

**OPINION PRESENTED TO THE UNIVERSITY OF REGINA
STUDENTS' UNION BOARD OF DIRECTORS
DECEMBER 14, 2018**

FACTS

The University of Regina Students' Union ("URSU") retained a Chief Returning Officer ("CRO"), Amber Smale, in late September 2018, to oversee the by-election held on October 17 and 18, 2018, pursuant to the URSU Constitution and Bylaws.

14 candidates stood for election in 12 positions, or categories. The Board of Directors had previously determined that two positions, those for Director for the Faculty of Science and Director for the Faculty of Graduate Studies and Research, were not eligible to be contested. The positions were not available through the by-election, as the incumbents had not resigned, nor did the Board recall them before advertising the positions as open, as required under the URSU Election and Referendum Bylaw.

The CRO held an all-candidates meeting on October 5, 2018, at which she provided instructions to candidates on their roles and responsibilities, as well as what activities were permitted during the campaign period and on election days. The CRO's instructions included an overview of the Election and Referendum Bylaw and the Candidates Information and Nomination package.

The campaign period ran from October 9-16, 2018, prior to the election on October 17 and 18. There were 14,492 students eligible to vote. Based on the totals from the presidential election, 1,312 members voted, representing approximately 9.1% of total eligible voters. Election results were announced on October 19, 2018, along with a caveat that the results for the office of President were subject to investigations by the Elections Committee. The Elections Committee launched its investigations as a result of various complaints submitted during the election period.

The CRO received a total of 19 complaints about possible by-election violations. The CRO identified the following complaint categories:

- Participating in media interviews prior to the campaign period;
- Placement of posters;
- Attendance at events on campus;
- Intentional misrepresentation of facts;
- Attempts to discredit candidates;
- Interference with the administration of the election and the voting process;
- Use of intimidation tactics and threats against voters;
- Use of electronic devices to facilitate, influence, or coerce members' votes;
- Interference with voters' freedom of choice and right to vote.

The CRO received all complaints in writing, in addition to various forms of evidence. Some complaints identified specific accused and witnesses, and some complaints included evidence such as audio recordings, video, and photos.

The Elections Committee, made up of the CRO, Amber Smale, Public Elections Officer, Marc Kelly, and the Student Elections Officer, Shafeeka Sayyid, met on October 22 and 23, 2018 to review the complaints and to interview two candidates for URSU President: Sukhdeep Brar and Shawn Wiskar.

After weighing the evidence and interviewing Mr. Brar and Mr. Wiskar, the Elections Committee decided to disqualify Sukhdeep Brar as a candidate for election. In apparent accordance with the Election and Referendum Bylaw, the Elections Committee declared that Shawn Wiskar had been elected URSU President. The Elections Committee provided its decision to Mr. Brar and Mr. Wiskar, as well as the URSU Board of Directors and Campus Security.

In a report to the URSU Board of Directors, dated October 31, 2018, the CRO details the specifics of her service and expresses particular concern about certain “incidents and... complaints” involving “personal safety.” As a result of her concerns, the CRO recommends in her report that “the URSU work with the Regina Police Service University Liaison Officer, Campus Security and the University of Regina to ensure students have a safe school environment and trust that they can report incidents in confidence to both URSU and the University of Regina.” It is unclear from her report whether the CRO’s concerns stem, in whole or in part, from any incidents related to either or both of Mr. Brar’s or Mr. Wiskar’s campaigns.

The University of Regina Students’ Union Board retained Runyowa Law on December 10, 2018, to provide a legal opinion on the questions below. This legal opinion is provided for the information of Board members, and for no other purpose.

ISSUES

1. Does the URSU Board of Directors have jurisdiction to overturn the Elections Committee decision to disqualify a candidate for URSU President?
2. If “yes” to Issue 1, how could the Board proceed with overturning the Elections Committee decision, in accordance with the URSU Constitution and Election and Referendum Bylaw?
3. If “no” to Issue 1, what are the Board’s obligations in the aftermath of the by-election?
4. What changes can be made to the URSU Constitution and/or Bylaws to ensure similar situations do not arise in future elections?

As a prelude to the analysis and recommendations below, it is important to distinguish between what the URSU governing documents appear to provide for, and what is fair, desirable, and legally sustainable in any democratic institution. Thus, this opinion differentiates between “what is” and “what should be.” Runyowa Law has attempted to frame its recommendations for reform to deliver fairness to the parties involved, flagging relevant case law that provides guidance on the relevant issues.

