

UNION DISCIPLINE

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21-1

Amended Provincial Executive October 17, 2014

21 -1 Policy on Member Conduct, Complaints and Discipline

MEMBER CONDUCT

- 21.01 Every member has an obligation to comply with the Constitution and conduct himself/herself in a manner that upholds the objectives and values of the Union.
- 21.02 Every member has the right to participate in any level of legitimate Union activity without risk of harassment, discrimination, exclusion, or any other impediment to full democratic inclusion.
- 21.03 Every AUPE staff member has the right to perform their assigned duties in an environment free of harassment and actions which undermine their ability to perform their duties.
- 21.04 One or more of the following acts shall constitute conduct unbecoming a member of the Union:
- a. knowingly fail to comply with the Constitution.
 - b. knowingly violate any provision of the Policies of the Union.
 - c. fail, without reasonable excuse, to pay dues, fees, assessments, or fines levied under the Constitution.
 - d. obtain membership through fraudulent means or by misrepresentation, or assist another member to do so.
 - e. cross a picket line of this Union without authorization.
 - f. work behind a picket line or during a work stoppage when under no legal duty to do so, except as authorized by the Union.
 - g. except when carrying out the job responsibilities of one's position with the employer, institute or advocate that a member begin a proceeding in a court or tribunal against the Union, any of its officers, or any of its members, in respect of any matter concerning the affairs of the Union, without first exhausting all internal process as provided in this Constitution.
 - h. without proper authorization:

- i. communicate or otherwise reveal confidential information about the business, membership, proceedings or other affairs of the Union to anyone not entitled to such knowledge.
 - ii. remove or retain any funds or any other belongings of the Union.
 - iii. destroy, mutilate, or erase any books, records, bills, receipts, vouchers or other property of the Union.
- i. while holding elected office in the Union:
- i. do anything intended to cause the withdrawal of any member from the Union.
 - ii. work in the interest of any other organization seeking to provide collective bargaining or union representation for a person represented by the Union.
 - iii. violate the oath of office.
- j. either verbally or otherwise, publish or circulate false reports about the Union or any member.
 - k. deliberately misrepresent concerns of the Union or any member in respect to any matter connected with the affairs of the Union.
 - l. disrupt or obstruct any meeting of the Union or its component parts to the point where business of the meeting may not be fairly and reasonably conducted.
 - m. bring forth a frivolous, vexatious, or malicious accusation or complaint, which has no foundation in fact and is filed for the purpose of bringing an adverse consequence to the respondent or another member of the Union.
 - n. misappropriate funds of the Union or any component.
 - o. intentionally falsify Union expense claims.
 - p. use, without proper authority, the name of the Union or of a local in order to solicit funds or advertising for another organization.
 - q. harass, coerce, intimidate, or wrongfully prevent a member or any officer or any AUPE staff person or any accredited representative of the Union from carrying out their obligations or duties, or from exercising their rights under the Constitution in a way that impedes the democratic and legitimate involvement in the Union or the ability to properly fulfill their roles and duties.
 - r. go against the intent of the Union Constitutional objectives by interfering with or retaliating against a participant in the complaint process.

COMPLAINTS AND DISCIPLINE

- 21.05 Where a member violates the Constitution, or engages in conduct unbecoming a member, the Union may, after following the Complaints and Discipline process, discipline the member or direct the member to take corrective actions as set out in this article.
- 21.06 The Conduct and Discipline process has four potential parts: Informal resolution, Independent investigation with recommendations, Review Committee hearing, and Provincial Executive Appeal hearing. Every effort should be made to resolve or correct situations early, with open communication and in a cooperative manner.

Informal Resolution

- 21.07 Members should use informal dispute resolution methods to resolve potential complaints before filing a written complaint.

Written Complaint

- 21.08 A complaint may be filed against any regular member or group of regular members alleging:
- (a) a violation of the Constitution, or
 - (b) conduct unbecoming a member of the Union.
- 21.09 A complaint:
- (a) may be filed by a regular member in good standing, a group of regular members, a Local, or a Chapter.
 - (b) must be filed by the President on behalf of the Executive Director, if, after a complaint and investigation under an AUPE staff collective agreement or harassment policy, the Union finds a member is responsible for improper conduct towards a staff member. The Executive Director shall then assume the role of Complainant under this process.
- 21.10 The Complainant must provide sufficient proof, on a balance of probabilities, of the alleged Constitutional breach or conduct deserving discipline.
- 21.11 A written complaint shall be sent within ninety (90) calendar days of when the alleged violation ought reasonably to have come to the

attention of the person complaining. The complaint shall be delivered in person, by regular mail, by fax or as an attachment by email to:

- (a) the President unless the complaint is against the President.
- (b) to the Vice President designated by Provincial Executive, if the complaint is against the President.

