

## Judicial Policy

G-03

LONG TITLE	A Policy Respecting the Judicial Branch of the Association	DATE OF ENACTMENT	January 2023
		LAST AMENDED	October 14 2023
REFERENCE No.	G-03	NEXT REVIEW	June 2025
CATEGORY	Governance	COMPETENT CHAMBER	Bicameral

### MANDATE

This Policy shall govern the free and independent judicial institutions of the Association, their composition, rules of order, and authority. This Policy shall be reviewed every two years by Council and the Board.

### INTERPRETATION

1 This Policy may be called the *Judicial Policy*.

2 In this Policy, the following definitions shall apply, and any other unclear terms shall have the same meaning as in *Black's Law Dictionary*:

“**appeal**” includes any proceeding to set aside or vary any judgement of the initial decision-making body appealed from;

“**appellant**” means the person or group who initiated the matter before the Tribunal;

“**chair**” or “**tribunal chair**” is hired to serve in this role by the Tribunal Chair Hiring Committee.

The responsibilities of the Tribunal Chair, in addition to their duties as a regular Tribunal Member, include administrative duties, coordinating the other Tribunal Members and making rulings on procedural issues. The Tribunal Chair’s vote on a Judgment is of equal weight to the votes of each Tribunal Member;

“**case**” means any proceeding before the Tribunal. “Tribunal Member” means a voting member of the Tribunal, including the Tribunal Chair;

“**chair**” means the Chair of a tribunal;

“**Chief Returning Officer**” means the person appointed to manage and administer all aspects of CUSA elections;

“**day**” means a calendar day;

“**decision**” means the resolution or ruling of a Tribunal, and the reasons given for such a decision;

“**Intervenor**” or “**Intervening Third-Party**” means a third party who is not an Appellant or a Respondent. For an Intervening Third-Party to be considered to have standing to make submissions by a Panel, they must demonstrate that they or their office would be

materially affected by the outcome of the Case and therefore ought to be heard as part of the hearing;

**“judgement”**, means any judgement, rule, order, decision, decree, or sentence from a lower body; and when used with reference to the Tribunal, includes any judgement or order from the Tribunal;

**“Panel”** means the group of Tribunal Members brought together for the purposes of adjudicating a Case. Panels shall consist of an odd number of ABMs;

**“Panel Chair”** means the Tribunal Member in charge of a Panel. It is the Tribunal Chair if they sit on the panel, otherwise each Panel shall elect from amongst themselves a Panel Chair. The Panel Chair ensures that rules and procedures are followed and deals with administrative issues that may arise during the Case;

**“party”** means the Appellant or Respondent, or an Intervenor;

**“reference case”** means a case referred to the Students’ Tribunal not arising from a dispute or allegation

**“Respondent”** means the person or group whom the complaint was filed against in the matter before the Tribunal;

**“(a) tribunal”** means a judicial body;

**“the Tribunal”** or **“Students’ Tribunal”** means the Judicial Board of the Carleton University Students Association;

**“Tribunal Member”** means a voting member of the Tribunal, including the Tribunal Chair. All tribunal members have equal voting rights;

**“vice-chair”** means the officer of a Tribunal so designated by its members to preside in the absence of the Chair; and

**“witness”** means an individual brought forth by a Party in order to testify in front of the Tribunal.

## **GENERAL PRINCIPLES**

**3** Every tribunal and judicial body of this Association shall operate according to the principles of natural justice, including procedural fairness, proportionality, past precedent, and the purposive school of interpretation.

**4** Every tribunal and judicial body of this Association shall operate, wherever reasonable and applicable to the case considered, according to the principles and decisions of Canadian administrative law.

**5** No one can be a party or advocate for a party before a Tribunal who is not an undergraduate student at Carleton University. A party may represent themselves.

**6** No decisions or orders of a tribunal or judicial body of this Association shall, in truth or perception, override the decisions or orders of the Courts of Canada and Ontario, or the decisions and orders of disciplinary bodies of Carleton University.

**6.1** Every tribunal or judicial body shall, when application for a hearing is made, assess whether the matter of the case is within their jurisdiction as set in Association Policy.

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**6.2.** A tribunal or judicial body shall refuse to consider a case, upon receipt of information that the case heard is outside of their jurisdiction. Such instances include but are not limited to where the matter falls within the purview of University Policy.