SHORT ANSWERS

1. The URSU Board of Directors does appear to have jurisdiction to overturn the Elections Committee’s decision to disqualify a particular candidate, after the Elections Committee and CRO have fulfilled their mandates, as described in the Constitution and Bylaws. However, the jurisdiction to overturn is not necessarily the same as the right to do so under any circumstances.
2. If the majority of Board members are in favour, the Board should pass a resolution overturning the Elections Committee decision to disqualify the candidate for URSU President, subject to members’ confirmation at a Special Meeting of Members.
3. The URSU Constitution should be amended to enshrine the Membership in General and Special Meeting as the ultimate governing body of the URSU, to specify that Board resolutions to overturn Elections Committee or CRO decisions must make specific reference to bad-faith or negligent conduct on the part of one or more Elections Committee members, and that any such resolution requires a two-thirds majority of the Board to be carried. The Election and Referendum Bylaw should be amended to specify that the Board is only permitted to intervene in an Elections Committee or CRO decision in the cases of apparent bad-faith conduct or negligence on the part of one or more Committee members.

DOCUMENTS CONSIDERED

In preparing this Opinion, Runyowa Law makes reference to, or otherwise considered, the following documents:

- University of Regina URSU By-election 2018, October 17-18 Results (dated October 19, 2018)
- 2018 University of Regina Student’s (*sic*) Union By-election Declaration of Results for Office of President (dated October 19, 2018)
- 2018 URSU By-election Final Report (dated October 31, 2018)

- URSU Election and Referendum Bylaw (approved February 8, 2018)
- University of Regina Students' Union Board of Directors Record of Decision (voting period ending 12:00 pm November 8, 2018)
- University of Regina Students' Union Standards of Conduct Policy (approved July 25, 2016)
- URSU Board HR Committee Policy (approved April 25, 2017)
- Constitution of the Students' Union of the University of Regina, Inc. (ratified October 26, 2017)
- URSU Board of Directors Meeting Minutes – October 19, 2018
- URSU Board of Directors Meeting Minutes – November 2, 2018
- URSU Board of Directors Meeting Minutes – November 15, 2018
- Contact Details for Potential Witnesses (provided November 23, 2018)
- Harassment Policy and Procedure (approved March 10, 2016)

THE LAW

Constitution of the Students' Union of the University of Regina (emphasis added)

ARTICLE VI

(1) The Board of Directors shall uphold the principles of the Students' Union.

(2) The Board of Directors has the power to make, amend, and repeal By-Laws of the Students' Union, as provided for in section 90 (1) of the Non-Profit Corporations Act.

(3) The Board of Directors shall recommend all By-Laws made, amended, or repealed under Article VII to the next general meeting of the members for approval, as required by section 90 (2) of the Non-Profit Corporations Act.

(4) The Board of Directors is responsible for the administration of the affairs of the Students' Union.

(10) The Board of Directors shall follow the chain of command policy for the purpose of ensuring the effective operation of the Students' Union. To change the "chain of command policy", it shall require a Motion of Substance to the Board of Directors, and shall be unanimously passed by the Board of Directors. The chain of command shall be the following:

1. All employees ultimately report to the General Manager. The General Manager reports to the President.
2. The President reports to the Executive Committee.
3. The E Committee reports to the Board of Directors.
4. The Board of Directors is the ultimate decision making authority of the Students' Union.

(11) The Board of Directors shall not directly interfere with any employee in the discharge of his or her duties. All suggestions and recommendations for the enhancement or improvement of an employee's performance related to his or her duties or function with the Students' Union shall be first brought to the Board of Directors in the form of a motion, whereupon it shall be discussed in camera and adopted or rejected. Any recommendations arising from this Process shall then be passed on to the President, who in turn will pass the direction on to the General Manager for administration and action. The Executive Committee shall retain the right to enter into discussions with the General Manager for the purposes of ensuring the effective day-to-day operations of the Students' Union.

(12) All members of the Board of Directors are responsible for ensuring the integrity of the Board of Directors and ultimately the Students' Union. This includes but is not limited to the following: confidential in camera sessions and personal briefings. Any member of the Board of Directors undermining this integrity can be removed with a two-thirds majority quorum vote of the Board of Directors.

URSU Election and Referendum Bylaw (emphasis added)

3.1.11. Election Results

The CRO shall declare elected the member who receives the greatest number of votes for the office or constituency in which they have run.

