

2018-04-04 Union Council REGULATION FOR COMPLAINTS

adopted by the Union Council on 2018-04-04

Complaints regarding another member of MUNACA shall be submitted to the President or Vice-President, as per the PSAC Constitution. This shall include requests or motions of non-confidence in a council member or member of the executive committee. The complaint will, except where deemed inappropriate because of confidential information, be distributed to the members of the union council within five (5) days of receipt. The council will, except in the case of confidential information, determine whether the complaint is receivable, and give its reasons in writing. In the case of the former, where confidential information must be considered, the receivability will be decided by the investigation committee (see below), which will state its reasons in writing.

Although the PSAC Constitution states that complaints can be filed for any breach of the constitution or bylaws, in practice this should be reasonably understood as relating to serious matters, liable to seriously prejudice the union or individual members. This may occur in the case of repeated and blatant disregard of procedural issues, although infrequently. It could also apply in the case of elected representatives who are alleged to be failing to perform their duties. These would be cases in which a motion for a vote of non-confidence or removal from office might be expected.

If there are complaints involving interpersonal conflict, the council is in agreement the charges are serious and have *prima facie* merit, mediation shall be offered to the parties, the procedures for which are described below. Mediation of an informal nature may also be offered in cases where it is decided the accusations are not sufficiently serious to merit investigation. In either case the parties shall mutually agree on a mediator. A designated member of the executive or their delegate will assist with the tasks of suggesting, contacting and arranging mediation.

In the case of formal mediation, access to a recognized professional shall be provided, unless an alternative is agreed to by the parties. A maximum of 6 hours shall be allowed for this purpose.

In the event mediation is not possible, is not accepted or is unsuccessful, within 20 days of being informed of this the President or delegate shall convene a meeting of an investigation committee, which shall receive and review all documents related to the complaint.

Both the respondent and complainant(s) shall have access to \$800 in order to consult with a lawyer or legal professional. Any bills shall be forwarded to the VP finance or delegate, and shall respect MUNACA's financial and legal procedures. Should there be multiple complainants and/or respondents where complaints concern the same or similar matters, for this purpose they will be treated as a single complaint. In the event an individual complainant or respondent feel strongly that their situation is distinct from the others who are the subject of the same complaint or group of complaints, they may make an appeal to the union council for an additional \$400 contribution towards such consultation.

Should mediation not occur or is unsuccessful, a process of arbitration will then take place. An arbitrator shall be chosen by members of the executive, or in the event of a dispute, by the union council. The arbitrator's mandate shall consist in chairing an investigative panel of 3, with each party choosing one representative drawn from members of MUNACA or another PSAC local, guiding them and the witnesses in terms of presentation of evidence, questioning and cross-examination of witnesses, rules of procedure, ensuring due process, and drafting a report based on the findings. It will be up to the panel members to recommend measures, to be included in the report. Anyone called to give testimony may be subject to cross-examination. In general, the panel will respect the principles and rules of natural justice. The hearings shall be public, although in the case of confidential information one or both of the parties can request that portions be held *in camera*. Both the respondent and union may be represented by a third party of their choosing, at their cost.

Once drafted, the report will be presented to the union council, which will have the right to ask questions and make suggestions for changes.

If the report contains a finding that there was a serious breach of the bylaws, the code of conduct or the PSAC constitution, the President or their delegate shall publish the recommendations, along with a call for a special meeting of the General Assembly, or of the Council, in the case of a motion of non-confidence in a council member. If the report and recommendations contain confidential information this shall be redacted. These bodies will consider the report and then vote on either a motion of non-confidence or whether to forward the report to the NBoD with a recommendation, in the case of the General Assembly. Both the respondent and complainant shall abstain from the vote. The General Assembly will also have the option, in the case where dismissal from office is the recommendation, to only conduct a vote of non-confidence, without sending a recommendation to the NBoD.

Where the complaint is of a particularly severe and serious nature (such as described below), the union council can decide to temporarily suspend the officer or council member, pending an outcome of the proceedings. In order to do so, the facts must be clearly and credibly presented in writing by the President or delegate, and the alleged breaches must be considered to place either an individual or individuals in a situation of danger or that leaving the individual(s) in place could cause serious prejudice to the union. This could be further defined as allegations that the continued participation of the accused is likely to cause psychological, physical, financial harm to fellow union members, or that the continued participation of the accused is likely to significantly reduce the bargaining power of the union or its members or otherwise affect its ability to effectively represent members. Such charges must not be based on interpretation of the bylaws or constitution, but rather on concrete facts and the determination of reasonable apprehension or risk of irreparable harm. Examples of this would include serious harassment or physical threats, serious public slander of an individual or the union, deliberate misrepresentation of the

union or a member, forgery, fraud or theft, or collusion with management for the express purpose of harming the union's future success. Such a suspension may be in effect for the duration of the process, but must be renewed every 90 days.

To facilitate and make possible investigations in accordance with the PSAC constitution all council representatives will undergo training on investigation processes and procedures, to be organized either by the PSAC or by MUNACA. Only members who are at arm's length of the complaints shall be asked to sit on a committee.