

Discipline, Interpretation, and Enforcement (DIE) Board

Ruling of the Board

HEARING DETAILS

Style of Cause:	Re: Ruling 2010-05
Hearing Number:	Ruling #6 2010/2011
Hearing Date:	March 15, 2011
DIE Board Panel Members:	Joanna Waldie, Associate Chief Tribune, Chair; Kathleen Elhatton-Lake, Associate Chief Tribune; Christopher Le, Tribune; Brandon Mewhort, Tribune; Timothy Mallet, Tribune.
Appearing for the Applicant:	Scott Fenwick, Deputy Returning Officer, Students' Union
Appearing for the Respondent:	N/A
Intervener(s):	Colten Yamagishi, VPSL Candidate; David McBean, VPSL Candidate; Craig Turner.

BACKGROUND

1. Following a hearing in regard to the actions of the former C.R.O., D.I.E. Board issued a ruling that ordered a new election for the Vice President Student-Life race in order to “restore procedural fairness” to the election process (Ruling #5 at para 16). The panel held that the new election was to be governed by the existing by-election provisions in Bylaw 2000, specifically section 75. In addition, the panel held that no new candidates would be eligible for nomination. The nomination provisions of s. 75(3) would not apply, and the original two candidates from the original election period would be the only eligible candidates in the new election.

2. Section 75(4) of Bylaw 2000 States:

The voting for the new Election shall occur on two (2) consecutive weekdays to be determined and announced by the C.R.O. at least twenty-one (21) days in advance.

3. The Applicant, Scott Fenwick, requested that D.I.E. Board use its authority to permit the new VPSL Election to take place concurrently with the 2011 Students' Union Councillor and GFC Councillor elections. These elections are scheduled to occur on March 24 & 25, 2011. Such a ruling would be contrary to the above cited section of Bylaw 2000, as it would not allow for the election be announced 21 days in advance.

RELEVANT LEGISLATIVE PROVISIONS

4. Excerpts from Bylaw 2000:

75. By-Election - Executive Committee and Board of Governors

(1) Where another Election is required by virtue of Section 63(14) or Section 63(15), the new Election shall be governed by this bylaw with the exception of Sections 10 through 12, 17, and Sections 24 through 26, which shall not apply.

(2) The Campaign for the new Election shall begin a minimum of seven (7) days prior to the commencement of voting as set out in Section 75(4).

(3) The nomination deadline for the new Election shall occur a minimum of thirteen (13) days prior to the commencement of voting as set out in Section 75(4).

(4) The voting for the new Election shall occur on two (2) consecutive weekdays to be determined and announced by the C.R.O. at least twenty-one (21) days in advance.

POSITION OF THE APPLICANT

5. Mr. Fenwick cited concerns regarding voter turnout, elections staffing and mental health as reasons to allow the new VPSL election to run concurrently with the General Council Election. A 21

day period before the commencement of the election would push voting to the last full week of classes prior to exams, and would result in the third election period in an academic term. Mr. Fenwick was concerned this would result in very low voter turnout.

6. Staffing at polling stations were also a concern of the D.R.O., as an election so close to exams could hamper the availability of Poll Clerks and Poll Captains . This could lead to as few as four polling stations being available, as opposed to the 13-14 polling stations open during the General Executive and Board of Governors Elections. The mental health of the Elections Staff was also cited, as both Deputy Returning Officers are particularly busy, especially in the period leading up to exams. A compromised ability to effectively market a third election was also mentioned.

SUBMISSIONS OF COLTEN YAMAGISHI AND DAVID MCBEAN, INTERVENORS

7. The VPSL Candidates, David McBean and Colten Yamagishi made similar submissions to the D.R.O.'s, expressing their approval of this request.

8. Mr. Yamagishi cited concerns regarding the efficiency of the electoral process, and concerns over use of student resources.

9. Mr. McBean added that holding the election during this earlier period would be better suited for both candidates' academic schedules.

SUBMISSIONS OF CRAIG TURNER, INTERVENOR

10. Mr. Turner wished to speak to policy reasons as to why s. 75 of Bylaw 2000 need not apply to the new VPSL election, as this is in effect a re-election, and not a by-election, since no executive position has been left unfilled as in the case of a by-election. He contended that there was no formal

policy in existence regarding how a re-election is to run. In his view, there is no foundation for “artificially binding” the elections office to the by-election policy.