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**6.3** If a tribunal declares a case put to it as out of its jurisdiction, it shall refer the case to the appropriate body, including those of this Association or the University, where the case shall be heard without delay.

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## **Part One — The Students' Tribunal**

### **Division I — Organization**

#### **COURT OF FINAL APPEAL**

**7** There is established as the highest judicial authority for the Carleton University Students' Association a body called the Students' Tribunal.

#### **Authority**

**8** The Tribunal shall exist as the body of final appeal for the Association, except where otherwise provided by this Policy, and as an additional court for the better administration of the laws of the Association. All parties to disputes within this Association agree that this Tribunal has the right to arbitrate, and as such, submit to the decision of the Tribunal.

**8.1** The Tribunal has the authority, on grounds analogous to a Commission, to make Regulations for its own administration, attached as Schedules of this *Policy*, provided that they are in accordance with this Policy and any other resolutions of Council. Every inconsistency shall be of no force nor effect to the extent of the contradiction.

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**9** All decisions of the Tribunal are final, binding, and conclusive without question or appeal to any body of this Association, barring a change to the legislation on which the decision rested.

**10** Valid appeals include, but are not limited to, those from

- (a) Chief Returning Officer;
- (b) the Electoral Arbitration Tribunal;
- (c) Council;
- (d) the Board;
- (e) the Clubs Oversight Commission; and

- (f) the Social Media Moderation Commission.
- 11** Appeals are limited to where the body of first instance:
  - (a) makes a mistake of fact;
  - (b) renders a decision that is unreasonable or disproportionate;
  - (c) makes a mistake of law;
  - (d) makes a mistake of both law and fact; or
  - (e) acts in a manner amounting to a miscarriage of justice.
- 12** No appeal is valid that fails to identify an error in judgement or decision of the lower body and merely engages in forum-shopping or dissatisfaction with the decision.
- 13** The Tribunal shall be the court of first instance for:
  - (a) individuals alleged to:
    - (i) violate the Association's *Bylaws*, Policies, or Procedures, except where concerning clubs or elections;
    - (ii) violate any rule, resolution or regulation passed by Council or the Board; or
    - (iii) any behaviour deemed unbecoming to a student-at-large except where otherwise provided in Part Two; and
  - (b) reference questions given to the Tribunal by resolution of Council, the Board, any member of the Executive, or petition of more than 50 students-at-large, including any question on Council, the Board, and legislative interpretation; or
  - (c) at the petition of twenty-five student-at-large, the review of any motion, resolution, or Policy provision approved by Council, the Board, or the Executive Council that is alleged to exist in contravention of the *Bylaws*.

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## **MEMBERS OF THE TRIBUNAL**

- 15** The tribunal shall have seven members, of which
  - (a) four shall be recent graduates of Carleton University currently attending law school who were never Association Executives or senior employees, with preference towards those attending nearby common-law institutions; and
  - (b) three shall be students-at-large who are not themselves Councillors, Directors, Executives, nor voting members on Committees, Commissions, or other Tribunals of this association, with preference towards those who have some experience or education in law and who are not Executives of CUSA-certified clubs.
- 17 (1)** Members of this Tribunal shall serve two-year terms, except in the first year of its formation, where some shall be designated by Council to have their term of service close after one year.
- 17 (2)** Members must remain eligible under s. 9 and no one shall be elected who is not expected to remain eligible.

**17 (3)** Should a vacancy arise for any reason, Council shall appoint a replacement to serve out the remainder of the term for the former member, and the replacement shall be of the same membership type, under s. 15, as the former member.

s. 15, (a) and (b)

**18** There shall be a Chair and Vice-Chair of the Tribunal, where the Chair is a member under s. 15 (a), and the Vice-Chair, a member under s. 15 (b).

s. 15, (a) and (b)

**19** The members of the Tribunal shall be appointed by Council, according to the advice of a nominating committee on the legal knowledge and analytical skills of candidates.

**20** This nominating committee shall be constituted as the Judicial Candidates Investigatory Committee, from whose suggestions Council must appoint the Tribunal members. Specifically:

- (a) The Committee shall refer to Council not less than nine candidates, from whose number Council shall appoint seven members and two alternates; and
- (b) The Committee shall further nominate candidates for both Chair and Vice-Chair of the Tribunal.

