

# The Students' Union, The University of Calgary

## The Judicial Bylaw

**Approved SLC Meeting 13/64, October 10, 2006.**

Whereas section 95 of the Post-Secondary Learning Act, S.A. 2003, c. P-19.5, authorizes the Students' Legislative Council to develop and enforce a system of student law.

**NOW THEREFORE** the Students' Legislative Council enacts as follows:

**1** In this bylaw,

- (a) "Active Member" means a student who qualifies as a member of the Students' Union pursuant to section 3 of the Governance bylaw.
- (b) "Appeal" means a request made to the Tribunal chair for the Tribunal to hear a matter decided by the Review Board as set out in section 7 of this bylaw.
- (c) "Application" means a request by the SLC, SAA, the Executive Cabinet, or an Active Member for the Review Board to hear and decide on matters within its jurisdiction as described in section 5 of this bylaw.
- (d) "Review Board Chair" means the person appointed in accordance with section 2(a) of this bylaw.
- (e) "Constitution" means The Students' Union, The University of Calgary Constitution passed under section 93 of the Post-Secondary Learning Act.
- (f) "General Rules of Procedure" means the procedural rules of the Review Board and Tribunal established by SLC procedure and section 24 of this bylaw.
- (g) "hearing" means all meetings and other proceedings required for the Review Board or Tribunal to hear and decide a matter placed before them in accordance with this bylaw;
- (h) "Non-student Member" means a member of the Tribunal or Review Board who is not an Active Member;
- (i) "Regulation" means any SLC, SAA, Commission or Executive Cabinet Procedure or SLC resolution of a legislative nature made or approved under the authority of a bylaw.
- (j) "Review Board" means the Students' Union Review Board, The University of Calgary, established in article VIII of the Constitution;

(k) “Review Board Member” means a person appointed to the Review Board as Chair or member in accordance with section 2 of this bylaw;

(l) “SAA” means the Student Academic Assembly of the Students’ Union established by section 55(1) of the Governance bylaw.

(m) “SLC” means the Students’ Legislative Council of The Students’ Union established by Article VI section A of the Constitution.

(n) “Standing Nominating Committee” means the committee established by the SLC for the purpose of nominating or appointing individuals to various Students’ Union boards and committees.

(o) “Student Member” means a member of the Review Board or Tribunal who is an Active Member;

(p) “The Students’ Union” means The Students’ Union, The University of Calgary established by section 93 of the Post-Secondary Learning Act.

(q) “Tribunal” means the Students’ Tribunal, The University of Calgary, established in article VIII of the Constitution;

(r) “Tribunal Member” means a person appointed to the Tribunal as Chair or member in accordance with section 8 of this bylaw;

(s) “Tribunal Panel” means a panel of the Tribunal with all the powers, duties and functions of the Tribunal, established to hear an Appeal to the Tribunal.

(t) Tribunal Chair means the person appointed in accordance with section 8(a) of this bylaw.

(u) “reasonable grounds” means a bona fide belief in a serious possibility based on credible evidence and discernable facts that substantiate this.

### **Part 1 – The Students’ Union Review Board**

**2** The Review Board, established by article VIII of the Constitution, consists of 9 persons appointed by the SLC from a list of nominees provided by the Standing Nominating Committee, of whom

- (a) 1 must be a Student Member, who is the Review Board Chair,
- (b) 4 must be Student Members,
- (c) 2 must be Non-student Members, and
- (d) 2 may be either Student Members or Non-student Members.

**3(1)** Five members, 1 or more of whom must be the Chair or an acting Chair, and 1 of whom must be a Non-student Member, must be present at the Review Board hearing to form Quorum.

**3(2)** If a hearing requires more than 1 meeting to determine the outcome of a particular matter, the same or fewer members of the Review Board must be present at all additional meetings. Quorum must still be met for additional meetings.

**4** The Review Board is responsible for

- (a) promoting a system of student discipline by which offenses in breach of the Constitution, bylaws, and Regulations committed by members of The Students' Union, against members of The Students' Union or against The Students' Union itself may be adjudged;
- (b) enforcing and interpreting the Constitution, bylaws, and Regulations;
- (c) carrying out such other responsibilities as the SLC may assign to the Review Board from time to time.

**5(1)** The Review Board has the jurisdiction and power to interpret and enforce the Constitution, bylaws, and Regulations of The Students' Union.

