

**ELECTION PROCEDURES COMMITTEE
APPEAL PANEL DECISION**

IN THE APPEAL OF THE DECISION OF THE RETURNING OFFICER

APPELLANT: [REDACTED], Student Candidate

RESPONDENT: Jennifer Webster, Returning Officer

DATE OF HEARING: March 31, 2023

DECISION: Appeal allowed. The Appellant is eligible for election to the Board of Governors.

REASONS: This is an appeal of the Respondent's ruling that the Appellant is not eligible for candidacy as a student on the Board of Governors. For the reasons stated below, the panel allows the appeal and orders the Respondent to accept the eligibility of the Appellant.

The Appellant is a student at Toronto Metropolitan University and a candidate for a student position on the Board of Governors.

The Respondent, who is the Returning Officer, decided on March 10, 2023 at 4:00 pm that the Appellant was not eligible to be elected to the Board of Governors because the Appellant had been elected to the Senate earlier in the day at 12:00 pm.

The Appellant submits that on February 13, 2023, the Appellant registered as a candidate to sit on the Board of Governors and the Senate. The Appellant completed the participation form as follows:

Are you interested in running for a position on the Board of Governors (BOG) or Senate? *

Board of Goveners

Senate

Both (Note: Elected students can sit either on the BOG or Senate, not both)

Other: Both

The Appellant argues that students have sat concurrently on the Board of Governors and the Senate in the past. The Appellant submits that in 2007-2008 and in 2015-2016, [REDACTED] and [REDACTED], respectively, held a position on each of those governing bodies and neither of them held that position as an ex officio member.

The Respondent admits that when the Appellant asked about serving on both governing bodies, the Respondent did not share any information about past practice as the Respondent was new to the role.

The Respondent now submits that the *Toronto Metropolitan University Act*, section 12 indicates that a student is eligible for election to the Board OR the Senate whether or not the student has attained the age of eighteen years. The Respondent argues that the use of “or” is exclusive and not inclusive in the ordinary meaning of the clause.

In the panel’s view, it was clear in the participation form and the information session that students were eligible for candidacy on either the Board or the Senate and not both governing bodies. Unfortunately, it is not as clear in the legislation that participation is exclusive. The meaning of “or” in legislation can be either inclusive or exclusive, depending on the meaning of the legislative text and what the legislature intended (*Rooney v. ArcelorMittal S.A.*, 2016 ONCA 630). The heading of section 12 is “age of student members” and therefore, whether the legislature intended that a student serve on only one governing body is not self-evident.

Also, unlike the Senate, the Board does not have clear election rules about serving on only one of the governing bodies and the consequences if a student wins election on both governing bodies.

The panel, therefore, must rely on evidence of past practice. The evidence submitted is that students in the past were eligible to serve on both governing bodies.

Accordingly, the panel allows this appeal and orders the Returning Office to accept the eligibility of the Appellant for the student position on the Board of Governors. The allowance of the appeal would not prejudice the other student candidates.

The panel notes that the Senate is a separate governing body from the Board of Governors. The Senate has separate practices, policies, and rules, and exercises its own jurisdiction over its elections.

DATED as of the 6th day of April, 2023.



Julia Shin Doi, Chair

APPEAL PANEL: Julia Shin Doi, Sherif El Tawil, Stef Rychlo

OTHERS IN ATTENDANCE: [REDACTED], Appellant
Jennifer Webster, Returning Officer
Jennifer MacInnis, Board Secretariat
Susan Badar, Board Secretariat