The CRO shall declare elected any member who receives more "yes" votes than "no" votes when running unopposed for a position.

By noon of the first business day after the close of the Voting period, the CRO shall publish the results of the count of ballots and the result of the Election, By-Election, or Referenda.

In the event a winning candidate in any election is disqualified, the runner-up will take the place of the disqualified winner.

3.1.17. Resolution of Campaigning Complaints

Campaigning complaints which would entail 5 or fewer demerit points are assessed by the CRO. If the nature of the complaint, or the CRO's judgment of the complaint, would entail greater than 5 demerit points, the complaint will be brought before the Elections Committee. A complaint deemed legitimate by the CRO or the Elections Committee, as appropriate, is deemed a violation and the appropriate number of demerit points are assessed against the candidate.

If at any time a candidate is assessed 5-7 cumulative demerit points, they may lose campaign privileges, such as posters, social media, or tabling.

If at any time a candidate is assessed 8 or more cumulative demerit points, they may be eligible for disqualification from the election. The history of the violations committed by the candidate will be brought before the Elections Committee who will decide whether the candidate is to be disqualified or, in exceptional cases, they may decide to remove violations of 5 or fewer demerit points only. If removing said violations brings the candidate below the threshold of 8, the candidate is not yet disqualified but may be if further violations are incurred.

3.1.18. Resolution of Voting Complaints

Voting complaints are to be submitted to the CRO. The submitted complaint should contain as much detail as possible with as little hearsay or conjecture as possible. Complaints may be submitted by the CRO, or by any member of URSU, or by any staff member of URSU.

In all instances of voting complaints, the CRO shall assess the appropriate response in compliance with this document whether the complaint is against a member, non-member, or student group.

3.1.20. Report of the CRO

Within two weeks of the close of a General Election, By-Election, or Referendum, the CRO shall publish a report for presentation to the Board of Directors, which report shall contain:

1. A statement of the number of candidates nominated at the election and the name of the constituency or office, or other position for which each was nominated.
2. A summary of their work.
3. A statement of final results.
4. A review of every appeal or question of interpretation that was raised.
5. A review of the activity (if any) of the PEO and the SEO.
6. Any recommendations to improve future elections or referenda.
7. Any recommendations to modify, clarify or otherwise improve this bylaw.

3.2. By-Election

Unless otherwise indicated a by-election shall follow the policies of a general election. By-elections will be held at the discretion of the URSU Board of Directors for the purpose of filling any or all unfilled positions.

3.4.1. Board of Directors

The Board of Directors shall:

- Set the dates of the election in accordance with this bylaw and Article XI of the Constitution.
- Hire the CRO, PEO, and SEO a minimum of two weeks before the scheduled start of the Notice of Elections period.
- Assist the CRO and the Elections Committee in the completion of their duties
- Follow the rules and regulations of the Election, By-election, Referenda that are laid out within this bylaw.
- Promote participation in the Election, By-election, Referenda to the members of URSU.
- Set honoraria for the CRO, PEO, and SEO in advance of hiring.

3.4.3. Chief Returning Officer

The Chief Returning Officer shall be nominated by the Board of Directors to be CRO of the URSU. During their contract the CRO, shall be responsible to the Board of Directors and shall have access to all of the resources of URSU as they complete their duties. The CRO shall be paid such honoraria, allowances, and expenses as the Board of Directors sees fit.

3.4.4. Public Elections Officer

The Public Elections Officer (PEO) shall be nominated by the Board of Directors to be PEO of the URSU. During their contract the PEO, shall be responsible to the Board of Directors and shall have access to all of the resources of URSU as they complete their duties. The PEO shall be paid such honoraria, allowances, and expenses as the Board of Directors sees fit.

3.4.5. Student Elections Officer

The Student Elections Officer (SEO) shall be nominated by the Board of Directors to be the SEO on behalf of the URSU. During their contract the SEO, shall be responsible to the Board of Directors and shall have access to all of the resources of URSU as they complete their duties. The SEO shall be paid such honoraria, allowances, and expenses as the Board of Directors sees fit.

