Report and to respond to that evidence if they choose to do so. The draft final Report shall be given to the ASM within sixty (60) days of the President informing the ASM of the investigation. The ASM shall have ten (10) days to respond to the draft final Report. If notice of discipline is not received within ninety (90) days of the sending of the President's written notice of investigation, then discipline shall not be imposed.
- 19.38 Any discipline imposed on an ASM for gross misconduct in research shall be subject to Clause 19.03. If the Association decides to grieve under Article 20, then the grievance shall proceed directly to Arbitration (Step 3).
- 19.39 If the proposed discipline is a letter of warning or reprimand, or suspension without loss of pay, the provisions of Article 20 shall apply. If the proposed discipline is one of suspension with loss of pay, then the provisions of Clauses 19.09 to 19.11 shall apply. If the discipline is one of dismissal, the provisions of Clauses 19.17 to

19.21 shall apply except, notwithstanding Clause 19.18, an arbitration board of three (3) persons shall hear the grievance.

19.40 If the University decides after investigation not to discipline the ASM named in the allegation(s) or if an arbitration board decides that no discipline is to be invoked, then the University shall remove all documentation relating to this matter from the ASM's official personal file. The University shall take such steps as may be necessary and reasonable to protect and restore the reputation and credibility of ASMs wrongfully accused of gross misconduct in academic research, including written notification of the decision to all agencies, publishers, or individuals who were informed by the University of the investigation.

19.41 The University shall use its best efforts:

- (a) to minimize disruption to the research of the complainant and of any third party whose research may be affected by the securing of evidence relevant to the allegation during the course of the formal investigation; and
- (b) to ensure that any such disruption not negatively affect future decisions concerning the careers of those referenced in Clause 19.41(a) above.

19.42 The University shall take disciplinary action against those who make unfounded allegations of gross misconduct in research which are reckless, malicious or not in good faith.

19.43 (a) The President shall inform concerned agencies and publishers only in situations where accusations of gross misconduct in academic research are sustained as the result of a formal investigation or an arbitration hearing, if one is held.

- (b) Where the outside agency or publisher has been informed of an accusation against an ASM that subsequently is not sustained as the result of a formal investigation or an arbitration hearing, if one is held, the President shall send a copy of the investigator's report and the University's decision or arbitrator's report to concerned agencies or publishers.