

DISCIPLINE, INTERPRETATION, AND ENFORCEMENT BOARD

Citation: Students' Council v Ali; 2022-HA-07

BETWEEN:

Students' Council (Speaker)

Applicant

- and -

Haruun Ali

Respondent

COUNCILLOR'S ELIGIBILITY STATUS

Panel Members:

Scott Parker, Associate Chief Tribune (Chair)

Sarah Rhydderch, Chief Tribune

Kamryn Wiest, Tribune

Hearing Date:

September 10, 2022

Witnesses for the Applicant:

None

Witnesses for the Respondent:

None

PLAIN LANGUAGE SUMMARY

- [1] The University of Alberta Students' Union (UASU) is a students' association created under the *Post-Secondary Learning Act*. The *Act* mandates the association is managed by a council drawn from the membership. The *Act* charges the council with administration of student affairs, including making Bylaws for the qualifications required for election as a member of the council.
- [2] The Discipline, Interpretation and Enforcement Board's (The Board) mandate is to interpret and enforce Students' Union legislation, and this includes adjudicating disputes that arise when the Legislation or Standing Orders are unclear.
- [3] There has been ongoing debate over the eligibility of Councillor Haruun Ali to represent the Faculty of Arts. According to Bylaw, a Councillor is only eligible to represent the faculty they are enrolled in. When Councillor Ali was elected, during the March 2022 UASU election, he was not in the Faculty of Arts. However, Councillor Ali was at that time *admitted* into the Faculty of Arts for the fall term, beginning September 1, 2022.
- [4] Bylaw requires the Chief Returning Officer (CRO) to verify that all candidates for council are eligible. Candidate eligibility does not require a nominee to be enrolled in the faculty they seek to represent. They need only be enrolled in a faculty and in good academic standing.
- [5] Councillor Ali was, once this dispute arose, provided a letter from the CRO verifying his eligibility as a candidate for the Faculty of Arts. This would indicate the Councillor Ali's election as Councillor representing the Faculty of Arts cannot be questioned. Except it has been questioned.
- [6] One of the responsibilities of the Speaker is to confirm all individuals elected to council are enrolled in the faculty they represent. The Speaker, on undertaking this duty, determined Councillor Ali was not presently enrolled in the Faculty of Arts. Ultimately, Councillor Ali was asked to resign, which he refused.
- [7] There is confusing direction from Bylaws regarding Councillor eligibility, and also the timing of a candidate's enrollment or admission in a particular faculty.
- [8] For reasons set out below, The Board determines that Councillor Ali was eligible to be a candidate for the Faculty of Arts, is properly elected by Faculty of Arts students and therefore cannot be removed from Council.

FACTS:

- [9] On March 17, 2022, Councillor Ali submitted his nomination package to be a candidate as Councillor representing the Faculty of Arts. Prior to submitting the nomination package, Councillor Ali had contacted the Chief Returning Officer (CRO) to determine if he was eligible as candidate for the Faculty of Arts. In evidence presented and accepted by The Board, Councillor Ali messaged the CRO regarding his eligibility. Note that the CRO in March 2022 was Lucas Marques. Mr. Marques is no longer a student at the University of Alberta. The CRO confirmed Councillor Ali was eligible to run. Councillor Ali was eligible even if he was not presently enrolled in the Faculty of Arts but had been conditionally admitted for the fall term. Councillor Ali testified he confirmed this again in the candidates' meeting. Councillor Ali presented evidence of conditional admission to the Faculty of Arts with an admission letter dated March 11, 2022.
- [10] Councillor Ali maintains he was due diligent in determining his eligibility to run as Councillor for the Faculty of Arts. The Board accepts Councillor Ali's diligence and finds Councillor Ali at no time tried to mislead the CRO regarding his future admission to the Faculty of Arts. The CRO verified Councillor Ali's eligibility, as per the CRO's duty.
- [11] Councillor Ali was democratically elected by students to represent the Faculty of Arts in the March, 2022 UASU Students' Council elections.
- [12] On June 28th, nearly three months after the election, the Speaker received an email from a Councillor indicating Councillor Ali did not meet the enrollment requirements to sit as Councillor for the Faculty of Arts.
- [13] On June 29th the Speaker initiated a confirmation process of all elected Councillors. The Speaker has the duty under Bylaw to ensure all Councillors meet eligibility requirements. These eligibility requirements are stricter than candidate eligibility requirements and require a Councillor to be "enrolled in the faculty they represent."¹ There was, however, some uncertainty how this should proceed. The Speaker testified this process is not a routine event and had not, to his knowledge, been carried out in the previous two years.
- [14] After further inquiries the Speaker was satisfied Councillor Ali was not eligible to represent the Faculty of Arts on Council, because Councillor Ali was not at that time enrolled in the Faculty of Arts. On July 12th, the Speaker met with Councillor Ali and requested the Councillor's resignation. Councillor Ali refused.

