

DISCIPLINE, INTERPRETATION, AND ENFORCEMENT BOARD

Citation: Singh v Students' Council; 2021-06

BETWEEN:

Chanpreet Singh

Applicant

- and -

Students' Council (Speaker)

Respondent

BYLAW 100 SECTION 6(5); STANDING ORDER SECTION 2 DECISION

Panel Members:

**Kyle Ramsey, Associate Chief Tribune (Chair)
Emily Stolz, Tribune
Bensler, Tribune**

Hearing Date:

January 30, 2022

Witnesses for the Applicant:

Harrun Ali

Witnesses for the Respondent:

Rowan Ley; Lucas Marques

The reasons of the unanimous Board are delivered by K. Ramsey

LEGISLATION:

Bylaw 100: Students' Council

A Bylaw Respecting Students' Council

1. Definitions

- e. "Legislation" means
 - i. Students' Union bylaws,
 - ii. Students' Union political policies,
 - iii. Students' Council standing orders, and
 - iv. general orders of Students' Council;

6. Replenishment

- (1) *In the event of a vacancy in the office of President, Vice President, or Undergraduate Board of Governors Representative, the vacancy shall be filled in the following manner*
 - a. *If the vacancy occurs during the period on or after May 1 and on or prior to September 1, Council will appoint an individual to the position on an interim basis until the results of the by-election are announced in accordance with Bylaw 2400.*
 - b. *If the vacancy occurs in the period after September 1st, but on or before April 30th, Council will appoint an individual to the position for the remainder of the position's elected term*
- (5) *The appointment will be made with respect to a vote by Council using a preferential ballot.*
- (6) *In the event of a vacancy in the office of Councillor, the Chief Returning Officer of the Students' Union shall offer the position to the candidate who would have been elected, had another Councillor been allocated to the resigning Councillor's faculty, during the last election before which nominations were open for that faculty.*
- (8) *The process for replenishment of Councillor positions shall continue until*
 - a. *No vacancies remain for the faculty in question,*

- b. *he list of candidates from the last election before which nominations were open for the faculty in question is exhausted, or*
- c. *The position would be offered to None of the Above.*

Bylaw 2100: Chief Returning Officer and Elections Staff of the Students' Union

A Bylaw Respecting the Chief Returning Officer and Elections Staff of the Students' Union

8. Duties of Elections Staff

- (3) Duties of the election staff to be found in Bylaw include but are not limited to:
 - a. conducting the balloting process; and
 - b. ...

Standing Order – Students Council

1. Rules of Order

- (1) Roberts' Rules of Order will be observed at all meetings of Students' Council except where they are inconsistent with the Bylaws or Standing Orders of Students' Council.
- (2) Where the Bylaws, Standing Orders and Roberts' Rules of Order fail to provide direction with respect to procedure, the Speaker will decide.

2. Structure of Session

- (1) *The Order of Business for Students' Council will be:*
 - j. ***Closed Session***
 - i. *Closed session will only be held if items have been submitted to the Speaker for discussion in closed session.*
 - a) *The only items that may be submitted to the closed session are discussion or information items.*

17. Voting

- (1) *Voting shall take place in a manner in which votes for/against/abstain are recorded.*
 - a. *For all motions, the result of the vote being carried/ defeated and the number of votes for/against/abstentions shall be recorded for the minutes*

- (2) *A Roll Call/Division vote will be taken if requested by any member of Students' Council. Roll Call/Division requests can be requested at any time, up until the closing of the vote, and may be submitted in an oral, or written form.*
- (3) *A roll call/division vote shall take precedence over any other method of voting, except for voting by secret ballot. A vote by secret ballot will only take precedence over a roll call/division vote if dealing with matters of personnel or other potentially sensitive motions, at the discretion of the Speaker*
- (4) *The Speaker may refuse a dilatory request for a roll call/division vote, except on items of business disposing of main motions.*

24. Miscellaneous

- (2) *Meetings of Students' Council are open to the public, unless Students' Council moves in camera.*

FACTS

[1] On January 26, 2022, Mr. Chanpreet Singh (“Mr. Singh” or “The Applicant”) applied to the DIE Board (“the Board”) to hear an allegation that the Students’ Council (“Council”) violated Students’ Union legislation, specifically *Bylaw 100*, section 6(5) and *Students Council Standing Order*, section 2, subsection j, paragraph i, subparagraph a.

