



**CONCORDIA  
STUDENT  
UNION**

## **Nicole Nashen V. Hassan Nabeel**

Complaint Received: February 22, 2022

Hearing: March 9, 2022

Decision: March 11, 2022

### **Complainant**

- Nicole Nashen (Representing Hillel Concordia)

### **Respondent**

- Hassan Nabeel

### **Vote on sending question to referendum:**

**Unanimous Decision**

### **Vote on sending question to referendum in current form:**

**Majority Decision**

## Statement of Facts

During the CSU Council of Representatives regular meeting of February 9, 2022, Councilor Hassan Nabeel presented a motion to pass the following question to the next referendum:

*“Do you support the CSU to adopt a position against the practice of apartheid (as defined by leading human rights organization such as Human Rights Watch and Amnesty International) and to divest from any investments and withdraw any financial or vocal support from states or businesses that are involved in apartheid?”*

After the motion passed, the Judicial Board received a complaint by Hillel Concordia through its representative Nicole Nashen on February 22, 2022. In their complaint, the petitioner argues that the proposed question deliberately targets the state of Israel thus contravening with section 1.9 of the Policy on Positions held by the Union which states:

*1.9 For positions on subjects that go beyond the Canadian context, there shall be no mention of specific countries or governments.*

The petitioner further argued that allowing this question to go to referendum would create an unsafe space for Jewish students on campus. Thus, the petitioner requested that the Judicial Board stop the question from going to referendum.

The Judicial Board held a hearing on March 9, 2022 to hear both parties. As per the request of Councilor Hassan Nabeel, the named respondent, the hearing was held in a private session. Following this procedure, members of our Board gathered to vote on the complaint.

### Decision

After careful consideration of the information presented, as well as of the motion in question, the Judicial Board has voted unanimously to **allow the motion to go forward to a referendum vote**. The Judicial Board found that the motion did not violate any By-laws of the Concordia Student Union, is within the confines of CSU Policy, and that the cause and effect relationship stated in the complaint regarding the motion is undetermined due to insufficient evidence.

### Regarding the Intent to Target Only Israel

On the matter of the targeting of Israel and Jewish students, the Judicial Board found that the intent of the motion cannot be proven and there is insufficient evidence to support it being brought forth in a bad faith attempt to target Israel or Jewish students. As such, the Judicial Board cannot strike down the question on this point.

### Regarding a Contravention to the CSU Policy on Positions

Regarding violation of CSU's **Policy on Positions** section 1.2.2:

*1.2.2. A position should not be confused with a resolution mandating the execution of a specific task or action in a **time-limited** fashion.*

The Judicial Board found that the actions proposed in the referendum question are not bound by any specific time frame and thus the question is within the confines of the CSU *Policy on Positions*.

### Regarding the Safety of Jewish Students on Campus

The petitioner(s) voiced their concern on the possibility of an increase in the experience of harassment towards Jewish students. Harassment as per **CSU's Code of Conduct** constitutes as:

*“The act of systematic and/or repeated unwelcome, vexatious conduct directed towards a person;*

- a. Which may be based upon one of the prohibited grounds specified in the Quebec Charter of Human Rights and Freedoms, that is; race, colour, ethnic or national origin, sex, gender identity, pregnancy, sexual orientation, civil status, age, religion, political convictions, language, social condition, disability or the use of a means to palliate a disability;*
- b. When such conduct has the effect or purpose of unreasonably interfering with a person's right to pursue their work, study or other activities related to University life in a safe and civil manner or of creating an intimidating or hostile environment for such activities."*

On this subject, the Judicial Board found that there is insufficient evidence to support the claim that the motion, if implemented, will result in "systematic and/or repeated unwelcome, vexatious conduct directed towards a person" as per the CSU's definition of harassment. We found that the assumption that the motion being sent to referendum will create a hostile environment for Jewish and Israeli students is speculative with insufficient evidence to support it.

The Judicial Board found that the claim that the motion seeks to, "forc[e] [Hillel and associated clubs] to contravene [their] constitution" is unsubstantiated. The motion makes no mention of individual clubs taking an official stance against apartheid, and furthermore, there is no current policy or mandate that suggests that this would occur.

