

DIE BOARD RULING 2018-07

Hearing Details: Student's Council in violation of Bylaw 100(11.4). Noncompliance with Standing Orders regarding release of presentation materials.

Style of Cause: *Monda* (Applicant) *v Students' Council (Speaker)* (Respondent)

Hearing Date: September 13, 2018

DIE Board Panel Members: Karamveer Lalh, Chief Tribune (Chair)

Shridar Patel

Christian Zukowski

Applicant: Kyle Monda (Councillor)

Appearing for the Respondent: Levi Flaman (Board of Governors Representative, Deputy Speaker, Council Administration Committee Chair)

Reasons per Lalh CT:

Bylaw 100

1. Definitions

1. In this bylaw

- e. "Legislation" means
- iii. Students' Council standing orders, and

11. Legislation

4. Standing orders of Students' Council

- a. Are ongoing instructions to members of Students' Council and Students' Union staff respecting the manner of execution of Students' Council logistics;
- b. Are adopted, amended, or rescinded on a simple majority vote of Students' Council or the Council Administration Committee; and
- c. Do not expire, but shall be reintroduced by the Chair of the Council Administration Committee at the first meeting of each year's Students' Council.

Bylaw 1500

2. Mandate

The [D.I.E.] Board is the organ of the Students' Union responsible for the interpretation and enforcement of Students' Union legislation.

3. Scope of Cases

1. The scope of the Board shall be limited to actions and appeals brought before it that:
 - a. initiate a complaint about a contravention of Students' Union legislation

Summary of Facts

- [1] This case is about an issue arising from the implementation Bylaw 100.11(4).
- [2] Councillor Monda submitted evidence that indicated that a change was made to the Students' Union Standing Orders at the Council Administration Committee meeting 2016-17/3a.
- [3] This change was regarding the archival and accessibility of all presentations made to council. The motion to update the standing orders passed unanimously.
- [4] The evidence presented before this tribunal suggested that the standing order amendments were not enforced from its implementation at CAC to the adoption of new standing orders at the start of the next legislative session.
- [5] Deputy Speaker Flaman did not dispute these facts.

Analysis

- [6] This case is the result of poor communication and a bizarre parallel process for implementing changes to standing orders.
- [7] Following in the tradition of Canadian courts and a recent court decision in *Singh v Quebec (AG)* 2018 QCCA 257, parliamentary privilege suggests that the operational procedures of a legislature are exempt from review by the courts.
- [8] However, the bylaws of the Students' Union grant the D.I.E. Board the express authority to do so.
- [9] It is plainly clear from the facts that the Speaker erred in enforcing the orders passed in the CAC, and then new rules were adopted later without the amendments.
- [10] Therefore, it is plainly obvious that the only outcome that can arise is that I must order the speaker to make a reasonable attempt to procure the missing documents and release them as per the amendment passed at CAC meeting 2016-17/3a reproduced below:

MONDA/DEJONG MOVES to amend Students' Council Standing Orders by adding the following subsection:

Presentation Materials: All materials or slides accompanying a presentation must be submitted to Council for archival and made available to all members of the Students' Union. Materials presented during in-camera sessions must be archived and made available in accordance with Section 3 (2) of Bylaw 500.

[11] I believe that this problem is not one of a failure to interpret bylaw, but because of bizarre Student's Union structure which allows proposed amendments to be approved in two different channels.

[12] Deputy Speaker Flaman told this panel that no other committee can unilaterally approve an item before a final vote in council.

[13] It seems patently obvious to me that this procedure resulted in confusion, and ultimately resulted in an amendment aimed at providing transparency to students, somewhat ironically, vanishing into thin air.

[14] Furthermore, the conclusion and remedy that which I recommend is narrow in scope. As above, I will only order the speaker to make a reasonable undertaking to release the documents mentioned from the period above.

[15] This means that the standing order would be in effect for only a few months, after which no such reporting requirement exists.

[16] This is an absurd result, as doing so no longer will satisfy the primary purpose of that amendment, but it is the only result I can give that is within the scope of both the D.I.E. Board's jurisdiction, and the express instructions of the Council in its bylaws.

[17] I also strongly recommend that council amend their legislation to strip CAC's ability to unilaterally pass and implement amendments as this results in confusion.

[18] My suggestion is that the CAC remains the place for proposal and debate of bylaws, but any bylaw discussed there they are not considered legislation until ratified by council.

Conclusion

[19] In reviewing this case, I rule in favour of Councillor Monda.

[20] I order the speaker to undertake to release the documents as discussed in the standing order and as above.

[21] I strongly recommend that Council address this issue with a bill amending how standing orders are created and implemented to prevent a similar issue from occurring in the future.

Patel T: I concur.

Zukowski T: I concur.

Ordered accordingly.