Judgment of the Board delivered by Jones D.

Jones D., Chair: Two Dalhousie Student Union (DSU) Councillors have petitioned the Judicial Board to provide an advisory judgment on whether a violation of policy or bylaw by DSU Council has occurred.

Procedural Background

[1] On September 21, 2019, DSU Councillor Lenka Wicha, Faculty of Agriculture Representative, submitted a request for clarification on an apparent conflict in the Judicial Board Policy between provision 3.1, which states that a Councillor may submit a petition to the Judicial Board and provision 7.3.2. which states that an Executive Officer must refer an issue to the Judicial Board for advisory judgment.

[2] The Judicial Board convened and decided that we would interpret the Judicial Board Policy to permit Councillors to bring forward petitions for advisory judgments.

[3] On October 22, 2019, the Judicial Board received a petition from Ms. Wicha and Meghan Faught, Faculty of Law Representative. The petition was submitted pursuant to Judicial Board Policy 3.3: for advisory judgment on whether a violation of policy or bylaw by Council has occurred.

[4] On October 27, 2019 the Judicial Board accepted the petition.

[5] On November 1, 2019, the Judicial Board held a hearing to receive submissions on the matter. Ms. Faught and Councillor Fatima Beydoun, Board of Governors Representative presented arguments on behalf of the petitioners and DSU Council respectively. Aisha Abawajy, DSU President and acting Council Chair during the events at issue, gave submissions as an intervenor. All three individuals were questioned by the Board.

Summary

[6] Motion 6.1, as passed on May 22, 2019 during a DSU Council meeting (the “meeting”), allowed the DSU to join the Canadian Federation of Students (CFS) as prospective members. A number of events occurred leading up to and during the meeting which have violated a number of DSU Bylaws, and these cannot be attributed to deliberate actions when each violation is considered alone. We are cognizant of the fact that DSU Council has historically had some disorganization issues. Although, the current structural disorganization of the DSU has led to a
number of sequential violations of DSU bylaws. The result of this is the current situation under review by this board which we find warrants serious concern.

Advisory Opinion

[7] The following events alleged in the petition did breach bylaws but are not noteworthy on their own as isolated events causing long term consequences:

I. Notice goes out to Councillors regarding the May 22, 2019 meeting approximately 4 hours past the 48 hours’ notice required by Bylaw 4.5(d).

[8] DSU Council’s 4-hour delay in providing notice is particularly unnoteworthy in light of Bylaw 4.5(e), which states that:

The unintentional omission to give notice to any Councillor or any accidental irregularity in connection with the giving of notice or failure to receive notice by the Councillor will not invalidate the proceedings at a given meeting.

Further, Bylaw 4.5(f) recognizes waiver of notice by attendance of a Councillor at a meeting unless the Councillor attends the meeting for the express purpose of objecting to the transaction of any business on grounds of a Bylaw violation. The minutes of the meeting lead us to believe that there has been a waiver of notice, as one of the petitioners was present and the evidence provided by the petitioners did not reflect any objections to the 4-hour delay in notice at the meeting.

II. DSU President steps in as Chair instead of appointing Chair and Recording Secretary for the year as required by Bylaw 4.9(d).

[9] The President Report for the period of May 1, 2019 – May 22, 2019, as submitted by Council, reflects that Ms. Abawajy was in a difficult period of transition, whereas there has been a lack of one-on-one transition with the out-going President despite Ms. Abawajy’s efforts to arrange to meet. Additionally, it was alleged at the hearing that the previous Executive has not completed the hiring process for Chair as was their responsibility and has not notified the current Executive of that failure. Council resorted to allowing Ms. Abawajy to step in as Chair during the meeting because of this transitional issue that was out of their control. There is no evidence that Ms. Abawajy acting as Chair was of significant concern, especially as she did not hold a vote and acted solely in the role of chair.

[10] The following events were in breach of bylaws and contributed to concerning consequences resulting from Motion 6.1:

I. CFS gives 1.5-hour presentation at the meeting, beyond the 15-minute timeframe with no motion to extend and no presentation materials were submitted to Council at least 48 hours in advance, which violated Union Rules and Procedures Policy 8.8.

[11] The evidence shows that CFS gave 2 hours’ notice to DSU Council that they would be doing a presentation. We are concerned that following the presentation there was potential for
Councillors to feel pressured to vote with the majority on the motion. Given comments by petitioners we feel the pressure arose from not having sufficient background information on CFS or a sound awareness of what prospective membership would mean for Council and the student body. We recognize the lack of transition affected the quality of the minutes taken at the meeting which affected the recording of the full content of the discussion period. Despite this issue, the Board does not see any reason why the presentation could not have been rescheduled to allow for all Councillors, and in particular new Councillors, to be well aware of the content of the presentation, the history of negotiations with CFS, and most importantly the potential for impromptu motions to be made and passed after the presentations that could, and did, impact the entire student body.

II. Related to the above concern, the Councillors who have relations to or had contemplated further relations with CFS where they would or could gain a material benefit did not disclose such during the meeting, as required by Bylaw 4.10.a.