3.4.6. Elections Committee

The Elections Committee is comprised of the CRO, the PEO and the SEO. Specifically, the Elections Committee is responsible for:

- Disqualifying candidates, materials, representatives or members who, in the opinion of the Elections Committee, have broken the rules laid out in this bylaw and other relevant documents.
- Hearing, in confidence, any appeal or request for review on the conduct of any candidate(s), officials or members.
- Investigating all offences, claims and questions brought forward by the CRO.
- Reviewing and bringing resolution to any appeals of the CRO's decisions.
- Resolving serious violations of this bylaw.
- Being the final authority in interpreting this bylaw.
- Referring to appropriate independent legal counsel, where and when deemed necessary. The costs incurred will be the responsibility of the URSU.
- Recommending changes or additions to this bylaw.
- Developing and or enforcing appropriate disciplinary actions.

The Elections Committee has the jurisdiction to impose any sanction it deems just for any conduct that amounts to a significant and substantive breach of election protocol. Where an unfair

advantage has been obtained, a penalty shall be assigned that endeavours to fully counter-balance any advantage gained.

For example, the Elections Committee may:

- Withhold reimbursement of any amount of election expenses up to 100%
- Issue a letter of reprimand
- Require a letter of apology
- Publish a notice of the violation in The Carillon and/or on the URSU website.
- Require a new election to be held for any or all positions
- Disqualify candidates

4.1.5. CRO, PEO, and SEO

The CRO, PEO, and the SEO may be disciplined for committing an offence and/or failing to carry out their duties as laid out in this bylaw and their contract in the following manners:

- Termination of their contract and forfeit of any remaining payment for their position
- Loss of vote in future election(s)
- Legal action as deemed necessary by the Board of Directors
- Other penalties as recommended by the Board of Directors

ANALYSIS

At the outset of our analysis, it is important to note that we were presented with no evidence that the members of the Elections Committee, or any other URSU members, acted in any manner other than competently and in good faith. The discussion that follows contemplates only hypothetical scenarios in which URSU officials could perform actions incompetently or in bad faith.

In general, the Constitution of the Students' Union of the University of Regina (the "Constitution") and the URSU Election and Referendum Bylaw (the "Bylaw") create some interpretive tension between the powers of the URSU Board of Directors (the "Board") and members of the Elections Committee.

At first blush, it might appear that the provisions of the Bylaw are determinative of the CRO's ability to codify election results, particularly section 3.1.11, which provides that "[t]he CRO shall declare elected the

member who receives the greatest number of votes for the office or constituency in which they have run.” Although we are not dealing with legislative documents, principles of statutory interpretation are nevertheless useful in providing a logical and consistent interpretation of governance documents such as the USRU instruments. Applied to this case, the words of such instruments must be read in context, in their ordinary sense, and in harmony with the entire document, its object, and the intentions of the drafters.

The Preamble to the Constitution specifies that it has the “legal effect of a Constitution,” the highest governing document of the organization, and that the Board can subsequently create bylaws (Article VI (2)). Thus, the Bylaws are subordinate to the Constitution.

The Board is the Ultimate Decision-Making Authority of the URSU

Article VI (10) of the Constitution establishes the “chain of command” for the URSU, placing the Board of the top of the pyramid. As the subsection specifies, “[t]he Board of Directors is the ultimate decision making authority of the Students’ Union.” Furthermore, it is the Board that “is responsible for the administration of the affairs of the Students’ Union” (Article VI (4)). As the “ultimate” decision-making body for the Union, subject to any other provisions of the Constitution or Bylaws, the Board is generally empowered to manage the URSU’s affairs.

Article VI (11) places some relevant constraints upon the Board’s authority, prohibiting the Board from directly interfering with employees’ ability to perform their duties. As is further discussed below, the URSU Constitution and the Bylaw appear to establish an employee/employer relationship between the Board and the CRO. Accordingly, the Board is limited in terms of the extent to which it can “interfere” with the CRO’s function. In the present circumstances, however, the CRO has completed the performance of her duties. The question is not whether the Board can “interfere” with her work, but whether the Board, after receiving the CRO’s report in good faith and having not interfered with the duties the Bylaw enumerates for the CRO, can overturn a decision that the Elections Committee, including the CRO, has rendered.

The Employer/Employee Relationship

The URSU Election and Referendum Bylaw appears to clearly establish an employer/employee relationship between the Board and the CRO. Section 3.4.1., for example, specifies that the Board is responsible for hiring the CRO and assisting the CRO in the performance of her duties. Section 4.1.5. also indicates that the Board is empowered to issue discipline to the members of the Elections Committee. Still further, sections 3.4.3., 3.4.4., and 3.4.5. expressly indicate that the members of the

Elections Committee are responsible to the Board. Of course, hiring, discipline, and management are fundamental aspects of the employer/employee relationship.

