

DISCIPLINE, INTERPRETATION, AND ENFORCEMENT

BOARD

Citation: Reference Re: Board Remedy Power;

Decision 2022-08-20

Applicant: Haruun Ali

Panel Members: (Chair) Olive Bensler, Associate Chief Tribune
Scott Parker, Associate Chief Tribune
Rebekah Mitchell, Tribune

Panel Review Date: August 9, 2022

Intervenors present: Christian Zukowski, Speaker

Witnesses for the Applicant: n/a

Witnesses for the Respondent: n/a

The reasons of the unanimous Board are delivered by O. Bensler

LEGISLATION:

[1] Relevant to this case are two bodies of legislation. The Alberta government created the Post Secondary Learning Act, which governs post-secondary systems within the province. The second is the Bylaws created by the Students' Union to govern itself, its committees, boards, and other bodies. The relevant Students' Union Bylaws to determine this reference are Bylaw 100(4)(1), Bylaw 1500(2), (13) and (29), Bylaw 100 Schedule C 10(10.1), 11(11.1) through to 11(11.2.1)(1), and 13(13.1), and Bylaw

9000(3)(1). In Alberta's Post-Secondary Learning Act, SA 2003, c P-19.5, the relevant sections are 93(3) and 95(1) and (2).

Bylaw 100: Students' Council

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.

Bylaw 1500: The Judiciary

2. Mandate

1 The Board is the organ of the Students' Union responsible for the interpretation and enforcement of Students' Union legislation.

13. Who may be appointed Tribunes

- 1. No tribune may be:*
 - 1. a voting member of Council,*
 - 2. a voting member of a committee of Council, or*
 - 3. an employee of the Students' Union*

29. General Powers of Enforcement

1 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.

Bylaw 100 Schedule C: The Student Governance Code of Conduct

10. Informal Resolutions

10.1 Restorative justice practice will be the default method for resolving a violation under the code of conduct. This process will focus on the following principles:

- a. *The people most affected by the violation should be able to participate in its resolution.*
- b. *Repair harm caused by the violation and reduce future harm through preventative actions.*
- c. *The transgressing party must take responsibility for their actions and the harm they caused.*
- d. *We must remedy or set right the negative impact of the transgressing party and reintegrate all parties back within the community, if this is possible without causing further harm.*
- e. *A cooperative effort by the complainant, transgressor, and mediator is necessary.*
- f. *The UASU's responsibility is to maintain order and of student representatives to build peace.*

11. Formal Resolutions

11.1 Student representatives may be subject to the following processes for failing to respect this Code of Conduct and upholding the principles of restorative justice as outlined in the informal resolution process.

11.2 Students' Council

11.2.1 Students' Union Councillors who violate the Code of Conduct and fail to adhere to the principles of informal resolution will be subject to disciplinary action, including:

11.2.1 (1) Temporary or permanent revocation of an individual's powers or privileges.

13. Review and Appeals

13.1 As per Bylaw 1500, all formal resolutions under the code of conduct may be appealed to the D.I.E.Board.

Bylaw 9000: The Emergency Procedures Act

3. Limitations

1. The Limitations of Bylaw 9000 are such that:

- 1. It cannot be used to extend the terms of the Executive committee or Students' Council.*
- 2. Cannot be used to change the salary or benefits of the Students' Union Executive.*
- 3. It cannot override the results of any Students' Union General Elections By-Election, or impact the voting power of the student body.*
- 4. It cannot override Bylaw 100 or Bylaw 1500 except in their mention of other bylaws, political policies, operational policies, or committees.*
 - 1. Under Bylaw 9000 the Discipline, Interpretation and Enforcement (DIE) Board has authority to discipline the Students' Union in reference to Bylaw 9000 or bylaws and policies which are not suspended.*

Post-Secondary Learning Act SA 2003, c P-19.5 (Student Affairs)

Students association

93(3) The students association of a public post-secondary institution shall provide for the administration of student affairs at the public post-secondary institution, including the development and management of student committees, the development and enforcement of rules relating to student affairs and the promotion of the general welfare of the students consistent with the purposes of the public post-secondary institution.

