

**DISCIPLINE, INTERPRETATION, AND ENFORCEMENT (DIE) BOARD
RULING # 2017-02**

Reference Re Section 7 and Section 21 of Bylaw 100

Hearing Date: August 24, 2017

DIE Board Panel Members: Alin Florea, Chief Tribune
Landon Haynes, Tribune
Karamveer Lalh, Tribune

Appearing for the Applicant: Saadiq Sumar

The DIE Board is unanimous in the following interpretation.

BACKGROUND

[1] The Students' Union, on behalf of Speaker Saadiq Sumar, made an application on August 21, 2017 requesting an interpretation of section 7 and section 21 of Bylaw 100 of the Students' Union Bylaws (the "Bylaws"). The relevant portions of the two sections of Bylaw 100 are reproduced below:

7 Start-Up

...

3. The Speaker shall convene and Chair the introductory meeting as soon as practical after all elections have been completed except any portion of the meeting in which the outgoing Speaker is running for re-election.
4. At the introductory meeting, the Students' Council-elect shall
 - a. select the ensuing year's Speaker of Students' Council; and
 - b. select the compositions of the ensuing year's standing committees; and
 - c. set the meeting schedule for the ensuing year's Students' Council, with the first meeting to occur not before the last scheduled meeting of the current Students' Council and not later than May 7, and the last meeting to occur not later than May 7 of the succeeding year.

5. At the first meeting of any year's Students' Council, all members of that Students' Council except the General Manager of the Students' Union shall be installed in a ceremony to be presided over by:

- a. the previous year's Students' Union President, if available; or
- b. the previous year's Speaker of Students' Council, if the previous year's President is unavailable; or
- c. the incoming Speaker of Students' Council, if neither the previous year's President nor the previous year's Speaker of Students' Council is available.

6. Upon the execution of (5), power is transferred from one year's Students' Council to the next.

21 Attendance Regulations

1. Attendance is defined as attending for at least one (1) roll call of attendance.
2. Councillors are expected to attend, send a Proxy or Councillor-Designate, to meetings of Students' Council as minimum expectation of holding office.
3. A Councillor shall have an attendance record of at least 50% of meetings each trimester.
4. Formal attendance percentages shall be calculated for each Councillor at the end of every trimester by the Speaker, and be provided as an information item to Students' Council.
 - a. A leave of absence for elections shall not be accounted into the attendance percentage.
5. Where a Councillor has less than 50% attendance at the end of the trimester, they shall be declared in contravention to this Bylaw and be automatically removed as a member of Students' Council.
 - a. This regulation shall only apply at the end of the Spring/Summer and Fall trimesters.

[2] “Introductory meeting” is defined in Section 1(d) as “the annual meeting of those persons elected to serve on Students’ Council for the coming year”.

[3] The questions posed to DIE Board in this application are as follows:

1. Do both the introductory meeting and the first meeting of Council need to occur before May 7? What are the consequences if this does not happen? Can the first meeting occur before May 1?

2. Is the introductory meeting counted towards councilor attendance for the Spring/Summer term? This meeting is unique to this term.

ANALYSIS

1. Do both the introductory meeting and the first meeting of Council need to occur before May 7? What are the consequences if this does not happen? Can the first meeting occur before May 1?

[4] Section 7(4)(c) of the Bylaws make it clear that the first meeting shall not be scheduled later than May 7. Since the first meeting is set at the introductory meeting, it follows that the introductory meeting cannot occur later than May 7. Hence, the answer to the question: “Do both the introductory meeting and the first meeting of Council need to occur before May 7?” should be answered in the affirmative.

[5] Turning to the last part of the first question (“Can the first meeting occur before May 1?”), section 7(4)(c) makes it clear that the first meeting is to occur not before the last scheduled meeting of the current Students’ Council. On a plain reading of this provision, it would seem that it is possible for the first meeting to occur before May 1 if the last scheduled meeting of the current Students’ Council is also scheduled before May 1. Subject to any Bylaws that have not been brought to our attention that add additional conditions to these dates, it is our interpretation that the first meeting can occur before May 1, under the right conditions (i.e., the last scheduled meeting of the current Students’ Council is held in April, and the introductory meeting is held in April).

