

DISCIPLINE, INTERPRETATION, AND ENFORCEMENT BOARD

Citation: Adekar et al (Applicants) v Students' Council; 2021-02, 2021-03

BETWEEN:

Nikita Adekar

Mohit Kumar

Applicants

- and -

Students' Council (Speaker)

Respondent

BYLAW 100 SECTION 21(7) DECISION

Panel Members:

Kyle Ramsey, Associate Chief Tribune (Chair)

Kienna Shkopich-Hunter, Tribune

Emily Stolz, Tribune

Hearing Date:

August 26, 2021

Witnesses for the Applicant:

None

Witnesses for the Respondent:

None

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

LEGISLATION:

Bylaw 100:

A Bylaw Respecting Students' Council

21. Attendance Regulations

- 1. "Satisfactory attendance" is defined as being present for at least 50% of roll calls per trimester.*
- 2. "Unsatisfactory attendance" is defined as being present for less than 50% of roll calls per trimester.*
- 3. Councilors are expected to attend, send a Proxy or Councillor-Designate, to meetings of Students' Council as minimum expectations of holding office.*
- 4. A Councillor must maintain satisfactory attendance each trimester to remain a Councillor for the following term.*
- 5. 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.*
- 6. Where a Councillor has unsatisfactory attendance at the end of the trimester, they shall be declared in contravention of this Bylaw and automatically removed as a member of Students' Council.*
- 7. The contravening Councillor shall be able to appeal their removal to DIE Board within three (3) business days of their removal, based on extenuating circumstances at the Board's discretion, including those listed below:*
 - a. Personal circumstances including medical, emotional, mental, or family emergencies; or*
 - b. Academic program requirements, where evidence of mandatory evening or overnight commitments is provided confirming the conflict with meeting these attendance requirements; or*
 - c. Other circumstances deemed reasonable, at the discretion of the DIE Board.*
- 8. Unreliable proxies or Council-Designates shall not be considered a reasonable excuse for appeal, unless DIE Board deems there were extenuating circumstances.*
- 9. During the appeal proceedings, the Speaker shall attend the hearing to provide the*

official attendance record and field any questions of the Board.

10. Should the DIE Board approve the appeal of the contravening Councillor, that Councillor shall be re-appointed immediately.

FACTS

[1] On August 12, 2021, Councilors Adekar and Kumar (“The Councilors”) applied for the DIE Board to hear appeals of their removal from the Students’ Council by the Speaker for unsatisfactory attendance pursuant to *Bylaw 100(21)*.

[2] The Councilors’ appeals were held separately, but given the similarity of the facts in each appeal, the DIE Board has chosen to deliver their decisions with a single set of reasons.

[3] The Speaker of the Students’ Council determined that both Councilors were in contravention of the requirements of *paragraph 100(21)(1)* “Satisfactory Attendance”. Both Councilors applied for relief via *subparagraph 100(21)(7)(c)* “Other circumstances deemed reasonable, at the discretion of the DIE Board”.

[4] During Councillor Adekar’s appeal, she stated that she was unable to attend the requisite attendance calls due to the scheduling requirements of her summer employment. While Councillor Adekar submitted availability to her employer, which did not include the regularly scheduled Students’ Council meetings, she also submitted that in order to attain a 40-hour workweek, she made herself available to work additional shifts that may or may not occur during the regularly scheduled Student’s Council meetings. Adekar was subsequently scheduled to work during the regularly held Students’ Council meetings leading to her accumulated absences from roll call.

[5] Adekar submitted that, initially, she was unaware of *Bylaw 100(21)*. When she became aware of the attendance requirements, she made reasonable attempts to find a suitable proxy to attend the Students’ Council meetings in her place pursuant to *paragraph 100(21)(3)*. Adekar further submitted that she had persuaded her roommate to act as her proxy for one or more of the Students’ Council meetings that she would be unable to attend. Unfortunately, her roommate was unable to attend the meetings due to scheduling conflicts.

[6] Additionally, Adekar submitted that she felt that the DIE Board should exercise their discretion in her appeal given the fact that she had nearly met the 50% attendance requirement stated in *paragraph 100(21)(1)*, and employment obligations would no longer constrain her during the forthcoming trimester.

[7] Councillor Kumar submitted that he was unable to meet the requirements of *paragraph 100(21)(1)* due to his employment obligations to attend weekly meetings, which conflicted with the regularly scheduled Student's Council meetings. Kumar submitted copies of his calendar to substantiate his submission regarding the conflict.

[8] Similar to the appeal of Adekar, Kumar gave oral submissions regarding his initial unawareness of *Bylaw 100(21)* and, what he considered to be, the exhaustive steps he took to find a sufficient proxy to attend the meetings in his place. Kumar submitted that he contacted all of his friends and associates within the Faculty of Science but was unable to find a sufficient proxy. Kumar also submitted that many potential proxies were unwilling to commit to attending the meetings due to the time commitment required.