**5(2)** The Review Board's authority includes, without restricting the generality of subsection (1), the jurisdiction and power to

- (a) hear and decide questions
  - (i) to determine if the Constitution is consistent or complies with sections 93 and 95 of the Post-Secondary Learning Act.
  - (ii) on the validity of bylaws, and Regulations referred to the Review Board by the SLC, the SAA, the Executive Cabinet, or the President;
- (b) hear and decide Applications by the SLC, the SAA the Executive Cabinet, the President, or an Active Member pertaining to
  - (i) the interpretation of the Constitution,
  - (ii) the interpretation and validity of the bylaws and Regulations of The Students' Union, or
  - (iii) the violation of the Constitution, bylaws, and Regulations by any person, group, club, society, incorporated or unincorporated body, or any other entity;
- (c) impose sanctions for the violation of the Constitution, bylaws, and Regulations by Active Members, Sanctioned Clubs, Sanctioned Fraternities, or any other person or entity created or governed by the bylaws of The Students' Union;
- (d) hear and decide Applications for the disqualification and removal from office of members of the SLC or the SAA as provided in the Governance bylaw;
- (e) hear and recommend a course of action to the SLC on Applications to terminate the membership of a Students' Union member provided by section 5 of the Governance bylaw.
- (f) carry out any other such matters as the bylaws may provide.

**(3)** The Review Board, unless the Constitution or a bylaw states otherwise, has the power to impose the following sanctions for violations of the Constitution, bylaws, and Regulations

- (a) censure;
- (b) suspension of any or all privileges of The Students' Union for either a fixed or an indefinite period of time;
- (c) other sanctions as the Constitution or bylaws may provide.

**(4)** All Applications must be made in accordance with the General Rules of Procedure.

**(5)** The Review Board shall hear all Applications permitted by bylaw made by Active Members, the SLC, the SAA, the Executive Cabinet, or the President, and all questions referred to the Review Board by the SLC, the SAA, the Executive Cabinet, or the President.

**6** A decision of the Review Board on Applications or references to the Review Board comes into effect

- (a) if the decision, finding, or order is not appealed, at the end of the Appeal period, or
- (b) if the decision, finding, or order is appealed and it is upheld by the Tribunal, at the time The Students' Union receives the Tribunal's written decision.

**7** Unless a bylaw explicitly states that the decision of the Review Board is final, any party to a review board hearing may appeal a decision, a finding or an order of the Review Board to the Tribunal in accordance with section 14 of this bylaw.

## **Part 2 – The Students' Tribunal**

**8** The Tribunal, established by Article VIII of the Constitution, consists of a minimum of 5 persons appointed by the SLC from a list of nominees provided by the Standing Nominating Committee, of whom

- (a) 1 must be a Non-student Member, who is the Tribunal Chair,
- (b) 1 or more must be a Non-student member, and
- (c) 1 or more must be a Student Member.

**9(1)** If the Tribunal Chair, or Acting Chair, determines that there are reasonable grounds for Appeal in a given case provided in section 15 of this bylaw, the Chair shall designate 1 Student Member and 1 Non-Student Member to sit with the Chair as a Tribunal panel.

**(2)** A Tribunal Panel may exercise and perform all the powers and duties of the Tribunal and a reference to the Tribunal in this bylaw or any other bylaw is also a reference to a Tribunal Panel.

**10** The Tribunal Chair and both the Tribunal Members appointed to a Tribunal Panel must be present at a meeting of the Tribunal to form a Quorum.

**11(1)** The Tribunal is responsible for hearing and determining Appeals from decisions, findings, and orders of the Review Board.

(2) Appeals to the Tribunal shall be conducted as new hearings.

(3) The decisions of the Tribunal shall be final.

**12(1)** The Tribunal shall hear Appeals that have been referred by the Tribunal Chair and, in hearing such Appeals, the Tribunal has the same powers as the Review Board.

(2) Unless the Constitution or a bylaw states otherwise, the Tribunal has the power to confirm, reverse or amend any decision, finding, or order made by the Review Board.

**13** The Tribunal Chair, or acting Chair, shall

- (a) have members of a Tribunal Panel confirm they are qualified to serve on the Tribunal Panel prior to any hearing;
- (b) review Appeals to determine if there are grounds for an Appeal; and
- (c) where the Tribunal Chair in his or her sole discretion determines there are reasonable grounds for Appeal as provided in section 15, the Chair will convene a Tribunal Panel on an ad hoc basis to hear the Appeal.

**14(1)** The party who seeks an Appeal from any decision, finding, or order of the Review Board shall submit to the Tribunal Chair a request to Appeal within 5 SU business days of when the written decision, finding, or order of the Review Board is made public.

