Tuesday, September 27, 2022

DIE Board Hearing Application 2022/2023

Please note that this information will all be public.
If necessary, the Students' Union DIE Board Registrar may contact you to confirm that you are a student.

Name Levi Flaman

E-mail [redacted]

Phone Number [redacted]

This application is for a: Appeal of a DIE Board Decision

Reason for Application

Describe the specific violation of a bylaw or rule, your specific interpretation question, or the specific errors made by the DIE Board or the CRO. If you want the Board to issue some kind of order, explain what you think the Board should do. You may also attach additional written submissions or supporting documents at the end of this form.

Reason In ruling that the respondent was eligible, The Panel focused solely on Bylaw 2300(6)(3)(b) as the bar for eligibility while ignoring 6(3)(a), 6(3)(c) and 6(3)(d).

Proposed Respondent(s)

List the individual(s) alleged to have infringed a rule or who are otherwise adversely involved in interest to your application. If you are appealing a CRO Ruling, list the CRO and any candidates involved.

Proposed Respondent None

Anticipated Witnesses

List other individuals involved in the case who can contribute to the Hearing, if any.

Anticipated Witness None

Signature

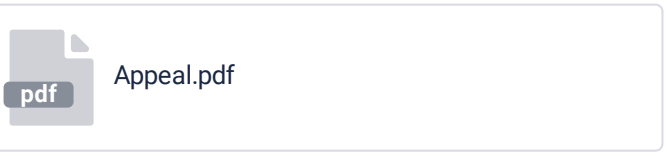
Attach File

Although not required, you may attach additional written submissions or supporting documents for the Board to consider, including any relevant facts, a copy of any Students' Union legislation or rules relevant to your arguments, and your position on the matters in issue. These submissions will help the Board understand the nature of your complaint or request for interpretation. The Board may rule against you if you do not provide sufficient reasons for your application.

Please submit as a single document.

If you're unsure of how to combine multiple separate documents, you can save all documents as a PDF and use and use PDF Merge.

File upload



Direct any questions to:
DIE Board Registrar
governance@su.ualberta.ca
SUB 6-24

Appeal of 2022-05-R

#1: Future Eligibility

In Hearing HA-07, the Panel of First Instance ("The Panel") first answered the following question: "Are candidates for Council who are not currently enrolled in the faculty they wish to represent but are admitted in future to the faculty they wish to represent eligible as candidates for that faculty?"

The panel ruled yes, given that the candidate had fulfilled the requirements for an eligible nomination package under Bylaw 2300(6)(3)(b). But when reading (6)(3) in its entirety:

(3) Valid nomination packages shall contain:

a. a signed acceptance of the nomination by the proposed nominee;

b. a signed letter from the proposed nominee's faculty confirming that they are in good academic standing under University regulations; if a candidate with valid reason cannot provide a letter of academic eligibility, the C.R.O shall extend the deadline by seventy-two (72) hours provided that the rest of the nomination package is complete and submitted by the actual deadline.

c. a statement, signed by the proposed nominees, identifying the name under which they wish to appear on the ballot; and

d. papers soliciting the names, faculties, years, signatures, and student identification numbers of at least ten (10) members registered in the same faculty as the nominee as nominators.

The use of the word *and* in (6)(3)(c) requires that all four items are required for a nomination to be valid and accepted under (8)(1) and (8)(2) as opposed to if *or* was used, in which case only one of the four would suffice. This assertion is affirmed in Cutarm v. Students' Council[1] when The Panel at that time ruled that "Section 3.5[2] in turn, contains a number of requirements that a petition question must outline to create a DFU" and that "There is no great mystery here, nor any ambiguous language, and it is clear to this panel that this Bylaw is intended to serve as a checklist for SC. A review plebiscite must contain all of the information listed above. Absent this information; the question does not follow the Bylaws." Similar to how Bylaw 6100(3)(5)(a) through (h) serves as a checklist in which all conditions much be met for the petition question to valid, Bylaw 2300(6)(a) through (d) must all be present for a nomination package to be valid.

Did the nomination package contain (a); a signed acceptance of the nomination by the proposed nominee? Yes. Progress to (b).