[9] Kumar also submitted that the Board should exercise their discretion to overturn his removal from Student's Council as employment obligations would no longer constrain him once the Fall trimester commenced.

ISSUES

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

1. *Did Councilors Adekar and Kumar contravene Bylaw 100(21)?*
2. *Were the circumstances that prevented the Councilors from attending the Students' Union extenuating as intended by Bylaw 100(21)?*
3. *Should the DIE Board exercise its discretion to reinstate the Councilors Adekar and Kumar to the Students' Council?*

ANALYSIS

1. Did Councilors Adekar and Kumar contravene Bylaw 100(21)?

[11] Regarding the first issue, the evidence clearly showed that both Adekar and Kumar were in contravention of *Bylaw 100(21)*. Both Adekar and Kumar submitted that they violated the satisfactory attendance requirements imposed by *subparagraph 100(21)(1)* of the *Students' Council Bylaws*. Furthermore, the Speaker presented the Board with the official records of attendance which indicated that neither Councillor had been present for the requisite 50% or roll calls. Given these facts, it is clear that both Adekar and Kumar contravened *Bylaw 100(21)*.

2. Were the circumstances that prevented the Councilors from attending the Students' Union extenuating as intended by Bylaw 100(21)?

[12] The Board finds that it is uncontroversial that circumstances prevented the Councillors from attending the requisite number of Students' Council meetings. The issue is whether the

circumstances that prevented the Counselors' attendance rise to the level of extenuating.

[13] *Bylaw 100(21), paragraph 7* denotes specific circumstances intended to mitigate the culpability of Councilors who failed to meet the requirements of satisfactory attendance as defined in *paragraph 100(21)(1)* of the *Students' Council Bylaws*. Neither Councilor submitted that they were unable to attend the meetings due to "Personal circumstances including medical, emotional, mental, or family emergencies", as such *subparagraph 100(21)(7)(a)* does not apply to the facts of either appeal.

[14] While neither Adekar nor Kumar submitted that academic requirements were the direct cause of their inability to attend meetings, Adekar did submit that she missed one meeting due to having an exam on the morning following a Students' Council meeting, which caused her to miss that particular meeting. Additionally, Kumar submitted that his employment was related to his academic studies. For the sake of clarity, I will address both of these submissions in turn.

[15] Councilor Adekar submitted that she missed one Students' Council meeting due to having a scheduled exam on the morning following the Students' Council meeting, and she informed the President of the Students' Council as much. The Board is in agreement that the scheduled exam does not fall under extenuating circumstances as defined in *subparagraph 100(21)(7)(b)* as the exam was not an academic requirement that occurred in the evening or overnight and conflicted with the Students' Council meeting. Because the exam was scheduled for the morning following the Students' Council meeting, Adekar could have attended the meeting and not missed her exam. The question of whether having a scheduled exam the morning following a Students' Council meeting is a reasonable circumstance that may warrant the Board's discretion will be addressed subsequently.

[16] Councilor Kumar submitted that he missed the bulk of the Students' Council meetings due to a conflict in scheduling required by his summer intensive; the Board is in agreement that this scheduling conflict does not fall within the intention of *subparagraph 100(21)(7)(b)*. While Kumar did present evidence of a mandatory evening commitment confirming the conflict with meeting the Students' Council attendance requirements, the conflict was not an academic requirement, and as such, falls outside the scope of *subparagraph 100(21)(7)(b)*.

3. Should the DIE Board exercise discretion to reinstate the Councilors Adekar and Kumar to the Students' Council?

[17] The final subparagraph of *Bylaw 100(21)(7)* grants the DIE Board discretion to reinstate a Councilor where reasonable circumstances warrant the exercise of that discretion; the Board agrees that the circumstances of these appeals are not extenuating and do not warrant the exercise of the Board's discretion.

[18] The term "extenuating circumstances" is equated with the term "mitigating circumstances" and is defined as "a fact or situation that does not justify or excuse a wrongful act or offence but that reduces the culpability and thus reduce the damages"; or "a fact or situation that does not bear on the question of a defendant's guilt but that may bear on a court's possibly lessening the severity of its judgment" (Bryan Garner ed, *Black's Law Dictionary*, 11th ed, 2019) sub verbo "mitigating

circumstances”.

[19] *Bylaw 100(21)* was intended to ensure that Councilors take their elective roles seriously and have valid reasons for missing roll calls. *Subparagraph 100(21)(7)(c)* was included so that Councilors would not be needlessly expelled from Students’ Council when there is evidence of a constellation of circumstances that can justify missing roll calls. In the present appeals, there was no evidence of mitigating circumstances.

[20] In the Adekar appeal, the Councillor submitted that, initially, she was unaware of the attendance requirement imposed by *Bylaw 100(21)(1)*. Upon becoming aware of the requirements, she began the search for a proxy. The Board was unpersuaded by this submission. Councillors are given a copy of the Bylaws and are expected to read and understand their obligations as an elected representative of their given faculty. Unawareness of the bylaws reflects a Councillor who is not taking their role as an elected representative seriously.

