

Judicial Board Policy

Oversight body: Bylaw and Policy Review Committee

Date Passed by Council: January 8, 2018

Date of Next Review: January, 2020

Related policies, bylaws, legislation: Bylaw 2,4,5,6, Committees Policy, Code of Conduct

Definitions

“Member” – an individual who meets the membership criteria as outlined in the bylaws.

“Executive Officer” – A Member who is elected as an Executive Officer of the DSU as per the bylaws.

“Policy” – a rule passed by Council.

“Bylaw” – a binding regulation the DSU is legally obligated to uphold and is registered with the Province.

“Judicial Board” – a standing committee of the DSU in accordance with Committees Policy.

“Code of Conduct” – a policy which outlines expectations and possible violations which Councillors will be held to account for.

“Petitioner” – Council, an Executive Officer, or Committee submitting a request to the Judicial Board.

“Respondent” – A Councillor who is named in a petition to the Judicial Board and asked to make a specific reply to the Judicial Board.

“Designated Representative” – a third party asked to represent the Petitioner or Respondent to

the Judicial Board.

“Witness” – a third party called upon by the Judicial Board to provide evidence or testimony in regards to a petition.

“Intervenor” – a Member who wishes to contribute in a meaningful way to the deliberation of a petition accepted by the Judicial Board.

“Advisory Judgment” – a ruling by the Judicial Board that is not binding but meant to inform the Petitioner.

“Binding Judgment” – a ruling by the Judicial Board that Council cannot dispute and must abide by.

“Hearing” – a meeting of the Judicial Board for the presentation of testimony and an opportunity for the Judicial Board to ask questions.

“Judgment” – a comprehensive written report outlining the petition, ensuing information sources, a detailed description of Judicial Board deliberations, and the final ruling.

Verbal Warning – A verbal conversation with a Councillor detailing the prohibited action/s, the order to cease such action/s, and the consequence of its repetition.

Written Warning – A written record, provided to a Councillor and kept on file, detailing the prohibited action/s, the order to cease such action/s, and the consequence of its repetition.

Suspension – When a Councillor is excused from work for a specific period of time, often without pay but not always, either as a disciplinary measure or pending an investigation into wrongdoing.

Restitution – an order to restore something to its original state or provide equivalent recompense.

Prohibition – an order which precludes a Councillor from participating in DSU activities, programs, or events.

Conduct Probation – an order issued to a Councillor containing specific terms and conditions to be met for the continuation of their role in the DSU.

Scope

The Judicial Board will advise Council, Executives, and Committees at their request. In the event Council submits a request to the Judicial Board for a ruling on the interpretation of policy and/or bylaw, the ruling will be considered binding on Council.

Purpose

This policy serves to clarify the role, procedures, and limitations surrounding Judicial Board operations.

Policy Statement

1. Appointment

1.1 The members of the Judicial Board shall be appointed by Council. Persons wishing to be appointed must be present at the Council meeting when the appointments are made, and answer questions posed to them at that meeting, if any.

1.2 Council shall appoint the Judicial Board in May of each year for the duration of Council's term.

1.2.1 Council shall take into consideration representation of designated equity seeking groups, including, but not limited to, black and other racially visible persons, Indigenous people, persons with disabilities, LGBTQ2S+ people, and women.

1.3 No member of the Judicial Board shall, during their term of office:

1.3.1 be a member of the Council;

1.3.2 sit on any other committee of the Union; or

1.3.3 be employed in any capacity by the Union.

2. Removal

2.1 Should Council find that a Judicial Board member has not met their obligations or violated any of their agreements with the DSU, Council may vote to:

- 2.1.1 issue a verbal warning
- 2.1.2 issue a written warning
- 2.1.3 suspend the Judicial Board member
- 2.1.4 dismiss the Judicial Board member

2.2 A Judicial Board member may only be removed from that appointment by a special resolution of Council.

3. Petition

3.1 Only a Councillor or Chair of a Committee may submit a petition to the Judicial Board.

3.1.1 Should a Member wish to raise a concern regarding Council, the concern shall be raised with the President.

3.1.2 Should a Member wish to raise a concern regarding a Councillor (who is not an Executive Officer), the concern shall be raised with the Chair of Council.

3.1.3 Should a Member wish to raise a concern regarding an Executive Officer, the concern shall be raised with the Chair of the Executive Review Committee.

