

# *Discipline, Interpretation, and Enforcement (DIE) Board*

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## *Ruling of the Board*

### (1) HEARING DETAILS

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Style of Cause:	Reference re: Bylaw 2000 s. 19(3)
Hearing Number:	Ruling #4, 2008/2009
Hearing Date:	N/A
DIE Board Panel Members:	Jason Morris, Chief Tribune, Chair Natalie Climenhaga, Tribune Christiaan Conradie, Tribune
Appearing for the Applicant:	Patrick Wisheu, Chief Returning Officer
Appearing for the Respondent:	N/A
Intervener(s):	Steven Dollansky, VP Operations and Finance

### (2) ALLEGED CONTRAVENTION / INTERPRETATION QUESTIONS

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Bylaw 2000 § 19(3) repeatedly refers to “an executive” or “an executive position”. Is this referring to:

- a) Incumbent members of the Executive committee
- b) Incumbent members of the Executive committee and the Undergraduate Board of Governors Representative?

Other sections of Bylaw when referring to an incumbent member of the Executive Committee explicitly state “incumbent members of the Executive Committee” (Bylaw 2000 §37(3)) without mention of the Undergraduate Board of Governors Representative.

In discussing the Executive and Board of Governors General Election, Bylaw 2000 routinely refers to Executive and Undergraduate Board of Governors positions or candidates in a partnered phrase such as “Executive Committee and the Undergraduate Board of Governors Representative” in Bylaw 2000 § 11(1),

### (3) RELEVANT LEGISLATIVE PROVISIONS

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Bylaw 2000 s. 19(3) reads:

Members of Students’ Council and its standing committees are not required to take a leave of absence from their duties for the period beginning with the nomination deadline and ceasing with the conclusion of voting of the election in which they are contesting a position, in order for their nominations papers to be valid. The following exceptions apply:

- a) An executive contesting an executive position when the race is contested,

- b) An executive contesting a Faculty Councilor position when the race is contested,
- c) Any member of Students' Council, excluding members of the Executive.

For the purpose of this section, any race solely contested by a joke candidate shall be considered uncontested.

The DIE Board notes that the words “executive” and “executive position” are not used elsewhere in Bylaw 2000 in those forms with the exception of in s. 16. All other uses in Bylaw 2000 of the word “executive” are in the context of “Executive Committee,” often in combination with “and Board of Governors.”

In Bylaw 1100, which governs the Executive Committee, the word “executive” does not appear on its own.

In Bylaw 0100 the word “executive” in lower case appears once, in reference to executives of affiliated student groups. In Bylaw 0100 the word “Executive” capitalized appears once, in a reference to “member of the Executive.”

#### (4) ANALYSIS

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The Applicant requests an interpretation of whether the word “executive” as it appears in various places in Bylaw 2000 s. 19 (3) includes the Board of Governors Representative.

##### **(4.1) The Significance of Capitalization**

While the capitalization of a word is a drafting hint that the word is defined elsewhere in legislation, the hint is not useful if the capitalized word or words are not used in the same form (or an obviously related form) where they are defined. “Executive Committee” is a defined phrase by virtue of Bylaw 1100, but the word “Executive” is not. Therefore, we make no distinction between the word “Executive” as capitalized in s. 19 (3) (c), and the word “executive” as it appears everywhere else in s. 19 (3).

##### **(4.2) The Plain Meaning of the Words**

The interpretation process begins by looking at the words used, and how they are used elsewhere. In this case, this is unhelpful, because the word “executive” is not used elsewhere absent the context of the word “committee” or “member”, either of which might make it clear that the reference was to the Executive Committee, which does not include the Board of Governors Representative. It is therefore plausible both that the intent was to include the Board of Governors Representative as an individual elected during what are colloquially referred to as “executive elections”, and that the intent was to include only members of the Executive Committee.

### **(4.3) The Context of the Words**

DIE Board next considered the how the section as a whole informs the meaning of the word “executive” in this section. First, the board found it necessary to rephrase the bylaw in such a way as to make it intelligible. The resulting condensed bylaw would read:

Members of Students’ Council ... are not required to take leaves of absence ... unless:

- A) They are an incumbent executive running for a contested executive position,
- B) They are an incumbent executive running for a contested Faculty Councilor positions, or
- C) They are a member of Students’ Council other than an executive member.