[2] Mr. Singh’s application (“the Application”) claimed two violations of Students’ Union legislation. First that the Council violated *Bylaw 100* by not using a preferential ballot. Second, that Council violated the *Students Council Standing Order* by holding a vote in an in camera session when the vote was not in regard to a discussion or information item. As a remedy, Mr. Singh asks the Board to declare the vote invalid and issue a warning to the Students’ Council about violating Students’ Union legislation. Mr. Singh’s application further stated, “All I am asking is that the Students’ Union Council stop acting in secrecy... and start making decisions publicly”.

Positions of the Parties

[3] Mr. Singh’s application stated that the *Standing Order* clearly states that closed sessions are restricted to discussion and information items only and that voting in closed sessions is prohibited.

[4] Mr. Singh alleges that when the Council moved in camera to interview, discuss and vote on Board of Governors candidates, thus violating the *Standing Order*.

[5] The Application further states that “It is unknown if Bylaw 100, section 6.5 was also violated or not, but it is highly likely that a normal ballot was used rather than a preferential ballot”. Further, Mr. Singh’s application states, “I ask that the Speaker to provide clarification on if the preferential ballot was used, and what was the voter turnout along with the votes for each candidate”.

[6] Mr. Singh’s application states that he went to the Students’ Council meeting to hear the candidate’s speeches and the Councilor’s questions to better understand the individual who would ultimately become the new Board of Governors’ representative.

[7] In response to Mr. Singh’s application, the Students’ Council Speaker (“The Speaker”) submitted a detailed written response (“the Response” or “Speaker’s Response”) to the application submitted by Mr. Singh.

[8] The Response states that the *Bylaw 100(6)* offered imprecise direction on how to conduct a Board of Governors replenishment vote and that the Council did not want to create the perception of bias by holding the vote in an untested manner. The Response further states that the Speaker collaborated with the Chief Returning Officer (“CRO”) and the Students’ Council President (“President”) to determine the appropriate procedure to follow in the circumstances. In order to avoid the perception of bias, the Speaker, CRO, and President determined the best procedure to follow was the Speaker selection process as it is well established and has never been challenged as unfair. The Response further states that the Manager of Administrative Services was consulted to ensure that the decision was appropriate and would be perceived as fair.

[9] The Response offered the rationale behind the decision stating that there is precedent for holding interviews and discussion about external candidates for Council nominated positions in-camera. The Response also states that given the similarities to other in camera hiring processes – such as the Speaker selection process, the hiring process for employment positions with the Students’ Union, University, and private companies – the replenishment of the Board of Governors’ position should also be held in camera. The Response also relied on the impeachment procedures being required to be held in camera to further ground the rationale for holding the interview, discussion and vote in camera.

[10] The Response states that if candidate interviews and discussion were to be held publicly, Councilors could face personal pressure and “punishments” from candidates and their supporters. The Response presents the rationale that Councilors could face political backlash for their questions or disapproval of certain candidates, which could damage their relationships with stakeholders. The Response distinguishes the endorsed procedure from the general elections procedure because there is no chance of political repercussions for votes cast in a general election.

[11] In regard to the balloting procedures employed in the in camera vote, the Response states that under *Bylaw 2100*, the CRO is granted discretion in conducting the balloting process. The

Response further explains that the decision to conduct the balloting process in camera would be a valid exercise of the CRO's discretion under *Bylaw 2100* and supersede any inconsistency with a *Standing Order*.

