

DISCIPLINE, INTERPRETATION, AND ENFORCEMENT BOARD

Citation: Rahman v. Students' Council (Speaker), 2021-04 (Interim Order)

BETWEEN:

Farhana Rahman

Applicant

- and -

Students' Council (Speaker)

Respondent

CHIEF TRIBUNE INTERIM ORDER

Decision Maker: Christian Zukowski, Chief Tribune

Hearing Date: N/A

Witnesses for the Applicant: N/A

Witnesses for the Respondent: N/A

FACTS

[1] On August 12, 2021, Farhana Rahman (the Applicant) submitted a hearing application (the Application) with the intent of appealing her expulsion from Students' Council due to failing to meet attendance requirements under s. 21 of Bylaw 100.

[2] The Application submitted by the Applicant details information of a highly personal nature, including specific medical diagnoses and laboratory results. It is on the basis of this information that the Applicant intends to mount their appeal.

[3] The Application further details remedies that have been implemented to prevent unsatisfactory attendance in the future.

[4] The Protocols of the Discipline, Interpretation, and Enforcement Board (the Protocols) clearly states at s. 11 that "the Registrar will publish on the website of the Students' Union all Applications for Hearing or Appeal ... within one business day of receipt of that information."

[5] Bylaw 500 of the Students' Union, *A Bylaw Respecting Access to Students' Union Information*, sets out what is to be considered confidential information for the purposes of the Students' Union. At section 1(2)(d), it is stated that the "personal information of volunteers" is to be classified as confidential information.

[6] The Protocols, at s. 5, stipulate that the Panel may change rules regarding the hearing process, but must "allow each party to make submissions to the panel" and "reach a decision in an unbiased manner."

[7] The Chief Tribune, under Bylaw 1500 and the Protocols, is responsible for overseeing the administrative processes of the Board.

[8] A panel has not been selected for the substantive matter in this case.

ISSUES

[9] The issues in this matter are as follows:

1. *Is it acceptable, under Students' Union legislation and the Board Protocols, for information of a highly personal nature to be publicized?*
2. *Does the Chief Tribune have the authority to modify the Protocols?*

ANALYSIS

Issue #1:

[10] While the Board Protocols are not defined in Bylaw as legislation, they are given force through s. 31 of Bylaw 1500 and take the form of secondary legislation. While this means that the Protocols are a binding instrument, in the event of a contradiction between the Protocols and other forms of Students' Union legislation, the legislation prevails.

[11] It is my opinion that, in this instance, the information provided by the Applicant is protected information under Bylaw 500.

[12] The wording of the expulsion mechanism of Bylaw 100 makes clear that any expulsion due to failure to meet attendance requirements is automatic, and therefore the Applicant is no longer a Councillor of the Students' Union and, in that regard, cannot presently be considered a volunteer. However, the disclosure of personal information at hand directly relates to the Applicant's former position with Students' Council. Bylaw cannot be interpreted so narrowly as to strip volunteers of protection of information disclosed in relation to their position with the Students' Union, regardless of whether that position is currently held.

[13] I further submit that, even if I have erred on this point, the highly personal and medical nature of the information disclosed warrants a higher degree of caution on the part of the Students' Union in safekeeping it.

[14] Given that Bylaw has supremacy over the Protocols, it follows that the Protocols are of no force or effect to the extent that they contradict Bylaw. In this case, any requirement to publicly disclose confidential information is of no force or effect.

Issue #2

[15] As detailed at para. 6, modifications to the Protocols are possible where a panel has heard submissions from the parties and reaches a decision in an unbiased manner.

[16] The Protocols do not explicitly empower the Chief Tribune to unilaterally modify the Protocols. However, at various points of the Protocols, the Chief Tribune is empowered to make

unilateral decisions, such as the selection of the panel (at s. 8) and the rejection of an application that fails to include required information (at s. 13).

[17] Given the requirement that the Application be posted on the website of the Students' Union within one business day of its receipt (see para. 4), a panel has not been able to be selected at the time of this order.

[18] It is readily admitted that, in most circumstances, this sort of issue should be considered by a full panel of the Board. However, given the limited time period for a panel to be selected and the nature of the information contained in the Application, I cannot allow the entire Application to be posted publicly in contravention of Bylaw.

ORDER

[19] On the basis of the above reasons, I order the following:

1. That the posting of the Application on the website of the Students' Union be substituted with this order with a redacted version of the Application attached as an appendix.
2. That the content of the Application is not to be publicly disclosed, except within the bounds of what is allowed in this order.
3. That the Application may be disclosed to the Respondent in the substantive matter, with the understanding that the Respondent is to abide by this order and any subsequent orders of the Board regarding this issue.
4. That this order be in effect until varied or quashed by a panel of the Board, or until a written decision has been issued on the substantive matter of this case that varies or quashes this order.

APPEAL

[20] This decision may be appealed to the Board under Bylaw 1500.