

ASFA JUDICIAL COMMITTEE RULES OF PROCEDURE

TO THE GENERAL BY-LAWS OF

Fédération des associations étudiantes de la Faculté d'arts et science de l'Université Concordia
Concordia University Arts & Science Federation of Student Associations Inc.

Adopted by resolution of ASFA Council of Representatives on May 12th, 2011

DEFINITIONS

“**Adjudicator**” shall mean a member of the Judicial Committee of ASFA.

“**ASFA**” shall mean the Arts and Science Federation of Associations of Concordia University.

“**ASFA-constituted bodies**” shall mean any appointed committee or other appointed body of officers with administrative powers that is enacted by the ASFA By-laws.

“**By-laws**” shall mean the ASFA By-laws, excluding Regulations enabled by the By-Laws.

“**Canadian Charter**” shall mean the *Canadian Charter of Rights and Freedoms*, being Part I of *The Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11.

“**Complaint**” shall mean a complaint filed to the Judicial Committee of ASFA, within the meaning of these Rules and the ASFA By-laws.

“**Constitution of a Member Association**” shall mean the product of the legislative act of the membership of a Member Association whereby rules for the conduct of its daily affairs are provided, within the meaning of the By-laws.

“**Council**” shall have the same meaning as in the ASFA By-laws.

“**Criminal Code**” shall mean the *Criminal Code*, R.S., c. C-34.

“**Deposition**” shall mean Testimony submitted in any recorded form, within the meaning of these Rules.

“Enforcer” shall mean any appointed officer of ASFA with an unshared and independent mandate to enforce order in the affairs of ASFA by the exercise of their singular discretion. [This includes Chief Electoral Officers, Chairs of ASFA Boards and Committees, etc.]

“Plaintiff” shall mean any legal person who has filed a Complaint, within the meaning of these Rules.

“JC” shall mean the Judicial Committee of ASFA.

“Québec Charter” shall mean the *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12.

“Ordinary Member” shall mean any ASFA Member, within the meaning of the ASFA By-laws, i. who does not have administrative powers in ASFA, ASFA-constituted bodies, or Member Associations or ii. who is deemed not to present themselves in an administrative capacity before the JC, within the meaning of these Rules.

“Panel (of Adjudicators)” shall mean an ASFA Judicial Committee quorum, within the meaning of the By-laws, of Adjudicators, within the meaning of these Rules, gathered specifically for the resolution of a matter requiring adjudication, arbitration, or opining.

“Petitioner” shall mean any legal person who has submitted a request for arbitration or a request for opinion on regulatory interpretation, within the meaning of these Rules

“Quorum (of Adjudicators)” shall mean an ASFA Judicial Committee quorum, within the meaning of the By-laws, of Adjudicators, within the meaning of these Rules, gathered specifically for the resolution of a matter requiring adjudication, arbitration, or opining.

“Regulations” shall mean any regulations enabled by the ASFA By-Laws and enacted by the ASFA Council of Representatives, excluding these Rules.

“Respondent” shall mean any legal person against whom a complaint has been filed, within the meaning of these Rules.

“Request” shall mean any request filed by a Member or Member Association to the ASFA Judicial Committee, within the meaning of the By-laws and these Rules.

“Testimony” shall mean evidence submitted by a witness in oral form.

“**these Rules**” shall mean the present Rules of Procedure.

“**Witness**” shall mean any legal person giving or expected to give testimony, within the meaning of these rules.

All other capitalized terms in these Rules, where capitalization is otherwise uncommon in the vernacular, shall have the same meaning as in the By-Laws.

SCOPE AND JURISDICTION

Scope

1. These Rules are enabled by section 133 of the By-laws, recommended by a Quorum of Adjudicators, and adopted by approval through a vote in Council, in accordance with the aforementioned section.
2. These Rules are complementary but subordinate considerations to the By-laws for the composition and role of the JC.
3. These Rules are to be made public with the greatest expediency possible by ASFA, within a suitably public forum of its choice.
4. The JC, Plaintiffs, Respondents, Petitioners and Witnesses shall conduct themselves in accordance with these Rules, in the interest of a just, expedient and orderly adjudicative process.