[12] In response to the statements made in the Application, the Speaker's Response states that it may be appropriate to share the total votes that each candidate received, but this was not standard practice. However, the Response argued that revealing the rank choice of any particular Councilor would violate *Standing Order section 8(7)*. The Response further states that it would be inappropriate for anyone other than the CRO to see how any particular Councilor voted and that secret ballot voting is standard practice in most deliberative bodies.

[13] In response to the allegations regarding in camera voting, the Response states the intent of *Standing Order 2(1)(j)(i)(a)*. Subparagraph a is there to ensure that there are no secret votes on motions and outcomes that are not made public. The Response further states that candidates and the outcome of the vote were made public at the first opportunity.

[14] The Speaker's Response states that the situation complained of in the Application cannot be equated with the circumstance where a motion is drafted in closed session and agreed to by voice vote or roll call. The Response offered the rationale for the practice of holding votes ex camera is to ensure that decisions made by a body like the Council are transparent. The Speaker's Response takes the position that because the Board of Governors' Representative result was made public as soon as reasonably possible, there was no violation of the principle of transparency.

[15] The Response goes on to state that ex camera voting procedures do not allow for the protection of confidential information that may need to be discussed in making a final decision on deliberative matters. As such, in camera voting is justified in certain circumstances.

[16] The Response states that interviews and discussions relating to Board of Governors' Representative candidates falls under the definition of information and discussion items and is thus permitted under the *Standing Order*.

[17] The Response concludes by stating that any claims of Council being "secretive" is not a matter to be reviewed by the DIE Board. The Response makes clear that it disputes any allegation of Council acting "secretively".

Evidence Presented at The Hearing

[18] On January 30th, 2022, the DIE Bboard heard the oral submissions of the Applicant and the Respondent. Additionally, both parties presented witnesses to give statements relating to the application.

[19] Mr. Singh made a number of oral submissions at the hearing in relation to the violation of the Standing Order and Bylaw and in responding to the Speaker's Response.

[20] Mr. Singh submitted that he believed that *Bylaw 100(6)* was sufficiently clear in its guidance on how to conduct a vote, and there was no need to conduct the Board of Governors' Representative process in accordance with the Speaker selection process. He further submitted that any concerns about the discussion of confidential information should be explicitly stated in the Bylaws. He took the position that because confidential information is not mentioned in the Bylaw, it cannot ground an argument for in camera voting.

[21] Mr. Singh further submitted that the discretion granted to the CRO regarding the balloting process by *Bylaw 2100* is too broad and should not justify the balloting process used in the Board of Governors' Representative selection process.

[22] In relation to his written allegation that a preferential ballot may not have been used, Mr. Singh submitted that there was sufficient evidence to demonstrate that a normal ballot was used in the vote carried out by Council. He submitted that, in his view, the speed at which the vote was calculated and Council's refusal to make the details of the voting public indicated that a normal rather than a preferential ballot was used. Mr. Singh took the position that the vote was calculated too quickly for a preferential ballot to be used.

[23] At the hearing, Mr. Singh called Mr. Harrun Ali as a witness to give a statement substantiating the process undertaken by the Council and to attest to the speed at which the final vote was tabulated. Mr. Ali was a candidate for the Board of Governors' Representative position who did not receive a sufficient proportion of the vote to be named the Board of Governors' Representative. As indicated on Mr. Singh's written application, Mr. Ali contests the result of the Council's vote.

[24] Mr. Ali reiterated the procedure described by Mr. Singh. That is that the Council moved in-camera to interview, discuss, and vote for the Candidates for the Board of Governors' Representative position. Mr. Ali stated that during the Student's Council meeting on January 25th, 2022, the CRO stated that "it would take 45 minutes to calculate the results of the vote". Mr. Ali took the position that, because the calculation of the vote and the announcement of the results took "approximately 15 minutes" instead of 45 minutes, it is highly likely a normal ballot was used instead of a preferential ballot.