Did the nomination package contain (b); a signed letter from the proposed nominee's faculty confirming that they are in good academic standing under University regulations? No, it

[1] Cutarm v. Students' Council
[2] Bylaw 6100(3)(5)

did not. In lieu of a letter of academic eligibility, the Chief Returning Officer ("C.R.O.") was accepting unofficial transcripts instead of a letter of academic eligibility[3]. However, Bylaw 2300(6)(b) is explicitly clear in that a valid nomination package shall contain "a signed letter from the proposed nominee's faculty confirming that they are in good academic standing under University regulations" and does not allow for any substitutions to be made; whether an unofficial transcript or anything else. And while "the DIE Board is not bound by prior precedent[4]," whether from previous DIE Board rulings or elsewhere, those previous rulings do provide guidance from which to draw from such as in Flesher v. Clark[5] when the Panel of Appeal at the time ruled that "the Bylaw is clear, and it should be enforced as it is written," just as 2300(6) should be enforced as it is written in its entirety.

A candidate might say they were only doing what the C.R.O. told them and assumed the information given to them by the C.R.O. was correct, but the nomination package also warns candidates that "It is each candidate's responsibility to ensure his or her nomination form complies with bylaw. In addition, each candidate must ensure that all aspects of his or her campaign, and the actions of any campaign volunteers, do not violate the provisions of bylaw or any other election rules or regulations." Further down, there are further important notices for candidates; "this document is intended to supplement bylaw but does not replace it. In the event of a discrepancy, Students' Union bylaw takes precedence." Hence, when the nomination package allows for unofficial transcripts but bylaw does not, unofficial transcripts should not be accepted in lieu of the letter of academic eligibility. Regardless of information provided by the C.R.O. either verbally or in the nomination package, it is incumbent upon the candidates to ensure they are not being given misleading or outright false information and to challenge the C.R.O. if that were to happen. Such was the case in Singh v. Elections Office[6] when Singh successfully challenged a C.R.O. ruling that candidates were not permitted to endorse each other, despite being allowed under Bylaw 2300(22)(1). But in the absence of a signed letter of academic eligibility, (b) would not be met.

Did the nomination package contain (c); a statement, signed by the proposed nominees, identifying the name under which they wish to appear on the ballot? Yes. Progress to (d).

Did the nomination package contain (d); papers soliciting the names, faculties, years, signatures, and student identification numbers of at least ten (10) members registered in the same faculty as the nominee as nominators? No. Most of the nominations came from Arts students, some from other faculties, but only one came from an Open Studies student; that of the candidate themselves.

---

[3] March 2022 Students Council and General Faculties Council Representative Election Nomination Package
[4] Singh v. Students' Council
[5] Flesher v. Clark
[6] Singh v. Elections Office

During the nomination period, the candidate was in Open Studies. As recently as 2020[7], students contesting an Open Studies seat did not require nominators at all; an exemption that was added after Jones v. Chief Returning Officer[8] where the applicant asserted the higher difficulty Open Studies students face in collecting nominator signatures given "that the majority of students in Open Studies are part time students, dispersed throughout the campus." Although Bylaw 2300(6)(4) no longer appears in bylaw despite no evidence of that clause being rescinded in the last two years and in the absence of such evidence, an omission which could be attributed to "shoddy record keeping and inadequate staffing of Discover Governance[9]" where there have been many examples over the years, that clause should still be of full effect given that Students' Union Bylaws "are adopted, amended, or rescinded by two (2) simple majority votes or readings of Students' Council occurring not less than seven (7) days apart[10]" and not because of a clerical error.

Furthermore, 2300(6)(3)(d) is unambiguous in that it requires "names, faculties, years, signatures, and student identification numbers of at least ten (10) members registered in the same faculty as the nominee as nominators." Given that the close of nominations was March 15, 2022, at 17:00 (extended to March 17 at 17:00), the nominee and nominators should be in the same faculty as of the nomination deadline; that is March 17th at 17:00 and not as of any date in the future. Since at the close of nominations the candidate had nominations from predominantly Arts students but was not an Arts student themself, 2300(6)(3)(d) would not be met.

In conclusion, since 2300(6)(3)(b) and (6)(3)(d) were both unsatisfied, 2300(6)(3) in its entirety is unsatisfied and therefore the C.R.O. erred in accepting it under 2300(8)(1).

#2: Elected but ineligible Councillor

Asserting that the answer to Issue #1 was in fact no, a simple solution is to look at the definitions of eligible[11] and ineligible[12].

Eligible being defined as "meeting the stipulated requirements, as to participate, compete, or work; qualified; (or) legally qualified to be elected or appointed to office."

Ineligible being defined as "legally disqualified to hold an office; legally disqualified to function as a juror, voter, witness, etc., or to become the recipient of a privilege."