[21] Similarly, in the Kumar appeal, the Councillor submitted that he was unaware of the attendance requirement. For the same reasons as above, the Board does not find that unawareness of the bylaws can act as a mitigating factor in regard to a Councilor’s removal per *Bylaw 100(21)*.

[22] Upon taking on a position on the Students’ Council, Councilors take on the responsibility of representing the students in their respective faculties. Knowing the *Bylaws* is integral to fulfilling one’s duties as a Councillor. Had the Councilors been aware of the obligations imposed by *Bylaw 100(21)* when they assumed their positions, they would have had ample time to find proxies and alternative proxies prior to missing 50% of roll calls. As elected representatives of their respective faculties, they should have known that, absent a proxy, missing 50% of the role calls would lead to their expulsion from the Students’ Council.

[23] Regarding Adekar’s submission that her roommate had agreed to attend the meetings but later could not attend, *paragraph 100(21)(8)* clearly states: “Unreliable proxies or Council-Designates shall not be considered a reasonable excuse for appeal unless DIE Board deems there were extenuating circumstances”. The Board agrees that no evidence of extenuating circumstances exist regarding the unreliability of the proxy in the Adekar appeal was presented.

[24] *Paragraph 100(21)(9)* states that the Speaker shall be present during the appeals to provide the official attendance record and answer any questions the Board may have. Regrettably, the Speaker could not attend the Adekar appeal. However, the Speaker was able to provide an official record of attendance to the Board prior to commencing the appeal, and the Board had no questions for the Speaker in this regard. The official record of attendance indicated that Adekar was well below the requisite 50% attendance requirement established by *paragraph 100(21)(1)*. While it is always preferable for the Speaker to attend as denoted in *Bylaw 100(21)*, the Board is satisfied that a sufficient level of information was available to reach a well-informed decision on this matter. The Board is also satisfied that the presence of the Speaker at the Adekar appeal would have no substantial influence or effect on the outcome of the appeal.

[25] Student Councilors serve a valuable role to represent their respective faculties at Students’ Council meetings. When Councilors contravene *paragraph 100(21)(1)* and fail to meet the attendance requirements, they cannot effectively serve the students they represent. Democracy is

a pillar of the Canadian constitution and society more generally (*reference Re Succession of Quebec*, [1998] SCR 217 at para 61); the duties owed to constituents by democratically elected officials are not diminished just because they occur at the university governance level. Moreover, the electorate agrees to allow representatives to make binding decisions on their behalf (*ibid* at para 76). When Councilors contravene *paragraph 100(21)(1)*, they do not just fail to make roll calls; they fail to act as the eyes and ears of their constituents. Moreover, they fail to influence the policies of the Students' Council for the students who trusted them to act in their best interests. By failing to attend, send proxies or Council-Designates, Councilors Adekar and Kumar failed to adequately represent the students enrolled in the Faculty of Science during the summer trimester.

[26] The Board is sympathetic to the needs of students to work and earn income during the summer trimester; however, employment obligations *per se* will not normally garner the exercise of the Board's discretion under *subparagraph 100(21)(7)(c)*. In the Board's view, there will be instances where employment obligations can be classified as extenuating as intended by *Bylaw 100(21)(7)*. In the past, the DIE Board has recognized an incapability to contact proxies because of the inability to use a phone for long periods while undertaking one's employment duties as an extenuating circumstance (*Bridarolli et al. v Students' Council*, DIE Board Ruling 2018-04 at para 15). Additionally, recruiting another Councillor to assist in an attempt to find a proxy when an employment obligation interferes with attending a Students Council meeting has been viewed as a mitigating factor regarding *Bylaw 100(21)* (*Ibid*, at para 16). While the DIE Board is not bound to follow previous decisions, these examples serve to demonstrate what circumstances can mitigate the culpability of a Councillor who contravenes *paragraph 100(21)(1)*. The submissions made by Councilors Adekar and Kumar demonstrate that attempts were made to find proxies; however, given the gravity of the obligation imposed by a position on the Students' Council, their attempts were insufficient to warrant the discretion of the DIE Board under *subparagraph 100(21)(7)(c)*.

DISPOSITION

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

1. *Did Councilors Adekar and Kumar contravene Bylaw 100(21)?*

[28] The Councilors were in contravention of *Bylaw 100(21)*.

2. *Were the circumstances that prevented the Councilors from attending the Students' Union extenuating as intended by Bylaw 100(21)?*

[29] The circumstances that prevented the Councilors from attending the requisite number of roll calls do not fall under the intended meaning of extenuating outlined by *Bylaw 100(21)*.

3. *Should the DIE Board exercise its discretion to reinstate Councilors Adekar and Kumar to the Students' Council?*

[30] The Board will not use its discretionary powers to reinstate Councilors Adekar and Kumar.

[31] The Speakers' removal of Councilors Adekar and Kumar is upheld.

Appeals denied.