Management of student organizations

95(1) The business and affairs of a student organization of a public post-secondary institution must be managed by a council, the members of which are

- (a) to be elected by and from the members of the student organization as provided in the bylaws made by the council under subsection (2), or*

- (b) if it is the first council of the student organization, to be elected in accordance with the procedures prescribed by the initial governing authority under section 5(2)(b)(ii) or 42(2)(b)(ii).*
- (2) The council of a student organization may make bylaws governing*
- (a) the requirements for membership in the student organization;*
 - (b) the qualifications for election as a member of the council and the time and manner of conducting the elections;*
 - (c) the number of persons and the officers that the council is to consist of;*
 - (d) the calling of meetings of the council and the quorum and conduct of business at those meetings;*
 - (e) in the case of a students association, the maintenance of the association by the levy of membership fees on its members;*
 - (f) in the case of a graduate students association, the maintenance of the association by the levy of membership fees on its members;*
- (f.1) in the case of a graduate students association, its role as bargaining agent for academically employed graduate students, which must require the association to ascertain and act on the wishes of the academically employed graduate students;*
- (f.2) in the case of a graduate students association in its role as bargaining agent for academically employed graduate students, the charging of union dues and the amount of those dues;*
- (g) the acquisition, management and disposition of property by the student organization;*
 - (h) any other matter pertaining to the management and affairs of the student organization.*

FACTS:

[2] On August 10, 2022, Haruun Ali (Mr. Ali), a Councilor of the University of Alberta Students' Union (UASU), submitted a reference question to the Discipline, Interpretation and Enforcement Board

(The Board). As per Bylaw 1500(4)(2), Councilors have the standing to submit reference questions to The Board to clarify Bylaws and their meaning.

[3] Christian Zukowski (Mr. Zukowski) requested Intervener status in this reference. Under The Board's Protocols, Section 26, individuals who wish to make a submission may be permitted as Interveners. The Hearing Panel has the discretion to permit Interveners if they have a material interest in the outcome of the Hearing. The Board determined Mr. Zukowski had a material interest and thus granted Intervener status. Mr. Zukowski, who holds the position of Speaker of the UASU Students' Council, stressed he was not intervening on the direction of the Students' Council. Mr. Zukowski was intervening as the outcome of this Hearing may have a material impact on upcoming Hearing Application 07, which Mr. Zukowski was directed by the Students' Council to undertake.

[4] Within the Students' Union Bylaw system, there are two Bylaws of the most concern to Mr. Ali: Bylaw 1500(29)(1) and Bylaw 100 4(1). Mr. Ali submits that these Bylaws are contradictory as Bylaw 100(4)(1) limits Student Council from removing a Student Councilor except in circumstances where a Councilor is in contravention to the Attendance Regulations. In contrast, Bylaw 1500(29)(1) provides The Board with broad discretion to create remedies, which could include the removal of a Councilor.

[5] Mr. Ali submits that the DIE Board is a committee of the Students' Council and thus cannot have power beyond the Council itself. Therefore, the DIE Board's power to remove a Councillor would be limited by Bylaw 100(4)(1), which directs the circumstances in which the Students' Council can remove a councillor for unsatisfactory attendance. Mr. Ali contends that if the Students' Council does not have the authority to remove a Councilor except for attendance, then The Board, as an organ of the Students' Council, does not have that authority. Mr. Ali submits that the Post-Secondary Learning Act (PSLA) gives a students' association (such as the Students' Council) full authority over the "business and affairs of a student organization..." and therefore has control over The Board and remedies that The Board provides.

[6] Mr. Zukowski wanted The Board to review its decision in *Sunday v Students' Council (Speaker)*, 2018-02. In this decision, The Board went as far as to determine that if the circumstances were so dire, The Board could have the authority to disband Council altogether and order new elections. In *Sunday*, the broad powers of The Board, granted by the Students' Council through bylaws, were well elucidated.