¹ <https://docs.su.ualberta.ca/books/students-council-legislation/page/bylaw-100-students-council>

- [15] The Speaker and Council proceeded with their own due diligence to ensure this issue was given cautious consideration. Council discussed both the concerns of Councillor Ali and the matter of eligibility. This issue continued to occupy much discussion within Council over many weeks and meetings. Ultimately, Council voted 11-9 in favour of submitting this dispute to The Board. The remedy requested by the application submitted by Council is the removal of Councillor Ali.
- [16] The Board determined, for reasons set out below, that Councillor Ali was properly elected to represent the Faculty of Arts and should not be removed from his position. Additionally, The Board considers the CRO, as the highest authority in the elections process, should have the authority to determine eligibility of a candidate to represent a particular faculty. To have the Speaker, at a later date, re-validate Councillors after they have been elected and active in Council is a practice that must be revised. It is not fair to students or candidates to have the CRO validate a nominee as eligible to represent a faculty, but later have the Speaker determine the elected Councillor is not eligible to represent that faculty. This practice interferes with student democracy. Student voters must have confidence their chosen representatives are eligible to serve.
- [17] This has been an ongoing and acrimonious issue, including multiple hearing applications made to The Board. The Board does not appreciate attempts to use hearing applications to further extend a dispute. Applicants bringing issues forward to The Board in order to create precedent for a future matter risk being considered vexatious. The Board is not bound by its prior decisions.
- [18] In all its decisions, The Board strives for fairness, deference to Speaker and Council where appropriate, and above all consideration of what outcome best serves the students of the University of Alberta.
- [19] This hearing was conducted *in camera* as the Applicant raised privacy concerns.

ISSUES:

- [20] In careful consideration of the submissions, oral arguments and evidence, The Board clarifies the issues to be adjudicated as:
- 3) *Are candidates for Council who are not currently enrolled in the faculty they wish to represent but are admitted in future to the faculty they wish to represent eligible as candidates for that faculty?*
 - 4) *If the answer to (1) is no, what remedy is appropriate for the elected but ineligible Councillor?*
- [21] The Board wishes to address a further issue:

- 3) *Who has ultimate authority for determining eligibility of candidates for election to a particular faculty?*

RULES:

[22] The Board relied on the following UASU legislation to determine answers to the issues.

Bylaw 100: Students' Council

1. Definitions

1(b) "Faculty" means

- (i) Any entity designated by University of Alberta General Faculties Council policy as a faculty, except the Faculty of Graduate Studies and Research, the Faculty of Library and Information Studies, and the Faculty of Extensions,*
- (ii) All undergraduate students registered at the University of Alberta in Open Studies;²*

3. Eligibility

2 Every Councillor is required to be enrolled in the faculty they represent.³

4. Resignation

1. Students' Council does not have the authority to remove any Councillor, except those Councillors in contravention to the Attendance Regulations set out in Section 21 and 22.⁴

8. Speaker of Students' Council

1. The Speaker is responsible for

- c. Requesting a report from the University of Alberta Office of the Registrar and Student Awards each term to confirm that all individuals occupying positions requiring them to be undergraduate students meet all requirements set out in bylaw;⁵*