### **Bylaws and Codes of Procedure**

As per bylaw 8.2 titled "Powers and Tasks", paragraph a & b:

*8.2 The Judicial Board of the Student Union shall, upon the written request of any member or member association, convene to:*

- a. Interpret these by-laws and the validity of regulations and resolutions enacted by the Council of Representatives.*

*b. Declare invalid any act of any member who through their action derogates from these by-laws or from the constitution of any member association of the Student Union.*

It is within the legal right of the Judicial Board to declare invalid any act of any member who through their action derogates from these by-laws or from the constitution of any member association of the Student Union.

As per bylaw 2.1 titled “Objects”, paragraph a, & f:

*2.1 The objects of the Student Union are:*

*a. To form a representative Student Union to promote the educational, political, social, recreational and cultural interests of its members;*

*f. To consider and support activities which enhance the quality of life for students of Concordia University;*

It is within the legal authority for the Concordia Student Union to put questions up for referendum which are intended to represent the educational, political, social, recreational, and cultural interests of its members.

**The referendum question states as follows:**

“Do you support the CSU to adopt a position against the practice of apartheid (as defined by leading human rights organization such as Human Rights Watch and Amnesty International) and to divest from any investments and withdraw any financial or vocal support from states or businesses that are involved in apartheid?”

The nature of the question does not violate current bylaw 2.1, paragraph a & f, as the question is within the realm of “political & social” interests. Furthermore, it is within the right of the CSU Council of Representatives to put the question up for referendum.

The petitioner cited Bylaw 3.1 and 6.3(h):

*3.1. Every undergraduate student registered in a credit course or its equivalent and subject to the Student Union fee at Concordia University shall be a member of the Student Union.*

Bylaw 6.3 states in part:

*6.3 The tasks and powers of the Council of Representatives may only be properly exercised in the course of a duly convened meeting of same. In particular the Council shall do or cause to be done the following:*

*h. Such other acts as allowed by law which do not contravene these bylaws.*

Upon review of bylaws 3.1 and 6.3(h), the Judicial Board found that these bylaws would not be violated if this question were sent to referendum.

**1.9 of the Policy on Positions held by the Union, “for positions on subjects that go beyond the Canadian context, there shall be no mention of specific countries or governments”**

After careful review of the question brought to referendum, the Judicial Board found no violation of section 1.9. The question does go beyond the Canadian context as it mentions “apartheid states,” but it does not mention specific governments or countries within its body. Therefore, the accusations of the petitioner cannot be upheld on the point of this motion targeting a specific group/state.

### **Policy on Positions Held by the Union**

*1.2. The positions serve as a guide for the political representation engaged in by officers of the union and the Union’s political discourse and long-term goals.*

*1.2.1. Positions provide the Union with a position on a topic in a general way that establishes the political culture, goals, and stances of the Union on social, political, and academic issues.*

*1.2.2. A position should not be confused with a resolution mandating the execution of a specific task or action in a time-limited fashion.*

The Judicial Board believes that the motion does not go against section 1.2 of the Policy on Positions. The question is in line with several concerns for social justice that the CSU has called on in the past.

*5.7 The CSU opposes antisemitic rhetoric and culture present at Concordia University and within the Montreal community. The CSU opposes Holocaust denial, being the act of denying the existence of the Holocaust. The CSU also opposes antisemitic remarks and harassment and calls on all levels of government to recognize and address the challenges that Jewish people face not only within the boundaries of the school, but within the Jewish community at large.*

As for section 5.7 in the Positions Book, there is insufficient evidence to prove that this question will probe antisemitic acts against Jewish people on campus and in the community at large. Section 5.7 addresses antisemitic rhetoric in general and is not relevant to the referendum question being posed.

## **CSU Code of Conduct**

*2.1 Student Union Representatives shall refrain from:*

*2.1.9 Discriminating against or making discriminatory comments or remarks on the basis of race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status or age in accordance with the Quebec Charter of Human Rights and Freedoms*

The Judicial Board found no violation of section 2.1.9 as there is insufficient evidence to prove that this question will perpetuate institutionalized discrimination against students under the CSU.

### **Dissenting Opinion:**

While the Judicial Board unanimously voted that the student body has a right to vote on this referendum question, there was a second vote regarding sending the question to referendum in its current form. Among the Judicial Board, *this was not a unanimous decision* and passed based on majority vote.

It is the opinion of the dissenting member of the Judicial Board that the referendum question *might be confusing to students* due to the fact that it contains two parts: a portion on adopting a position condemning apartheid and one on divestment from states and businesses which support apartheid. For the voting student body, *there is insufficient explanation for how divestment will occur assuming that the position passes*. Even amongst the CSU councilors collected at the February 7th regular meeting, discussion of divestment was theoretical and speculative.

