

ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)

BETWEEN:

**DR. CHRIS BART, DR. DEVASHISH PUJARI, DR. WILLIAM RICHARDSON,
DR. JOSE ROSE, DR. SOURAV RAY, DR. GEORGE STEINER AND
DR. WAYNE TAYLOR**

Applicants

-and-

**MCMASTER UNIVERSITY, THE BOARD SENATE HEARING PANEL FOR SEXUAL
HARASSMENT/ANTI-DISCRIMINATION UNDER THE MCMASTER UNIVERSITY
ANTI-DISCRIMINATION POLICY, THE SENIOR ADMINISTRATOR AT
MCMASTER UNIVERSITY AND CERTAIN UNNAMED INDIVIDUALS AT
MCMASTER UNIVERSITY**

Respondents

AFFIDAVIT OF DR. RAFAEL KLEIMAN
(sworn February 7, 2015)

**I, RAFAEL KLEIMAN, of the City of Hamilton, in the Province of Ontario, MAKE
OATH AND SAY:**

Background & Involvement

1. I am tenured Professor at McMaster University (the "University") in the Department of Engineering Physics, the President and former Vice-President of the McMaster University Faculty Association ("MUFA"), a member of the MUFA Joint-Standing, Nominating, and Pension Committees and a former member of the Remuneration Committee, and as such have knowledge of the matters hereinafter deposed.

The Role of Associate Dean

A. Term & Responsibilities

2. Pursuant to the Terms of Reference for Associate Deans, effective March 27, 2002 (“Terms of Reference”), attached hereto as Exhibit “A”, the term of office for an Associate Dean of a Faculty or of Graduate Studies is normally five years.
3. Also pursuant to the Terms of Reference, an Associate Dean is accountable to the Dean, and is tasked with administrative responsibilities including: providing leadership and coordination of appropriate academic programs; such other duties as delegated by the Dean; and in the Dean’s absence will represent the Dean on various bodies, committees, or councils on which the Dean serves as *ex officio*.

B. Stipend

4. The administrative role of Associate Dean carries a fixed stipend of \$9,000.00.

C. Course Relief

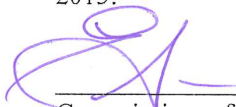
5. The Protocol on Faculty Recovery for Teaching Release, which is available at:

http://www.mcmaster.ca/vpacademic/documents/Protocol_on_Faculty_Recovery_for_Teaching_Release-Nove2014.pdf

and is attached hereto as Exhibit “B” provides that nominal teaching loads are nine units for tenure-track faculty in Engineering, Science and the Faculty of Health Science, and twelve units for tenure track faculty in Business, Humanities, and Social Science.

6. As the administrative role of Associate Dean entails additional responsibilities to the University, teaching relief is also often granted.
7. The teaching relief that may be afforded varies from faculty to faculty, and would be negotiated between the individual Associate Dean and the faculty Dean.
8. I make this affidavit in support of the Applicants' Notice of Application for Judicial Review and for no other or improper purpose

SWORN BEFORE ME at the City of
HAMILTON, in the Province of
Ontario, on February 2nd
2015.



Commissioner for Taking Affidavits



RAFAEL KLEIMAN

EXHIBIT "A"

This is **Exhibit "A"** to the Affidavit of **Dr. Rafael Kleiman**, sworn before me this 2nd day of February, 2015



Elliot P. Saccucci

*A Commissioner etc.,
Province of Ontario*

Protocol on Faculty Recovery for Teaching Release

Office of the Provost – November, 2014

This set of protocols addresses the funding of teaching release due to a number of scenarios including the assignment of academic *teaching* and *administrative* duties outside of a Faculty affiliation. It also addresses requests for reduced teaching loads related to teaching buyout funded by a *research* award. They are to be used as guidelines with the Responsible Executive (defined in the following table) having the discretion to alter these arrangements in special circumstances.