### **(4.4) The Section is Drafted as a General Rule with Exceptions**

It does not make sense for this section to be drafted as a general rule with exceptions unless there was some party to whom the exceptions did not apply. If the word “executive” includes Board of Governors Representative, the only matters on which the requirement for a Leave of Absence was contingent would be a) being a Faculty Councilor, or b) running for a contested position.

If that had been the intent, there would have been an easier way to say so. If we exclude the Board of Governors Representative from the word “executive”, the Board of Governors Representative is the only party to whom the exceptions do not seem to apply, which gives the exceptions meaning.

### **(4.5) Whether the Section Lists All Possible Members of a Class**

It also does not make sense, if the intent was to include the Board of Governors Representative in the term “executive”, to have sub-clauses a) and b) as separate clauses. If “executive” is inclusive of the Board of Governors Representative, then there is no type of position to which the requirement would not apply, and it would have sufficed to write a single clause requiring incumbent members of the Executive Committee and the Board of Governors Representative to take a leave of absence when running for “contested elected positions”, or other equivalent generic language.

### **(4.6) Policy Justifications**

The Board, noting that this bylaw is a recent change to Bylaw 2000, also inquired into the policy reasons behind the change. The Intervener suggested that there were two reasons: First it was an effort to prevent members of the Executive Committee running unopposed from having to take a leave of absence, and thereby inconveniencing the Students’ Union administration without cause. Specifically, there was a concern about the ability to maintain quorum in Executive Committee meetings during election periods. Second, there was a desire to ensure that incumbents did not have the opportunity to “poison the well” for their opponents should they become aware that they were likely to lose re-election bids.

The Board asked why these considerations should not have applied to the Board of Governors Representative position. The intervener suggested that it was because no opportunity existed for

members of Executive Committee to poison the well for the Board of Governors Representative. But the Board notes that there is no real means for the members of Executive Committee to poison the well for Faculty Councilors either, and yet the requirement to take a leave of absence in the case of an incumbent Executive Committee member running for a Faculty Council position is clear. Even if such a means did exist, the members of Executive Committee would thereby also have the power to poison the well for the Board of Governors Representative in the latter's capacity as a voting member of the Students' Council. So it is not clear why that protection would be afforded to Faculty Councilors and not the Board of Governors Representative.

Also, if there is some reason that the Board of Governors election is somehow less sensitive than the others, and that a leave of absence is therefore not necessary for members of the Executive Committee, it is not clear to the Board why the same consideration would not apply to incumbent Board of Governor Representatives or Faculty Councilors.

The Board is concerned that the resulting effect of this interpretation is not consistent from a policy standpoint. While the general exception for Executive Committee might be explained by concerns about maintaining quorum during election periods, the Board has not heard any satisfactory explanation for the further exception for members of Executive Committee running for the position of Board of Governors Representative.

#### **(4.7) Preference for Contextual over Legislative Intent Approach**

Nevertheless, the Board is more comfortable taking its cues from the text of the Bylaw than from an imagined intent of the Students' Council. Neither of the interpretations available to us explain away all of the anomalies that exist in how this bylaw was drafted. However, the interpretation that the word "executive" excludes the Board of Governors Representative explains away more of them.

#### **(4.8) The meaning of "contested" in s. 19(3)(b)**

The Board notes that there is some uncertainty as to determining whether or not a Faculty Councilor position is "contested" under s. 19(3)(b). The Board declines to rule on this matter as it was not argued before the panel.

### **(5) DECISION**

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The word "executive" throughout Bylaw 2000 s. 19(3) should be read as "member of the Executive Committee", or "Executive Committee" as appropriate, thereby excluding the Board of Governors Representative.

Accordingly, a leave of absence will always be required for incumbent Board of Governors Representatives and Faculty Councilors, and will be required for incumbent members of the Executive Committee only where they are running for a contested Executive Committee or Faculty Councilor position.

*The Discipline, Interpretation, and Enforcement (DIE) Board functions as the judicial branch of the Students' Union, and is responsible for interpreting and enforcing all Students' Union legislation. Please direct all inquiries regarding the DIE Board or this decision to the Chief Tribune at: <ea@su.ualberta.ca>.*