**21** This nominating committee shall consist of:

- (a) three Councillors, selected by Council;
- (b) two Directors, selected by the Board;
- (c) the Vice President Internal and Director of Student Development, as non-voting resource members.

**22** Members of the Tribunal may be removed for cause, by either the Chair or the Director of Student Development, following all appropriate human resources measures.

**23** Members of the Tribunal may be dismissed by two-thirds resolution of Council.

### **QUORUM AND PANEL SELECTION**

**24** Quorum is met with a panel of three, five, or all seven members of the Tribunal for any given hearing, which shall constitute a panel of the Tribunal.

**25 (1)** The members of a panel shall be determined by consensus of the full Tribunal.

**26** Notwithstanding s. 25, the Chair of a Tribunal may, if deemed necessary, require a sitting of the full tribunal of all its members.

**27** Panel members shall be present throughout the entire oral arguments, and no member who is absent for a significant part of the hearing may take part in the decision.

**28** If quorum is in any way not found on the date of the hearing but before oral arguments, any other members of the Tribunal may replace the members of the Panel.

**29** If the Tribunal Chair is a member of the panel they shall be the Panel Chair unless they step down to allow another Chair to be elected.

**30** Each panel where the Tribunal Chair is not presiding shall elect amongst themselves a Panel Chair to preside over the Case.

## Division II — General Tribunal Proceedings

### **PARTIES AND ADVOCATES**

**31** The Appellant and Respondent may each designate another student-at-large to represent them as their advocate.

**32** No advocate may be paid for their service, nor may they hold a Juris Doctor (J.D.) or be licenced in any jurisdiction to practice law or provide any legal services.

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**34** The Association itself shall be the Appellant in a case when an individual is alleged to have committed a s. 13 (a) violation

s. 13 (a) paras. (i-iii)

**35** The Association itself shall be, as appropriate, the Appellant or Respondent in a case when an appeal is made from any lower judicial body.

**36** Repealed.

**37** Repealed.

**38** Repealed.

**39** Repealed.

**40 (1)** Repealed.

**40 (2)** Repealed.

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### **CASES**

#### **Record**

**41** Every case shall be recorded as follows: the name of the Appellant, then *versus*, followed by the name of the Respondent, closing with the year in simple brackets.

**42** Every reference case shall be recorded as follows: the word “Reference,” then *re*, followed by the nature of the reference, closing with the year in simple brackets.

#### **Application for First-Instance Hearing**

**43** There shall be a publicly available application form for a request that the Students’ Tribunal hear any case, that specifies an alleged individual responsible for an enumerated breach in the standing law of the Association.

#### **Application for Appeal**

**44** There shall be a publicly available application form for an appeal to the Students’ Tribunal from any inferior or lower body, and any Parties at a lower body shall be made aware of this form at the time the lower decision is rendered. The application form for appeal must be submitted within two weeks of the lower decision being rendered

## **Exception**

**44 (1)** On matters related to the Electoral Code, and subsequent decisions made by the Chief Returning Officer or designate, the application form for appeal shall be submitted within seventy-two hours.

**45** Every hearing shall be publicly accessible to all students-at-large, where the Chair or Panel Chair reserves the right to expel or bar any individual who is disruptive to the proceedings of the Tribunal.

**46** Proceedings shall be initiated when the appropriate appeal form is filed to the Tribunal Chair by the Appellant;

- (a) Petitions on behalf of the Association as a whole may be brought by the member of the Association Executive initiating a matter in conjunction with the President of the Association, or by a majority vote of Council, or a majority vote by the Board
- (b) The Tribunal shall decide within forty-eight (48) hours after receiving the Appellant's application whether it has jurisdiction to hear an action brought before it;
- (c) The Tribunal shall then either:
  - (i) Refuse to hear the appeal, thus informing the Appellant of the failure of the application; or
  - (ii) Give leave to hear the appeal, thus informing the Appellant of the success of the application, informing the Respondent of the existence of a pending Case against them and its basis.

## **Pre-Hearing Considerations**

**47** The Appellant and Responded may submit written submissions prior to the oral hearing, according to a template drafted and made available to the parties, attached as a Schedule to this Policy.

**48** Written submissions from the Appellant, Respondent, and any Intervenors shall be submitted to the Chair of the Tribunal not less than three days before a Hearing.