21.12 The written complaint shall:

- (a) be signed by the regular member or group of members, or if the complaint is from a Local or Chapter, signed by an officer of the Local or Chapter,
- (b) set out the address, phone, and email of the Complainant(s),
- (c) identify the name of the member the member or members complained against (the Respondent(s)),
- (d) set out the details of the events on which the complaint is based, including:
 - i. a description of the violation or misconduct, including the section of the Constitution breached or the specific misconduct under Article 21.04 Member Conduct,
 - ii. the dates, time(s) and location(s) of incidents,
 - iii. any response or action taken by the Complainant prior to the written complaint,
 - iv. name(s) of witnesses, if any
 - v. copies of any documents, pictures, and supporting information, and
 - vi. the remedy sought by the Complainant.

President's Actions on Receipt of Complaint

21.13 The Union President or his designate, upon receipt of a complaint, may do any combination of the following:

- (a) notify the Respondent(s) and include:
 - i. a summary of or a copy of the complaint,
 - ii. information about the Respondent's right to participate and be represented by a person of their choice, but the Union will not pay for any legal advice or representation,
 - iii. the process to deal with the complaint,
 - iv. a request for the Respondent to file a written response, if appropriate, and

- v. any applicable timelines.
- (b) the Complainant, and any other member who it appears to the President may be affected by the complaint. Notice should include a description or summary of the complaint.
- (c) review the complaint and, if the President determines that the complaint is frivolous, wholly without merit, or cannot be reasonably substantiated or proven, dismiss the complaint without further investigation or hearing. For the purposes of making this determination, the President shall consider the Complainant's obligation to prove, on a balance of probabilities, the allegations in the complaint, and shall assume that the details alleged in the complaint will be proven.
- (d) refer the complaint to a staff member, officer or independent mediator (member of the Union or not) to attempt to resolve the complaint. The objective of this informal process is to rectify any situation or conflict in a fair and respectful manner without having to resort to the formal process.
- (e) forward the complaint to an Independent Investigator. When the President triggers the investigation process, the President must also establish a Conduct and Complaint Review Committee (the Review Committee) panel to receive the Investigator's report.
- (f) where the behavior may constitute a criminal offence, advise the Complainant to refer the matter to the police for further investigation.
- (g) in cases of harassment or fiscal misconduct, where the safety of a person or finances of the Union or a component are in jeopardy, suspend the Respondent from the benefits and entitlements of membership, pending the outcome of the complaint process.

Independent Investigation

21.14 The Union may establish a roster of Independent Investigators who are:

- (a) aware of the Union Constitution, structure, values and Policies,
- (b) trained in conducting investigations and writing reports,
- (c) independent of the Executive Committee, Provincial Executive, staff and regular members, and
- (d) committed to conducting fair, impartial, timely, confidential investigations under this process.

- 21.15 If an Independent Investigator conducts an investigation, the Investigator shall:
- (a) sign a non-disclosure agreement in accordance with access and privacy legislation,
 - (b) determine the procedures and timelines to use in the investigation, consistent with the parameters of this Policy/ Article,
 - (c) ensure the Complainant and Respondent have an opportunity to present evidence on the complaint and make their views known to the Investigator,
 - (d) hear from any relevant witnesses identified by the Complainant and Respondent,
 - (e) ensure all parties and witnesses are advised to and agree to protect the privacy and confidentiality of the investigation process,
 - (f) complete the investigation on the evidence submitted, if, after being given a reasonable opportunity to do so, the Complainant or Respondent or a witness refuses to cooperate, and
 - (g) provide a written report of the investigation to the Complainant, Respondent, and the chair of the Review Committee panel.