Bylaw 2100: Chief Returning Officer and Elections Staff of the Students' Union

1. The duties of the C.R.O. shall include:

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

- a. overseeing the implementation of the Elections Bylaw, which includes Bylaws 2100, 2200, 2300, 2400, 2500; and
- b. such duties required of the C.R.O. under Bylaw 100 and 8100; and
- c. being the highest responsible manager of the Elections Office and elections staff, particularly when interpreting, enforcing, and delegating authority afforded by the aforementioned Bylaws.⁶

Bylaw 2300: Councillor Elections to Students' Council and General Faculties' Council

6. Candidate Nomination Packages

3. Valid nomination packages shall contain:

- (b) a signed letter from the proposed nominee's faculty confirming that they are in good academic standing under University regulations;⁷

8. Acceptance of Candidate Nominations

- 2. Should a member submit valid nomination papers, they shall be designated a candidate at the nomination deadline.

ANALYSIS

Issue #1: Are candidates for Council who are not currently enrolled in the faculty they wish to represent but are admitted in future to the faculty they wish to represent eligible as candidates for that faculty?

[23] Yes, for the following reasons:

[24] Bylaw 2300(6)(3)(b) is clear that valid nomination packages shall contain a “signed letter from the proposed nominee’s faculty confirming that they are in good academic standing under University regulations”.⁸

[25] When submitting his nomination package, Councillor Ali was enrolled in Open Studies. Bylaw 100(1)(b)(ii) defines Open Studies as a faculty.⁹ Therefore, The Board finds Councillor Ali had fulfilled the requirements for an eligible nomination package under Bylaw 2300(6)(3)(b).

⁶ <https://docs.su.ualberta.ca/books/students-council-legislation/page/bylaw-2100-chief-returning-officer-and-elections-staff-of-the-students%E2%80%99-union>

⁷ <https://docs.su.ualberta.ca/books/students-council-legislation/page/bylaw-2300-councillor-elections-to-students%E2%80%99-council-and-general-faculties%E2%80%99-council>

⁸ *Ibid.*

⁹ *Supra* note 2.

- [26] Bylaw 2300(8)(2) instructs that if a member submits valid nomination papers, as Councillor Ali had done, they “shall be designated a candidate at the nomination deadline.”¹⁰
- [27] There is confusion whether a candidate must be enrolled in the faculty they intend to represent *at the time* they submit their nomination package. The Board’s interpretation of Bylaw 2300(6)(3)(b) is that a member is simply required to be enrolled in their faculty and be “in good academic standing”. A review of the October 2022 UASU by-election Nomination Package makes no reference to having to be enrolled in the faculty a nominee wishes to represent.¹¹ The Nomination Package only requires what the Bylaw requires: a letter of academic eligibility.
- [28] However, this would indicate a candidate can be enrolled in any faculty and be a candidate to represent any other faculty. This is contrary to principles of representative democracy. Candidates should represent the students of the faculty they are enrolled in. But student elections must also be able to account for fluidity, that is, when a student moves between faculties. If a candidate is elected in March but intends to move to a different faculty in Fall term, students may benefit from being able to select that candidate to represent their faculty in the Fall term.
- [29] In this case, Councillor Ali had made his intention to be enrolled in the Faculty of Arts very clear. The Hearing Panel asked Councillor Ali directly if he had ever intended to mislead the CRO or voters as to his enrollment, and Councillor Ali replied he had not. The Board accepts Councillor Ali’s position and the evidence provided by Councillor Ali.
- [30] Councillor Ali provided two compelling exhibits regarding his diligence in determining his eligibility to be a candidate in the Faculty of Arts:
- [31] First, a text message to the CRO asking if Councillor Ali would be eligible to represent the Faculty of Arts if he was enrolled in the Fall 2022 term, and the CRO confirmed Councillor Ali was eligible. Councillor Ali provided The Board with a letter confirming his conditional admission to the Faculty of Arts prior to submitting his nomination package.
- [32] Second, after his election as Councillor in the Faculty of Arts, there was dispute over whether or not Councillor Ali was eligible. A letter from the CRO dated April 5, 2022, confirmed Councillor Ali had “fulfilled **all** election eligibility requirements in accordance with Bylaw 100 and 2300.”¹²

¹⁰ *Supra* note 7.