[25] In relation to his written argument that the in camera vote violates the *Students' Council Standing Order*, Mr. Singh submitted that the vote constitutes an Action Item and thus is prohibited by *Standing Order section 2(1)(j), subparagraph 1(a)*. Mr. Singh presented a copy of the Students' Council Agenda Late Additions (SC-2021-21). Attention was drawn to Additional item 2021-21/8f (at 17) a UASU Student's Council Agenda Submission made by Rowen Ley for a motion to move Council in camera to begin the Undergraduate Board of Governors Representative replenishment selection process. The "Action Requested" notation on this agenda submission does not indicate a discussion or information item. Mr. Singh submitted that the Agenda Submission clearly indicates that the procedure carried out by Council does not meet the proscribed standard outlined by the

language of *Standing Order section 2(1)(j), subparagraph i(a)* and establishes a violation of Students' Union legislation.

[26] In response, the Speaker made submissions largely reiterating the position described in the written response to the Applicant.

[27] Given the detailed outline of the written submissions above, it is unnecessary to detail the oral submissions that reiterate the same position. However, it is useful to briefly detail the Speaker's oral submissions, and the arguments made that diverge or elaborate on the Response.

[28] The Speaker submitted that *Bylaw 100(6)* is imprecisely worded and, given that a Board of Governors Representative replenishment vote had not occurred for several years, the best practice would be to seek advice in how to undertake a vote of that kind.

[29] The Speaker submitted that a number of parties were consulted to determine the best procedure to be used in the circumstances. After consulting with the President, the CRO and the Manager of Administrative Services, the decision to follow the Speaker selection process was reached.

[30] The Speaker also made submissions regarding the language used in *Bylaw 2100* and the broad discretion given to the CRO in determining the balloting process.

[31] The Speaker called two witnesses to give statements about the procedure used and the underlying rationale for the Council's decision to adopt the same procedure as the Speaker selection process.

[32] Rowan Ley was called as a witness and made a number of submissions that reiterated the rationale used in concluding that the Speaker selection process was, in the groups' opinion, the optimal choice for the Board of Governors' Representative replenishment process. Many of these rationales were outlined in the Speaker's written response and oral submissions; as such, the details need not be repeated *ad nauseum*.

[33] Mr. Ley's submissions emphasized the broad discretion in balloting procedures under *Bylaw 2100* and the importance of in camera procedures when a candidate's confidential information is integral to the selection procedure.

[34] Mr. Ley also submitted that, in his opinion, both the interviewing and discussion of candidates by Council easily fall under the definition of "information and discussion items" outlined by the *Standing Order*. Moreover, given the procedure being employed and the underlying rationales pointed out in his statement – as well as the Speaker's response – there was no substantive reason to divorce the voting aspect of the process and label it as an action item.

[35] The Speaker also called Mr. Lucas Marques, the Chief Returning Officer, to give a statement.

[36] The CRO made a number of submissions regarding the procedures used in candidate selection as well as the reasoning underlying the decision to use the Speaker selection procedure.

[37] The CRO plainly submitted that the procedures employed by the Elections Office are not matters to be determined by the DIE Board.

[38] Relating to the Applicant's desire for the Council to release the results of the voting that occurred on January 25th, 2022, the CRO submitted that he is prohibited from releasing the results of any election procedure while they are being contested. He stated that the results would be made public as soon as reasonably possible once any disputes about the procedure and results are resolved.

[39] The CRO further submitted that one of the primary considerations for holding the proceeding in an in camera session had to do with confidentiality. The CRO stated that the Candidates had signed disclosure agreements that only granted the Council to hear their confidential information. If confidential information were broadcast publicly, it would violate the disclosure agreement between the candidates and the Election Office.

[40] Finally, the CRO directly addressed the statement made by Mr. Ali relating to the statement he made at the January 25, 2022, meeting. The CRO stated that the words he used on the night of the vote were that calculating the results of the vote and announcing the winner would take "up to 45 minutes" and that Mr. Ali's statements mischaracterized what the CRO had actually said.

