

DIE BOARD RULING 2018-04

Hearing Details: Multiple removals from Students' Council pursuant to Bylaw 100(21)

Style of Cause: *Bridarolli et al (Applicants) v Students' Council (Speaker) (Respondent)*

Hearing Date: September 13, 2018

DIE Board Panel Members: Karamveer Lalh, Chief Tribune (Chair)
Nina Fourie
Gil Miciak

Applicants: Abigail Bridarolli (First Applicant — Not Present)
Kara Farris (Second Applicant — Present)
Syed Mustafa Fasih (Third Applicant — Not Present)
Mariam Hosseiny (Fourth Applicant — Not Present)

Appearing for the Applicant(s): James Thibaudeau (for Farris)

Appearing for the Respondent: None

The D.I.E. Board is unanimous in the following decision:

Bylaw 100

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. Councillors are expected to attend, send a Proxy or Councillor-Designate, to meetings of Students' Council as minimum expectation 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.
 - a. A leave of absence for elections shall not be accounted into the attendance percentage.

6. 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.
 - a. This regulation shall only apply at the end of the Spring/Summer and Fall trimesters.
7. The contravening Councillor shall be able to appeal their removal to D.I.E. 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 conflict with meeting these attendance requirements; or
 - c. Other circumstances deemed reasonable, at the discretion of D.I.E. Board.
8. Unreliable proxies or Councillor-Designates shall not be considered a reasonable excuse for appeal, unless D.I.E. 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 D.I.E. Board approve the appeal of the contravening Councillor, that Councillor shall be re-appointed immediately.
11. The contravening Councillor's seat shall not be replenished until the three (3) day appeal period has passed or the subsequent appeals process has been exhausted.
12. The Speaker shall present and e-mail these regulations at the first meeting of Students' Council each trimester.

Summary of Facts

[1] All four Councillors were appealing the decision of the speaker regarding their removal for inadequate attendance as per Bylaw 100(21), reproduced above.

[2] Only Farris attended the scheduled hearing date and time. Bridarolli, Fasih, and Hosseiny did not attend. The Speaker also stated he was unable to attend.

[3] Farris, Fasih, and Hosseiny made written submissions.

[4] Bridarolli failed to produce written submissions.

[5] According to evidence, all the applicants failed to comply with the bylaw as per Subsections 1 – 6 and sought relief under Subsection 7.

[6] During the hearing, Farris stated she could not attend the required attendance calls due to circumstances surrounding her employment at a summer camp. At this camp, she stated she did not have cell phone access and did not know prior to her employment that she as an employee would not have access during weekdays. To aid in her compliance with the bylaw, she enlisted the help of Councillor Thibaudeau to attempt to ensure that a proxy was available for every

meeting. Farris and Thibaudeau attempted to contact members of the Education Students' Association via social media and requested their help attending meetings. Farris stated that she did everything she felt she could to ensure that a proxy was available for Council meetings. Thibaudeau testified to that effect and felt that Farris was aware of the bylaw and made beyond a reasonable effort to comply with the bylaw. Farris also suggested that her attendance record in the year prior, where she was present for a clear majority of attendance calls, was mitigating.

[7] Fasih did not appear at the hearing. Fasih submitted written reasons for his failure to comply. He stated that he was present using the "Adobe Connect" remote access program but failed to make the attendance calls due to an emergency in his home. Councillor Fasih missed the 50% cut-off by one attendance call. Fasih was granted one week to provide any evidence for this emergency but failed to do so.

[8] Hosseiny did not appear at the hearing. Hosseiny submitted written reasons for her failure to comply. She stated she was involved in a motor vehicle collision overseas. She stated that another individual died because of this collision, and that she was severely injured. Hosseiny stated that she suffered from physical and mental health issues in the aftermath and was thus unable to make attendance calls. When asked for evidence of this event, Hosseiny provided a prescription from a physician in the overseas country. The prescription was written partially in a foreign language. Chief Tribune Lalh was able to identify the medications listed on the prescription as being consistent with her retelling of events. Chief Tribune Lalh also confirmed with two speakers of that language that the prescription did belong to Hosseiny.

Analysis

[9] The purpose of Section 21 of Bylaw 100 is to ensure that Councillors attend Council meetings and participate in the process for which they were elected. The bylaw recognizes that on occasion, Councillors will face circumstances they cannot control and gives D.I.E. Board the ability to determine what circumstances are reasonable beyond those outlined in Section 21.

[10] The intent behind Section 21 was to sanction Councillors who were lazy or failed to appreciate the seriousness of their commitment to the Council. We do not believe that it serves the public interest to read Section 21 in such a way that unfairly deprives students of their representation on Council.

[11] Councillors should have valid reasons for their failure to appear at attendance calls. For the D.I.E. Board to accept that Councillors have a valid reason, Councillors must provide evidence. The D.I.E. Board assessed the evidence on a balance of probabilities.