[12] Bylaw 4.10.a. which governs conflicts of interest states:

“a Councillor or Executive Officer who is a party to, or has a material interest in […] a material contract or transaction or proposed material contract or transaction with the Union shall disclose in writing to the Chair of Council, or have recorded in the minutes of the meeting, the nature and extent of their interest.” [emphasis added]

DSU Councillors’ failure to disclose relationships with CFS in a timely manner is of particular concern because only those with affiliations or those who have interacted with them in the past had information about CFS. The Board is not confident based on the submissions and answers to our questions that all of the Councillors voted unanimously on something that they had adequate information about.

III. There is disagreement as to whether DSU’s prospective membership with CFS is legally binding, but the Board views it as such based on the evidence submitted by the petitioners.

[13] It appears that from the perspective of CFS, the DSU is already in a legally binding relationship (according to provision 2.b.v of CFS Bylaw I - Membership). If so, DSU Bylaw 12.1 was breached as the 5% membership fee was not waived until after prospective membership was already approved. Bylaw 12.1.d was breached because there is no guarantee that the DSU Bylaws would supersede CFS Bylaws. Bylaw 12.1.f was breached because it is not clear whether the DSU reserves the right to terminate its CFS membership according to their own Bylaws. This would also mean that the DSU should have sought advice from legal counsel prior to becoming a prospective member and was in breach of Bylaw 12.2.

[14] One of the biggest issues in this petition is the lack of knowledge on what “prospective membership” meant to Council and the student body as a whole. Furthermore, the lack of effort put into ensuring Councillors and student body were informed of the full meaning of “prospective membership”. Any breach of Bylaw 12.2, requiring consultation with legal counsel, is significant here mainly because this task of analyzing the bylaws of external organizations and their relationship with the DSU Bylaws is beyond the scope of the Judicial Board.
Additionally, it is apparent that under the CFS Bylaws 2.b.xi, the prospective membership will automatically continue unless additional resources are organized to ensure Councillors and the student body is aware of the ways it will not continue, which is by referendum. Cancelling the prospective membership outright is not one simple action according to CFS. This may be an onerous and unrealistic task given the historical and ongoing disorganization of the DSU Council. Therefore, if the legal obligations require that the DSU is subject to CFS Bylaws, a referendum is not successful, and the student body is not aware of all of the benefits and disadvantages associated with prospective membership, this possibility warrants concern and leads to significant, long-term consequences.

Recommendations

The significance of these cumulative failures to follow DSU Bylaw and Policy is indicative of a larger institutional struggle to remain organized and practice good governance. It is understandable how certain actions came about and we cannot say that these violations were committed in bad faith. Nevertheless, to ensure best representation of the student body possible, the presentation and subsequent discussion, or at the very least the voting and passing of Motion 6.1 should have been postponed for another meeting. Further, the absence of a Bylaw requirement does not mean that student government should not recognize that some decisions require more thought, debate, and information prior to voting on them. The DSU Council should take this into account moving forward to maintain trust from the greater student body and conduct themselves according to their mandate and in the best interests of students.

The presentation from CFS and alleged question and answer period was not, as confirmed at the hearing, fully recorded and as such it is unclear what information was given and not given regarding the obligations surrounding prospective membership. The DSU Council should work to ensure that minutes are recorded thoroughly in the future and disseminated to all members not present at the meeting. If the DSU is unable to achieve this for whatever reason, the meeting should be rescheduled for a time when it is achievable.

Despite an inclination with respect to the petitioners’ submissions to nullify Motion 6.1, the issue now lies between the DSU and CFS in how to reconcile the conflicts between the organizations’ bylaws. As previously stated, this issue of prospective membership with CFS lies outside of the scope of the Judicial Board. As a result, to recommend nullifying the motion would have no force or effect.

The next step will be to hold a referendum, but the Judicial Board heard no clear, organized ideas on how exactly the DSU Council plans to conduct the referendum in a fair and accurate manner. It is unclear whether the student body is even aware of all aspects, good and bad, of joining CFS and DSU Council presented no cogent plan for how they will communicate this integral information prior to the referendum. We are also unsure of DSU Council’s ability to present both the pros and cons to joining CFS, as from the hearing, it is our understanding that there may potentially be some obligation to show support for CFS through something called “the “Yes” campaign”. We have not been provided with more information about this campaign outside of a brief mention of it at the end of the hearing and are unable to confirm the exact
details surrounding any existence of DSU Council obligations and potential consequences. As this depends on the requirements under CFS bylaws and/or policies, we recommend that the DSU Council should make sure to involve Dalhousie legal counsel as soon as possible regarding their relationship with CFS.

[20] Our final recommendation would be for DSU Council to look into the possibility of creating an independent committee/group to adequately inform the student body about the current situation of CFS prospective membership and to encourage voting in the referendum. This would include informing the student body that no vote for CFS full membership is equal to a vote for continued prospective membership because failing to meet quorum will result in automatic extension of the prospective membership. In addition to educating the student body, responsibilities of a potential external committee/group may also include planning the referendum itself and analyzing the results.