ISSUES

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

1. *Did the Students' Council violate Bylaw 100(6)(5) by not using a preferential ballot?*
2. *Did the Students' Council violate Students Council Standing Order section 2(1)(j)(i)(a) by holding a vote for Undergraduate Board of Governors Representative in-camera?*

ANALYSIS

1. Did the Students' Council violate Bylaw 100(6)(5) by not using a preferential ballot?

[42] The Board finds that Mr. Singh's allegation that the Council violated *Bylaw 100(6)(5)* by using a normal rather than a preferential ballot has no material evidentiary basis and should be rejected outright.

[43] It is clear from Mr. Singh's own choice of words in his application that his claim is based solely on speculation. It is worth quoting his words directly to establish the grounds on which the Board rejects his allegation, "It is unknown if Bylaw 100, section 6.5 was violated or not but it is highly likely that a normal ballot was used rather than a preferential ballot" [emphasis added].

[44] While the DIE Board is not bound by prior precedent, it does find the principles and holdings from Canadian jurisprudence to be highly persuasive. The Canadian rules of evidence clearly state that opinion evidence is presumptively inadmissible, that is, there is a general rule of exclusion; *R v Mohan* (1994), 89 CCC (3d) 403 (SCC) at 410; *Abbot and Haliburton Co v White Burgess Langille Inman*, 2013 NSCA 66 at para 24 aff'd in 2015 SCC 23. Mr. Singh's application makes clear that the Students' Council may have violated *Bylaw 100(6)(5)*. Mr. Singh's allegation is based on an inference from the observed fact that the time taken to tabulate the vote was shorter than he expected and clearly falls under the definition of opinion; *R v McPhil*, 2019 ABCA 427, at para 4. Basing the inference that a Bylaw was violated on opinion is unreasonable and cannot ground the remedy sought by Mr. Singh.

[45] Given the fact that Mr. Singh offered no evidence to substantiate his allegation that *Bylaw 100(6)(5)*, the Board cannot in good conscious accept this claim and dismisses it outright.

[46] While the Board has determined there is no material basis to consider the allegation that *Bylaw 100(6)(5)* was violated, a number of submissions were made in the hearing, and we deem it worthwhile to address them for further certainty on the issue.

[47] Mr. Singh presented a witness to testify in an attempt to substantiate his allegation that a normal ballot was used rather than a preferential ballot. The Board notes that Mr. Ali's statements are hearsay evidence and, under Canadian rules of evidence, are presumptively inadmissible. While this is not a court of law, the underlying principle informs that hearsay statements should be treated with a degree of skepticism regardless of forum. However, Mr. Ali's statements related to the phrases uttered by the CRO, and the CRO was present at the hearing and able to testify to the veracity of Mr. Ali's statements. Because the CRO was present, the Board is satisfied that there were sufficient grounds to test Mr. Ali's statements. As such, the hearsay statements that would otherwise be of questionable value were considered by the Board.

[48] Mr. Ali attempted to substantiate Mr. Singh's allegation that a normal ballot must have been used because the results were calculated and announced in less than 45 minutes, contrary to what he testified the CRO said. When Mr. Ali was cross-examined by the Speaker, he stated that it was not possible that the CRO could have said anything other than "it would take 45 minutes to calculate the results". It is possible and even likely that Mr. Ali remembered hearing the CRO use those exact words. However, the CRO was later called to testify and give a firsthand account of the words he uttered.

[49] The CRO testified that when discussing the timeframe necessary to calculate the votes, he used the phrase “it will take up to 45 minutes”[emphasis added]. The Board found the CRO to be a credible witness and finds no reason to suspect he was anything less than forthright. We find the CRO’s testimony about the words he used on January 25th, 2022, to be more credible than the hearsay statements made by Mr. Ali. Thus, Mr. Ali’s testimony adds no weight to the opinion evidence proffered by Mr. Singh.