- 21.16 In conducting its investigation, the Investigator:
- (a) shall protect personal information received during the complaint process, except as required to reasonably process and conclude the complaint,
 - (b) shall act in a sensitive, confidential, professional and timely manner,
 - (c) shall conduct any meetings in-camera,
 - (d) may receive any evidence it considers appropriate, and is not bound of the rules of law respecting evidence applicable to arbitration proceedings,
 - (e) cannot deal with information that is given anonymously.

21.17 After completing its investigation, the Investigator shall, within 60 days from the date of its appointment to the complaint, prepare a written report and recommendations and send it to the President, the chair of the Review Committee panel, the Respondent and the Complainant. The report shall outline:

- (a) the allegations in the complaint,
- (b) the Investigator's finding on each allegation,
- (c) a summary of the evidence, events and timelines in the complaint,
- (d) a summary of the reasons for the findings,

- (e) the recommended decision on the complaint (substantiated or not substantiated), including the specific Constitutional provision breached or misconduct found,
- (f) where the Investigator finds the complaint is substantiated, the recommended disciplinary action or remedy, and
- (g) a summary of the reasons for the recommended remedy or disciplinary action.

21.18 Where the Investigator finds the complaint has been substantiated, it must recommend to the Review Committee, Complainant and Respondent, one or more remedies or disciplinary actions. When recommending a remedy or disciplinary action, the Investigator must consider the nature of the conduct or breach, the seriousness of the matter, the impact on the Complainant, other members and the Union, any prior record of the Respondent, the background of the Respondent, and any other relevant matter.

21.19 The Investigator may recommend any combination of the following disciplinary action and remedies:

- (a) an order to stop the offending conduct,
- (b) a recommendation to complete counseling or coaching,
- (c) an order to complete training on a particular topic,
- (d) an order to give a formal apology in a format determined by the Review Committee,
- (e) conditions on future interaction with the Complainant or witnesses to the complaint for a period established by the Review Committee ,
- (f) denial of access to Union property,
- (g) an order to repay any misappropriated funds, or return Union property,
- (h) reprimand,
- (i) monetary penalty,
- (j) removal from office(s),
- (k) suspension of rights and privileges of membership, except those protected by law, for a period no longer than four (4) years,
- (l) expel a person from membership,
- (m) an order that the member pay all or part of the costs of the investigation and hearing,
- (n) an order that the Union reimburse the Complainant, or any other affected party for their costs in an amount not to exceed five hundred dollars (\$500.00) each.

Appeal of Investigator's Recommendations

- 21.20 The Complainant or Respondent may, within 30 days of the date of the Investigator's report and subject to the Review Committee process, write to the chair of the Review Committee panel to object to the Investigator's report on any of the following grounds:
- (a) using erroneous or incomplete evidence to make its findings,
 - (b) making findings unsupported by the evidence,
 - (c) considering conduct outside the scope of the Constitution or Code of Conduct, or
 - (d) ignoring relevant considerations when selecting the remedy or disciplinary action.

Conduct and Complaint Review Committee Process

- *Review Committee*
- 21.21 The President or Vice-President designated by the Provincial Executive, will establish and appoint a Conduct and Complaint Review Committee to deal with complaints filed under this Article.
- 21.22 The Review Committee will be comprised of five to seven (5 - 7) regular members in good standing, who are Union Stewards with at least three years of Union involvement, but are not members of the Executive Committee or the Provincial Executive. Members of the Review Committee will serve a two-year term.
- 21.23 Members of the Review Committee will:
- (a) receive at least one half day of orientation and training about the role of the Review Committee,
 - (b) work in panels of at least three persons, selected by the President or Vice-President designated by the Provincial Executive, from the Review Committee members, to handle a particular complaint,
 - (c) be impartial and independent of the persons named in the complaint,
 - (d) not participate in any complaint involving persons from their component, close friends or associates that could give rise a reasonable perception of partiality.
- 21.24 The Review Committee may, subject to approval of the Provincial Executive, prepare procedures governing its proceedings, including

matters of confidentiality, notice and procedure to be followed by the Review Committee and those appearing before it.

