

DISCIPLINE, INTERPRETATION, AND ENFORCEMENT BOARD

Citation: Ali v Students' Council; 2022-HA-06

BETWEEN:

Haruun Ali

Applicant

- and -

Students' Council (Speaker)

Respondent

ABSTENTIONS and MOTIONS TO RECONSIDER

Panel Members: Scott Parker, Associate Chief Tribune (Chair)
Sarah Rhydderch, Chief Tribune
Kamryn Wiest, Tribune

Hearing Date: September 10, 2022

Witnesses for the Applicant: None

Witnesses for the Respondent: None

The reasons of the unanimous Board are delivered by Scott Parker

PLAIN LANGUAGE SUMMARY

- [1] There are procedural issues within the Students' Union that may not be clearly addressed through Bylaws or Standing Orders (including reliance on Robert's Rules of Order). Ultimately, where there is ambiguity with respect to procedure, the Speaker will decide.
- [2] The DIE Board's mandate is to interpret and enforce Students' Union legislation, and this includes adjudicating disputes that arise when the Legislation or Standing Orders are unclear.
- [3] Keeping The Board's role in mind, it is important to note that bringing procedural issues to The Board for adjudication must be balanced against the power vested in the Speaker and Council by the students. Parliamentary rules, like Robert's Rules of Order, are in place to foster the democratic process. These rules, which as we will see can cause some confusion, should not be used as a barrier to carry out the spirit and intent of Council's activity.
- [4] In this case, there was a concern with how abstentions from voting are dealt with when a motion to reconsider a vote is contemplated. A review of Robert's Rules of Order by this Board indicates that a motion to reconsider can be made "only by a member who voted with the prevailing side."¹ Robert's Rules of Order is also clear that an abstention is not a vote.
- [5] For reasons set out below, The DIE Board determined the Speaker was correct in barring abstaining members from moving to reconsider the vote they had abstained on. This case is a rather confusing one that The Board will endeavour to clarify.

FACTS:

- [6] On August 9th there was a meeting of the Students' Council of the University of Alberta Students' Union (UASU). A motion was considered by Council to resubmit a hearing application to the DIE Board (The Board). The original application was submitted to The Board on July 14th, 2022, and concerned a Councillor's eligibility to remain in office. Ultimately, the July 14th hearing application was cancelled by the parties involved. At the August 9th council meeting, Council voted to resubmit that hearing application.
- [7] Council voted with 11 in favour of the motion to resubmit the application, 9 opposed and 8 abstained. The motion was carried and the hearing application would be resubmitted to The Board.

¹ Robert, Henry M. Robert's Rules of Order Newly Revised, 12th edition (p. 316). Public Affairs. Kindle Edition.

- [8] The Applicant is UASU Councillor Haruun Ali (Councillor Ali). Councillor Ali represents the Faculty of Arts on the Students' Council. Councillor Ali's eligibility for Council is the subject of the re-submission to The Board that was voted on in the August 9th meeting.
- [9] Councillor Ali contends those members that abstained from voting should have had the opportunity to motion to reconsider. A motion to reconsider allows members to bring back a motion that has already been voted on. The effect of this is to allow members to reconsider a vote that they may have made hastily or without properly considering the information available. Councillor Ali submits those who abstained should have had the opportunity to use the motion to reconsider. On reconsidering (basically, re-voting) it is possible Council could have voted down the motion to resubmit the application to The Board. This would prevent the Council from resubmitting the question of Councillor Ali's eligibility for judgment by The Board.
- [10] The Respondent is Students' Council Speaker Christian Zukowski (the Speaker). Under Bylaw 100 s. 8(1)(d), the Speaker is the representative for Students' Council in matters before The DIE Board.
- [11] The Speaker argued that members exercising their right to abstain from voting are not eligible to motion to reconsider. The Speaker's argument was in two parts. First, Robert's Rules of Order (RRO), in the 11th Edition, states abstentions as "having the effect of voting with the prevailing side".² With this in mind, The Speaker considers the 8 abstentions should be added to the 11 affirmative votes with the result of a counted vote of "19 in favour and 8 opposed".³ The Speaker, in interpreting RRO 11th Edition, considers that while abstentions the *effect* of a vote on the prevailing side (as per RRO 11th Edition), abstentions are not actual votes. Second, The Speaker considers that an abstention is not actually a vote, "because the Rules consider voting to be an expression of opinion" and by its nature, an abstention does not express an opinion.⁴ These may seem to be opposing concepts, that an abstention is counted as a vote for the prevailing side, but is also not a vote at all. Hence the confusions.
- [12] The Speaker had relied on RRO 11th Edition, which is superseded by RRO 12th Edition. The 12th Edition provides a clearer characterization of abstentions. The Board found the 11th Edition's language misleading.