Jurisdiction and Competence

5. The JC is deemed jurisdictionally and otherwise competent to:
 - (i) adjudicate on any matter involving the exercise of executive and administrative powers by Executives, Enforcers, ASFA-constituted bodies, or by officers of Member Associations, where a breach of the By-laws or Regulations, or a breach of natural justice in relation therewith is alleged, upon receipt of a Complaint from any Member or Member Association;
 - (ii) adjudicate on any matter involving the exercise of executive and administrative powers by officers of any given Member Association, where a breach of the Constitution of that Member

Association, or a breach of natural justice in relation therewith is alleged, upon receipt of a Complaint from any Member or Member Association;

- (iii) adjudicate on any matter involving the conduct of Ordinary Members, where a breach of the By-laws or Regulations is alleged, upon receipt of a Complaint from any Member or Member Association;
 - (iv) adjudicate on any matter escalated to it by Request of any given Enforcer, where the decision in that matter is regularly within the discretionary administrative powers of that Enforcer;
 - (v) arbitrate any matter involving the conduct of Ordinary Members, with the express consent of all parties to arbitration, upon receipt of a Request from any Member;
 - (vi) invalidate Regulations or Constitutions of Member Associations judged to be demonstrably in conflict with the By-laws, where required to remedy a Complaint received from any Member or Member Association;
 - (vii) opine on the interpretation of the By-laws, Regulations or the Constitutions of Member Associations on Request of any Member or Member Association; and
 - (viii) sanction punitive or remedial action in the interest of restoring justice, where it finds in favour of any evidence of wrongdoing.
6. Notwithstanding section 5. of these Rules, the JC is deemed jurisdictionally and otherwise incompetent to:
- (a) sanction an invalidation of any part of the By-laws;
 - (b) sanction any action where that action would contravene any part of the By-laws;
 - (c) rule on any matter where the contentious issue primarily pertains to a serious violation of the Criminal Code, where the potential for such a violation is judged existent by a majority of the Adjudicators on the Panel upon or following receipt of the Request;

- (d) rule on any matter where the contentious issue primarily pertains to a serious violation of the Canadian Charter, where such a violation is judged existent by the Adjudicators upon or following receipt of the Request;
- (e) rule on any matter where the contentious issue primarily pertains to a serious violation of the Québec Charter, where such a violation is judged existent by the Adjudicators upon or following receipt of the Request; or
- (f) rule on any matter in relation to which it judges itself technically incompetent, on a case by case basis, upon or following receipt of the Request.

Determination of Incompetence

- 7. The JC must dismiss any Request or any part thereof requiring it to act outside its competence, if such a requirement is deemed evident in the Request by a majority of a Panel.
- 8. The JC may not dismiss a Request on the basis of section 6.(f) where:
 - (a) that Request is issued by an Enforcer in accordance with section 5.(iv); or
 - (b) the substantive matter of that Request is within the technical competence of an extant member of the Executive Committee, or an extant member of an ASFA-constituted Body, who can be duly summoned as an expert Witness, within the meaning of these Rules.

FORM AND TYPE OF REQUESTS TO THE JC

Types of Requests

- 9. There are three types of valid Requests, namely:
 - (a) Complaints of wrongdoing by one party against another;
 - (b) Requests for arbitration of the interests of consenting parties; and
 - (c) Requests for the opinion of the JC on the interpretation of the By-laws, the Regulations, or the Constitutions of Member Associations.

Procedural Timelines for Processing Requests

10. The JC shall convene a Panel of Adjudicators within two (2) Juridical Days of the receipt of any Request, or as soon as a shortage of Adjudicators is remedied by Council, if such a shortage prevents the JC from convening a Panel.
11. The JC will immediately inform the ASFA Internal Affairs Coordinator of any difficulties in convening a Panel or, in the alternative, of the date the panel was convened.
12. Where the Request is a Complaint, the Panel shall conduct a Preliminary Inquiry, and notify the Plaintiff of its preliminary decision within five (5) Juridical Days of the date the Panel was convened.
13. Where the Request is a section 9.(b) or a section 9.(c) Request, the Panel shall conduct a Preliminary Inquiry, and notify the Petitioners of its preliminary decision within five (5) Juridical Days of the date the Panel was convened.
14. The Panel, by its sole discretion and taking under consideration the preferences of the Plaintiff where these are expressed in the given Complaint or the preferences of the Petitioner where these are expressed in the given Request, may decide to adjudicate the matter by deposition or by hearing.
15. Subject to the preliminary decision of the Panel, where adjudication by hearing is preferred, that decision will announce the date, no later than five (5) Juridical Days from the date the preliminary decision was rendered, and the venue where the hearing is to be held.
16. Subject to the preliminary decision of the Panel, where adjudication by hearing is preferred, the Plaintiff or the Respondent may request a remission of the hearing to a date within ten (10) Juridical Days from the date the preliminary decision was rendered.
17. Subject to the preliminary decision of the Panel, where adjudication by hearing is preferred, the Plaintiff and the Respondent must prepare their Witnesses and their Evidence for the date of the hearing.