When someone has not met the eligibility requirements, they are not eligible. They would be ineligible. They would be legally disqualified to hold an office, legally disqualified to function as a voter, or legally disqualified to become the recipient of a privilege; the privilege to

---

[7] March 2020 General Election of the Students' Council and General Faculties Council Nomination Package
[8] Jones v. Chief Returning Officer
[9] Students' Council's lack of transparency hinders students from engaging with it
[10] Bylaw 100(11)(1)(b)
[11] Dictionary.com - Eligible
[12] Dictionary.com - Ineligible

represent students. The privilege to hold their power in exchange for a promise; the promise to make decisions with their interest in mind[13]. When someone is legally disqualified to hold office, the only suitable remedy would be removal from said office.

#3: Ultimate Authority for Determining Eligibility

The Panel ruled that "the CRO must be the final authority on who is eligible to be candidate for Councillor" and that "deciding eligibility issues after elections is an unfair practice" which is conflating eligibility of a candidate to run for office and eligibility of a Councillor to hold office.

The CRO should maintain the authority to verify who is eligible to run as a candidate in any Students' Union-run election, but that authority should extend no further than the election periods. The Speaker of Students' Council on the other hand, should maintain the authority of verifying who is eligible to hold office if successful in the election, and should continue to do so each term as currently written[14] or at minimum, once near the beginning of Spring term when the Council year begins, and again near the beginning of Fall term where most if not all program and faculty changes are likely to occur. By confining the Speaker to verify eligibility of a Councillor (not as a candidate) immediately after an election would only reveal those who have already accepted an offer to change faculties in September. Any candidate who ran in and was successfully elected in one faculty in March, had their eligibility to sit as a Councillor verified shortly after, then accepted an offer to change faculties later in the summer would go unnoticed. It would fall on the honor system for the then-ineligible Councillor to speak up and either resign themselves or be subject to removal when legislation is introduced to remove ineligible Councilors. But such legislation would only be effective when a Councillor is known to being in contravention and if the Speaker is forced to check once prior to the Council term starting and never again, leaves the door open for Councilors to keep quiet about accepting an offer into a new program and riding it out for the remainder of the year.

Having that separation of duties – that is leaving the CRO to verify candidate eligibility and the Speaker to verify councilor eligibility throughout the term is a fundamental concept of internal controls; a mechanism with which to catch errors that came about previously either from someone neglecting their duties unintentionally, or fraud that came about from malicious intent. Not only did the CRO neglect to verify eligibility requirements 6(3)(b) and 6(3)(d) for the candidate in question [redacted: Personal information — confidential under Bylaw 500 section 1(2)]

[redacted]

[13] Oath of Office
[14] Bylaw 100(8)(1)(c)
[15] Bylaw 100(1)(1)(p)

Bylaw 2300(8)(2)[16] since "Should a member[17] submit valid nomination papers, they shall be designated a candidate at the nomination deadline." A candidate must be a member to submit valid nomination papers and rightfully so; lest we start letting faculty, alumni, or members of the general public run in Students' Union elections as well.

Conclusion

The Panel recommended that the Elections Office pay closer attention to eligibility criteria in the future. This much is obvious. Whether due to poor turnover and transition during the COVID years or poor oversight and supervision is irrelevant. Mistakes were made; mistakes that needn't have been made. Mistakes that legislation changes alone will not rectify. Students' Council and Bylaw Committee specifically can word legislation airtight, but even airtight legislation fails when those tasked with adhering to and executing it fail to do so. Examples have been provided where the CRO either neglected to follow legislation as written or attempted to re-write to suit their needs. Neither are acceptable.

The Board recommends that the Elections Office base eligibility on currently being in the faculty that a candidate wishes to represent. That is how eligibility is currently written. Bylaw 2300(6)(3)(d) states "papers soliciting the names, faculties, years, signatures, and student identification numbers of at least ten (10) members *registered in the same faculty as the nominee as nominators*" (in other words, a Pharmacy nominee soliciting Pharmacy nominators or a Law nominee soliciting Law nominators, not an Arts nominee soliciting Science nominators). And Bylaw 100(3)(2) is even more clear in that "every Councillor is required to be enrolled in the faculty they represent."

The Board recommends that Bylaw 2300 be clarified to say candidates must be in the faculty they wish to represent at the time of candidacy but this is unneeded for the reasons above.

The Board recommends that Bylaw 100 be further amended to grant Council the power to remove members who are ineligible. This is prudent but should leave the power out of Council's hands (lest it be optional and subject to a judgment call thus defeating the purpose) and have it trigger automatically similar to the attendance regulation removals.

[16] Bylaw 2300(8)(2)
[17] Bylaw 2300(2)(1)(a)