[6] Turning now to the second part of the first question (“What are the consequences if [both the introductory meeting and the first meeting do not occur before May 7]?”) -- the Bylaws are not as clear.

[7] Discipline and penalties due to breaches of the Bylaws are comprehensively dealt with in other sections of the Bylaws (see for example section 47 of Bylaw 2200). However, these provisions deal with specific circumstances and do not apply to all breaches. In this case, it appears that Bylaw 100 is silent about what remedy would be available if either the introductory meeting or the first meeting do not occur before May 7.

[8] Perhaps the only relevant section of Bylaw 100, with regards to the current issue, is section 5(2):

5 Impeachment of President, a Vice President, or Undergraduate Board of Governors Representative

...

2. A motion to impeach the President, a Vice President, or the Undergraduate Board of Governors Representative must be made in good faith and only for one or more of the following reasons:

- a A significant breach or multiple breaches of Students' Union Bylaw, or Political Policy. It is required that that such contraventions be supported by D.I.E. Board Rulings.

Hence, if either the President, a Vice President, or the Undergraduate Board of Governors Representative had the authority to "set the meeting schedule for the ensuing year's Students' Council," then if the first meeting was set after May 7 under this authority, this may constitute a breach for the purpose of section 5 of Bylaw 100. However, section 7 of Bylaw 100 makes it clear that it is the "Students' Council-elect" that shall "set the meeting schedule for the ensuing year's Students' Council." This implies a group decision-making process, probably in a democratic setting, rather than the responsibility of a single individual. Even if the date-setting rested with the authority of the President, a Vice President, or the Undergraduate Board of Governors Representative, it would be an open question whether or not scheduling the first meeting after May 7 would be a "significant" breach within the meaning of section 5(2).

[9] In light of the observations listed in the previous paragraph, it is our interpretation that the Bylaws lack an appropriate provision to deal with the consequences if the first meeting of Students' Council occurs after May 7. While section 29 of Bylaw 1500 gives the DIE Board a general power of enforcement ("If the Board finds that an application for action or application for appeal requires action, the Board may make any order proscribing or prescribing any remedy it considers appropriate and just in the circumstances") it is our opinion that this provision would not be much help when, for example, the first meeting was held on May 8, rather than May 7. If

an application is brought after May 8, there can be no “application for action” since the “action” (i.e., the first meeting) has already taken place. If the application is brought before the May 8 first meeting, then the DIE Board may be able to issue a ruling mandating that the meeting be held on May 7 (or before), but this cannot be done if the meeting has already taken place, albeit later than the Bylaws demand.

2. Is the introductory meeting counted towards councilor attendance for the Spring/Summer term? This meeting is unique to this term.

[10] Section 21 of Bylaw 100 speaks exclusively about the attendance of “Councillors” rather than “Councillors-elect” who are the individuals in attendance at the introductory meeting as the term “Students’ Council-elect” is used in section 7(4) of Bylaw 100 in discussing the introductory meeting. For this reason alone, it is this Panel’s opinion that the introductory meeting does not count for attendance for any trimester. Since it is at the “first meeting of any year’s Students’ Council [when] all members of that Students’ Council ... shall be installed in a ceremony,” since the first meeting occurs after the introductory meeting, section 21 of Bylaw 100 does not apply to the introductory meeting. If the Students’ Union wishes to make section 21 of Bylaw 100 apply to the introductory meeting, then the Bylaws would have to be amended to specify that.

[11] However, there are added complications with the fact that we have interpreted that the introductory meeting and the first meeting may occur before May 1 under the right circumstances (see paragraph 5 above). For the first meeting (and the introductory meeting if the Bylaws are amended), which trimester would attendance count towards if that meeting was held before May 1? The only place in Bylaw 100 where the date ranges of the trimesters are laid out is section 15(1):

15 Functioning of Standing Committees

1. Standing committees shall establish meeting schedules on a trimesterly basis, in advance, with the trimesters being
 - a. May to August; and
 - b. September to December; and
 - c. January to April.