[50] Despite the lack of an evidentiary basis to ground Mr. Singh’s allegation that *Bylaw 100(6)(5)* was violated, the Board is satisfied that the ballot used in the Board of Governors’ Representative vote conformed with the definition of preferential ballot as outlined in *Bylaw 100*. The Board is also satisfied that *Bylaw 2100* grants the CRO broad discretion in the balloting process. As stated in the Speaker’s Response, a rank-order Google Form was used as a preferential ballot when the Council undertook the vote. There is no evidence to counter this statement, and Mr. Singh did not question the veracity of this claim when questioning the Speaker.

[51] The Board finds that there are no grounds to base the claim that the Students’ Council violated *Bylaw 100(6)(5)*, and the evidence adduced to prop up Mr. Singh’s theory was rebutted by the CRO’s testimony. Moreover, we are satisfied that the Speaker’s Response clearly established that a rank-order ballot was used when the Council voted. As such, we conclude that Mr. Singh has failed to demonstrate on a balance of probabilities that the Students Council violated *Bylaw 100(6)(5)*.

2. Did the Students’ Council violate Students Council Standing Order section 2(1)(j)(i)(a) by holding a vote for Undergraduate Board of Governors Representative in-camera?

[52] The Board finds that Mr. Singh did not discharge his burden in establishing, on a balance of probabilities, that the Council violated *Standing Order section 2(1)(j)(i)(a)*. Mr. Singh’s allegation largely turn on matters of legislative interpretation. Had this been an application to the Board to interpret the Standing Order seeking a remedy to have the *Standing Order* amended to better clarify restrictions on in camera voting, this matter likely could have been resolved more easily.

[53] Mr. Singh centred his arguments on the fact that *Standing Order section 2(1)(j)(i)(a)* states: “The only items that may be submitted to the closed session are discussion or information items”. However, when interpreting legislation, the Board follows the widely accepted approach employed by the Supreme Court of Canada.

[54] The modern, principled approach to statutory interpretation adopted by the DIE Board and the Supreme Court was outlined by Elmer Driedger in *Construction of Statutes* and requires that interpretation of statute not focus solely on the wording of the legislation. Rather, the principled

approach requires that the words of the legislation be read in their entire context and in their plain grammatical sense harmoniously with the scheme of the legislation as a whole; *Re Rizzo & Rizzo Shoes* [1998] 1 SCR 27 at para 21; *Reference re Students' Union Bylaw 8200* at para 6. Another principle that underlies the principled approach is the presumption of internal consistency. Courts have held that it is reasonable to conclude that legislators intend the legislation they draft to be free of contradictions. Put another way, if legislative language permits two possible interpretations of a provision, one of which is inconsistent with the larger legislative scheme and one that is not, then the consistent interpretation will be used.

[55] When properly applying the modern, principled approach of statutory interpretation to the impugned legislation, in this case, the Board is satisfied that the Council did not violate *Standing Order section 2(1)(j)(i)(a)*.

[56] The error that is present in Mr. Singh's interpretation of the *Standing Order* was neglecting to read the subparagraph harmoniously with the section it was contained in and to consider the entire legislative scheme in ascertaining the subparagraphs meaning. When reading *Standing Order section 2(1)(j)(i)(a)* within the context of the standing order more broadly, and in conjunction with the larger framework of the Students' Union Bylaws, it becomes apparent that in camera voting is not prohibited in the way Mr. Singh alleges. The Board agrees that the impugned *Standing Order* could be amended to indicate the permissibility of in camera voting more clearly, but the current structure of the *Standing Order* does not warrant the remedy sought by Mr. Singh.

[57] The Board wishes to acknowledge that this is not a hearing seeking proper interpretation of the legislation, but demonstrating the error that led to this matter is warranted given the highly publicized nature of this application.

[58] First, the Board looks to the entire context of the legislative provision. That is, *section 2(1)(j)* should be examined in its entirety, *subparagraph (i)(a)* cannot be read in isolation to evidence a violation of the legislative scheme. When discussing the structure of the closed section, Section 2 – Structure of Session, of *Students Council Standing Order* states:

(1) *The Order of Business for Students' Council will be:*

j. Closed Session

i. Closed session will only be held if items have been submitted to the Speaker for discussion in closed session.

a) The only items that may be submitted to the closed session are discussion or information items.

