

DISCIPLINE, INTERPRETATION, AND ENFORCEMENT BOARD

Citation: Filipovic v. Students' Council (Speaker), 2021-01

BETWEEN:

Hanna Filipovic

Applicant

- and -

Students' Council (Speaker)

Respondent

SECTION 21(7) DECISION BYLAW 100

Panel Members:	Christian Zukowski, Chief Tribune (Chair) Kienna Shkopich-Hunter, Tribune Casandra Corbit, Tribune
Hearing Date:	August 18, 2021
Witnesses for the Applicant:	None
Witnesses for the Respondent:	None

The following is the decision delivered by the Board.

FACTS

Bylaw 100: A Bylaw Respecting Students' Council

[1] Bylaw 100 governs the processes and protocol regarding Students' Council. In particular, Bylaw 100 at s. 21(1) defines satisfactory attendance as:

“being present for at least 50% of roll calls per trimester.”

[2] Bylaw 100, at subsection 9(1), also states that a Councillor may appoint up to one Students' Union member from their faculty, as a Proxy or Councillor-Designate in the event of an absence from a meeting of Council.

Section 21: Attendance Regulations

[3] As stated in Bylaw 100 s. 21 (6), reproduced below, failure to meet the attendance requirement results in an automatic removal from Students' Council.

“Where a Councillor has unsatisfactory 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.”

[4] Subsection 7, acknowledges that the Councillor has the right to appeal their removal to the D.I.E Board within 3 business days of their removal.

[5] Subsection 8, reproduced below, notes that unreliable Proxies or Councillor-Designates do not constitute a reasonable excuse for an absence, and, therefore, will not be considered as a reasonable excuse for an appeal in the event of an expulsion from the Students' Council unless deemed as extenuating circumstances by the D.I.E Board.

“Unreliable proxies or Councillor-Designates shall not be considered a reasonable excuse for appeal, unless D.I.E. Board deems there were extenuating circumstances.”

Summary of Facts

[6] On August 12th 2021, Hanna Filipovic (the Applicant) referred to this Board an appeal arising from Bylaw 100. The Applicant is seeking to appeal their removal from the Students Council on the basis of extenuating circumstances as per Bylaw 100, s. 21(7).

[7] The Applicant submitted that their work as an Immunizer for the COVID-19 Campaign impeded on their ability to meet the 50% Attendance Requirement.

[8] The Applicant further submitted that their employment for the Spring/Summer term of Council was directly linked to the ongoing COVID-19 pandemic and the need to provide immunization to Albertans.

[9] On August 18th 2021, the DIE Board heard the appeal and requested the Applicant send more information documenting some details surrounding the employment. The Applicant sent in these documents which showed the Applicants employment date commenced on March 22, 2021. The Applicant submitted a copy of their work schedule for a single week, showing that their shift work hours tended to end between 5pm and 7pm.

[10] The Speaker of Students' Council, Philip Miheso (the Respondent), submitted that, as of the date of the hearing, the Applicant had been present for ten roll calls in the Spring/Summer term of Council. The Respondent submitted that given that there is only one scheduled meeting of Council remaining in the Spring/Summer term, the Applicant was removed from Council. However, despite the above, the Respondent also submitted at various points that they were supportive of the Applicants appeal and reinstatement as a Councillor.

ISSUES

[11] The issues before this Board are as follows:

- 1. Do the Applicant's circumstances constitute academic or personal extenuating circumstances under Bylaw 100?*
- 2. Do the Applicant's circumstances constitute 'other' extenuating circumstances under Bylaw 100?*

ANALYSIS

Issue #1:

[12] The purpose of Section 21 of Bylaw 100, is to ensure Councillors attend Council meetings and participate in the process for which they were elected. Should a Councillor fail to meet attendance requirements, the D.I.E. Board may be called upon to assess and decide what circumstances might be deemed reasonable beyond those outlined in Section 21(7)(a) and (b). The applicable standard relevant to the issues, under Subsection 7 is “extenuating circumstances”.

[13] The D.I.E Board heard evidence and arguments from the Applicant on August 18, 2021. The evidence and arguments presented pertain to the circumstances behind the Applicant’s unsatisfactory absences from Council meetings over the Spring/Summer term. The Board has determined that the Applicant’s employment does not fall under Section 21(7)(a) “personal circumstances” or (b) “academic circumstances”.