- *Review Committee's Actions When Investigator Issues Report*
- 21.25 When the chair of a Review Committee panel receives a report from an Independent Investigator, the chair shall schedule a hearing on the complaint to be held within sixty (60) days of the date of the report.
- 21.26 The purpose of the hearing is to hear any objections from the Complainant or Respondent to the Investigator's report or recommendations, and to make a final decision on the complaint and any recommended remedy or disciplinary action. The hearing may be held in person, by teleconference, by video conference, or by documentary review. The Review Committee will provide at least fourteen (14) days written notice of any hearing. The Review Committee will apply the principles and considerations set out in clauses 21.15, 21.16, 21.17, 21.18, and 21.19.
- 21.27 If either the Complainant or Respondent objects to the content of the Investigator's report, the objector must bring evidence or argument to prove the objection. The Review Committee is limited to hearing evidence and arguments about objections to the Investigator's Report and cannot hear evidence or arguments that duplicate the Investigator's process. After the hearing, the Review Committee will issue a decision that:
- (a) confirms or alters the findings of the Investigator,
 - (b) confirms, alters or overturns the Investigator's determination about whether the complaint is substantiated or not,
 - (c) confirms, alters or overturns the Investigator's recommendation on remedy or disciplinary action,
 - (d) directs the President to implement any remedy or disciplinary actions outlined, and
 - (e) briefly outlines the reasons for the decision.
- 21.28 If the Complainant and Respondent do not object to the content of the Investigator's report, the Review Committee will issue a decision adopting the findings of the Investigator, concluding whether the complaint is substantiated or not, determining the remedy or disciplinary action to impose, and directing the President to implement the remedy or disciplinary actions outlined.

- 21.29 In the event, the Review Committee finds the complaint is not substantiated, it may order the Union to reimburse the Respondent's travel and subsistence expenses and time off for Union business, with pay, if required to travel to and from to attend any meetings or hearings with the Investigator or Review Committee.
- 21.30 The decision of the Review Committee, if not appealed to the Provincial Executive within 30 days, shall be final and binding on all the parties.

Appeal of Review Committee Decision

- 21.31 The Complainant or the Respondent may appeal the decision of the Review Committee by filing a written appeal to the Provincial Executive within 30 days of the date of the decision of the Review Committee. The appeal may be against the Review Committee's findings, any discipline or remedy imposed, or both.
- 21.32 If the Provincial Executive receives an appeal from the decision of a Review Committee decision, the Provincial Executive shall:
- (a) within thirty (30) days after the date of the appeal, schedule an appeal hearing before the Provincial Executive. The hearing will be conducted separately from the regular business of the Provincial Executive. The Provincial Executive may extend the time for up to thirty (30) days, if necessary.
 - (b) provide the parties at least thirty (30) days written notice of:
 - i. the date, time and place of the appeal hearing,
 - ii. the procedures to be used for the appeal hearing,
 - iii. their right to a copy of the documents on the written record,
 - iv. their right be represented and make representations at the appeal hearing, but the Union will not pay for legal advice or legal representation at the appeal,
 - v. their right to submit written presentations before or at the appeal hearing.

Conduct of the PE Appeal Hearing

- 21.33 The purpose of an appeal hearing is to hear from the appellant and respondent on the grounds of appeal.

21.34 The appeal hearing is an appeal on the written record, rather than a new hearing on the merits of the complaint. The Provincial Executive shall receive the written record, which comprises all documents gathered by the Review Committee including the complaint, response, witness statements, Investigator's report, and Review Committee's decision, but shall not receive the personal notes made by the Investigator or the Review Committee's members. The Provincial Executive will not receive any new verbal or documentary evidence, nor will it rehear the evidence presented to the Investigator or the Review Committee.

Provincial Executive Decision on the Appeal

21.35 The Provincial Executive will use its normal democratic procedures in the decision making process on the appeal.

21.36 If the appeal is from a member of the Executive Committee or Provincial Executive, the Executive Committee or Provincial Executive member may not participate in any Provincial Executive debate, decision-making processes, or vote on the appeal, and must absent themselves from the Provincial Executive discussions and deliberations.

21.37 Within ten (10) days after the appeal hearing, the Provincial Executive will prepare and provide a written decision on the appeal, and send the decision to the appellant, respondent and the President.

21.38 The decision of the Provincial Executive on the appeal shall be final and binding on all the parties.

Obligation of Union Officers

21.39 Any Union Officer approached by a member with a verbal concern about breach of the Constitution or improper conduct by a member, should inform the member of these complaint procedures.