

香港浸會大學教職員工會
Hong Kong Baptist University Faculty and Staff Union

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NEWSLETTER (198)

A GUIDE TO
Consultation on policy guidelines and procedures governing disciplinary
proceedings of substantiated staff (2)

February 18, 2009

Part III. The Committee of Enquiry (CoE)

3.1 Under the current policy guidelines and procedures:

"If the informal procedures fail to produce the desired positive results, the Faculty / School / Office concerned should write to notify the Personnel Office of its intention to set up a Committee of Enquiry to formally consider removal from appointment of a substantiated staff on the grounds of misconduct, inefficiency or other good cause." (Paragraph 5)

The membership of the CoE is stipulated in Paragraph 5.1 (a) and (b).

Paragraph 5.2 Evidences: This part provides readers with examples and circumstances whereby evidences for "misconduct" and "inefficiency" may be considered by the CoE. With regards to "any other good cause," the current guidelines and procedures require that "the Committee must be satisfied that the cause in point is a valid one."

Paragraph 5.3 Procedures: This part lays down the CoE procedures, including the right of the staff concerned to be notified in writing at least 20 working days before the CoE meets, to appear before the Committee, to present his / her own case in person, and to answer any questions which may be asked by Committee members. He or she may be accompanied by a friend who is a staff member of the University (provided that such a colleague has not been admitted as a solicitor or barrister in any jurisdiction).

Paragraph 5.34 reads "In case of urgency, the Chairman of the CoE could consult with the President and Vice-Chancellor to consider if the staff concerned should be suspend from duty during the process of enquiry."

Paragraph 5.38 requires CoE to take "one of" four course of action, ranging from a recommendation to initiate the removal procedures, through various degrees of sanction measures, to the dismissal of the case altogether.

Paragraphs 5.3.10 and 5.3.11 stipulate that the recommendations of the CoE shall be submitted to the President / Vice-Chancellor for approval.

3.2 If the proposed changes are adopted:

The President / Vice-Chancellor can give direction to set up a CoE, or "if the informal procedures fail to produce the desired positive results within such period of time as determined by the President / Vice-Chancellor, then a CoE will be set up."

The President / Vice-Chancellor determines the membership and the terms of reference of the CoE.

The CoE has sole and absolute discretion to set its procedures for the meeting.

Paragraph 5.2 *Evidences* and Paragraph 5.3 *Procedures* of the current policy guidelines and procedures will be annulled, leaving CoE with no clear direction or operational definitions as to what amount to "misconduct, inefficiency, poor performance, or other good cause."

It is not clear if CoE is still required to present its findings and recommendations in accordance with Paragraph 5.38 of the existing guidelines and procedures.

The staff concerned shall have a chance to respond to all the allegations made against him or her either verbally or in writing and within a reasonable time frame as prescribed by the CoE.

The President / Vice-Chancellor may suspend the appointee from duty and take such other action as may be necessary in case of urgency.

The staff concerned may make further submission to the President / Vice-Chancellor within 7 days upon receipt of the CoE Report if he or she does not accept the findings / recommendations.

The President / Vice-Chancellor shall decide whether to accept the recommendations of the CoE, with or without revision.... The decision of the President / Vice-Chancellor shall be final as far as the internal enquiry procedures are concerned.

QUESTIONS for Part III:

- 3.1 Do you agree to give the President/Vice-Chancellor the new powers regarding the formation, membership, terms of references, as well as the ultimate power to revise the findings / recommendations of the CoE?
- 3.2 Do you agree to give the President / Vice-Chancellor the new power to suspend colleagues from duty and take such action as may be necessary in case of what he or she regards as "urgency"?
- 3.3 Do you think there is a chance that the President / Vice-Chancellor may see it necessary to remove from appointment substantiated staff in case of "urgency"?
- 3.4 Do you agree to give the CoE sole and absolute discretion to set its procedures for the investigation?
- 3.5 Do you agree to give colleagues the right to comment on or appeal against the findings and recommendations of the CoE before the President/Vice-Chancellor arrives at a decision on the case?
- 3.6 In your view, do the existing guidelines and procedures regarding the CoE make better or worse provisions for procedural fairness than the proposed ones?
- 3.7 Do you support the retention of the entire Paragraph 5.2 *Evidences* in the existing guidelines and procedures?
- 3.8 Do you support the retention of the entire Paragraph 5.3 *Procedures* in the existing guidelines and procedures?
- 3.9 The existing guidelines and procedures exclude colleagues who are qualified for the practice of law from providing advice and moral support for the staff concerned. Do you agree to such restriction?

Part IV. The Committee on Termination of Appointment (CTA)

- 4.1 Under the current policy guidelines and procedures:

Paragraph 6 reads "In the event that the CoE decides to make a recommendation on removal from appointment to the President & Vice-Chancellor and if the President & Vice-Chancellor agrees that there are adequate evidences in support of such a recommendation, then Clause 16 of Term of Service A can be invoked, and a Committee on Termination of Appointment shall be formed to investigate into the relevant case."

Paragraph 6 further suggests that "Under exceptional circumstances, in the absence of any recommendation from the CoE, the President / Vice-Chancellor should have the absolute discretion to initiate the process of removal from appointment of any academic or equivalent administrative staff...if he is satisfied that there are adequate evidences in support of such investigation."

Legal representation will not be permitted at the meeting. Similar to the CoE proceedings, the staff concerned may be accompanied by a friend who is a staff member of the University (provided that such a colleague has not been admitted as a solicitor or barrister in any jurisdiction).

4.2 If the proposed changes are adopted:

The President / Vice-Chancellor has the power to recommend the setting up of the CTA under any circumstances, without going through CoE or providing adequate evidences in support of his decision.

The CTA shall have the sole and absolute discretion to set its procedures for the meeting.

The CTA is not obliged to take into account the availability of the staff concerned when determining the total length of the meeting and the date(s) on which and the venue where the meeting(s) shall be held.

The statements of factual witnesses shall contain only facts. Personal opinion is not allowed, and shall be excluded from the statements.

It is not clear if legal representation will be permitted under the new guidelines and procedures.

The CTA is given new powers to make decisions other than removal from appointment of the staff concerned, including "any other decisions as the CTA may deem fit."

QUESTIONS for Part IV:

4.1 With reference to Paragraph 6 in the existing guidelines and procedures, do you agree the power of the President / Vice-Chancellor to set up a CTA can only be used on two occasions, either (a) acting upon a CoE recommendation or (b) under exceptional circumstances with the presence of adequate evidences in support of such action?

4.2 Do you think procedural justice will be best served by giving the CTA new powers (a) to fix meeting(s) regardless of availability of witnesses, (b) to exclude "personal opinions" from witness statements, and (c) to make decisions "as the CTA may deem fit"?

4.3 The existing guidelines and procedures exclude colleagues who are qualified for the practice of law from providing advice and moral support for the staff concerned. Moreover, legal representation is not permitted. Do you agree to such restrictions?

To be continued.....