[7] The Board appreciated the submissions of both parties in this reference.

ISSUES:

[8] The question before this Board is as follows:

1. *Does The Board have the authority to remove a Student Councilor if appropriate and just in the circumstances?*
2. *The Board takes this opportunity to further clarify The Board's status as an organ of the Students' Union and The Board's ability to provide remedies to issues brought before it.*

ANALYSIS OF ISSUE #1

Does The Board have the authority to remove a Student Councilor if appropriate and just in the circumstances?

[9] In brief and certain terms, The Board has the power to prescribe any remedy it considers appropriate and just given the circumstances of a hearing, as outlined in Bylaw 1500(29)(1). There are no Bylaws which restrict the power of The Board. No Bylaw prohibits The Board from determining a remedy such as removal of a Student Councilor, so long as it remains appropriate and justified on a case-by-case basis. Stating otherwise would go directly against the precedent outlined in *Sunday* and against

the purpose of Bylaw 1500. Further, The Board was defined as "a separately instituted entity."¹ Although not bound by previous decisions, The Board weighs its previous decisions in determining its present ones.

[10] To further clarify the power of The Board, it is crucial to interpret the meaning of the terms outlined in Bylaw 1500 s.29(1) "appropriate" and "just in the circumstances." The Board has adopted the modern, principled approach to statutory interpretation. This method of interpretation requires an analysis of more than the simple words of the legislation. Three factors must be considered: an examination of the bylaw should include grammatical context, the ordinary use of the terms, and the overall purpose and structure of the Bylaw. Further, an interpretation of a Bylaw should be internally consistent. Finally, an interpretation should be consistent with the larger bylaw scheme, its object, and the drafters' intention.

[11] The Board applies these principles of statutory interpretation to Bylaw 1500(29)(1):

"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."

[12] The context of the terms "appropriate" and "just in the circumstances" suggests the definition of the terms as both broad and up to the discretion of The Board. Expressly, the Board is permitted to make "**any** order [that] it considers appropriate and just in the circumstances" (emphasis added). As such, in a circumstance where a member of the Students' Council is in serious violation of a Bylaw or other serious misconduct, The Board could determine the appropriate, and just remedy is the resignation or removal of that Councilor. As indicated by the language of Bylaw 1500(29)(1), The Board should not consider such a remedy lightly. The Board must weigh the circumstances of the infraction on a case-by-case basis. Factors to be taken into account would be the misconduct cited, the intentions of the Councilor, the

¹ At para 8

impact of retaining or removing a Councilor, and the impact on operations of the Students' Council.

Ultimately, if the removal of a Councilor is the remedy The Board considers "appropriate and just in the circumstances," a Councilor could be removed or asked to resign.

[13] To address Mr. Ali's concerns regarding The Board's powers and the PSLA, attention must be given to both s.93(3) of the PSLA and s.95(1), which Mr. Ali referenced in his arguments. Mr. Ali contends that s. 95(1) makes it clear that a council must manage the affairs of a student organization. The Board does not dispute this.

[14] The Board, on further reading of the PSLA, notes that in s.95(2), the Act states that the Council of a student organization may make bylaws governing the organization's membership requirements and the number of persons on the Council. Further, in ss. (h) "any other matter pertaining to the management and affairs of the student organization." S. 95(2) of the PSLA gives the student organization the power to make Bylaws governing any matter they see fit, and the Students' Council has created Bylaw 1500(2), which is the mandate for The Board. Further, s. 93(1) of the PSLA states that the students' association "shall provide for administration of student affairs," and this includes "the development and enforcement of rules relating to student affairs...".

[15] The Board understands the PSLA to allow the Students' Council to make Bylaws, such as all of Bylaw 1500, to provide for enforcing rules relating to student affairs. In this way, The Board can fulfill the mandate the Students' Council has given it: the interpretation and enforcement of Students' Union legislation.