It is the opinion of the dissenting member that the referendum question be sent back to the CSU councilors to edit, namely that the question be split into separate positions, one against apartheid and one for divestment. A clear strategy for how divestment will be implemented ought to be drafted and analyzed by the CSU councillors on the Policy committee.




**Conclusion:**

The Judicial Board has ruled by majority vote that the referendum question to the student body to vote on in the March 2022 election.

The Judicial Board found that bylaws 2.1 (a), 2.1 (f), 2.1 (j), 6.3 (h), and 8.3 (g) would not be violated if the referendum question were sent to the student body.

Examining both the Concordia Student Code of Conduct article 2.1.9 and Position 5.7 from the Positions Book, the Judicial Board found that there was insufficient evidence to claim that the referendum question was targeting Jewish and Israeli students and was antisemitic in nature. Further, the Judicial Board found there to be insufficient evidence that sending this referendum question to vote would directly cause the harassment of Jewish and Israeli students, as claimed by the initial complaint.

## Annex: Complaint

 <b>CSU Judicial Board — Election Complaint Form</b>	
Are you submitting this complaint as an individual, referendum committee, or on behalf of an election slate?	Individual
Your name	Nicole Nashen
Your email address	nicolenashen@gmail.com
Slate or referendum committee name	Hillel Concordia
Names of other individuals on your slate or referendum committee	jbiz.olami@gmail.com students@jewishndg.com
Is your complaint regarding an individual or an election slate?	Individual
Name(s) of individuals whom your complaint refers to	Hassan Nabeel, Councillor
Date and time of incident(s)	February 9th 2022
Subject of complaint	Safety of Jewish Students on Concordia Campus
Summary of incident(s)	<p>The following Judicial Board complaint will prove that despite the fact that section 1.9 of the policy on positions prohibits the referendum committee from mentioning Israel by name, the mentioned referendum question has the intent to target only Israel and the Jewish community at Concordia University. Should this question be sent to referendum during the election, the campaign period will cause Concordia to be an unsafe space for Jewish students on campus. All other relevant information, evidence, and clauses will be in the attached document. Furthermore, due to the campaigning period beginning soon, this case is time-sensitive.</p> <p style="text-align: center;"><a href="#">Draft 2 (2).pdf</a></p>
Description of supporting documents	In this document, there is evidence and supporting regulations that presents Hillel Concordia's case to the Judicial Board.
Describe what action should be taken in response to this complaint.	We ask that the Judicial Board strike down this divisive motion in order to prevent harassment on the basis of such a dispute.
	Accepted

## Judicial Board Complaint

Hillel Concordia and associated clubs V. Nabeel H. and associated councilors

### BACKGROUND INFORMATION

[Link to Video of Meeting](#)

Referendum Question:

#### Preamble

Whereas the CSU represents the undergraduate student body at Concordia University and whereas it represents several Human Rights Issues such as BLM, LGBTQ 2+, anti-Semitism and Migrant rights that have all been sent to a vote before by the CSU Council, be it resolved that the following question be sent to referendum in the 2022 election:

#### Question

“Do you support the CSU to adopt a position against the practice of apartheid (as defined by leading human rights organization such as Human Rights Watch and Amnesty International) and to divest from any investments and withdraw any financial or vocal support from states or businesses that are involved in apartheid?”

#### Summary

The Apartheid Convention defines the crime against humanity of apartheid as “inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them.” The Rome Statute of the ICC adopts a similar definition: “inhumane acts... committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime.” The Rome Statute does not further define what constitutes an “institutionalized regime.”

Link to complete definition

<https://www.hrw.org/report/2021/04/27/threshold-crossed/israeli-authorities-and-crimes-apartheid-and-persecution>

### **Preamble:**

A motion to send the above question to referendum was passed at council on February 9. According to **section 1.9 of the Policy on Positions** held by the Union, *“for positions on subjects that go beyond the Canadian context, there shall be no mention of specific countries or governments”*.

The following Judicial Board complaint will prove that despite the fact that section 1.9 of the policy on positions prohibits the referendum committee from mentioning Israel by name, **this referendum question has the intent to target only Israel** and **the Jewish community at Concordia University.**

Should this question be sent to referendum during the election, the campaign period will cause Concordia to be **an unsafe space for Jewish students on campus.**

Therefore, we are asking the Judicial Board to strike down the question in order to ensure the safety of Jewish students on our campuses.