11. Mr. Turner was asked about his interpretation of the phrase “seven (7) days” in s. 75(2) of Bylaw 2000:

(2) The Campaign for the new Election shall begin a minimum of seven (7) days prior to the commencement of voting as set out in Section 75(4).

Mr. Turner replied that his interpretation of the seven day period is seven calendar days, rather than seven business days.

DECISION:

12. D.I.E. Board finds that this application asked for a clarification and guidance regarding the interpretation of Ruling #5. The Board finds that Ruling #5 allows for some discretion in suspending the application of portions of s. 75 of Bylaw 2000, in particular, the words “in so far as is practicable” in paragraph 18. . In the interests of efficiency of the electoral process, it is not practical to announce a new election within 21 days. Thus, s. 75(4) can be suspended for the purposes of this re-election. The Board therefore holds that the VPSL re-election will be governed by the by-election provisions in s. 75 of Bylaw 2000, with the exception of s. 75(4). It has already been determined that the nomination provisions of s. 75(3) do not apply to this election. The VPSL re-election can therefore take place concurrently with the 2011 General Council Election

ANALYSIS

Ability to Hear the Appeal

13. Initially, there was concern regarding D.I.E. Board’s ability to hear this application. In particular, there was concern regarding s. 73(7) of Bylaw 2000:

(7) No appeal shall exist from a ruling of the D.I.E. Board on an appeal of a ruling by the C.R.O.

It was unclear whether hearing this application would lead to a contravention of the above-cited bylaw, as there was uncertainty surrounding whether Ruling #5 was properly characterized as a hearing or an appeal of a ruling by the C.R.O. The Board turned to s. 14 of D.I.E. Board protocol,

Upon review of the application, the panel may unanimously vote to dismiss an application for a Hearing or Appeal without meeting in person to hear evidence or oral submissions if the panel concludes the application is frivolous, vexatious, or has not possibility of success, or if the panel concludes the issue in question is outside of its jurisdiction to hear. The panel must given written reasons for its decision to dismiss the application.

14. Upon examination and discussion, the D.I.E. Board determined that this is in fact not an appeal, rather a request for interpretation of ruling #5. Mr. Fenwick did not indicate what kind of hearing he was requesting on his application to D.I.E. Board. As such, the Board holds that it is within their purview to hear this application.

15. In the alternative, D.I.E. Board holds that Ruling #5 is a disciplinary hearing in regard to the former C.R.O.'s contravention of bylaw since Mr. Yamagishi took the C.R.O. to D.I.E. Board. In this case, even if this application is characterized as an appeal, the appeal was not in response to a ruling by the C.R.O., and so it remains within the jurisdiction of D.I.E. Board to hear the application and is not in contravention of s. 73(7).

Suspension of s. 75(4)

16. The D.I.E. Board acknowledges that suspending provisions of Bylaw 2000 is not a preferable course of action. However, the Board is again faced with wandering into uncharted waters with the ordering of a new VPSL election. D.I.E. Board cannot craft a new re-election policy, as this is outside the Board's jurisdiction, and is a task that is better suited to Student Council.

17. The Board therefore defers to paragraph 18 of the previous ruling (#5), that s. 75 of Bylaw 2000, the by-election provisions, are to govern the VPSL re-election. We find that paragraph 18 confers discretion to suspend certain provisions, by stating the new election is to “be conducted, so far as is practicable” in accordance with the provisions in this section.

18. The Board finds the reasons of both the applicants and the VPSL candidates to be sufficiently compelling to warrant a suspension of s. 75(4). It is not practical, for reasons already cited, to hold an election 21 days subsequent to this hearing. It is practical to hold the new VPSL election concurrently with the General Council elections to ensure that the election that takes place is more efficient, and is a better use of student resources. Further, calling the election by March 17 will allow for a seven-calendar day campaigning period to take place before the voting period. This allows for compliance with the remaining provisions of Bylaw 2000. The Board further holds that it is within the purview of the Elections Office to work within the existing provisions in s. 75 to make this election work as effectively as possible, given the circumstances.