18. Subject to the preliminary decision of the Panel, where adjudication by deposition is preferred, that decision will indicate the deadlines for submission of Depositions and other material Evidence, and the exact manner in which it is to be addressed to the Panel.
19. Notice of the final decision in the adjudication by hearing of any matter shall be given to the relevant Petitioners, Plaintiffs and Respondents by the end of the hearing.

Complaints

20. Any Complaint must be formally submitted to the JC by a Plaintiff, and must give *prima facie* evidence of an alleged wrongdoing by a Respondent.
21. Any Complaint must be submitted in writing, duly dated and signed by regular or electronic means.
22. The forgery of a Complaint shall result in its dismissal, effective immediately once the forgery has been determined by majority of a Panel, and where the author of the forgery can be determined to be a current Member, the Panel may apply punitive sanctions.
23. The exact manner to address a Complaint to the JC is to be made public with the greatest expediency possible by ASFA, within a suitably public forum of its choice.
24. No legal person has the legal capacity to be a Plaintiff, where that legal person was not a Member or a Member Association on the date of the alleged wrongdoing.
25. No legal person has the legal capacity to be a Respondent, where that legal person was not a Member or a Member Association on the date of the alleged wrongdoing.
26. Any Complaint must bear notice of known additional legal persons, other than the signing Plaintiff, who are known to have suffered *prima facie* harm consequent to the alleged wrongdoing.
27. On the initiative of any Adjudicator, and subject to a preliminary decision by the Panel, the additional persons referred to in section 26. and the signatory Plaintiff shall constitute a class of Plaintiffs, and shall be incorporated as a single Plaintiff for the duration of the proceedings.

28. No Plaintiff or member of a class of Plaintiffs shall be given anonymity, neither during the proceedings nor on the record, unless serious cause for anonymity is presented in the Complaint.
29. Any Complaint must bear reasonable indication of wrongdoing and, wherever possible, indication of the part or parts of the By-laws, Regulations, or Constitutions of Member Associations that have been contravened.
30. Any Complaint must bear reasonable indication of the date and time of the alleged wrongdoing.
31. Where that Plaintiff is endowed with administrative powers by ASFA or a Member Association, any Complaint must bear reasonable indication of whether the Plaintiff is presenting themselves in the capacity of an Ordinary Member or not.
32. Where that Respondent is endowed with administrative powers by ASFA or by a Member Association, any Complaint must bear reasonable indication of whether the Respondent is to be summoned in the capacity of an Ordinary Member or not.
33. A Complaint may include information pertaining to the Plaintiff's availabilities for a hearing.
34. A Complaint will be dismissed, following a special session of the Panel, where the Complaint is deemed to grossly fail to meet the requirements of these Rules during the special session by a majority of the Panel.

DELIBERATIVE AND ADJUDICATIVE PROCEDURES

Deliberative Procedures for the Panel

35. The Panel must have Quorum, and need be composed of an odd number of Adjudicators, so as to make a majority decision possible. Thus the Panel must be composed of either three (3) or five (5) Adjudicators.
36. The Panel may convene by and may deliberate by telephonic or electronic means; such deliberation is only deemed to constitute sitting in session within the meaning of section 132.(b) of the By-laws, and for the purposes of section 34 of these Rules, when all members of the Panel are participants to

conference calls or when electronic correspondence between Panel members is addressed to all Panel members.

37. A Preliminary Inquiry is a deliberative process whereby the empanelled JCAs:
 - (i) assess the prima facie merits of a given Request (including any Complaint) among themselves;
 - (ii) consider whether the case is within the jurisdiction and competence of the JC; and
 - (iii) decide on matters of process, like scheduling, etc., in accordance with these Rules.
38. A Preliminary Inquiry need not be documented in the public record.
39. Electronic deliberations between JC members, within the meaning of section 36., are considered the equivalent of *in camera* deliberations, and the electronic record thereof shall not be made part of the public record.
40. Available records and testimony of deliberations covered by section 37. must be disclosed for an appellate review of JC action by Council.
41. Whether preliminary, transitional or final, any procedural determination or decision, made by the Panel must have the support of a majority of its convened Adjudicators.
42. A procedural determination must be made whenever the Panel lacks unanimity on the application of these rules during Panel sessions.
43. A member of the Panel, upon authorization by the Panel, must produce a written decision on record within 10 days from the production of the written decision given in adjudication.
44. The decision on record must contain the written decision given in adjudication, and shall contain in addition thereto, a narrative of the facts, reasons for the decision, and may contain in addition thereto, any other information deemed pertinent.
45. A dissenting member of the Panel may produce a dissenting opinion to be included in the decision on record.