¹¹ www.su.ualberta.ca/media/uploads/48/nominationpackage.pdf

¹² DIE Board Hearing HA 07, Exhibit C, Respondent Application.

- [33] It is the CRO's responsibility, as per Bylaw 2100, to oversee implementation of all elections Bylaws, including Bylaw 2300. Bylaw 2300 designates the CRO as the "highest responsible manager of the Elections Office...particularly when interpreting, enforcing and delegating authority" afforded by the election bylaws.¹³
- [34] The Board maintains Bylaw 2300 is silent on whether or not a Councillor must be enrolled in the faculty they wish to represent in order to be a candidate. Nomination Packages for candidates are also not clear. To be a valid candidate only requires good standing in their faculty. However, Bylaw 100(3)(2) is clear that "Every Councillor is required to be enrolled in the faculty they represent."¹⁴ Further, s. 8 of Bylaw 100 states the Speaker is responsible for confirming "all individuals occupying positions requiring them to be undergraduate students meet all requirements set out in bylaw".¹⁵ This gives the Speaker the duty to re-confirm all Councillors are eligible under Bylaw 100(3)(2).
- [35] There is no guidance on what remedy is available for removing or suspending a Councillor who has been elected but is found, once elected, to be violating Bylaw 100(3)(2).

Remedy ordered:

- [36] The Board suggests Council consider two approaches to remedying this issue, but one or the other must provide clarity, and The Board welcomes other draft interpretations:
1. An amendment to Bylaw 2300(6)(3)(b) to require valid nomination packages to provide either:
 - (a) confirmation of **current enrollment** in the faculty they seek to represent, or
 - (b) confirmation of current enrollment in the faculty they seek to represent **or admission in the upcoming fall or winter term** to the faculty they seek to represent (conditional admission should also be considered as either acceptable or not acceptable).
 2. An amendment to Bylaw 100(3)(2) to require every Councillor to be enrolled in the faculty they represent **or admitted to that faculty in the upcoming fall or winter term.**

¹³ *Ibid.*

¹⁴ *Supra* note 2.

¹⁵ *Ibid.*

The Board seeks a report back from the responsible entity, whether Council or the Bylaw Committee, on how a Bylaw amendment will address this issue, and prevent future disputes. Council will provide The Board with a plan to update these Bylaws.

- [37] Additionally, if the Speaker is to verify Councillor's eligibility, this must be completed immediately after elections. It is an inefficient practice to verify eligibility months after a Councillor has been elected and active in Council.
- [38] In determining this issue, The Board does not accept Councillor Ali's argument that since he is now in the Faculty of Arts, this issue is moot. The Board has also not previously agreed with Councillor Ali's position on the powers of The Board to remove a Councillor, as this option is open to The Board given Bylaw 1500(29). Bylaw 1500(29) allows The Board to make any remedy "it considers appropriate and just in the circumstances."¹⁶ The Board has further rejected Councillor Ali's argument in *Ali v Students Council* (2022-HA-O8), that this matter should not have been submitted to The Board due to improper consideration of abstentions to motion to reconsider.¹⁷
- [39] The Board reminds all Councillors their first duty is to the students that elect them. The Board is concerned that long and ongoing disputes remove focus from Councillors' most important task: the students' business. In future applications, The Board will take into account the seriousness of alleged violations being disputed against the interference the dispute has with Council's role in serving students.

Issue #2: If the answer to (1) is no, what remedy is appropriate for the elected but ineligible Councillor?

- [40] Given the answer to issue #1 is yes, The Board will not take remedy under consideration, but will provide instructions for remedy in future instances where Councillors are ineligible to remain on Council (based on the amended eligibility Bylaws).
- [41] The Board reminds Councillors that removing a Councillor is within The Board's broad remedy powers. Although Council has limited remedy available to remove a Councillor (notably for unsatisfactory attendance) this is not true of The Board. Where appropriate and just in the circumstances, The Board will instruct Students' Council to suspend or remove a Councillor.

