



Judgment of the USC Appeals Board in the matter of:

Science Student Council v Elections Governance Committee, 2023:1 Election

Hearing Date: January 16, 2023

Judgment Released: January 16, 2023

Panel: William Fawcett (Chair), Stephen Warner, David Vallillee

Reasons: Fawcett (Warner, Vallillee)

PART I: INTRODUCTION

1. This is an appeal from a decision by the Elections Governance Committee (“**EGC**”) to interpret Bylaw #2: Elections Bylaw (“**Bylaw #2**”) of the University Students Council (“**USC**”) such that any student enrolled in the third or fourth year of the Bachelor of Medical Sciences (“**BMSc**”) program will be considered a student of the Medicine constituency for the purposes of USC elections.

2. For the reasons below, this Board finds that the EGC’s decision, despite being made thoughtfully and with the best of intentions, was unreasonable. The appeal is upheld, and the EGC’s decision is struck.

3. For greater clarity, it is the understanding of this Board that the effect of this Board’s decision is that the current *status quo*, under which third and fourth year BMSc have been treated as part of the Science constituency for the purposes of USC elections will be maintained. For reasons explained below, this Board is not interpreting Bylaw #2 such that third and fourth year

BMSc students are necessarily part of the Science constituency. This Board's decision simply maintains what, up until this year, was the *status quo*.

PART II: FACTS

4. The BMSc program appears to be unique among programs offered at the University of Western Ontario. Students who are admitted to the Medical Sciences program who then meet certain criteria in their first two years are automatically admitted to the BMSc program, while other students may apply in their second year as part of the competitive pool.

5. For the purposes of this appeal, the key issue is that BMSc students in their third and fourth year become registered in the Schulich School of Medicine & Dentistry ("**Schulich**"). Prior to that, students in the Medical Sciences program are registered in the Faculty of Science.

6. This has caused some difficulty in USC run elections in the past. For example, in the 2019 election there was an error with the electronic balloting such that third and fourth year BMSc students were unable to vote for certain Science constituency positions. In response, the EGC issued a press release on February 5, 2019 indicating as follows.

The distinction between who is, and who is not, eligible to vote under the Faculty of Science has been consistent in our elections for many years and is guided by the Registrar's office. We worked with the Registrar's office this afternoon to confirm which programs within the Schulich School of Medicine and Dentistry are eligible to vote, as per graduation requirements, which is in-line with By-Law 2, Section 8.2.4.¹

7. In oral submissions, the Board heard how the current EGC was apprised by the University Secretariat in December 2022 that the *status quo* by which third and fourth year BMSc students

¹ The wording of what was then section 8.2.4 of Bylaw #2 is the same as what is now section 8.2.3(1) of Bylaw #2.

voting as part of the Science constituency in USC elections did not appear to be consistent with the records of the University that show third and fourth year BMSc students to be enrolled in Schulich. The University Secretariat also apparently indicated to the EGC that third and fourth year students vote with Schulich in University Senate elections.

8. The EGC subsequently contacted the Registrar, which provided a document titled Western: Constituent University Enrolment Forecast. This document shows that the MD Program and the BMedSci Program are both listed under Medicine. The EGC also had verbal discussions with one or more individuals who had access to the voting lists. We are informed by the EGC through oral submissions that these voting lists record third and fourth year BMSc students as part of the Medicine constituency. These voting lists were, quite correctly, not produced in evidence as doing so would breach privacy constraints.

9. Based on this evidence, and a review of the BMSc pathway described in paragraph 4 above, the EGC concluded that allowing third and fourth year BMSc students to participate in USC elections in the Science constituency (as candidates, voters, and nominators) violated sections 7.3 and 8.2.3 of Bylaw #2. These sections require candidates and voters to be registered in the constituency in which they run as candidates or vote. This is to be determined “through the use of the records of the University.”

10. In light of the conclusion it reached, the EGC released a document titled EGC Statement Regarding Electoral Status of Bachelor of Medical Sciences Students on January 12, 2023. Its authority to do so is found in section 1.2 of the Elections Governance Committee Terms of Reference (“**EGC Tor**”), which allows the EGC to release Regulations detailing how Bylaw #2 will be interpreted and applied during an election period.

11. The thrust of this Regulation is that “any student in their third or fourth year of the BMSc program will be considered a student of the Medicine constituency in accordance with their official registration status as determined by the records of the University.”

12. It is this decision from which the Science Students Council (“SSC”) appeals.

PART III: ISSUE

13. The issue is whether the EGC’s decision contained in this Regulation was reasonable.

PART IV: SUBMISSIONS

14. In its oral submissions, the SSC focussed on three main points:

- a. Third and fourth year BMSc students are more aligned with Science students with respect to their interests, their tuition, the manner in which they receive services, and so forth;
- b. Third and fourth year BMSC students would be disenfranchised by the EGC’s decision; and
- c. Previous instantiations of the EGC did not breach Bylaw #2 when treating BMSc students as part of the Science constituency.

15. In support, of its submissions, the SSC filed several documents, two of which have especial importance:

- a. The EGC’s February 5, 2019 press release, described above; and

- b. A letter from the Hippocratic Council President, Lina Ghattas, describing the process by which Medicine USC representatives are elected, particularly the requirement that candidates and voters for these positions must be Schulich medical students.
16. Ms. Ghattas' letter contained a link to the Hippocratic Council's Terms of Reference, which supported her characterization.
17. The EGC faced extensive questioning from the Board. It submitted, quite correctly, that it was not required to consult with any Faculty Councils or other bodies prior to releasing its decision. In the EGC's submission, it was bound to release the Regulation that it did, as this is strictly consistent with the requirements of Bylaw #2 described above, and its decision was reasonable based on its power, authority, and mandate. In the EGC's submission, prior instantiations of the EGC had breached Bylaw #2 by not requiring BMSc third and fourth year students to stand as candidates and to vote as part of the Medicine constituency.