**49** A list of Witnesses shall be submitted to the Chair of the Tribunal not less than three days before a Hearing, and distributed to the parties not less than one day before the Hearing.

**50** No Hearing may be called to order without seven days' notice to the parties.

**51** A Hearing shall commence with a call to order from the Panel Chair following a good-faith effort to schedule the time for the Hearing with both parties.

## **Division II — Hearings**

### **ORDER OF PROCEEDINGS**

**52** Every Hearing shall deal with a separate case, though Hearings may be held successively.

**53** The Panel may, at their discretion, modify the general oral hearing procedure as they see fit, given that A copy of the procedures shall be provided to the participants no less than three days prior to the hearing.

**54** Opening statements from the appellant and respondent will be heard, in that order. They may be limited to a certain time at the discretion of the Tribunal, but not less than five minutes.

**55** There shall be a time for the parties to enter items into evidence before the Tribunal, according to the general principles of evidence acceptance.

**56** Thereafter, the appellant and respondent may each have the opportunity to call witnesses and ask questions of them, according to the general principles of witness questioning.

**57** Closing statements from the appellant and respondent will be heard, in that order. They may be limited to a certain time at the discretion of the Tribunal, but not less than five minutes.

## **ADDITIONAL PROCEDURAL CONSIDERATIONS**

### **Intervenors**

**58** The Chair of the Tribunal, or a majority of its members, may accept intervening parties to offer a written and/or oral statement before the Tribunal at any Hearing.

**59** Notwithstanding the above, the President of the Association, the Speaker of Council, the Chair of the Board and the University Ombudsperson shall retain the right to offer intervening statements, subject to the same limits for time and form as the above.

**60** Any parties wishing to intervene may submit an application to intervene within three days of receiving notice of a Hearing, and shall be approved not less than three days before the Hearing shall be held.

**61** Applications to intervene shall be made available on the Association website at the same time as a Hearing is approved and announced by the Tribunal.

### **Preliminary Conference**

**62** The Parties to the dispute and members of the Panel may, time permitting, meet in a preliminary conference and discuss informally, including but not limited to:

- (a) arranging an agreement on non-contentious facts of the dispute;
- (b) explanation of hearing procedures; and
- (c) setting a date for the hearing.

### **Independent Arbitrator**



**63** Where, at any point, the Tribunal believes that the case at hand would be better served by the appointment of an independent arbitrator, it may, by majority, resolve so.

**64** The Tribunal Chair shall be responsible for finding persons capable of acting as an arbitrator and should be prepared to do so on short notice.

**65** The Board of Directors, on the recommendation of the Tribunal Chair, shall hire an independent arbitrator agreed upon by the parties to the appeal or, if the parties are unable to agree, as selected by the Tribunal Chair.

**66** The arbitrator shall provide directions for the conduct and determination of the appeal according to their discretion, including the submission of written materials and the convening of an oral hearing, if deemed necessary, and shall establish the applicable time limits for such steps. The arbitrator's decision shall be released to the interested parties, the Committee, and the Executive, where possible, within 10 (ten) days of the arbitrator's appointment.

## **CONFIDENTIALITY**

**67** If a Party or Witness to a case wishes to remain anonymous, they may apply to the Panel Chair adjudicating their Case with reasons for such status before the commencement of the oral Hearing.

**68** Anonymity may be granted if the Panel Chair decides the individual requires protection from slander, libel, or personal attack, or extenuating personal circumstances.

**69 (1)** In Cases where anonymity has been granted, the oral hearing shall be closed to the public and press and the anonymous individual shall only be referred to by their initials, or if their initials are also unduly identifying, by a pseudonym, in the written decision.

**69 (2)** The written judgement shall still be published publicly but with the private information Redacted.

**70 (1)** The Hearing may otherwise be held *in camera* In cases where Confidential Information of the Association is disclosed.

**70 (2)** The written decision shall remain available to current and future Tribunal members for consultation.

**71** No Tribunal Member or Party to a case may disclose information known to the Tribunal as confidential, or make clear and permanent recording of such information except as otherwise approved by the Tribunal.

## **DECISIONS**

### **Written and Oral Decisions**

**72** Judgements by the Tribunal may be rendered orally at the end of a hearing or reserved for release at a time not more than five days after the hearing, with written cause.