Remedy ordered:

¹⁶ <https://docs.su.ualberta.ca/books/students-council-legislation/page/bylaw-1500-judiciary>, see also DIE Board Decision HA-08 at www.su.ualberta.ca/media/uploads/assets/Committees_DIE/DIE-2022-03-R.pdf

¹⁷ Decision HA-08 at www.su.ualberta.ca/media/uploads/assets/Committees_DIE/DIE-2022-03-R.pdf

- [42] The Board recommends a further Bylaw amendment. Currently, the only Bylaw giving Council the powers to remove a Councillor is through Bylaw 100(4)(1). This allows Students' Council to remove "those Councillors in contravention to the Attendance Regulations".¹⁸ The Board recommends adding eligibility violations to Bylaw 100(4)(1).
- [43] If a student is verified as eligible based on the faculty they will be admitted to, and either does not get admitted or chooses not to enrol in that faculty, Council should have the power to remove them. Therefore, *once eligibility requirements are clarified*, Bylaw 100(4)(1) should allow Council to remove Councillors who violate eligibility requirements.

Issue #3: Who has ultimate authority for determining eligibility of candidates for election to a particular faculty?

- [44] The CRO, for the following reasons:
- [45] The CRO is charged with ensuring nominees are eligible as candidates to represent particular faculties. This pre-election evaluation is critical to ensure candidates are representing the faculties they are enrolled in or admitted to.
- [46] The Board finds the CRO discharged these duties, ensuring Councillor Ali had met the requirements of Bylaw 2300(6)(3)(b). This requires a candidate to be in good academic standing under University regulations.¹⁹ It does not require a candidate to be in good academic standing for the faculty they are a candidate to represent.
- [47] The Bylaw amendment proposed by The Board (para. 36) will address this issue.
- [48] There is a role for the Speaker in determining post-election eligibility. However, the Speaker's evaluation must not be allowed to override the CRO's evaluation on eligibility. It does not make sense for the CRO to declare a candidate eligible, the candidate to win an election, and then months later the Speaker declares the Councillor ineligible. But there still does require protection against candidates being elected to represent faculties they do not belong to, and do not intend to belong to. This is contrary to the principles of representative democracy. Clarity in eligibility requirements, and Council's ability to remove Councillors in violation of those requirements (as per para. 43) will ensure representative democracy is protected.

¹⁸ *Supra* note 2.

¹⁹ *Supra* note 7.

CONCLUSION

- [49] The Board wishes to thank Councillor Ali and Speaker Zukowski for their helpful written and oral submissions.
- [50] The Board instructs Councillor Ali will remain as Councillor in the Faculty of Arts.
- [51] The Board instructs Council or the relevant authority will submit to The Board a plan to update Bylaw as set out in this decision.
- [52] The Board gives Council latitude in how Council will chart the path towards clarifying matters of candidate eligibility. The Board, stopping short of ordering a specific amendment as remedy, prefers to hear from Council on how eligibility can be clarified. Does Council consider Bylaw 100(3)(2) must strictly prevail and it is Bylaw 2300(6)(3)(b) that should be amended? The Board would like to hear from Council on charting the way forward.
- [53] The Board respects Council's time. The Board would like the Speaker to be in contact within two weeks of this decision and inform The Board on how the proposed amendments will be accomplished.
- [54] The CRO must be the final authority on who is eligible to be a candidate for Councillor. Deciding eligibility issues after elections is an unfair practice, unless eligibility criteria is made clearer. Closer attention to the issue of eligibility is warranted in all future elections. In order for candidates running in the October by-election to be in compliance with Bylaw 100(3)(2) as it currently stands, The Board recommends the CRO determines eligibility based on current enrollment in the faculty a candidate wishes to represent. The Board recognizes this restricts fluidity. Given that by-elections are underway, The Board respects the CRO's discretion to conduct the elections how they see fit and, as usual, in the best interests of students.
- [55] Students' Council should have the ability to remove Councillors who are not in compliance with the *amended and clarified* bylaws on eligibility, based on an amendment to Bylaw 100(4)(1) as set out above.