46. Decisions on record are filed with the ASFA Internal Affairs Coordinator; the ASFA Internal Affairs Coordinator will make the record public in a place to be determined with the greatest expediency possible by ASFA.

Decisions and Non-Majority Initiatives

47. Any ruling, remedy or sanction, whether provisional or final, or any formal opinion, or any other action sanctioned by a majority of the Panel is deemed a decision.
48. The decisions of the JC are binding on all parties that are Members or Member Associations.
49. The decisions of the JC will remain on record indefinitely.
50. The record of JC decisions shall be made public by ASFA, at intervals of publication to be determined by ASFA, within a suitably public forum of its choice.
51. Any action by a single Adjudicator is deemed a non-majority initiative.
52. A non-majority initiative may not be a ruling, remedy or sanction, whether provisional or final, or any formal opinion, or any procedural determination.
53. Non-majority initiatives are otherwise at the full discretion of individual Adjudicators in a Panel insofar as they contribute to the orderly proceedings of that Panel, within the meaning of the spirit and letter of these Rules, and include, but are not limited to, inviting observers to a public Panel session, inviting and requesting the approval by decision of the Panel of an *amicus curiae*, requesting that the Panel come to a decision, providing an informal opinion outside of a session, and any other action not prohibited by section 52.
54. In any case, a non-majority initiative may not contradict a decision.

Adjudication by Deposition

55. Neither party is allowed legal representation, or any other manner of representation, in adjudication by deposition.
56. Adjudication of any matter by Deposition will proceed chronologically in the following manner:
- (i) Plaintiffs, Respondents, Petitioners and Witnesses will each submit a written deposition including:
 - i. their testimony about facts pertinent to the matter at hand; and
 - ii. their arguments justifying their legal claim, mandatory only in the case of Plaintiffs and Respondents
 - (ii) Depositions are due within 5 days of the request of the Panel.
 - (iii) The Panel will deliberate *in camera* until it comes to a decision on its findings.
 - (iv) The Panel will adjourn to draft the written decision.
 - (v) The Panel will present the final decision to concerned Plaintiffs, Respondents and Petitioners in writing, within 48 hours of the adjourning of the Panel.
57. The Panel may, at any point during an adjudication by deposition, choose to issue a provisional decision.

Adjudication by Hearing

58. Every hearing is, by default, an open session; i.e. only parties to the hearing (Plaintiffs, Respondents, Witnesses and *amici curiae*) may attend. The Panel may choose to make any hearing or session of a hearing a public hearing or a public session a closed session by majority decision, and will post notice of such a decision and such a hearing or session at least 24 hours prior to it being held.
59. Neither party is allowed legal representation for adjudication by hearing.
60. Representation for cause of speech or linguistic impediment may be allowed to Plaintiffs, Respondents, or Witnesses. The representative must present credentials confirming their ability to

translate or assist the party they are claiming to represent, and must satisfy the Panel that the represented party has agreed to have the representative represent them.

61. Adjudication of any matter by Hearing will proceed chronologically in the following manner:

- (i) The Panel will inquire with present Plaintiffs, Respondents, Petitioners and Witnesses about facts pertinent to the matter at hand, using the Complaint as a guideline for questioning. The Panel may revisit such questions of fact at any later point in the process.
- (ii) The Panel may, at any point hereafter, order a continuation.
- (iii) The Panel will propose the necessary legal and regulatory considerations for deliberation. The Panel may revisit such questions of law at any later point in the process.
- (iv) The Plaintiffs, Respondents and Petitioners present may submit argument on the legal and regulatory considerations. If they choose to do so, the order of presentation in the hearing of arguments subsequent to a Complaint will be: Plaintiff, then Respondent.
- (v) The Panel will deliberate *in camera* until it comes to a decision on its findings.
- (vi) The Panel will adjourn to draft the written decision.
- (vii) The Panel will present the written decision to concerned Plaintiffs, Respondents and Petitioners in a session to be held within 48 hours of the adjourning of the Panel.