[59] When considering the plain and grammatical meaning of *subsection j, paragraph i*, it is clear that the words describe when a closed session can occur. A closed session will only occur if items have been submitted to the Speaker for discussion in a closed session. When reading subparagraph a in its plain and ordinary grammatical meaning, it is also clear that items that can

be *submitted for discussion* in the closed session must be confined to information and discussion items.

[60] When these two paragraphs are read harmoniously within *section 2*, the phrasing indicates that the section informs the procedure for the events that can trigger or initiate a closed session, not for determining the proceedings that can occur within the closed session. Put another way, items pertaining to information or discussion must be *submitted* to the Speaker for discussion in camera. If any other items are *submitted* for discussion in camera it would be inappropriate for Council to discuss those items in camera.

[61] At the hearing, Mr. Singh did not take issue with the interviews or discussion of candidates being classified as information or discussion items. When Mr. Ley gave testimony, the Board inquired if interview items would be considered information and discussion items; he affirmed that they would. When given the opportunity to cross-examine Mr. Ley on this statement, Mr. Singh did not question or dispute Mr. Ley's classification. Accordingly, the agenda submitted by Mr. Singh as evidence of the interview, discussion, and voting process being an action item rather than a discussion or information item, does not support his allegation regarding the interview and discussion of candidates on January 25, 2022. It follows that the only activity that Mr. Singh takes issue with is the vote occurring in camera.

[62] The issue before the Board then becomes whether *section 2(1), paragraphs (j)(i)(a)* of the *Students Council Standing Order* prohibit voting in a close session as Mr. Singh alleges. In the Board's opinion, they do not.

[63] *Section 2(1), paragraphs (j)(i)(a)* of the *Students Council Standing Order* are silent on whether votes can or cannot proceed in camera. When making his oral submissions at the hearing, Mr. Singh was questioned about whether the *Standing Order* discusses voting procedures or prohibitions. While Mr. Singh acknowledged that, to his knowledge, the *Standing Order* was silent regarding in camera voting, he opined that he believed the Standing Orders or Bylaws should outline voting procedures and prohibitions. Whether or not Students' Union legislation should outline voting procedures and prohibitions is a policy decision for the democratically elected Students' Council and not a matter for the DIE Board to determine.

[64] The Board acknowledges that while the impugned section of the *Standing Order* is silent regarding voting in in camera sessions, the section and paragraphs in question clearly do not prohibit voting in camera. The principled approach to statutory interpretation requires looking to the larger legislative scheme determine the intention of the legislation. As such, the *Standing Order* section related to voting must also be analyzed. *Section 17* of the *Students' Council Standing Order* clearly defines voting procedures to be carried out in certain circumstances.

[65] *Section 17(3)* states that:

A roll call/division vote shall take precedence over any other method of voting, except for voting by secret ballot. A vote by secret ballot will only take precedence over a roll call/ division vote if dealing with matters of personal or other potentially sensitive motions, at the discretion of the speaker [emphasis added].

While this subsection does not necessarily apply to the procedure in question in this proceeding, it offers guidance as to when the Students' Council is justified in using secret ballots. Specifically when matters of personal or potentially sensitive matters are to be voted on.

[66] *Subsection 17(1)* sets general guidelines for voting procedures in the broader context. That is, "Voting shall take place in a manner in which votes for/against/abstain are recorded". Paragraph a states that "For all motions, the result of the vote being carried/defeated and the number of votes for/against/abstentions shall be recorded for the minutes".

[67] Finally, when looking to the larger legislative scheme of the *Standing Order, section 24* must also be accorded attention. *Subsection 24(2)* plainly states that "Meetings of Students' Council are open to the public unless Students' Council moves in camera". This section establishes that once a triggering event occurs – an information or discussion item is submitted and subsequently approved – the Council is permitted to move in camera and the meeting will no longer be open to the public.