ANALYSIS OF ISSUE #2

[16] The overall purpose and structure of the Bylaws in question must be considered when assessing the powers of The Board. The Board is defined as an "organ of the Students' Union," though it may also

be considered a committee of the Student Council; it is not restricted by the same Bylaws which govern the Student Council. Instead, the Students' Council, in creating The Board and drafting Bylaw 1500, delegated its powers to the DIE Board and placed restrictions on its own operations, such as Bylaw 100(4)(1). As such, the applicant is correct in stating that the Students' Council has the authority to remove a Councillor under limited circumstances in Bylaw 100 Section 4(1). However, this restriction does not limit the Board's ability to prescribe a remedy nor supersede Bylaw 1500 s.29(1).

[17] The Board has a mandate from the Students' Union as per Bylaw 1500(2), as noted above. However, The Board would like to take this opportunity to further clarify The Board's role in the Students' Union. In addition, the Board wishes to point to other Students' Union codes and Bylaws to clarify this relationship.

[18] The Student Code of Conduct in Bylaw 100 Schedule C sets out the expectations of UASU student representative behaviour. Should a student representative breach the Code, there is a procedure for investigation and remedy for a breach. This is all within the powers of the Students' Council or the Student Group Committee. If an informal resolution cannot be reached under s. 10 of the Code, a formal resolution may be made under s. 11. However, the ultimate adjudicator of a Code of Conduct violation may be The Board, as per s. 13.1: "...all formal resolutions under the code of conduct may be appealed to the DIE Board". In Code violations that cannot be resolved within Council, the Students' Council allows The Board to be the final arbiter. This indicates that The Board, as an organ of the Students' Council, is charged (by its mandate) to operate with a great deal of independence from Council when adjudicating disputes. If the Students' Council had preferred otherwise, different language would be used in the Code and the Bylaws related to The Board.

[19] Further evidence of The Board's independence from the Students' Council is found in Bylaw 9000: The Emergency Procedures Act. Under this Bylaw, the Students' Union has the authority to

suspend bylaws, political policies and operational policies as long as a $\frac{2}{3}$ majority vote is passed in Council. However, there are limitations on this broad emergency power.

[20] Bylaw 9000(3)(1) sets out the limitations of this emergency authority. Bylaw 100 and Bylaw 1500 cannot be overridden by the Students' Council. In fact, under ss. 1(d)(i), The Board retains its authority to discipline the Students' Union in reference to decisions made under Bylaw 9000. In addition, the DIE Board has the ability, under s. 8, to restrict any use of the emergency powers elucidated in Bylaw 9000 if The Board determines there is an abuse of power, a non-proportional response, that emergency powers are not required, or if emergency powers have been enacted outside the purview of the Students' Union. It is clear that all the Bylaws which apply to restrict the power of Students' Council were not intended to apply to all organs of the Students Union. The Board finds that Bylaw 100(4)(1) was not intended to limit the power of the Board in prescribing remedies.

[21] It is clear to The Board that, over and above the mandate given to The Board by the Students' Union, there are other explicit examples of Bylaws and Codes that provide The Board with the broad discretion it needs to adjudicate disputes arising from the management of student affairs and business.

[22] In the event the Students' Union wishes to limit The Board's discretion, and therefore The Board's independence in the discipline, interpretation and enforcement of Bylaws, Codes and other rules brought before it, the Students' Union can undertake to make revisions to the relevant Bylaws through the democratic and legislative process. The Board exists to serve the students of the University of Alberta.

CONCLUSION:

[23] The question before this Board, and the answers to that question, are as follows:

1. *Does The Board have the authority to remove a Student Councilor if appropriate and just in the circumstances?*

[24] The answer provided by The Board is:

Yes. Where The Board deems it appropriate and justified in line with Bylaw 1500(29)(1), the Board may order the removal of a Student Councilor where appropriate.

2. *The Board takes this opportunity to further clarify The Board's status as an organ of the Students' Union and The Board's ability to provide a remedy to issues brought before it.*

[25] The answer provided by The Board is:

The Board exists as a separately instituted entity whose power, though granted by the Students' Council, is not restricted by the Bylaws which were intended to directly limit the Council.

Appeal allowed.