Scenario	Faculty member fully released from teaching in order to assume university administrative appointment (AVP or higher)	Faculty member released from some teaching in order to assume a leadership role <u>outside</u> their Faculty	Faculty Member buying out part of their teaching due to a research award	Faculty member assigned teaching responsibilities in another Faculty/Area or Interdisciplinary Program
Purpose of Release:	Administrative	Administrative	Research	Teaching
Protocol Scenario:	<u>Scenario 1</u>	<u>Scenario 2</u>	<u>Scenario 3</u>	<u>Scenario 4</u>
Compensation to home Faculty:	Full salary & benefits	Nominal value of sessional/ overload cost: \$15,000 per 3 unit course	Full salary & benefits prorated by % of teaching units relieved	Full salary & benefits prorated by % of teaching units relieved
Source of Funds	Senior Admin Pool	Support unit	External Research Funding	Corresponding Faculty or Interdisciplinary program
Responsible Executive	Provost	Provost	Dean	Deans of affected Faculties

Scenario 1. Senior University Administrators

This protocol applies to Senior Administrators at the AVP level or above. Senior administrative positions at the University are often filled internally by faculty members. The professorial salary continues to be paid by the faculty member's department. However in October 2009 the Budget Committee created the Senior Administrators Pool. This pool serves to reimburse Faculties for the full professorial salary and benefit costs of these senior administrative faculty members while they serve in these roles. The reimbursement to the Faculty is done by journal entries each year.

Scenario 2. Teaching Release for Administrative Appointments

This protocol applies to teaching release associated with administrative assignments, below an AVP level, that take place outside a Faculty affiliation. Such assignments might include administrative roles in support units, chairs of committees or groups (e.g. Director of the

Network of Campus-Community Partnerships) and to directors of interdisciplinary programs. However, should a program director appointed to an Interdisciplinary program also teach in the program, Scenario 4 would likely apply. Appointments involving MIETL, depending on the nature of the contract and commitment involved, could be considered under this scenario or Scenario 4.

The units of teaching release for these appointments outside the Faculty should be negotiated individually and reflect the time commitment required in the Administrative role. Faculties should be compensated for released faculty members at the rate of \$15,000 per 3 unit course.

Scenario 3. Teaching Buyout from Research Awards

There are certain research awards that come with a requirement for reduced teaching load. Provided that the Dean is made aware of and agrees to such commitments at the time of application the university will honour all of these for our recipients.

For a faculty member to "buy-out" of teaching requires the individual to have funds that have come through the university in a research grant or contract that may be expended in this manner. Discretionary funds with an endowed chair might also be used this way. In either case the buy-out of teaching requires prior agreement of the Dean. Personal funds cannot be used but a faculty member can choose to reduce their workload (and compensation) according to SPS23 - *Faculty Reduced Workload Policy*. Teaching buy-outs for research should be of a fixed duration and never more than five years without a re-evaluation by the Dean.

The cost of teaching load reduction will be calculated in a manner consistent with SPS 23 *Faculty Reduced Workload Policy*. Thus, the cost of teaching buy-out will be calculated by the formula: $Cost = S \times N/M$, where S is the annual compensation of the individual, N is the requested course reduction in units and M is the normal course load in units as approved by the Dean.

Teaching buy-out must cover benefits as well as salary. Currently, we do not require a loaded portion of pension payments as well as current benefits, but we reserve the right to introduce this requirement in the future.

Scenario 4. Recovery for Faculty members teaching outside the Faculty

There are many programs across the University that utilize the teaching resources of other Faculties to teach courses listed in their own Faculty, or more often to teach in their own interdisciplinary program. Historically, each Faculty has negotiated its own compensation for "loaning out" the faculty member, or at times faculty members are paid on overload directly from the cross faculty or program.

In order to provide a unified approach, it is recommended that Faculties utilize the following methodology to compensate other Faculties who provide members to teach. The full cost of a Faculty member's time, as opposed to just the amount of time available for teaching, should be compensated. This is in line with a cross appointment amongst Faculties, where the full salary is split, as well as, the Teaching buyout guidelines to Faculty members in Scenario 3. The

Protocol - Reimbursement to Home Faculty for Faculty member teaching release

approach is therefore similar to Scenario 3, except for the use of an average salary for ease of administration. The expectation is that faculty members provided to a program on this basis will have the capacity to engage with students outside the classroom (project supervision, advising etc.) and to participate in program administration.