[12] Unfortunately, Councillor Bridarolli failed to attend the hearing, and failed to provide evidence or submissions describing why she failed to meet attendance calls. For those reasons, DIE Board has no reason to grant her appeal, and she should be removed from Council.

[13] Councillor Farris' case posed several difficulties for the DIE Board, as her reason for failure to attend is referred to in the statute, namely Subsection 8, which states, "[u]nreliable proxies or Councillor-Designates shall not be considered a reasonable excuse for appeal, unless D.I.E. Board deems there were extenuating circumstances."

[14] In determining whether there were extenuating circumstances, the D.I.E. Board assessed the full body of evidence, including testimony from Councillor Thibaudeau. In drafting this decision, we consulted *Black's Law Dictionary* which defines 'extenuate' as "to make less severe; to mitigate".

(Bryan A Garner, *Black's Law Dictionary 5th Pocket Edition*, St. Paul, Thomson Reuters, 2016, p 320)

[15] First, we addressed her lack of knowledge about her phone access while she was employed at the summer camp. The D.I.E. Board found Councillor Farris to be credible and accepted that she did not know that she could not use her cell phone at that camp but could not come to a definite conclusion whether she *ought* to have known that she would not be allowed regular access. Therefore, from this cell phone issue alone, we could not conclude whether there were extenuating circumstances.

[16] We accepted Councillor Thibaudeau's testimony regarding Councillor Farris' actions to comply with Section 21. Farris' attempt to recruit Councillor Thibaudeau to help ensure that she would have proxies the day of the meetings when she did not have cell phone access, was a reasonable, and admirable, attempt to comply with the bylaw. As well, the D.I.E. Board believes that Councillor Farris' strong attendance record the year prior was mitigating. Taken together with the cell phone issue, the D.I.E. Board considers these set of circumstances to be extenuating.

[17] Therefore, we grant Councillor Farris' appeal and restore her to the Students' Council as per Subsections 7(c) and 8.

[18] Councillor Fasih offered a statement as to why he did not make the attendance call. He stated that he had an emergency in his home that he had to attend and therefore failed to check in using the online system. Councillor Fasih was offered an opportunity to provide evidence to that effect. The D.I.E. Board suggested that a member of his household provide a signed statement, and that this would be sufficient to substantiate his claim; especially as he was only one attendance call from satisfying this requirement. Councillor Fasih, however, did not provide any evidence to that effect.

[19] Due to the lack of evidence to substantiate his story, we deny Councillor Fasih's appeal, and uphold his removal from Council.

[20] Councillor Hosseiny stated in a written statement that she was in a severe car accident overseas and had experienced both physical and mental trauma as a result. When asked for proof to substantiate her story, she provided a prescription. Though the evidence was difficult to interpret, the medications listed and her name on the prescription substantiated her story.

[21] The D.I.E. Board grants her appeal and restores her to the Students' Council as per Subsection 7(a). We wish her the best in her recovery.

Conclusion

[22] In reviewing these four cases in this consolidated decision, we believe that this decision will serve as a useful guideline for Councillors as to what criteria satisfy the D.I.E. Board's interpretation of Section 21.

[23] Councillor Farris' and Councillor Fasih's cases represent, in our view, the two sides of the boundary of reasonableness or extenuating circumstances.

[24] The purpose of Section 21 of bylaw 100 is to ensure that Councillors attend Council meetings and participate in the process in which they were elected to participate. The D.I.E. Board believes the intent behind Section 21 was to sanction Councillors who were lazy or failed to appreciate the seriousness of their commitment to Council. We do not believe that it serves the public interest to read Section 21 in such a way that unfairly deprives students of their representation on Council.

[25] In Councillor Farris' case, the D.I.E. Board appreciated that Farris took the process seriously. Though her claim itself was borderline precluded by statute, we found the actions that she took after the discovery of the conflict demonstrated an awareness of the bylaw and an appreciation of its seriousness. At no point during the hearing did we have doubts about Farris' commitment to Council.

[26] In contrast, Councillor Fasih did not provide us with any evidence to support his written statement. We contacted Councillor Fasih, gave him the opportunity to communicate with us, and suggested what evidence would suffice. Councillor Fasih however did not take any of these opportunities to better present his case. This demonstrates a lack of seriousness regarding this process, and we have doubts about his commitment to Council. We do not have reason to grant his appeal.

[27] The Speaker of the Students' Union was required by Subsection 9 to attend the hearing. He stated that he could not, which is regrettable. Though the D.I.E. Board was able to come to its conclusions without the speaker, we would have liked to field the speaker questions, particularly with respect to attendance protocol on "Adobe Connect". Had we had the opportunity to hear evidence on this issue, we may have come to a different conclusion with respect to Councillor Fasih's appeal. That said, Councillor Fasih had a fair opportunity to respond on his own, so we will not suggest that the Speaker's lack of attendance would have resulted in a different outcome. For the future, we politely request that those required by bylaw to attend hearings, do so.

Appeal granted for Councillors Farris and Hosseiny, appeal denied for Councillors Bridarolli and Fasih.