



**SIMON FRASER UNIVERSITY
Policies and Procedures**

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Disciplinary Measures

Part One: General¹

- 1.1 A member² may be disciplined only for just, reasonable and sufficient cause.
- 1.2 Such disciplinary action shall be reasonable and commensurate with the seriousness of the violations and shall be consistent with past practice. Except in extreme circumstances, discipline will be of a progressive nature with the aim of being corrective in application.
- 1.3 In any case where a Dean, the University Librarian, the University Archivist (all in consultation with the appropriate Vice President), or a Vice-President considers that the conduct or performance of a bargaining unit member warrants discipline, he/she may take one of the following actions he/she deems appropriate in the circumstances:
 - a. issue a written reprimand,
 - b. recommend to the President that the member be suspended with or without pay, or
 - c. recommend to the President that the member be dismissed.

The President may also initiate disciplinary action culminating in a reprimand, suspension or dismissal.
- 1.4 In the event that the behaviour giving rise to the disciplinary action was related to emotional illness or the use of alcohol or drugs, the member shall be given the opportunity to voluntarily seek treatment/counselling for the problem unless exceptional circumstances exist. If the member participates in an active treatment program, the relevant disciplinary authority may mitigate or suspend the disciplinary action pending the outcome of the treatment/counselling.
- 1.5 Where a member is incarcerated prior to a criminal trial or upon criminal conviction he/she shall be considered on leave of absence without pay which may be partially offset by the annual vacation entitlement. Where a member is at liberty pending judgment in a criminal trial, he/she will be placed on a leave of absence with pay if, in the view of the appropriate Vice President or of the President, the nature of the criminal charge(s) is such that the member should not continue to perform his/her employment duties.³ Where the subject matter of the criminal trial has resulted from actions in the performance of the member's duties or from actions which affect or could reasonably be expected to affect his/her suitability for continued employment, disciplinary action may also be pursued under this policy.
- 1.6 If disciplinary action is in progress at the same time as a member is being considered for salary review, renewal, tenure, promotion or study leave, there will be a deferral of the consideration until the disciplinary process, including any appeal, is concluded.

Part Two: Reprimand

- 2.1 Letters of reprimand must be clearly identified as such and as being disciplinary measures. The letter must contain a clear statement of the reasons for taking this action and shall be delivered by courier to the member's current place of residence.
- 2.2 A member wishing to appeal the reprimand must inform the Vice President, Academic, in writing, within 15 working days of receipt of the letter. The appeal shall be heard within 20

working days of the notice of appeal by an internal disciplinary review board comprised of three bargaining unit members, one selected by the Association, one selected by the University and a chair selected by the other two review board members.

- 2.3 In the determination of whether there was just cause for the reprimand, the University (the respondent) bears the burden of proof and is heard first.
- 2.4 The initial submissions of the parties shall be in writing. The parties may also elect to make an oral presentation on their initial submissions to the review board. A request to make an oral submission must be received by the Chair at least 5 working days before the deadline for receipt of the written submission.
- 2.5 Both parties may have the assistance of a representative. At any oral presentation, only the parties and one representative for each side may appear before the review board.
- 2.6 Each party has the right to be present to hear all oral presentations.
- 2.7 The proceedings of the review board shall be held *in camera* and will be confidential, as will the submissions made to the board.
- 2.8 Within 10 working days of being notified by the Chair of the review board, the respondent will provide the review board and the appellant with a written submission detailing the rationale for the letter of reprimand. Any oral submission will be heard by the board as soon as possible after the deadline for receipt of the written submission.
- 2.9 Within 10 working days, the appellant will provide the review board and the respondent with a response to the respondent's submission. Any oral submission will be heard by the board as soon as possible after the deadline for receipt of the written response.
- 2.10 The respondent has 5 working days to submit a written rebuttal, with a copy to the appellant, of any new issues raised in the appellant's submission.
- 2.11 The review board will have available to them a copy of the University policy book, which includes the Framework Agreement. The board may only consider the behaviour which is the subject of the letter of reprimand. Matters subsequent to the issuing of the letter of reprimand may not be considered. The board may seek clarification from either party before coming to a decision.
- 2.12 The review board decision need not be unanimous and will be binding on both parties. It may either uphold or overturn the decision to issue the letter of reprimand.
- 2.13 Within 10 working days of considering the appeal, the board will submit a written report of its decision to the Vice President, Academic, with copies to both parties.
- 2.14 If the disciplinary decision is overturned, all copies of the letter of reprimand shall be destroyed and any references to such a letter in other documents shall be removed. If the disciplinary decision is upheld, copies of the appeal board's report shall be filed in the member's file in the appropriate Vice President's and Dean's offices and in the department, school or unit.
- 2.15 The letter of reprimand will be kept in the member's file for a two year period. After two years, providing there has been no further disciplinary action taken against the member, any reference to the letter of reprimand and the letter of reprimand itself shall be removed from the member's files and sealed in the University's Archives. If the member is subsequently the subject of disciplinary action, this documentation may be unsealed and taken into account for the purposes of progressive discipline. Otherwise, the documentation of the reprimand will be destroyed after five years under seal.
- 2.16 The rationale for the letter of reprimand, may, where relevant, be taken into account for performance review purposes during the appropriate review period.