Methodology: The recovery provided to a Faculty should be calculated by the formula:

$$\text{Cost} = S \times N/M$$

where **S** is the average annual compensation including benefits for a specified rank within a Faculty, **N** is the requested course units and **M** is the nominal course load in units.

For ease and consistency of negotiation the following standards are defined below:

Table 1 – 2013/14 Average Faculty Salaries by Rank

Rank	Faculty					
	Business	Engineering	Humanities	Science	Social Science	FHS
Professor	\$195,000	\$169,000	\$168,000	\$164,000	\$169,000	\$179,000
Associate Professor	\$161,000	\$142,000	\$130,000	\$133,000	\$131,000	\$145,000
Assistant Professor/CLA	\$138,000	\$100,000	\$86,000	\$97,000	\$92,000	\$109,000

*Fringe Benefits 28%

Table 2 – Nominal Loads by Faculty

Nominal Teaching Load	Tenure Track	Teaching Track/CLA
Engineering, Science and FHS	9	18
Business, Humanities, and Social Science	12	21

*Actual loads vary by faculty /department.

If this teaching outside the home faculty bumps an individual into overload, the associated payment should be made from the home faculty.

This Scenario is a guideline intended to aid parties in understanding costs of these commitments and to normalize costs of similar commitments. Actual or modified salaries or loads may be used at the discretion and agreement of both parties particularly in anomaly situations.

Occasionally, a program would still obtain teaching resources from Faculties on a more casual basis. This may be because there is a benefit to the Faculty providing the instructor (marketing/piloting a related program), or it is a late-in-the-process one-off decision with no post classroom time requirements. In these cases the reimbursement for these resources could be at a reimbursement rate as described in Scenario 3 or using modified values of above formula.

This document supersedes the following directives:

Protocol - Reimbursement to Home Faculty for Faculty member teaching release

- Protocol for Faculty Members Released to Teach or Appointed to Administrative positions Outside their Faculties - dated 1991 (Original), 2006 (Revised)
- Teaching Buyout guidelines – dated April 2010
- Arts and Science Compensation for Core Teaching Provided by Partner Faculties – dated April 2014

EXHIBIT "B"

This is **Exhibit "B"** to the Affidavit of **Dr. Rafael Kleiman**, sworn before me this 2nd day of February, 2015



Elliot P. Saccucci

*A Commissioner etc.,
Province of Ontario*



Policies, Procedures and Guidelines

Complete Policy Title:

Policy Number (if applicable):

Terms of Reference for Associate Deans

Approved by:

Senate

Board of Governors

Date of Most Recent Approval:

March 13, 2002

March 27, 2002

Date of Original Approval(s):

Supersedes/Amends Policy dated:

Responsible Executive :

Dean of Relevant Faculty or Graduate
Studies

Enquiries:

University Secretariat

DISCLAIMER:

If there is a Discrepancy between this electronic policy and the written copy held by the policy owner, the written copy prevails.

An Associate Dean:

- works with the Dean on behalf of the Faculty or School of Graduate Studies as appropriate, and is accountable to the Dean
- will provide leadership and coordination of appropriate academic programs, activities and other duties¹ as delegated by the Dean
- on occasions acts as the Dean's delegate - specifically, in the absence of the Dean, the Associate Dean will represent the Dean on the various bodies, committees, or councils on which the Dean serves ex officio; should there be more than one Associate Dean then this representation will be assigned by the Dean as the occasion warrants
- will discharge such other duties as may from time to time be assigned by the Dean

Normally, the term of office for an Associate Dean will be five years.

¹ A representative, but not exhaustive, list of possible duties would include alumni affairs, budgeting, enrolment management, fostering and management of research, fundraising, public relations, and strategic planning.

DR. CHRIS BART et al.
Applicants

McMASTER UNIVERSITY et al.
Respondents

Court File No. 210/14

ONTARIO
SUPERIOR COURT OF JUSTICE
(Divisional Court)

Proceeding commenced at TORONTO

AFFIDAVIT OF DR RAFAEL KLEIMAN
(SWORN FEBRUARY ____, 2015)

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