In general, employers enjoy significant discretion in guiding employees' work products. Employers are generally free to accept, reject, modify, table, or otherwise manage "deliverables" that employees create in the course of employment. In the present case, the Board has received "deliverables" from employees, the members of the Elections Committee, including the CRO, which include the decision to disqualify a candidate for the URSU Presidency and the CRO's report to the Board. For the Board to make efforts to reject portions of the Elections Committee and the CRO's work products seems consistent with the nature of the employer/employee relationship.

However, the nature of elections and the democratic values they are intended to safeguard, elevates the expected level of independence that an Elections Committee must have from the Board. Although the Elections Committee is not an administrative tribunal in the strictest sense, its function of conducting and safeguarding the integrity of the elections system is analogous. Tribunals that are created by statute and with members appointed by the executive branch are nevertheless supposed to operate with a high degree of independence. Any Board interference or reconsideration of the Elections Committee's work must be rooted in grounds that are more exalted than the employer's general entitlement to make day-to-day decisions in managing employees. For the purposes of this report, it matters that the Elections Committee works for the Board, and is thus subordinate to it. However, this does not mean that the Board can disregard the Elections Committee's on a whim. As discussed further below, the threshold should be high and in limited cases.

The Board's Duty to Maintain the Integrity of the URSU

Article VI (12) of the Constitution dictates that "[a]ll members of the Board of Directors are responsible for ensuring the integrity of the Board of Directors and ultimately the Students' Union." The sub-article expressly enshrines the Board's responsibility as steward of the organization generally. Accordingly, where the Board believes that a member or employee has threatened, or is threatening, to undermine the Union's integrity, the Board has an obligation to act. Examples of the sorts of behaviour that may be seen to undermine the URSU's integrity might include acts committed in bad faith or that are negligent.

It must, again, be emphasized that Runyowa Law has not received evidence that, in the present case, any members or employees of the URSU have conducted themselves in any manner that undermines the Union's integrity. If, however, a member was to have performed a function in bad faith, not only would the Board be empowered to initiate corrective action, but the Board would be required to take such action.

Therefore, the significance of Article VI(12) in this case is to present a further basis for the Board's general authority to overturn Elections Committee/CRO decisions.

The Interaction Between the Constitution and the Bylaw

Considered independently, certain Constitutional Articles and sections of the Bylaw would seem contradictory. Articles VI (4), (10), (11), and (12) of the Constitution confer significant authority to the Board, for example, in terms of governance on behalf of the URSU. Sections 3.1.11., 3.1.18., and 3.4.6. of the Bylaw, however, appear to enshrine the power of the CRO and Elections Committee to make decisions that are final. What must be considered is that the Constitution is the ultimate source of the Board's authority, while the Bylaw is that for the CRO and the Elections Committee. It is the Constitution, not the Bylaws, that is the highest governing document of the URSU. In fact, the URSU Bylaws are only effective by virtue of the fact that the Constitution provides for the Board creating them (Article VI (2)).

When Constitutional Articles exist in apparent contradiction to sections of the Bylaws, the Constitution should be taken as the authoritative source. In the current case, even the explicitly enumerated powers of the CRO and the Elections Committee must be seen in light of the Board's overall authority.

Powers of the Board and Democratic Ideals

Although URSU's current regulatory regime appears consistent with the notion that the Board can overturn a decision of the Elections Committee or of the CRO, there exists a fundamental difference between what the applicable law provides and what is ideal in the circumstances. Taken together, the Constitution and the Bylaw are defective as drafted, and seem to confer too much power on the Board.

Election officials are, ideally, independent parties, free from the influences of partisanship and experienced in their fields. Though it appears the Board could, at present, overturn a CRO or Elections Committee decision, ostensibly through a resolution passed by a simple majority of Board members, to do so risks the appearance of partisan interference. Again, in the ideal scenario, the Board's powers to reverse the decisions of independent elections officers would only be used in extenuating circumstances, as in the cases of bad faith conduct or obvious incompetence.

For the Board to overturn CRO or Elections Committee decisions risks eroding the confidence of the URSU membership in the institution's democratic processes, delegitimizing the Board members and potentially violating the Board's duty to uphold the integrity of the Union.