3.2 A petition for an interpretation of policy or bylaw must be sent to the Chair of the Judicial Board with the following information:

3.2.1 The name/s of the Petitioner and contact information;

3.2.2 The name of the Committee they Chair or their position title;

3.2.3 The name of the policy or bylaw under question;

3.2.4 A brief description of the issue being encountered;

3.3 A petition for an advisory judgment on whether a violation of policy or bylaw by Council has occurred must be sent to the Chair of the Judicial Board with the following information:

3.3.1 The name/s of the Petitioner and contact information;

3.3.2 The name of the Committee they Chair or their position title;

3.3.3 A statement of allegation containing as many facts as possible;

3.3.4 Any supporting material as evidence. This may include:

3.3.4.1 E-mails or other electronic documents;

3.3.4.2 Hard copy documents;

3.3.4.3 Witness names and contact information.

3.4 A petition for an advisory judgment on whether a violation of policy or bylaw by a Councillor has occurred must be sent to the Chair of the Judicial Board with the following information:

3.4.1 The name/s of the Petitioner and contact information;

3.4.2 The name of the Committee they Chair or their position title;

3.4.3 The name of the Councillor being accused of a violation;

3.4.4 A statement of allegation containing as many facts as possible;

3.4.5 Any supporting material as evidence. This may include:

3.4.5.1 E-mails or other electronic documents;

3.4.5.2 Hard copy documents;

3.4.5.3 Witness names and contact information.

4. Preliminary Proceedings

4.1 When a petition is received by the Chair of the Judicial Board, they will convene the Judicial Board within one week where the Judicial Board will determine if the petition is valid.

4.2 Should the petition be found invalid and be rejected, the Judicial Board will compose a response to the Petitioner specifying its reasons no later than one week following the decision.

4.3 Should the petition be found valid and be accepted, the Chair will inform the Petitioner and may request additional information.

4.4 In the case of a petition involving the actions of a Councillor or Council as a whole, the Respondent will be informed of the petition's acceptance and asked for a response to the

allegations against them. Their response may include any of the same supporting materials listed in 3.4.5.

4.5 In the case of an accused Councillor, they have the right to know the Petitioner's name, the names of any witnesses, and what supporting materials have been provided.

4.5.1 Should a witness feel it would be unsafe for their name to become known to the Respondent, they may request special accommodation in having their name kept confidential by e-mailing the Chair of the Judicial Board.

4.5.1.1 The Chair of the Judicial Board will inform the witness of the Judicial Boards decision whether to accept their request or reject it prior to interviewing or taking any witness statement.

5. Hearing

5.1 Upon being asked for a binding authoritative judgment or advisory opinion, or upon receiving an appeal pursuant to section 12 hereof, the Judicial Board shall, where reasonably possible, hold a hearing within two weeks of receiving the request or appeal.

5.2 In the case of a public hearing, the DSU will post a notice to its social media and website specifying the date, time, and location of the hearing along with a summary of the accepted petition provided by the Judicial Board Chair.

5.3 Those Members wishing to be an Intervenor will provide a statement to the Judicial Board Chair indicating their wish to present at the public hearing and how they feel they will be contributing to the deliberations in a meaningful way.

5.2 The Petitioner and/or the Respondent are permitted to have a Designated Representative appear and speak on their behalf.

5.3 The Petitioner and any Respondent will be provided a five minute allotment at the start of a hearing to present their arguments after which they can be invited by a Judicial Board member to speak on a question.

5.4 The Judicial Board may determine in what form it will accept intervenor contributions.

5.5 All hearings shall be held in public, except where the principles of natural justice require that a hearing, or part thereof, be held in camera or where sensitive information will be discussed which if made public could be present a risk to the Union.

6. Binding Authoritative Judgments

6.1 The Judicial Board will make every effort to provide a judgment, with accompanying written reasons, within one month of having accepted the petition.

6.2 Decisions of the Judicial Board shall be determined by a majority vote.

6.2 The Judicial Board may only make a binding authoritative judgement on the correct interpretation of the Act of Incorporation, By-Laws, and/or the Policies of the Union at the request of Council, made by special resolution at a meeting thereof.

6.3 In making a binding authoritative judgement on the correct interpretation of the Act of Incorporation, By-Laws, and/or the Policies of the Union the Judicial Board may impose an appropriate sanction where an individual, committee or group has failed to comply with the By-laws or Regulations, and such sanction shall be entirely in the discretion of the Judicial Board, which shall at all times in determining such a sanction bear in mind the principles of proportionality.