(2) A request for an Appeal must be made in accordance with the General Rules of Procedure, and must include

- (a) a copy of the application made to the Review Board;
- (b) a copy of the decision, finding, or order being appealed,
- (c) the grounds for Appeal, and
- (d) all supporting evidence or documentation, if any.

**15** The grounds for Appeal include

- (a) alleged unfairness,
- (b) alleged error by the Review Board in interpreting or enforcing the Constitution, bylaws, or Regulations, or
- (c) alleged bias on the part of the Review Board or any of its members.

### **Part 3 – Membership of the Review Board and Tribunal**

**16** If the SLC is not prepared to appoint any of the Standing Nominating Committee's nominees for Review Board Chair, Review Board membership, Tribunal Chair, or Tribunal membership, the SLC can request the Standing Nominating Committee to provide additional nominees.

**17(1)** If the Review Board or the Tribunal has insufficient members to form a quorum for a hearing due to vacancies or conflict of interest, the SLC shall, as soon as possible after

the President is notified, appoint sufficient qualified persons as interim members to form a quorum for the hearing.

**(2)** Interim members appointed under subsection (1) remain members of the Review Board or the Tribunal until the parties to the hearing receive the Review Board or the Tribunal's written decision.

**(3)** In the case of a vacancy in the position of Review Board or Tribunal Chair, the SLC shall appoint an acting Chair from among the remaining Review Board or Tribunal members to assume the duties of the Chair until a replacement is appointed.

**(4)** If the Review Board or Tribunal Chair is unable to assume the Chair's duties for a hearing due to a conflict of interest, the Review Board or the Tribunal members shall choose an acting Chair from among themselves to assume the duties of Chair for that hearing.

**(5)** Acting chairs appointed under subsection (3) or (4) have all the powers and duties of the Review Board Chair or Tribunal Chair as the case may be.

**18(1)** A Review Board or Tribunal Member holds office for 2 years and may be reappointed.

**(2)** A Review Board or Tribunal Member may be removed from office before their term expires if they fail to meet any of the qualifications established in section 19 of this bylaw

**19** A person is not qualified to become or remain a member of the Review Board or the Tribunal if that person

- (a) is appointed as a Student Member, ceases to be an Active Member;
- (b) is appointed as a Non-student member and
  - (i) ceases to be a Non-student Member, or
  - (ii) is enrolled or becomes enrolled in any course at The University of Calgary with the exception of those programs offered by Continuing Education;
- (c) is a member of the SLC, the SAA or General Faculties Council of The University of Calgary;
- (d) is an appointee of the SLC which bars the appointee from being a member of the Review Board or Tribunal.
- (e) is a member of any SU committee that bars membership on the Review Board or Tribunal in the Terms of Reference of the committee.
- (f) is a member of the board or executive or a full-time employee of The Gauntlet Publications Society, New University Television Society (NUTV), or The University of Calgary Students' Radio Society (CJSW);
- (g) is a full-time, regular part-time, or contract employee of The Students' Union;
- (h) is an executive member of a club sanctioned by The Students' Union in accordance with section 19(2) of the Clubs bylaw.

(i) has been a member of the SLC, SAA, or the Executive Cabinet within the past year.

(j) is deemed by the SLC to be an unsuitable candidate for membership on the Review Board, or the Tribunal having regard to the duties and responsibilities of the Review Board or the Tribunal as the case may be;

(k) absent without authorization from 2 consecutive meetings during the Fall and Winter semester.

(l) is guilty of violating the Constitution, bylaws, or Regulations;

(m) has a conflict of interest in any matter before the Review Board or the Tribunal as defined in Part 1, Division 6 of the Governance bylaw and does not declare their conflict of interest and subsequently disqualify themselves from discussion and voting on the matter;

(n) takes an active role during any Students' Union election, referendum or plebiscite within the past year other than casting a vote.

(o) is the CRO.

**20(1)** A Review Board or Tribunal Member other than the Review Board or Tribunal Chair may resign by giving written notice to the appropriate Chair.

**(2)** The Review Board Chair or Tribunal Chair may only resign by giving signed written notice, attested to by two witnesses, to the President of the Students' Union.

**(3)** If a vacancy occurs in the membership of the Review Board or Tribunal, the SLC shall appoint a member under sections 2, 8, or 17 of this bylaw, as the case requires.

**(3)** If a vacancy occurs in the membership of the Review Board or Tribunal, it must be filled in the same way as the position was last filled.

**21(1)** If a person is disqualified from remaining a member of the Review Board or the Tribunal, the person must immediately resign.

**(2)** If the person does not resign

(a) if the person who refuses to resign is the Chair, the Review Board or Tribunal by resolution

(b) if the person who refuses to resign is a member, the Chair

may request the SLC for a resolution declaring the member disqualified and the position on the Review Board or the Tribunal vacant.