Part Three: Suspension (excluding suspension pending the outcome of an appeal for dismissal under 4.5)

Proviso: Section 60(1) of the University Act grants power to the President of the University to suspend any member of the teaching staff and section 60(3) gives the person suspended the right of appeal to the Board of Governors. As the Board wishes to resolve by arbitration any appeals of the President's decision to suspend a member and the Faculty Association wishes to make available to members of the bargaining unit the right to have an independent arbitrator determine whether or not the President's decision to suspend was justified, the Board and the Association agree to the appointment of an independent arbitrator to resolve appeals from suspensions in those cases where the member waives the right of appeal to the Board.

- 3.1 Suspension is the act of the President in relieving a member of all University duties and privileges with or without pay for cause without his/her consent.
- 3.2 Where the President believes that a summary suspension is justified, pending further action by the University or the bargaining unit member, he/she shall so order, in writing by courier, under the authority of the University Act. The suspension shall be with pay, and shall be considered non-disciplinary.
- 3.3 In all other cases in which the President determines that grounds exist for suspension, the member shall be entitled to a written account of the grounds for suspension and to meet with the President, and/or to submit a written response, prior to the imposition of the suspension. The member shall be informed that he/she may have the assistance of a representative at this meeting.
- 3.4 The President shall communicate his/her decision to the member in writing, by courier, within 15 working days of the meeting with the member or of receiving a written response, or of receipt of notice from the member declining to communicate with the President. Copies of the notice of suspension will be placed in the member's file in the appropriate Vice President's and Dean's offices and in the department, school or unit.
- 3.5 **Appeal:** A member may appeal the imposition of a suspension to a sole arbitrator. Written notice of an intention to appeal must be received by the President within 15 working days of receipt of the notice of suspension. Upon receipt of the member's notice of intention to appeal, the President shall within five working days forward to the sole arbitrator a statement of the conduct complained of, a copy of the letter imposing the suspension, and the member's notice of appeal. The suspension will not take effect pending the outcome of the appeal, although a summary suspension may be continued. The decision of the arbitrator will be binding on both parties.
- 3.6 If the suspension is overturned by the arbitrator, notice of the suspension in the member's files shall be destroyed and any reference to the suspension in other documents shall be removed. If the suspension is upheld or varied, a copy of the arbitrator's decision shall be lodged in the member's file in the appropriate Vice President's and Dean's offices and in the department, school or unit.
- 3.7 If the arbitrator substitutes a written reprimand for the suspension, sections 2.15 and 2.16 shall apply to the written reprimand.
- 3.8 The documents relating to a suspension will be kept in the member's file in the appropriate Vice President's and Dean's offices and in the department, school or unit for two years beyond the period of suspension. If, after the period of suspension and two years, there has been no further disciplinary action taken against the member, any reference to the suspension shall be removed from the member's files and sealed in the University's Archives. If the member is subsequently the subject of disciplinary action, this documentation may be unsealed and taken into account for the purposes of progressive discipline.
- 3.9 The rationale for the suspension may, where relevant, be taken into account for performance review purposes during the appropriate review period.

Part Four: Dismissal

Proviso: Section 59(2)(a) of the University Act grants power to the President of the University to make recommendations concerning the removal of members of the teaching staff; and section 27(g) of the same Act empowers the Board of Governors to dismiss a member of the teaching staff upon the recommendation of the President pursuant to section 59(2) (a) of the Act, but does not require the Board to follow the recommendation of the President. As the Board wishes to resolve by arbitration any disputes arising out of the recommendations by the President for dismissal for cause, and the Faculty Association wishes to make available to members of the bargaining unit the right to have an independent arbitrator determine whether or not the President's recommendation for dismissal for cause was justified, the Board and the Association agree to the appointment of an independent arbitrator to resolve dismissal disputes.