### **Intent to Target Only Israel:**

[Apartheid](#) is a word in Afrikaans which means apartness. It was coined to describe the system of racial segregation in South Africa from 1948 until the 1990s. Since the abolition of Apartheid in South Africa, only one nation has been routinely labeled as an Apartheid state by human rights organizations such as Amnesty International and Human Rights Watch: Israel. **The decision to use the Amnesty International and Human Rights Watch definitions of Apartheid in this referendum question was no coincidence; because the referendum committee made the deliberate decision to use these organizations since they have labeled Israel as an Apartheid state.**

In fact, as the CSU chair was amending the motion during the meeting on February 9,

Hassan Nabeel, the councilor who brought forward the question said,

*“I just also wanted to make sure in the definition we will be including Human Rights Watch and Amnesty International” (1:41:00).*

Evidently, the inclusion of these two organizations is crucial to the goal that the councilor who brought forward the question is trying to accomplish.

When Hadassah, a reporter from the Concordian asked what states the referendum committee had in mind to divest from and boycott (42:00), Hassan responded that they would be **“following the international community’s guidelines”**. It is no coincidence that the international organizations that are listed in the referendum question only target Israel. Furthermore, throughout the meeting councilors made clear that this proposed position does not intend to target any country other than Israel. Wawa, a councilor of Chinese descent, asked the following question:

“Canada has citizens and migrants from countries that could be considered apartheid countries. Some of them are small business owners that carry products from their home countries. For example my own family. My question would be should we decide to divest and withdraw financial support how can we ensure that this does not negatively affect small business owners who might be minorities in their home countries or left their home countries because they disagree with apartheid policies” (41:00).

Boutaina responded that, **“the businesses that you mention are gonna be slightly impacted or not even impacted by Concordia’s decision to stand against apartheid”** (42:00). Evidently, despite refusing to publicly provide a list of countries, the referendum committee knows which communities they do not intend to target.

**Specifically, they made clear that they do not intend to target most countries.**

It is also important to note that the link to the definition of apartheid included in the referendum question is entitled: **“A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution”**. Evidently, this referendum question only

**intends to target Israel** and the following section will expose that the referendum committee intends to use this to **target the Jewish community at Concordia University.**

Notably, the organizations such as Amnesty International, Human Rights Watch and United Nations Human Rights Council, have been **flagged and condemned for flagrant and targeted antisemitism and an obsession with Israel** by many leading Jewish organizations. Additionally, the recent reports by **Amnesty International and Human Rights Watch have been publicly rejected and denounced by the government of Canada, as well as many others.**

Intent to Defund Jewish Clubs:

Should the question pass at referendum, the CSU will have to “divest from any investments and withdraw any financial or vocal support from states or businesses that are involved in apartheid”. Though ambiguously written, the referendum committee made it clear in the meeting that **they intend to defund Jewish and Israel clubs.**

- **48:00 Harrison** - how will this affect clubs?
- **49:00 Kate** - clubs associated with (their definition of) apartheid should not receive funding
- **59:00 Harrison** - does this mean that clubs associated with apartheid cannot receive funding? Are they defunded entirely? Are specific events not funded?
- **Alina** - “if there was a situation in which a club was supporting an apartheid state or a figure of apartheid i think it would be fair to say that concordia should divest from that”
- **Harrison** - “Does that mean that cultural, religious or ethnic clubs that although do not represent their government and the places that they are from and even if there are individuals who do not agree with the apartheid regime that they government is portraying does that mean that those individuals will have to suffer the consequences and have their club defunded?”

- **Alina** - “If the club is directly, economically, enriching any figure that is supporting apartheid then yes the funding should be revoked” cultural events do not need to be defunded
- **1:03:00 Ikrame** - clubs need to make a statement condemning apartheid - **1:42:00 Chris** - who decides what clubs support apartheid
- **Ikrame** - “any clubs that supports an apartheid state” “for groups that are on the grey zones or that we cannot ensure whether or not they are supporting apartheid ... all clubs should state their dis-support and opposition to apartheid states” - **Chris** - who enforces it?
- **Kate** - clubs and space committee chaired by vp internal

Forcing Hillel to stake a stance against apartheid would be **forcing us to contravene our constitution as per their definition of apartheid which is a direct violation of the CSU regulations**