6.4 A binding authoritative judgement of the Judicial Board is final and shall bind the Council and the Union, and not be subject to any appeal.

6.5 The judgment will be e-mailed to the Petitioner, the Respondent (when relevant), and the General Manager.

7. Advisory Opinions

7.1 The Judicial Board will make every effort to provide a judgment, with accompanying written reasons, within one month of having accepted the petition.

7.2 Decisions of the Judicial Board shall be determined by a majority vote.

7.3 The Judicial Board may give an advisory opinion on the correct interpretation of the Act of Incorporation, the By-Laws, and/or the Policies of the Union where:

7.3.1 Council by a simple majority of those present at a meeting refer an issue to the Judicial Board for that purpose;

7.3.2 An Executive Officer refers an issue to the Judicial Board for that purpose;

7.3.3 Any committee of the Union requests an advisory opinion of the Judicial Board; or

7.3.4 Any Society votes at general meeting to request an advisory opinion of the Judicial Board.

7.4 The Judicial Board, following the making of an advisory opinion, shall, upon request, advise Council as to an appropriate sanction where an individual, committee or group has failed to conform with the Act of Incorporation, the By-Laws, and/or the Policies of the Union, but the imposition of any such recommended sanction shall be entirely at the discretion of Council.

8. Disciplinary Actions

8.1 The Judicial Board can recommend the following disciplinary actions to Council where they deem it appropriate:

8.1.1 Verbal warning

8.1.2 Written warning

8.1.3 Suspension

8.1.4 Restitution

8.1.5 Prohibition

8.1.6 Conduct Probation

8.1.7 A Councillor's removal from office

8.1.8 Any other disciplinary action that the Judicial Board sees fit, which prioritizes restorative justice principles and culturally-sensitive dispute resolution.

9. Non-Disciplinary Actions

9.1 The Judicial Board possesses the authority to temporarily suspend an individual Respondent should they find a potential for continued serious harm to the organization or another individual pending the results of their inquiry. A temporary suspension cannot exceed one week.

10. Conflict of Interest

10.1 In recognizing that relationships may exist between students in many forms, from romantic partnerships to friendships, and from colleagues at work to fellow students in class, Judicial Board members are expected to conduct themselves professionally and without bias. As such, Judicial Board members will self-identify where a relationship is sufficiently close to result in a potential conflict and to recuse themselves by notifying the Chair of Council.

10.2 Any Judicial Board member who is a party to, or has a material interest in, a contract or transaction or proposed contract or transaction with the DSU for which a judgment could have affect, will self-identify a potential conflict and recuse themselves by notifying the Chair of Council.

10.3 Should a Petitioner or accused feel a Judicial Board member has an undeclared conflict of interest, they should bring their concerns to the attention of the Chair of Council who will render a decision as to whether that Judicial Board member must recuse themselves or not.

11. Confidentiality

11.1 In certain scenarios, the Judicial Board will be compelled to break confidentiality. Such scenarios may include, but are not limited to:

11.1.1 Becoming aware of the potential for harm to take place to an individual or group in the future;

11.1.2 Becoming aware of information pertaining to the abuse of a minor;

11.1.3 A requirement to disclose information as a result of a legal proceeding, such as in response to a request or demand for information from the courts.

11.2 Notwithstanding the need for confidentiality, it may be necessary for Judicial Board members to discuss details of a petition with certain individuals, including but not limited to DSU legal counsel.

11.2.1 In the event the Judicial Board deems it necessary to consult with a third party, the Petitioner and, when relevant, the Respondent will be informed by e-mail prior to any disclosure of information and given 24 hours to protest the disclosure. The Judicial Board retains the right to proceed if it deems the protest to be insufficient.

11.3 All records, including any recordings and notes, will be kept for a minimum of one year after a judgment has been issued. These records will only be accessible to the General Manager and Judicial Board members and be kept in the office of the General Manager.

12. Election Appeals

12.1 The Judicial Board shall perform the function of an elections appeals committee, and in so doing shall have the authority to uphold, vary or set aside any decision of the Elections Committee properly subject to an appeal before the Judicial Board.

12.2 Decisions of the Elections Committee properly subject to an appeal before the Judicial Board shall only include decisions which have the effect of disqualifying or otherwise imposing some sanction on a candidate for election to any position of the Union, or any decision relating to any plebiscite or referendum.