ISSUES:

² Robert's Rules of Order, 11th Edition, S. 46, Voting. (<http://www.rulesonline.com/rro-08.htm>)

³ Respondent Application to HA 06 at para 17.

⁴ *Ibid* at para 19.

[13] Both the Applicant and Respondent provided their own helpful interpretations of how this issue of abstentions should be framed. After careful reading of the submissions and cautious deliberation, The Board believes the issues to be determined are:

- 1) *Should abstentions be counted on the prevailing side of the vote?*
- 2) *Are members of Council who abstain from a vote eligible to move to reconsider?*

[14] The Speaker's Respondent Application also suggested The Board consider the following issue:

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

The Board does not find this issue centrally important to adjudicating this matter, based on the initial application from Councillor Ali. However, The Board's decision will provide guidance to this additional question raised by the Respondent.

RULES:

[15] The Board relied on the following University of Alberta Students' Union (UASU) legislation and standing orders to determine answers to the issues. The Board also relied on Robert's Rules of Order (RRO) where the legislation and standing orders do not provide guidance. It must be noted that The Board relied on the new and updated 12th Edition of RRO, which provides some subtle but important updates to the rules we are relying on.

[16] *UASU Students' Council Standing Orders*

1. Rules of Order

1(1) Robert's 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.

1(2) Where the Bylaws, Standing Orders and Robert's Rules of Order fail to provide direction with respect to procedure, the Speaker will decide.⁵

[17] *Robert's Rules of Order (12th Edition)*

37:10 By Whom and When a Motion to Reconsider Can Be Made.

⁵ <https://docs.su.ualberta.ca/books/students-council-legislation/page/students-council#bkmrk-1%C2%A0rules-of-order>

a) The motion to Reconsider can be made only by a member who voted with the prevailing side. In other words, a reconsideration can be moved only by one who voted aye if the motion involved was adopted, or no if the motion was lost.⁶

44:1 Majority Vote – the Basic Requirement.

“...when the term majority vote is used without qualification—as in the case of the basic requirement—it means more than half of the votes cast by persons entitled to vote, excluding blanks or abstentions...”⁷

45:3 Right of Abstention.

Although it is the duty of every member who has an opinion on a question to express it by his vote, he can abstain, since he cannot be compelled to vote.⁸

(Note: in the 12th Edition there is no mention that an abstention’s effect “is the same as if he voted on the prevailing side.”, as is found in the 11th Edition)⁹

ANALYSIS

Should abstentions be counted on the prevailing side of the vote?

[18] No, for the following reasons:

[19] UASU Legislation and Standing Orders are silent on the matter of counting abstentions. As the Speaker points out in his submission, there are only two mentions in Students’ Union Legislation regarding abstentions, and neither are remotely relevant to this decision.

[20] Robert’s Rules of Order (12th Edition) are *not* silent on the issue of abstentions. UASU Standing Order 1(1) ensures that if Bylaws and Standing Orders do not provide guidance, we can turn to RRO. If RRO does not provide a clear answer, then Standing Order 1(2) allows the Speaker to decide the course of action.

[21] The Speaker was in a challenging position determining how to move forward with this issue, as there are conflicting ideas presented in RRO 11th Edition. RRO 11th Edition used confusing language in characterizing abstentions. RRO 11th Edition describes abstentions as follows:

“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,**

⁶ Robert, Henry M.. Robert's Rules of Order Newly Revised, 12th edition (p. 316). PublicAffairs. Kindle Edition.

⁷ *Ibid* at 381.

⁸ *Ibid* at 386.

⁹ *Supra* note 2.

though he knows the effect is the same as if he voted on the prevailing side.¹⁰
(emphasis added)

The bold wording is confusing, as it indicates that abstentions are basically the same as voting on the prevailing side. Fortunately, RRO 12th Edition, which supersedes all previous editions, defines abstentions more clearly.

[22] RRO 12th Edition dispenses with the confusing language regarding the effect of voting on the prevailing side. An abstention is described in s. 45:3 as simply the right of a voting member to not vote on a particular matter.¹¹

[23] RRO is clear that when the votes are counted, whether for a majority or a 2/3 vote, the vote is determined “excluding blanks and abstentions”.¹² Abstentions are not votes. They should not be added to the prevailing side of the vote. This is not the intent of abstentions. A member cannot abstain yet still be considered to have supported the prevailing side.