- 2.1.4.Support Israel’s right to exist, and not take stances on the actions of the Israeli government.
- 2.1.4.1. Hillel Concordia recognizes, supports and celebrates Israel as the indigenous homeland of the Jewish people.
- 2.1.4.2. Hillel Concordia does not take stances on the policies or actions of the government of Israel.
- 2.1.4.3. Hillel Concordia provides students with the diverse tools to form their own educated opinions on the State of Israel, the policies and actions of the Israeli government and the Israeli-Palestinian conflict.
- 2.1.4.4. Hillel Concordia is a safe space for students to debate, disagree and learn new perspectives on the State of Israel, the policies and actions of the Israeli government and the Israeli-Palestinian conflict.
- **1:52:00 Aria** - Is the club defunded or is the event defunded? Will clubs need to get every event approved by the csu? That’s not how it works right now
- **Kate** - didn’t really answer the question
- **1:56:00 Harrison** - the csu has never been asked to defund a club, even clubs who have stances against our positions book

Using a Position as a Policy:

- **35:00** this position is intended to mandate the csu into concrete action
- that is not the purpose of a position, that is what a policy is for

### **Policy on Positions Held by the Union**

- **1.2.** The positions serve as a guide for the political representation engaged in by officers of the union and the Union's political discourse and long-term goals.
- **1.2.1.** Positions provide the Union with a position on a topic in a general way that establishes the political culture, goals, and stances of the Union on social, political, and academic issues.
- **1.2.2.** A position **should not be confused with a resolution mandating the execution of a specific task or action** in a time-limited fashion.

### **JEWISH STUDENT SAFETY**

We resolutely expect that this referendum question and the campaigning period for it **will create an unsafe space for Jewish students at Concordia** by further inflaming Antisemitism, as driven by the reports mentioned in the question. This referendum question propagates these reports and calls for the definition of apartheid to be considered in line with these organizations reports and biases. Not only throughout past years, but up until this year, we have **witnessed severe instances of Antisemitism against Jewish students at Concordia on campus and online**. For decades, Concordia has been a place notoriously unsafe for Jewish students to openly express their identities. Over the last few years there have been efforts by some members of the CSU to remedy this, but there is still a long way to go, and this referendum question presents a major setback.

Here are some recent examples of antisemitism perpetuated by anti-Israel sentiments at Concordia.

- On Tuesday, November 16, 2021, Hillel Concordia set up an information table in the Hall Building promoting Hillel and opportunities to connect to



- Jewish Life on Campus. **They were stalked, accosted, physically intimidated and threatened, yelled at, and instigated by students with anti-Israel sentiments, even though there was absolutely no Israel related content at the table.** The Hillel members involved in the incident had to file reports with Concordia security. Many Jewish students did not feel safe walking around campus following this incident.
- The next day, the Hillel club room was vandalized.
  - 3 days later, Israel on Campus was tabling to discuss Israeli partnerships. The **students were again harassed, yelled at and protested against.** This further reaffirmed to current Jewish students at Concordia that they are not safe to express their identities. In the following video, the protesters can be heard blaming **Jewish Concordia students for the atrocities taking place in Israel-Palestine.** This is Antisemitic. [Click here to watch the video](#)
  - On November 1, the same students who partook in the harassment of Hillel members and the protest against Israel on Campus attended a Zoom event co-hosted by Israel on Campus Concordia, Israel on Campus McGill and Hillel McGill. This event **featured an Israeli peace-activist and a Palestinian scholar, to educate students on the conflict, and potential paths to peace and co-existence** When the Israeli speaker started talking, two attendees turned on their cameras, appeared to be **dressed in guerilla fighter outfits and held up Antisemitic signs.** A testimony may be provided for this as evidence.
  - In winter 2014, when BDS against Israel was on the ballot as a referendum question, tensions were heightened to a new level, and **Jewish students did not feel safe or welcomed at Concordia.** Daily during the campaign period, students were accosted and harassed for being openly Jewish and for being in support of the Jewish state. **Students had their religious garments forcefully removed,** they received threats and were stalked for being Jewish.

## CONTRAVENING CSU POLICY

1. This is not a general position. It is meant to be specific only to one country explicitly labeled as Aparthied by the organizations mentioned.
2. There is only 1 country labeled by Human Rights Watch and Amnesty International as an Aparthied State: Israel.
3. It was expressed at the council meeting that the goal is to target clubs that are associated with what would be deemed "aparthied".

