

*Dear DIE Board,*

To begin, there are some important pieces of context about how the process was chosen. Bylaw 100(6) only provides a handful of instructions for how to hold a replenishment vote. Because there has not been a replenishment vote in many years, we did not have a direct precedent to follow. We felt it would be unfair and possibly create a perception of bias to make up an untested procedure from scratch, and so we followed the much clearer Speaker nomination process, which is supported by many years of precedent, in cases where Bylaw 100(6) did not offer clear instructions. The entire process— receiving resumes and cover letters, going in camera, conducting interviews, discussion, and then voting by ranked ballot was kept as close to the Speaker selection process as possible to ensure procedural fairness. Rather than making things up, we used a system with a strong track record that is tested and trusted by Council and the community.

This plan was developed collaboratively between the CRO, Speaker, and President to ensure everyone was on the same page. The expert advice of the Manager of Administrative Services was sought to ensure we had made the right decision. This plan was developed by staff and officers of Council to be as fair as possible.

There is a very strong precedent for holding interviews and discussion around external candidates applying for Council-nominated positions in camera. The Speaker selection process, which we chose to emulate where bylaws did not offer enough guidance, is the clearest example. Interviews by Nominating Committee, which also appoints representatives to bodies as representatives of 35,000 students, holds its interviews and candidate discussions in camera. All job interviews at the Students' Union, the University, and most other employers are conducted in strict confidentiality. The inverse process, impeachment, is also explicitly required to be discussed in camera for similar reasons. No concerns about these practices have been raised before, and so we believe it is fair for Council to be guided by what precedent is available.

There is a strong rationale behind this. Appointments by Council should be made on the basis of merit. If interviews and discussion on personnel matters are held in the open, Councillors can be subject to personal pressure and punishments from candidates and their supporters for asking challenging questions or expressing disapproval or approval for a given candidate. Councillors need to work with stakeholders and colleagues for many more months, and so there is plenty of possibility for vendettas from unsuccessful candidates. This is notably different from a general election in which there is little ability for a candidate to punish a voter for questioning them or not voting for them.

The CRO has broad authority under bylaw to make decisions regarding election processes, an authority which may supercede the standing orders of Council. The CRO agreed that the interview and selection process should occur in camera. The CRO has the authority under Bylaw 2100(8)(3)a to "conduct the balloting process". While there is not a clear reference to Bylaw 100

in Bylaw 2100, the authority of the CRO to run several parts of the replenishment process is explicitly recognized in Bylaw 100. As Bylaw supersedes Standing Orders, a decision of the CRO to exercise their authority under 2100(8)(3)a and conduct the process in camera would supercede a contradictory standing order, even if one existed.

Next, we would like to address the arguments that the applicant has made.

The Applicant's arguments fall into four major categories:

1. That Council may not have used a preferential ballot, as required by Bylaw 100(6)5
2. That Council voted in camera, a violation of Standing Orders section 2(1)(i)(i)a
3. That Council discussed an item in-camera that is not a discussion or information item
4. That Council is generally secretive and undemocratic

We will address those concerns one by one.

#### **Accusation 1: Council may not have used a preferential ballot as required in Bylaw 100(6)5**

Council did use a ranked ballot using a secure Google form prepared by the CRO which allowed the candidates and None of the Above to be ranked from 1-5 using checkboxes. We have no idea what led the applicant to believe that a ranked ballot was not used, but it is concerning to see them making a very serious allegation on the basis of unsupported speculation. The burden of proof for such a claim is on the applicant.

The Applicant also *"ask[s] the Speaker to provide clarification on if the preferential ballot was used, and what was the voter turnout along with votes cast for each candidate"*. It might be acceptable to share the round-by-round vote totals for each candidate, though this is not a standard practice. It would not be acceptable to share how any given Councillor ranked candidates. This would be a violation of Standing Orders section 8(7), which specifies that *"votes on contested nominations shall take place in a confidential manner."* That section does not exclusively refer to nominations to committees of Council, but to all nominations made by Students' Council. It would be highly improper for anyone other than the Speaker (and in this case the CRO, given their role in replenishments) to see how Councillors voted on a nomination. Holding nomination votes by secret ballot is a standard practice in most deliberative bodies, and is essential to ensure that Councillors can vote based on merit and not external pressure.

#### **Accusation 2: Council voted in camera**

The issue the Applicant seems to have is that the CRO distributed a voting link before Council had come out of camera. That is the same process that is followed every year for the Speaker selection process. The intent of Standing Orders 2(1)(i)(i)a is to ensure that there are no secret votes where the motion and outcome are not made public. Both what the vote was for and the result were made public at the first opportunity in this case.

Neither standing orders or bylaw state explicitly that a voting link cannot be distributed before going ex camera. There is no harm caused by sharing the link to vote before leaving closed– the only visible change to spectators would be that they would have seen a link in the chat to the form which they could not fill out, and there would have been no impact on how Councillors voted. No matter when the voting link was sent out, nobody would have been able to see who each Councillor voted for, or know the reasons for their vote. Everybody would know exactly what the vote was about and how it was conducted, as that is all outlined in Bylaw.

This situation is not comparable to a situation in which a motion is drafted in closed and agreed by voice vote or roll call. The reason why it is traditional not to hold votes in camera is to ensure that decisions made by a body are shared transparently, and the BoG replenishment result was immediately calculated and announced. The reason is NOT to offer complete insight into every factor affecting a body's decision– confidential information and discussion items relating to a topic often precede an open vote on that topic, for example in the case of a motion to impeach, or in-camera discussions about contract negotiations preceding a public ratification of the contract.

In future, though, we agree that it is advisable to move ex-camera before distributing a voting link in order to avoid confusion of this type again.

### **Accusation 3: That Council discussed an item in-camera that was not a discussion or information item**

The interviews and subsequent discussion about candidates is best described as a discussion item. That votes have to be conducted transparently does not mean that Council must publish every conversation about that topic preceding a vote, as discussed in the previous example of contract negotiation updates being carried out in-camera prior to a public vote on approval once a final contract is reached. So the fact that Council discussed the candidates in-camera is not a violation of section 2(1)(i)(i)a.

There is also a very strong precedent and rationale for conducting interviews and discussion about personnel decisions in private, as described at the beginning of this response. Human resources best practices, procedural fairness, and precedent all point to in-camera interviews and discussion as the fairest and most ethical way to handle interviews and candidate selection. Conducting the interviews, and especially the conversation, in the open would undermine the legitimacy, equity, and fairness of the process.

### **Accusation 4: Council mostly acts secretly**

Council being “secretive” is not an argument that should be disputed at DIE Board. As long as Council has followed all relevant legislation, the decision of when to go in camera is a democratic decision at the discretion of Council.

But more importantly, the suggestion that Council mostly acts in secrecy is baseless and is not substantiated in any way. The vast majority of our meeting time, with the exception of a handful of meetings this year, is spent ex-camera. The vast majority of our committee work is done ex-camera. Council goes in-camera on an as-needed basis to discuss sensitive issues that cannot be appropriately handled ex-camera, such as litigation strategy, business negotiations, and personnel matters. Describing Council as “secretive” has no basis in fact.

### **Conclusion**

The application is filled with confusion about how Council works and baseless allegations. The applicant has made serious accusations about Bylaw 100(6) not being followed with no evidence at all, despite the burden of proof being on them. The applicant’s concerns around the timeline of the distribution of the voting link do not involve any harm to them or anyone else. The applicant has made irrelevant and unsubstantiated allegations of general secretiveness. In general, the application is unfounded and unreasonable.