**73** Before the rendering of an oral decision, the Tribunal may recess for *in camera* discussion between its members.

**74** Every decision must follow a vote by the members of the Panel. The Panel may vote to vote to allow an appeal, dismiss an appeal, or to give their answer to a reference question.

**75** All Judgements, even if rendered orally, shall be accompanied by a written decision.

**76 (1)** The Panel shall make available to the parties and the public their written decision and reasons not more than five days after the hearing.

**76 (2)** This decision shall clearly express the Panel's judgement, reasons, and subsequent awards, sanctions, orders and recommendations, in a manner and format consistent with Canadian court decisions generally.

**(3)** Sanctions and awards decided by the Student's Tribunal shall include anything that may be legally ordered by this Association, except where the sanctions and awards of the lower body are so limited.

**77** Minority or dissenting opinions may be attached to the majority decision, and published in the same fashion.

#### **Emergency Proceedings**

**78** A two-thirds resolution of the Tribunal may waive the timing and notice requirements in this Policy in order to expedite the adjudicative process, given that doing so does not materially disadvantage any Party or obscure the process from public scrutiny.

**79** During the election period, Tribunal Members shall be on notice that Appeals regarding election penalties may require rapid adjudication.

**80** Applications for a hearing of Elections disputes shall be approved or rejected as soon as possible by the Tribunal so as to not prejudice any candidate.

**81** The Tribunal should be prepared to hear expedited hearings during the Election Period within fifteen hours of the Application made on those disputes.

#### **LEGISLATIVE OVERRIDE**

**82 (1)** Council may expressly declare in a Policy or Bylaw amendment, that the legislation or a provision thereof shall operate notwithstanding a decision rendered by the Students' Tribunal.

**82 (2)** A legislative override approved in this manner must be agreed to by two-thirds of Council.

**82 (3)** A declaration made under subsection (1) shall cease to have effect one year after it comes into force or on such earlier date as may be specified in the declaration.

**82 (4)** Council may re-enact a declaration made under section (1) upon expiration.

**82 (5)** If Council decides to repeal a declaration prior to its expiration, a new declaration shall not be made on the ruling for one year.

**82 (6)** Subsection (3) applies in respect of a re-enactment made under section (4).

**83** No legislative override or action of any individual may obstruct the proceedings of a case under review by any Tribunal, nor may they prevent the Tribunal in any way from engaging with their work.

## **ADMINISTRATION**

### **Records and Precedent**

**84** A record of all written decisions from the Tribunal shall be kept and be made available, with expedience, to the public.

**85** A decision of the Students' Tribunal shall be binding on the Association, including on the lower judicial bodies and cases, and applies as the official interpretation of all legislation unless the legislation is otherwise amended by Council and/or the Board.

**86** Decisions of the Tribunal shall be referenced by the Tribunal in order to adhere to the principle that like cases ought to be treated alike, and different cases, differently.

## **Part Two — Other Judicial Bodies**

### **QUASI-JUDICIAL BODIES**

#### **Clubs Oversight Commission - Lower Court for Clubs**

**87** The currently extant Clubs Oversight Commission for the Carleton University Students' Association is to be considered a lower judicial board for clubs and societies certification and decertification, from which appeals to the Students' Tribunal are valid.

**88** The Clubs Oversight Commission shall exist as the body of first instance for student group matters of the Association, except where otherwise provided by this Policy. All parties to disputes within this Association agree that this Commission has the right to arbitrate on those disputes.

**89** The Clubs Oversight Commission shall be empowered to issue any awards, orders, or sanctions relating to the student groups administration, certification, and funding.

#### **Council - Lower Court for Councillor and Executive Discipline**

**90** The Students' Council of the Carleton University Students' Association is to be considered a lower judicial board for the discipline of Councillors and Executive members under its policy, from which appeals to the Students' Tribunal are valid.

**91** Appeals from Discipline Committees of Council or the Board are not valid.

#### **Board of Directors- Lower Court for Director and Executive Discipline**

**92** The Board of Directors of the Carleton University Students' Association is to be considered a lower judicial board for the discipline of Directors and Executive members under its policy, from which appeals to the Students' Tribunal are valid.

## Part Three — Implementation

### PARAMOUNTCY

**93** In the event of conflict between any provision of this Policy and any provision of any other Policy, the provision of this Policy prevails, excepting the *Conflict of Interest Policy*.