It is clear that should this pass, it will be used for the sole purpose of **harassing those associated with Israel, namely Jews.** This would violate several CSU policies and objectives, including:

**Bylaws 2.1 (a), 2.1 (f), 2.1 (j), 6.3 (h), 8.3 (g)** as well as the Code of Conduct and the Policy on Positions Held By The Union. Per bylaws 8.2 (a) and 8.2 (b), the Judicial Board can and must strike down the motion to send this position to referendum.

Bylaw 2.1 states in part that:

**2.1** *The objects of the Student Union are:*

- a. To form a representative Student Union to promote the educational, political, social, recreational and cultural interests of its members;*
- f. To consider and support activities which enhance the quality of life for students of Concordia University;*
- j. To be the representative of the undergraduate students of Concordia University pursuant to the accreditation granted to the Student Union pursuant to the Act Respecting the Accreditation and Financing of Students' Associations.*

Bylaw 3.1 states:

*3.1. Every undergraduate student registered in a credit course or its equivalent and subject to the Student Union fee at Concordia University shall be a member of the Student Union.*

The members of the union referred to in 2.1(a), 2.1(f), and 2.1(j) include all students, some of which are Jews and Israelis. The CSU cannot possibly “**promote the social and cultural interests**” of those members if it is **actively seeking to marginalize them**. Similarly, it cannot claim to be supporting activities which enhance their quality of life or representing them while harassing them.

As noted above, the policy goal of the motion in question is to target Jewish students and clubs and either defund them or force them to pledge to be against Israel, a requirement not made of any other group. Per the Code of Conduct, the definition of harassment is:

***“The act of systematic and/or repeated unwelcome, vexatious conduct directed towards a person;***

- a. Which may be based upon one of the prohibited grounds specified in the Quebec Charter of Human Rights and Freedoms, that is; race, colour, ethnic or national origin, sex, gender identity, pregnancy, sexual orientation, civil status, age, religion, political convictions, language, social condition, disability or the use of a means to palliate a disability;*
- b. When such conduct has the effect or purpose of unreasonably interfering with a person’s right to pursue their work, study or other activities related to University life in a safe and civil manner or of creating an intimidating or hostile environment for such activities.”*

This is both. It is a motion which seeks to **discriminate against Jews and Israelis based on “ethnic or national origin” and “religion”**. It also seeks the effect of

interfering with our “right to pursue other activities related to University life” in a “civil manner”, namely the right to be a club that can receive funding without being subject to questioning or being forced to take positions on foreign conflicts. It most certainly seeks to create a “hostile environment for such activities”. Note that position 5.7 of the Postions Book takes an explicit stance against antisemitic harrassment, also note that article 2.1.9 of the Code of Conduct states:

*2.1 Student Union Representatives shall refrain from:*

*2.1.9 Discriminating against or making discriminatory comments or remarks on the basis of race, colour, sex, gender identity or expression, pregnancy, sexual orientation, civil status or age in accordance with the Quebec Charter of Human Rights and Freedoms*

Although the above is grounds for demanding sanctions be levied against those that have promoted this question, we do not wish to seek punitive measures, **but rather to ensure that our rights are upheld and we can all be allowed to hold our diverse opinions under the CSU umbrella**. Thus we ask for the motion to **be struck down**, but not for any sanctions to be levied.

Bylaw 8.3g states in part that “ ... **Decisions of the Judicial Board shall be considered final and binding**. ...”. The Judicial Board has previously ruled that positions which create a hostile environment cannot be sent to referendum (in Sean Howard reference) and **that referendum questions cannot target clubs** (in CUSSA v. Council of Representatives).

Although in 2020 the CSU underwent a huge effort to rewrite and reorganize their Standing Regulations and the exact regulations quoted were repealed, most of the original meaning and intentions of the old policies remain. The *Safer Spaces Policy* was replaced with the *Sexual Violence and Safer Spaces Policy*. The new policy still holds

that the CSU is committed to a campus free from “discrimination, harassment, and violence.” It states:

*The Concordia Student Union (“CSU”) was established in order to **represent and advocate for a diverse population** of Concordia undergraduate students.*

*CSU members have a shared responsibility to ensure that Concordia (the “University”) is a learning, living and working environment that is free from sexual violence and discrimination.*

In addition, positions have been added to the Positions Book to reiterate these ideas. Position 5.6 states:

*The CSU calls for respect and kindness towards all religious and cultural minorities in our community and calls on the Concordia University community to foster a safer and more inclusive space for people of all cultures and religions as an act of solidarity internationally and equal opportunity for all.*

While the language of the regulations have changed, the content is still the same. This means that the Judicial Board case law remains in effect, and the motion in question cannot stand.