This section deals with the functioning of standing committees specifically, rather than the Students’ Union generally. However, without notice of a provision to the contrary, it is our interpretation that when the term “trimester” is used in the Bylaws those three “trimesters” represent the dates from May to August, September to December, and January to April. Section 21 refers to “Spring/Summer and Fall trimesters,” and this Panel thinks it is safe to assume that

the Spring/Summer trimester are the dates from May to August, with the Fall trimester being the dates from September to December. By process of elimination, this leaves a “Winter” trimester being the dates from January to April.

[12] The issue then becomes if the first meeting (and the introductory meeting if the Bylaws are amended) is held before May 1, does attendance count towards the “Spring/Summer trimester,” the “Winter trimester,” or no trimester at all? While adopting the time frames discussed would seem to suggest that attendance would count towards the Winter trimester, this would seem to contradict section 21 of Bylaw 100. Specifically, if we include the attendance in the Winter trimester, this would instead create a *quadrimester* regime, rather than a *trimester* regime. That is, there would be (presumably) one meeting in the first quadrimester (the first meeting to be held sometime in April), with meetings throughout the Spring/Summer and Fall quadrimesters, *but also meetings held in the Winter quadrimester of the following year*. Since section 21 of Bylaw 100 speaks exclusively of attendance during the “trimesters,” this quadrimester regime simply cannot be what the Students’ Union intended in passing this section.

[13] Furthermore, if we were to adopt the quadrimester regime, this would effectively make the first meeting an absolutely mandatory meeting for Councillors; missing the first meeting would result in being removed as a member of Students’ Council since the Councillor would have attended for exactly 0% of the meetings for the first Winter quadrimester (so long as the first meeting is the only meeting in April), and the Bylaws offer no discretion in the “automatic” removal of the Councillor. While our interpretation does not rely on this outcome (indeed, it is important for Councillors to attend *all* meetings, and making one meeting mandatory save automatic removal is not necessarily a bad thing in our opinion) we are cautious to interpret this kind of regime when this was probably not the Students’ Union plan, as expressed by Speaker Sumar.

[14] In light of all these observations, it is our interpretation that if the first meeting occurs before May 1, then any attendance taken at this meeting will not count for attendance for the Spring/Summer trimester and missing this meeting will technically not invoke any of the provisions in section 21. This is further supported by the fact that the automatic removal provision in section 21(5) is qualified by paragraph 21(5)(a) in that the provision “shall only apply at the end of the Spring/Summer and Fall trimesters.” If the first meeting were to occur before May 1, then it occurs during a period of time not contemplated by the language of the Bylaws (i.e., not in the Spring/Summer or Fall trimesters), and so attendance at this meeting attracts no consequence from section 21(5).

CONCLUSION

[15] The questions that were asked of this Panel, and our answers to them, are as follows:

1. Do both the introductory meeting and the first meeting of Council need to occur before May 7? What are the consequences if this does not happen? Can the first meeting occur before May 1?

Both the introductory meeting and the first meeting of Council need to occur before May 7. The first meeting can occur before May 1 in certain circumstances. If the first meeting is held after May 7 and if an application that is brought under section 29 of Bylaw 1500 postdates the first meeting, then there is no consequence to the Students' Union or Students' Council. However, DIE Board may be able to force the meeting to take place if the application that is brought under section 29 of Bylaw 1500 is submitted before the first meeting takes place.

2. Is the introductory meeting counted towards councilor attendance for the Spring/Summer term? This meeting is unique to this term.

The introductory meeting does not count towards councillor attendance for any trimester, as interpreted from the Bylaws. In the event that the first meeting (and indeed, any meeting) occurs before May 1, then that meeting will also not count towards councillor attendance for any trimester.

[16] **In conclusion, there are several gaps that we have identified in the Bylaws being discussed. It is our hope that Students' Council will address these issues by updating and amending their respective Bylaws.**