Furthermore, the Board may also want to consider the case of *Canadian Federation of Students v Mowat*, 2007 SKCA 90. This case dealt with a previous University of Regina electoral process (referendum) that went all the way to the Saskatchewan Court of Appeal. It is important to emphasize that the case dealt with facts and laws that are different from the current case. However, at paragraph 37 of its decision, the Court made a distinction between what a Board has the power to do, and whether it exercised that power in a manner that was fair and legally sustainable. The Court stated:

[37] On this point, the Students' Union contends that the Council had the power to disagree with the recommendations of one of its committees in the same way it is said that any corporate board can reject a committee recommendation. This line of argument, in my view, is not convincing. The issue in a case of this sort will rarely be whether the corporation had the power to act as it did. Rather, the question will be whether an otherwise valid exercise of corporate power amounts to oppression, unfair prejudice and so forth. That is the situation here. Mr. Mowat does not challenge the actions of the Students' Union on the basis that it lacked the root authority to do as it did. He argues that its use of power was inappropriate and gives rise to remedies under the *Act*. That issue, not the simple *vires* of the Council's decision, is the question before the Court.

This case might mean that if any of the candidates at the centre of this dispute chooses to resort to the courts, it is possible that the courts may extrapolate the principles in *Mowat* to the current case, and rule that the Board did not appropriately exercise its powers under URSU's governing instruments. That is why the Board should not only focus on what powers it has, but whether such powers could be seen as legitimately exercised if the Board overturns an Elections Committee and CRO who were hired for their independence, and who, by all available evidence, conducted their functions competently and in good faith.

CONCLUSION

In conclusion, it is our opinion and recommendation that:

1. Reading the URSU governing instruments in their totality, the URSU Board of Directors has jurisdiction to overturn the Elections Committee's decision to disqualify a particular candidate, after the Elections Committee and CRO have fulfilled their mandates, for the various reasons above. However, in the absence of demonstrable incompetence or bad faith on the part of the CRO or Elections Committee, a Board decision to overturn their decisions could face a successful legal challenge. The chances of a successful challenge seem, at least, fair.
2. If the Board is of a mind to overturn the Elections Committee decision, the Board, with a majority of Board members in favour, should pass a resolution overturning the Elections Committee

decision to disqualify the candidate for URSU President. Though not currently required by either the Constitution or the Bylaw, the Board should pass its resolution subject to members' confirmation at a Special Meeting of Members, to avoid the appearance of political interference in the election process. A Special Meeting of Members should be called as soon as practical, in order to address the Board resolution. A result arising from such a process may have a better chance of resisting a legal challenge, although there is no guarantee.

If the Board is not of a mind to overturn the Elections Committee decision, the Board, with a majority of Board members in favour, should pass a resolution immediately recognizing Shawn Wiskar as URSU President.

3. The Constitution of the Students' Union of the University of Regina should be amended in the following manner:
 - a. To enshrine the Membership in General and Special Meeting as the ultimate governing body of the URSU. Enshrining the membership as the supreme governing body helps to limit the possibility of a Board majority politically interfering in Union election results and will help to instill confidence in the membership of the URSU's democratic processes. Accordingly, any Board decision to overturn an Elections Committee decision could itself be overturned at a General or Special Meeting of Members.
 - b. To require that any resolution before the Board of Directors to overturn an Elections Committee decision require a two-thirds majority to be carried, and that any such resolution specifically reference bad-faith or incompetent conduct, on the part of one or more Election Committee members, as the basis for the resolution.
4. The Bylaw should be amended to include the ways in which the Board's powers are limited, relative to Elections Committee decisions and the CRO report to the Board. The Bylaw should specify that the Board may only intervene in a decision of the Elections Committee or the CRO in the cases of perceived bad-faith conduct or incompetence on the part of one or more Elections Committee members.
5. The Board may also resort to referring the questions discussed herein to the Courts for an authoritative determination of the Board's powers and limits. Potential mechanisms exist for the Board and the disputants to request such determinations. In our view, it would be best for the Board to take this step as a neutral arbiter. The final result will not only be authoritative, but also

less likely to be challenged by the disputants. Further, if the Board takes the initiative on this front, it prevents situation where the disputants are forced to spend money in a legal dispute, potentially making this a battle of the financially equipped rather than of the merits.

DISCLAIMER

Runyowa Law has provided this opinion in the tight timeline that was available. If the Board has further questions that require more in-depth legal research or analysis on any of the above, more time will be required to elaborate on any new lines of inquiry.