Arbitration or Formal Opinion

62. An arbitration, section 9.(b), or a formal opinion, section 9.(c), may be deliberated upon either by hearing or by deposition, in a manner similar to adjudication, but departing from the procedural bounds of adjudication whenever the Panel deems necessary, by a procedural determination.

63. Any procedural determination for the purposes of section 62. must be undertaken at the start of the proceedings, and announced to all parties concerned.

64. Any party may assist a section 9.(c) deliberation, and present argument or evidence thereat, upon a non-majority initiative of any Adjudicator empanelled for the purposes of that deliberation. This party shall be deemed an *amicus curiae*.

Appellate Procedures

65. In accordance with section 132.(c) of the By-Laws, so long as new evidence is presented, decisions of the JC may be revised by the JC indefinitely.
66. For a review to take place, a leave to appeal must be requested from the JC in writing, describing the content of the new evidence to be submitted and its *prima facie* relevance to the case.
67. The JC must give leave to appeal a case where, in the opinion of the original adjudicating Panel, there is *prima facie* reason to believe that proposed new evidence might alter the outcome of the case.
68. Where one or several members of the original adjudicating Panel are no longer in office as Adjudicators, the JC will replace only those members when empanelling the appellate Panel.
69. Appeals to the JC shall be deemed to contain the same Plaintiff(s) and the Respondent(s) of the original proceedings.
70. Where one of the parties, Plaintiff or Respondent, to the original proceedings is no longer a Member of ASFA, the JC may reject the appeal on grounds of not being able to do justice to the case.
71. A decision on appeal will replace the original or previous decision on record, and will retain the docket number of the original decision.
72. The written record of a decision on appeal will bear the content of the original decision as well as the content of decision on appeal in the form of an addendum.
73. The JC will may proceed to treat an appeal in the same manner as a Complaint, i.e. to be adjudicated by deposition or hearing, *mutatis mutandis*.

74. The parties to a Complaint may appeal the ensuing Panel decision, or subsequent Panel decisions on appeal to ASFA Council, in accordance with section 132.(e) of the By-laws and solely on the grounds of appeal listed therein.

Evidentiary Rules

75. In a section 9.(a) matter, the burden of proof is on the Plaintiff.
76. In any other matter, the burden of proof is subject to shift to whichever party challenges any given convention, custom, Regulation, or Constitution of a Member Association.
77. In every matter the standard of evidence to be employed by the Panel is that of a “balance of probabilities.”
78. Evidence, testimonial or otherwise, seeking to establish the character of a party to the matter can only be admitted if the Panel deems, by decision, that such is indispensable to the establishment of a record of facts.
79. In the event that the Panel cannot, for lack of expertise, assess evidence, it can, by decision, dismiss that evidence; evidence subjected to the interpretative testimony of an Expert Witness with relevant expertise may not be so dismissed.
80. A Request conforming to section 5(iv) will automatically confer upon the Enforcer the role of Expert Witness in the matters they are duty-bound to enforce; notwithstanding the foregoing, upon a reasoned decision of the Panel, the Enforcer will be discounted as an expert witness.
81. The Panel may admit any Witness as an Expert Witness, by a reasoned decision, in matters in which the witness has undeniable expertise and which are matters pertinent to the deliberation at hand.
82. The testimony of an Expert Witness in a given matter has precedence over conflicting testimony submitted by a non-Expert Witness, but is of equal worth to that of another Expert Witness.
83. The testimony of an *amicus curiae* is equivalent to the testimony of a Witness, unless that *amicus curiae* was duly admitted as Expert Witness in accordance with section 81.

Maintenance of Order and Security during Proceedings

84. The Panel has the authority to refuse, by decision, to hear a case in conditions where the physical and psychological security of either party, of Witnesses, of observers, or of the empanelled Adjudicators is in serious danger, or in conditions where the confidence measures implied in these Rules cannot be enforced.
85. Every empanelled Adjudicator has the authority to refuse, by non-majority initiative, to present themselves to a session where they feel that the session will unfold in conditions where the physical and psychological security of either party, of Witnesses, of observers, or of the empanelled Adjudicators is in serious danger.
86. Where the authority conferred by ss. 84. and 85. is used, the JC will negotiate directly and expediently with the ASFA Executive, Concordia Security, and other relevant organs of the Administration of Concordia University, to obtain conditions in which a session may be adequately held.