

**Submissions for the Respondent/Intervener
Christian Zukowski, Speaker of Students' Council**

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PART I: OVERVIEW AND STATEMENT OF ISSUE

- [1] On August 9, 2022, the Speaker ruled that members of Students' Council who had abstained are not allowed to move that a motion be reconsidered. On August 9, 2022, Haruun Ali [the Applicant] submitted a Hearing Application to the Board requesting that "interpret students council standing orders which shall include Robertson [sic] rule of orders and clarify if speakers ruling was within council procedures."¹
- [2] The Speaker respectfully submits that the following issues should be considered by the Board:
- [a] To what extent should decisions of the Speaker and Council be subject to review by the Board?
 - [b] Did the Speaker err in ruling that members of Council who abstain from voting are not eligible to move to reconsider?

PART II: PRELIMINARY MATTERS

- [3] The wording of the Hearing Application (see para. 1 of this document) indicates that the Applicant wishes to make an interpretation request. These types of matters often do not follow the same adversarial process as complaint applications. If the Board determines that acting as a Respondent in this case is improper, the Speaker submits that standing to become an intervener is met.
- [4] The Board Protocols state at section 27(a) that the test of standing for interveners is whether the party applying for intervener status "has relevant expertise or information that cannot be provided by another party; or has a material interest in the outcome of the

¹ *DIE Board 2022-04 Hearing Application.*

Hearing or Appeal and their interest cannot be represented by another party” (emphasis added).

- [5] As the procedural decision-maker for Students’ Council, the Speaker possesses unique insight into and expertise regarding both the general procedural workings of Council and the specific reasoning behind the decision brought forward in the Hearing Application.
- [6] If the Board deems acting a respondent is inappropriate in this circumstance, the Speaker seeks leave to act as an intervener on the above grounds.

PART III: STATEMENT OF ARGUMENT

a) *To what extent should decisions of the Speaker and Council be subject to review by the Board?*

- [7] The Board undoubtedly has jurisdiction and powers of enforcement in matters such as this, per Bylaw 1500 ss. 3 and 29. Additionally, the prospect of having an avenue of appeal when disagreement occurs in Council on a particularly controversial issue is without a doubt appealing to those who do not prevail. However, the Speaker respectfully submits that caution should be exercised in exercising oversight over Council.
- [8] In many senses, the procedural system of Council operates as a closed system. Roberts’ Rules of Order provides extensive guidance on general procedure and our Standing Orders provide modifications specific to our organizational needs. Included in this system are both an affordance to the Speaker to exercise discretion where the rules are silent² and a mechanism for Council to overrule the Speaker.³ Simply put, it is rare to have to look outside of Council’s internal rules for guidance.

² *Standing Orders of Council*, s. 1(2).

³ *Robert’s Rules Online* at 21, <http://www.rulesonline.com/rror-04.htm#21>.

[9] While the Speaker submits that this system does not and should not preclude appeal to the Board, it is also respectfully submitted that appeals to the Board have the potential to disrupt the settledness that internal procedure provides and erode the authority of those procedures. This is particularly true in instances where an interpretation does not relate to Bylaw or even Standing Orders, but meeting procedure such as Roberts' Rules of Order. In addition, internal appeal mechanisms would ideally be exhausted prior to appealing to an external body. These considerations may be particularly important in the disbursement of funds where, in some cases, decisions cannot be reversed or a reversal could have adverse impacts to the Students' Union. This is not to cast doubts on the propriety of this matter coming before the Board, but rather to respectfully suggest that interpretations be cognizant of how Council operates and be reconcilable with that system and its principles.

b) *Did the Speaker err in ruling that members of Council who abstain from voting are not eligible to move to reconsider?*

[10] At the August 9, 2022, meeting of Students' Council, the following motion was considered by Council:

CARBAJAL VELEZ/FLAMAN MOVE FOR the speaker of council to resubmit the DIE board application regarding eligibility to the DIE board by August 9th.

[11] Following debate and a successful amendment to the motion, Council voted by roll call on the motion with the results being 11 in favour, 9 opposed, and 8 abstaining. Confusion

arose because 11 votes in favour only constitutes a plurality of votes and as a result the Speaker consulted rules of procedure as to how the vote should be interpreted.

[12] Students' Union legislation relating to Council and its operation (Bylaw 100 and Council Standing Orders) only reference abstentions twice and neither clarify how abstentions are to be treated.