Bylaw 8.2, which enumerates the powers of the Judicial Board, states in part:

**8.2** *The Judicial Board of the Student Union shall, upon the written request of any member or member association, convene to:*

- a. Interpret these by-laws and the **validity of regulations and resolutions** enacted by the Council of Representatives.*
- b. **Declare invalid any act of any member who through their action derogates from these bylaws or from the constitution of any member association of the Student Union.***

The referendum question is in violation of the CSU Bylaws, Policies, Positions Book, and Judicial Board case law. The Judicial Board has the power and a duty to strike down this motion and deem it invalid.

In conclusion, **we ask that the Judicial Board strike down this divisive motion in order to prevent harassment on the basis of such a dispute.** We are not asking for sanctions to be levied against Mr. Nabeel, we want a CSU community where everyone is allowed their own space to hold their own views.

**Other Pertinent Points:**

Perhaps it will be said that those who spoke of defunding clubs are not affiliated with Mr. Nabeel, and the intention of this motion is not intentional explicit discrimination. While this is within the realm of possibility (however unlikely it is, considering Mr. Nabeel's answers and lack of answers at the council meeting), this would not void our complaint. Similarly, claims that not all Jewish or Israeli students would be negatively impacted would not void our complaint. In

*Frazer v. Canada*, the Supreme Court of Canada recognized that Adverse Impact Discrimination is a legally recognized form of discrimination to which paragraph 15 of the Charter of Rights and Freedoms Applies. Paragraph 15(1) of the Canadian Charter states:

**15(1)** *Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.*

Paragraph 69 of the Supreme Court of Canada's *Frazer v. Canada* ruling states in part: "First, whether the legislature intended to create a disparate impact is irrelevant. [...] Nor is an ameliorative purpose sufficient to shield legislation from s. 15(1) scrutiny" Paragraph 70 of *Frazer* states in part:

"Second, if claimants successfully demonstrate that a law has a disproportionate impact on members of a protected group, they need not independently prove that the protected characteristic "caused" the disproportionate impact. [...]" Paragraph 71 of *Frazer* states in part:

"It is also unnecessary to inquire into whether the law itself was responsible for creating the background social or physical barriers which made a particular rule, requirement or criterion disadvantageous for the claimant group. [...]" Paragraph 72 of *Frazer* states in part:

"Third, claimants need not show that the criteria, characteristics or other factors used in the impugned law affect all members of a protected group in the same way. This Court has long held that "[t]he fact that discrimination is only partial does not convert it into

*non-discrimination* [...] Writing for the Court, Dickson C.J. explained that practices

amounting to "partial discrimination" are no less discriminatory than those in which all members of a protected group are affected [...]"

Paragraph 75 of *Frazer* quotes an earlier ruling of the Supreme Court of Canada (*Quebec v. A*), which is:

" [...] "heterogeneity within a claimant group does not defeat a claim of discrimination" [...]"

Paragraph 76 of *Frazer* states in part:

"[...] The harm may include "[e]conomic exclusion or disadvantage, [s]ocial exclusion . . . [p]sychological harms . . . [p]hysical harms . . . [or] [p]olitical exclusion" [...]"

Thus, claims that this isn't intentional discrimination, that the discrimination occurs indirectly, or that not all Jewish or Israeli students are negatively impacted, would not be enough to dispel our complaint of adverse impact discrimination.

Article 1.3 of the Policy on Positions Held by The Union states:

**1.3.** *Positions cannot supersede, and are limited by, the By-Laws and these Standing Regulations. Positions cannot contravene Quebec or Canadian law, nor may they contravene the rights provided for under the Quebec and Canadian Charters of Rights and Freedoms.*

Bylaw 6.3 states in part:

**6.3** *The tasks and powers of the Council of Representatives may only be properly exercised in the course of a duly convened meeting of same. In particular the Council shall do or cause to be done the following:*

*h. Such other acts as allowed by law which do not contravene these bylaws.*

Thus the motion to send the position to referendum is invalid in any case and must be struck down.