[68] The various sections of the *Standing Order* highlight that certain voting procedures are proscribed for specific circumstances, clearly signaling a legislative intention to outline procedures that must occur and prohibit certain voting procedures when necessary.

[69] The lack of wording prohibiting in camera voting in this situation indicates that it was the Students' Council's intent to leave room for discretion to be applied as to when in camera voting can be employed. Moreover, *section 17* specifically states that when personal or potentially sensitive information is discussed in relation to voting, secret votes are permitted. It would contradict the purpose clearly established in *section 17* for the Board to find that in camera voting is prohibited in this particular proceeding. The CRO's testimony also made clear that the candidates had signed disclosure of confidential information agreements prior to applying for candidacy. This is sufficient evidence to indicate that the matters being voted on included information that was personal or otherwise sensitive in nature and thus is analogous to the situation described under *section 17(3)*. It would be inconsistent to read *Standing Order section 2(1)(j), paragraphs (i)(a)* as contradicting the permissible use of secret ballots in voting outlined in *section 17*.

[70] When applying the principled approach to statutory interpretation the Board finds that it would be inconsistent with the larger legislative scheme to accept Mr. Singh's interpretation of *Standing Order section 2(1)(j)(i)(a)*. The lack of specific language regarding voting in *section*

2(1)(j), paragraphs i(a) may be sufficiently vague as to confuse the typical student reading it. However, it does not imply the violation of the legislation by the Council.

[71] The Board finds that Mr. Singh has not established, on a balance of probabilities, that the Students Council violated *Standing Order section 2(1)(j)(i)(a)*. The reasonable steps and consultation undertaken by the Speaker, and the discretionary balloting procedure decision made by the CRO under *Bylaw 2100*, do not violate the explicit wording of the impugned section of the *Standing Order*, nor do they violate the underlying purpose of the legislative scheme regarding voting. In short, there was no impropriety on the part of the Speaker or any other member of the Students' Council.

[72] In this hearing, a number of arguments were made regarding Students' Council "secrecy", what the proper voting procedure should be, and what the contents of the Bylaws should be. The Board acknowledges the importance of transparency and accountability in democratic institutions. Indeed, transparency is considered one of the core concepts underlying the rule of law and the Canadian Constitution; Lord Bingham, "The Rule of Law" (2007) 66 CLJ 67; Joseph Raz, "The Rule of Law and its Virtue", in *The Authority of Law: Essays on Law and Morality* (Oxford: Clarendon Press, 1979); *Constitution Act, 1982*, RSC 1985, Appendix II, Schedule B, Preamble. The Board was not particularly persuaded by the Speaker's submissions that transparency could lead to "punishments" against certain Council members; some may refer to that kind of result as political accountability to constituents. However, it is not the Board's place to dictate policy decisions of the Students' Council. Given the Board's analogue to a court, the same principled division of powers holds true. It would be improper for the DIE Board to interfere with the decisions of a legislative body where the Supreme Court of Canada has made clear courts should not; *Reference re Canada Assistance Plan (BC)*, [1991] 2 SCR 525. Accordingly, if students take issue with the policy choices of the Students' Council, they should seek to change them by way of the democratic process, not by seeking judicial intervention.

DISPOSITION

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

1. *Did the Students' Council violate Bylaw 100(6)(5) by not using a preferential ballot?*

[74] The Students' Council did not violate Bylaw 100(6)(5).

3. *Did the Students' Council violate Students Council Standing Order section 2(j)(i)(a) by holding a vote for Undergraduate Board of Governors Representative in-camera?*

[75] The Students' Council did not violate *Standing Order section 2(1)(j)(i)(a)* by carrying out the Board of Governors Representative candidate in camera.

[76] The Board denies Mr. Singh's application to have the results of the January 25, 2022 vote overturned, and refuses to censure the Students' Council.

Application denied.