[13] Bylaw 100 at section 18(6) discusses abstentions only in the context of conflicts of interest and reads as follows:

“In extraordinary circumstances a member of council should be allowed to retroactively change their vote to an abstention in the case of a conflict of interest. This would be done through a motion to Students' Council. Any member of Students' Council will have an option to petition DIE Board on the narrow issue of what constitutes extraordinary circumstances.”

It is submitted that this section does not bear on the issue at Board as it provides no clarification on how abstentions are to be characterized and implications for motions to reconsider.

[14] Standing Orders of Council reference abstentions at section 17(1), which reads as follows:

“Voting shall take place in a manner in which votes for/against/abstain are recorded.”

Again, it is submitted that this does not provide insight into how abstentions should be characterized and only stipulates that they be recorded.

[15] As our legislation is silent, it is proper to turn to Roberts' Rules of Order [the Rules], which is to “be observed at all meetings of Students' Council except where they are

inconsistent with the Bylaws or Standing Orders of Students' Council.”⁴ Given the analysis of Bylaw and Standing Orders above, no such inconsistencies have been found.

[16] On the subject of abstentions, the Rules state the following:

*While it is the duty of every member who has an opinion on the question to express it by his vote, yet he cannot be compelled to do so. He may prefer to abstain from voting, though he knows the effect is the same as if he voted on the prevailing side.*⁵

[17] This provision of the Rules suggests that, in the event of abstentions, the abstentions be counted towards the prevailing side of actual (ie in favour or opposed) votes. As a result, in this case, votes were effectively counted as 19 in favour and 8 opposed.

[18] The Hearing Application does not indicate that this interpretation of the counting of votes is disputed.

[19] Regarding a motion to reconsider a motion already decided, “[the motion] must be made by one who voted with the prevailing side.”⁶ Given the wording produced at para. 14 of these submissions, that “while it is the duty of every member who has an opinion on the question to express it by his vote, yet he cannot be compelled to do so”, it is submitted that an abstention is not actually a vote because the Rules consider voting to be an expression of opinion. This is supported by the specific wording used later in the same paragraph that for an abstention “the effect is the same as if he voted on the prevailing side” (emphasis added). This indicates that an abstention is not a vote but merely has the effect of one. While this may appear to be pedantic, the semantic meaning of the rule is important in clarifying any ambiguity that may arise.

⁴ *Standing Orders of Students' Council*, s. 1(1).

⁵ *Robert's Rules Online* at 46, <http://www.rulesonline.com/rror-08.htm#46>.

⁶ *Robert's Rules Online* at 36, <http://www.rulesonline.com/rror-06.htm#36>.

- [20] For comparison, the Vancouver Charter’s characterization of abstentions may be considered, which states that “a member of Council present at the meeting at the time of the vote who abstains from voting is deemed to have voted in the affirmative.”⁷ This rule characterizes abstentions differently in two key respects. First, that a member who abstains is “deemed to have voted.” Second, that the vote is automatically counted as a vote in favour. Unlike the Vancouver Charter, the Rules do not characterize an abstention as a vote and do not dictate what specific voting opinion the abstention will have (ie in favour or opposed), only that it will count towards the prevailing side.
- [21] The scheme created by the Rules allows members of Council to refuse to vote and effectively allow the majority of expressed votes to prevail. This balances the desire for some members to not voice an opinion on an issue with the objective of not allowing Council business to be obstructed through abstentions. Given this and the fact that the Rules do not characterize abstentions as a vote or the expression of opinion on a matter before Council, it would be improper to allow a member who has abstained to move to reconsider as the mover is required to have “voted with the prevailing side” (emphasis added).
- [22] A supplementary consideration is that allowing abstentions to move to reconsider opens the process up to abuse. Motions to reconsider must be made by one who voted with the prevailing side in order to prevent settled issues from continually being reopened. Allowing abstentions to move to reconsider may allow members who oppose a motion to reopen the matter while also avoiding the consequences of publicly expressing opinion on it.

⁷ *Vancouver Charter*, Chapter III at 145.1(3).

PART IV: CONCLUSION

- [23] As argued in Part III, it is respectfully submitted that the above reasoning demonstrates that members of Council who make abstentions are not eligible to motion to reconsider. An abstention, while having implications for the counting of votes, is not a vote itself as it is an intentional refusal to express opinion on a given issue. As such, a member who abstains cannot be said to have voted with the prevailing side and should not be allowed to motion to reconsider.
- [24] In the event that the Board disagrees with this interpretation, it is respectfully submitted that guidance be particularly sensitive to Council's operation as discussed in Part II. The Speaker is amenable to providing additional submissions on this issue if required.