- 4.1** Dismissal means the termination of an appointment by the University without the consent of the member before the end of the stated contractual period. The failure to renew a term appointment, the elimination of a non-tenure-track position or the decision not to grant tenure do not constitute dismissal; the termination of a term appointment during the course of its term or the termination of an appointment without term by the University at any time other than normal retirement constitute dismissal.
- 4.2** Where the President determines that grounds exist for dismissal, the member shall be entitled to a written account of the grounds for the dismissal, and to meet with the President and/or to submit a written response, prior to a recommendation to dismiss being transmitted to the Board. The member shall be informed that he/she may have the assistance of a representative at this meeting.
- 4.3** The President shall communicate his/her decision to the member, in writing, by courier to the member's current residence, within 15 working days of the meeting with the member or of receiving a written response, or of receipt of notice from the member declining to communicate with the President.
- 4.4** If the President recommends dismissal, the member has the right to appeal the recommendation to a sole arbitrator. Notification of the intention to appeal must be sent to the President within 15 working days of receiving the President's recommendation. Within five working days, the President shall forward to the sole arbitrator a statement of the conduct complained of, a copy of the recommendation of dismissal, and the member's notice of appeal. The decision of the sole arbitrator will be binding on the Board and the member.
- 4.5** If the member is suspended by the President pending a determination by the sole arbitrator and subsequent determination by the Board, such suspension shall be with pay.
- 4.6** If the sole arbitrator finds that there is no just cause for the dismissal of the member, all copies of the recommendation to dismiss the member shall be destroyed and any references to such a recommendation in other documents shall be removed.
- 4.7** If the sole arbitrator finds that there is just, reasonable and sufficient cause for the dismissal of the member, then the Board shall proceed to consider and act upon the President's recommendation.
- 4.8** If the sole arbitrator finds that there is no just cause for the dismissal but finds that there is just cause for a lesser form of discipline he/she may substitute a written reprimand or suspension for the dismissal. Sections 2.15 and 2.16 shall apply to a substituted written reprimand and sections 3.8 and 3.9 shall apply to a substituted suspension.

Part Five: Arbitration Procedures

- 5.1** All appeals arising out of the President's decision to suspend a member (if the member waives the right to appeal to the Board) or the President's recommendation for dismissal for cause of a member from his/her employment with the University shall be submitted to arbitration by a sole arbitrator to be selected and agreed upon in writing by the President and the Association.

- 5.2** The term of the sole arbitrator shall be for a period of one calendar year and prior to the expiry of the said year, the President and the Association shall either agree to renew the appointment of the sole arbitrator or agree to the appointment of a new sole arbitrator for a period of one year. The same procedure shall be followed in each ensuing year.
- 5.3** If the President and the Association are unable to agree on the appointment of the sole arbitrator, either of them may request the Director, Collective Agreement Arbitration Bureau to appoint a sole arbitrator.
- 5.4** Pending the appointment of a new sole arbitrator, the term of the existing sole arbitrator shall be extended and remain in force until the date of the appointment of the new sole arbitrator.
- 5.5** If the sole arbitrator neglects or refuses to act, or is incapable of acting, or is unavailable to hold a hearing within a reasonable period of time, or dies before making his/her award and the President and the Association fail to agree on the appointment of another sole arbitrator, the provisions of section 5.3 shall apply.
- 5.6** The parties may agree upon the ad hoc appointment of additional sole arbitrators in appropriate circumstances. Such ad hoc sole arbitrators shall be selected and agreed upon in writing by the President and the Association or in accordance with section 5.3.
- 5.7** The sole arbitrator shall, within five working days of receipt of the documents referred to in section 3.5 or section 4.4, serve notice upon the President and the member of a date, time, and place for hearing the appeal, normally within two months of such notice. The member shall be informed that he/she may have the assistance of a representative at the hearing.
- 5.8** The scheduled hearing shall take place unless the arbitrator orders a change or, by mutual agreement, the matter is adjourned. The arbitrator has the power to decide what may be admitted as evidence, and is not bound to follow the rules of evidence used in a court of law.
- 5.9** Once the hearing has concluded, the sole arbitrator shall determine whether there was just, reasonable and sufficient cause for the suspension or dismissal of the member and shall render an award within one month from the conclusion of the hearing. The award shall be in writing and contain reasons in support of the decision. The award shall be sent to the Chair of the Board of Governors, the President, the member and the Association.
- 5.10** The fees and expenses of the sole arbitrator shall be established by agreement of the University and the Faculty Association. These fees and expenses shall be borne equally by the University and the member. Both parties shall bear their own costs of presenting their case before the sole arbitrator.
- 5.11** The Association may in its discretion by resolution of its Executive, provide such support, financial or otherwise, as it considers appropriate to the member disputing the suspension or recommendation for dismissal.

¹ This policy provides, inter alia, a mechanism for the imposition of disciplinary measures for a violation of any University policy unless a policy specifically provides its own disciplinary mechanism, e.g. GP 18, the Harassment Policy. Whether discipline is imposed under the Disciplinary Measures Policy, or under one of the specialized policies, any appeal by a member shall be conducted under the provisions of the former. If the discipline is something other than a reprimand, suspension or dismissal, it shall be treated as the equivalent to one of these categories according to its severity. The issue of equivalence may be resolved in the same manner as a statement of interpretation in section 14 of the Framework Agreement.

² "Member" means any Professor, Associate Professor, Assistant Professor, Instructor, Senior Lecturer, Lecturer, Laboratory Instructor I or II, Librarian I, II, III, IV or the Associate University Librarian, Archivist, Retired bargaining unit member appointed to a post-retirement appointment, Limited term faculty member, Limited term librarian, Limited term laboratory instructor.

³ This provision will not apply during the time a member is under a suspension without pay.