**(3)** Upon hearing a request under subsection (2) by oral or written evidence, as it requires, the SLC may

(a) make an order declaring the person to be disqualified and the seat on the Review Board or the Tribunal to be vacant,

(b) declare the person to be qualified to remain a member of the Review Board or the Tribunal, or

(c) if the SLC finds that the person is disqualified, dismiss the request if the SLC is of the opinion that the disqualification arose inadvertently or by reason of a genuine error in judgment made in good faith.

(4) The members of the Review Board and the Tribunal can only be disqualified through this section, and are not personally liable for anything done or omitted to be done in good faith in the exercise or purported exercise of a power of the Review Board or Tribunal.

22 A person may not be a Review Board Member and a Tribunal Member at the same time.

#### **Part 4 – Principles of Students’ Union Justice**

23 Any hearing by the Review Board, the Tribunal, or the Tribunal Chair shall be conducted on the principle that procedural fairness shall be applied to all parties in all procedures

24 Procedural fairness includes, but is not limited to, the following

- (a) the decision maker will act in good faith and in an impartial and unbiased manner and will disclose any conflicts of interest prior to commencement of any proceedings;
- (b) hearings will be commenced and conducted as expeditiously as possible;
- (c) all parties to hearings
  - (i) will be given notice of the hearing which notice will include the scheduled time and place of the hearing, the composition of the hearing body and any subsequent changes made to the composition of the hearing body;
  - (ii) will have the opportunity to appear and be heard orally;
  - (iii) will be given an opportunity to present all relevant evidence;
  - (iv) will be advised of any evidence considered by the Review Board, the Tribunal, or the Tribunal Chair, as the case may be;
  - (v) may be represented by counsel or a personal advisor;
  - (vi) will be allowed to cross-examine their opponent if necessary to effectively present their case; or where the case involves issues of fact;
  - (vii) will be entitled to present a summary of their case at the conclusion of the hearing;
  - (viii) will be given written reasons for a decision, finding, or order;
  - (ix) are entitled to a copy of the general rules of procedure of the Review Board and the Tribunal;
  - (x) have a right to request the Tribunal Chair for the right to appeal a decision, finding, or order of the Review Board;
- (d) a person being judged has the right to a written notice of the charge against that person, outlining the nature of the charge and who is making the charge and have reasonable time to prepare a defence;
- (e) no member may sit as a member of the Tribunal in respect of any matter in which that person has previously sat as a member of the Review Board.

**25(1)** If the applicant or the appellant does not appear in person for a hearing, the Review Board or the Tribunal, as the case may be, may proceed on the basis of the materials and persons before them.

**(2)** If the Review Board or Tribunal proceed with a hearing under subsection (1), and an applicant or appellant subsequently proves to the Review Board or the Tribunal Chair's satisfaction that the failure to appear was through no fault of their own or due to errors made in good faith, the Review Board or the Tribunal Chair may, in its sole discretion, re-hold the hearing on another date.

**26(1)** In the case of a group hearing, the Review Board, the Tribunal, or the Tribunal Chair shall ask for only a single spokesperson for the group to appear before the Review Board, the Tribunal, or the Tribunal Chair.

**(2)** Notwithstanding subsection (1), the Review Board, the Tribunal, or the Tribunal Chair may interview others at the hearing if the interviews could provide helpful information.

**27** No proceeding or decision of the Review Board, Tribunal, or Tribunal Chair is invalid because of

- (a) a defect of form,
- (b) a technical irregularity, or
- (c) informality, if there has been substantial compliance with the requirements of this bylaw and the General Rules of Procedure.

**28** The SLC may from time to time enact General Rules of Procedure consistent with the principles of Students' Union justice as set out in this bylaw that will be binding on the Review Board, the Tribunal, and the Tribunal Chair.

## **Part 5 – Enforcement**

**29** Enforcement of decisions, findings, and orders made by the Review Board and the Tribunal shall be carried out by The Students' Union.

## **Part 6 – Questions on Students' Union Legislation**

**30(1)** The Review Board and the Tribunal Chairs shall notify the Executive Cabinet, in writing, of any Applications or Appeals before the Tribunal or the Review Board respecting the interpretation and consistency of the Constitution with sections 93 and 95 of the Post-Secondary Learning Act or the validity of the bylaws or Regulations.

**(2)** The Executive Cabinet or their designate may place before the Review Board or the Tribunal any evidence in support of the Constitution, or the validity of the bylaws or Regulations as it considers appropriate.