PART V: ANALYSIS

18. Nominations for various USC positions, including some affected by the EGC's decision, opened today. Accordingly, this matter was heard on an urgent basis. The appeal request was submitted at 1:00 a.m. on Friday, January 13, 2023. Written submissions from both parties were received on Sunday, January 15, 2023, and the hearing was conducted on Monday, January 16, 2023. All parties are to be commended for the quality of their submissions given the very tight timeline.

19. The starting point for the Board's analysis begins with the EGC Tor. Section 1.2.1 requires that Regulations released by the EGC must be "strictly consistent" with the bylaws. Section 1.1.1 also requires the EGC to uphold the "Vision and Principles" of Bylaw #2.

20. The vision statement of Bylaw #2 reads as follows:

To maximize the opportunity for students to be involved in USC-governed elections at the University of Western Ontario, as candidates, voters, and informed individuals.

21. The uncontroverted evidence supplied by Ms. Ghattas is that the EGC's decision would have the opposite effect as what is embodied in the vision statement. Third and fourth year BMSc students would not be able to be run as candidates for the USC in the Medicine contingent. They would not be able to vote in those elections.

22. Accordingly, the EGC's regulation released on January 12, 2023 is not "strictly consistent" with Bylaw #2 as required by section 1.1.1 of the EGC ToR. It is consistent with sections 7.3 and 8.2.3. It is not consistent with the vision statement. As a result, the EGC's decision contained in that regulation is unreasonable.

23. In addition to this, the EGC was unaware of key pieces of information when it reached its decision.

24. It was unaware that a prior instantiation of the EGC had, in consultation with the Registrar, concluded that third and fourth year BMSc students were part of the Science constituency.

25. It was unaware that BMSc students would not be eligible to participate in USC elections – as candidates or voters – as part of the Medicine constituency.

26. It was also unaware that the Senate Election Procedures explicitly address the manner in which BMSc students (both first and second year students as well as third and fourth year students) are to be treated. See section A.2.3 which identifies first and second year BMSc students as part of the Faculty of Science and third and fourth year BMSc students as part of the Schulich School of Medicine & Dentistry. No other program is addressed in this fashion, which reinforces the unique nature of the BMSc program.²

27. While it is understandable that the EGC did not have these key pieces of information before it at the time it reached its decision given the pace at which the decision was made, the fact that it did not have this information entails that its decision is unreasonable. In particular, the EGC admitted in oral submissions that it had no desire to “withhold students from voting”, yet, because it was unaware of the information described above, its decision has that very effect.

28. Further reinforcing this Board’s conclusion that the EGC’s decision as contained in its January 12, 2023 regulation is not reasonable is the fact that in 2019 the EGC reached the opposite conclusion after consulting with the Registrar’s office. The EGC was unable to explain how this prior instantiation of the EGC reached the opposite conclusion as that which was reached by this instantiation, despite both consulting with the Registrar’s office, and, presumably, being guided by the Registrar’s records. Left unexplained, but potentially relevant to this point, is the fact that

² This Appeals Board also notes that Medicine constituency terminology does not map tidily onto the language in the Senate Election Procedures. The USC divides Schulich students into separate constituencies for Medicine and for Dentistry. The Senate Election Procedures treat all Schulich students as one constituency.

convocation records show that BMSc graduates are identified as graduates of the “Schulich School of Medicine & Dentistry and the Faculty of Science”.

29. The EGC stressed in its submissions at multiple times that it considered itself to be bound to reach the conclusion that it did regarding the application of sections 7.3 and 8.2.3 of Bylaw #2. The fact that a previous instantiation reached the opposite conclusion in 2019 reinforces the fundamental challenge with the EGC dealing with this matter by way of regulation. A future instantiation of the EGC could reach the opposite conclusion as this instantiation reached, resulting in another change to how third and fourth year BMSc students are treated with respect to USC elections, which could potentially occur on the eve of a future election as it did in this election. This reinforces this Board’s conclusion that the EGC’s regulation is not “strictly consistent” with Bylaw #2.

30. The BMSc program appears to be unique among University programs. The Senate Election Procedures carefully, and explicitly, addresses this uniqueness and ensures that both first and second year members of that program, as well as third and fourth year members, are accounted for with respect to voting and representation. Because the EGC’s regulation was made without a full awareness of all the various policies and procedures affecting the matter – particularly the ineligibility of third and fourth year BMSc students to participate in Medicine constituency USC elections – the EGC’s regulation unintentionally fails to provide the same protections. This Board stresses its finding that this result is unintentional.

31. However, during oral submissions, the EGC indicated that it had made recommendations to the USC Council with respect to the treatment of third and fourth year BMSc students with respect to USC elections. BMSc students are able to raise their concerns to Council in a manner

that was not available to them in the process leading to the EGC's decision contained in its January 12, 2023 regulation. Nothing in this Appeals Board decision should be construed as restricting Council in any fashion in how it may choose to deal with BMSc students. The Appeals Board has not decided the issue of whether third and fourth year BMSc students should be classified as part of the Science or Medicine constituencies, and it recognizes that a decision of Council on this issue is not appealable to the Appeals Board.

W. Fawcett