[14] A circumstance may fall under the category of “personal circumstances” where the councillor has experienced a personal medical, emotional, mental or family emergency. The Board has determined that the Applicant’s employment does not constitute a “personal circumstance” under Section 21(7)(a). In addition, the employment is independent from the university and does not meet any academic program requirements. For this reason, the Board has determined that the Applicant’s employment cannot be considered “academic circumstances” under Section 21(7)(b).

Issue #2:

[15] If a councillor’s circumstances do not fall under either Section 21(7)(a) or (b), the Board may then decide if the circumstances presented are reasonable under Section 21(7)(c). In determining whether the circumstances presented are reasonable, the Board can look to past decisions. Past decisions are not binding on the Board, they are merely persuasive.

[16] In the past, the Board has found that reasons relating to employment may be reasonable where circumstances were out of the councillors control and where sufficient mitigating circumstances exist. In *Bridarolli et al v Students’ Council (Speaker)*, the Board found that unexpected unreliable cell phone service along with past strong attendance and significant efforts to find a proxy all together met the threshold of extenuating circumstances (at para 16). In this case, Councillor Farris recruited another councillor to help find a proxy, the Board found these efforts to be significant and therefore mitigating.

[17] The decision of *Bridarolli et al v Students' Council (Speaker)* can be distinguished from the present case because Councillor Farris believed that they would be able to continue attending council meetings during the course of their employment when they took the job (at para 15). However, in the present case, the Applicant knew or ought to have known that she would not be able to attend a satisfactory amount of council meetings while maintaining her employment at the time that the Applicant took the position.

[18] Councillors have a duty to their constituents, as elected members of Student Council, to abide by the bylaws and make every effort to attend meetings. By accepting a position, knowing that the hours may conflict with council meetings, the Applicant failed to meet her duty to her constituents.

[#] The Board understands that the Applicant was working hours that were at times unreliable. The Applicant presented documents to the Board showing an employment start date of March 22, 2021 and shift work hours ending between 5pm and 7pm. The Board understands that the week of shifts provided is not necessarily representative of the exact hours the Applicant may have worked.

[#] In the past, the Board has found significant efforts to find a proxy to be mitigating. While a failure to find a proxy may not be considered an extenuating circumstance under subsection 8, this Board has, in the past, considered it to be mitigating where significant effort has been made to ensure that a proxy is present.

[#] It is aggravating that the Applicant was not able to find a proxy for the meetings missed on April 20, May 18 and June 1. The Applicant submitted that they did begin to communicate with the Speaker after having a conversation with them regarding their absences. While the Applicant is not required to let the Respondent know when she will be absent, the Board has considered strong efforts to comply with subsection 21 in the past to be mitigating.

[#] The Respondent spoke highly of the Applicant's past participation in council meetings and identified the Applicant as a valued member of the Council. The Respondent's comments are mitigating and weigh in favour of reinstating the Applicant. While the Respondent's comments are mitigating, they do not demonstrate effort on the Applicant's part to ensure that her constituents are adequately represented at Council or a high degree of respect for the seriousness of their position on Students' Council.

[#] While the Board is sympathetic to the importance of the Applicant's employment as part of the COVID-19 response and hear that the Applicant is appreciated as a member of Students'

Council by the Respondent, the aggravating factors present in this case outweigh the mitigating factors. The Applicant was aware of the potential time management conflicts when she took this position and did not make strong efforts to communicate with Council or secure a proxy which may be considered mitigating. For these reasons, the Board finds that the Applicant's circumstances are not extenuating.

DISPOSITION

[#] The issues before this Board, and the answers to those issues, are as follows:

1. *Do the Applicant's circumstances constitute academic or personal extenuating circumstances under Bylaw 100?*

[#] The Board finds that the Applicant's circumstances do not meet the criteria to qualify as personal or academic circumstances under Bylaw 100.

2. *Do the Applicant's circumstances constitute 'other' extenuating circumstances under Bylaw 100?*

[#] The Board finds that the Applicant's circumstances do not meet the criteria to qualify as an extenuating circumstance. As such the Board is not able to reinstate the Applicant to Council.

Application denied.