Are members of Council who abstain from voting eligible to move to reconsider?

[24] No, for the following reasons:

[25] The Board has reasoned above that abstentions are not counted as votes. The UASU Legislation and Standing Orders are silent on this matter, so we turn to RRO (12th Edition).

[26] S. 37:10 of RRO (12th Edition) is clear on who can make a motion to reconsider:

The motion to Reconsider can be made only by a member who voted with the prevailing side.

[27] It follows that an abstention, which is not a vote, cannot be considered as voting on the prevailing side. Therefore, under s. 37:10 of RRO a member who abstains cannot move to reconsider.

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

[28] The Board wishes to address this issue, as there have been other applications made regarding the extent of The Board’s scope to review Speaker and Council decisions.

¹⁰ *Ibid.*

¹¹ *Supra* note 1 at 386.

¹² *Ibid* at 381.

[29] Bylaw 1500 (3)(1) elucidates the scope of cases The Board can review:

1. The scope of the Board shall be limited to actions and appeals brought before it that:
 - a. initiate a complaint about a contravention of Students' Union legislation;
 - b. request an interpretation of Students' Union legislation or;
 - c. appeal rulings made by the Chief Returning Officer during the Students' Union's general elections.
 - d. A reference question allows DIE board the ability to provide opinions on the scope of Students' Union policies, actions, decisions and events without the need for a dispute to be brought to the board.

[30] While the enumerated actions and appeals are few, the possibilities for interpretation are many. The Board is often called upon to resolve ambiguities in Legislation that are confusing or contradictory. This case is a good example, where competing interpretations of the rules governing abstentions and motions to reconsider required further adjudication from The Board.

[31] The Board recognizes our role when it comes to adjudicating complex disputes within the Students' Council and understands the Speaker and Council's ability to conduct student business should be treated with deference. Serving the needs of the student membership of the UASU must remain the highest priority for all of us. However, where disputes cannot be resolved by Council in an efficient, fair, respectful and compliant manner, and where those disputes are referred to The Board for adjudication, The Board will do its utmost to resolve the issue quickly and fairly.

[32] The Board suggests that ambiguous procedural issues can be interpreted to clarify those issues for Council. However, adjudicating the many permutations of procedural issues should not slow Speaker and Council's business. The Board suggests that when Council resorts to RRO for guidance, and those rules are in dispute, The Board can provide an interpretation on the rule for *future use*. To do otherwise would risk unwinding Council decisions based on what are sometimes minor misinterpretations of RRO.

[33] To ensure smooth and efficient running of Council meetings, The Board instructs that deference should be provided to the Speaker where Standing Order 1(2) is relied on. This allows Council to carry on with the students' business instead of wrangling over minor procedural issues.

[34] In this case, Council voted to resubmit the hearing application to The Board for adjudication. The vote was 11 for and 9 against, with 8 abstentions. The spirit and intent of Council is clear that the majority of Councillors that voted wished to resubmit the application. The very minor issue of ambiguity in RRO 11th Edition wording on the effect

of abstentions should not have stood in the way of Speaker and Council proceeding with the students' business.

- [35] The Board will remain vigilant in evaluating applications for adjudication or interpretation of issues that are better resolved more efficiently within Council.

CONCLUSION

- [36] The Board wishes to thank Councillor Ali and Speaker Zukowski for their helpful written and oral submissions.
- [37] The majority vote (11 for and 9 against) affirmed Council's intention to resubmit the hearing application re: Councillor Ali's eligibility to The Board. The Speaker was correct in barring abstaining voters from moving to reconsider, as this would violate RRO 37:10.
- [38] Where procedural rules are unclear, deference must be given to the Speaker as per Standing Order 1(2). This ensures council meetings can proceed efficiently when there is no clear guidance from Bylaw, Standing Orders or RRO.
- [39] The Board recommends Council rely on Robert's Rules of Order 12th Edition for more clarity when RRO are relied on. Additionally, it must be noted that the 12th Edition, published in 2020, supersedes the 11th Edition, published in 2011. The 11th Edition is available for free online, while the 12th Edition must be purchased.
- [40] The Board reminds Councillors who abstain that while RRO gives them the right to abstain, this must be balanced against *the duty* to express their opinion on behalf of the students that elected them.
- [41] The Board will update its protocols to ensure that interpretations and disputes regarding RRO result in providing clarity for future use of those rules and will not apply retroactively to Council business. However, The Board will reserve a right to adjudicate a dispute over RRO where there is abuse of those rules to override the spirit and intent of Council.