

Discipline, Interpretation, and Enforcement (DIE) Board

Ruling of the Board

(1) HEARING DETAILS

Style of Cause:	<i>Eastham v. Chief Returning Officer</i>
Hearing Number:	Ruling #6, 2008/2009
Hearing Date:	Friday, February 27, 2009
DIE Board Tribunes:	Dane Bullerwell (Associate Chief Tribune and Chair) Jason Morris (Chief Tribune) Kurtis Streeper
Appearing for the Applicant:	Ms. Beverly Eastham, Represented by her agent Mr. Scott Nicol
Appearing for the Respondent:	Mr. Patrick Wisheu, Chief Returning Officer
Intervener(s):	None

(2) RELEVANT LEGISLATIVE PROVISIONS

A. Students' Union Bylaw 2000 (Elections Bylaw)

Section 19 (Restrictions on Candidate Nominees)

(1) No member shall be nominated for more than one (1) of the positions contested in each election.

(2) Notwithstanding Section 19(1), members may be nominated for both Students' Council and General Faculties Council within the same election.

(3) 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.

(4) Where a member contravenes Section 19(3), all of the member's nominations shall be declared null and void.

Section 20 (Acceptance of Candidate Nominations)

Where a member submits valid nomination papers, as set out in Sections 18(3) and 19 and prior to the nomination deadline as set out in Section 17, that member's nomination shall be accepted by the C.R.O. within twenty-four (24) hours of the nomination deadline.

Section 69 (D.I.E. Board)

...

(2) Any member shall be entitled to appeal a ruling of the C.R.O. to the D.I.E. Board.

(3) All appeals of the C.R.O.'s rulings, with the exception of those arising out of voting and Election results, shall be heard and ruled upon by the D.I.E. Board prior to the commencement of voting.

...

(3) DECISION

[1] There is probably no more difficult decision for the DIE Board than an appeal involving the disqualification of a candidate in an election. Not only are the stakes high, but the Board must issue a ruling very quickly. If our reasoning in this decision it is brief, it is due to the importance of issuing a ruling promptly.

[2] This hearing involves the application of a candidate in the Executive election, Ms. Beverly Eastham, who asks that the Chief Returning Officer's decision to invalidate her nomination papers be set aside. The CRO concluded that Ms. Eastham, a member of the Students' Union Executive, failed to take a leave of absence from her position as required by s. 19(3) of Bylaw 2000. As a result, he declared that her nomination papers were null and void (pursuant to the mandatory rule set out in s. 19(4)), and as a result, Ms. Eastham was effectively disqualified from the election.

[3] The primary issue in this case is the effect and meaning of s. 19(3) of Bylaw 2000. Although very awkwardly phrased, the Board has previously determined that it requires certain individuals to take leaves of absence from their positions in order to contest positions in Students' Union elections. Both Mr. Wisheu and Ms. Eastham agree that s. 19(3)(b) requires that Ms. Eastham take a "leave of absence" from her position as Vice President (External), beginning no later than the nomination deadline. The only remaining issue is whether Ms. Eastham did in fact take a leave of absence.

[4] The facts of the case are not in dispute. Ms. Eastham advanced the following evidence as proof she took a leave of absence from her position, and this evidence was not contested by the CRO.

- An email exchange between Val Stewart, Personnel Manager of the Students' Union, and Ms. Eastham. On February 12, Ms. Eastham wrote Ms. Stewart an email which read, in part: "Please be advised that I will be out of the office starting January 17 and will not be returning until the morning of March 6th." The next day, Ms. Stewart replied: "I know you mean starting February 17. We will miss you!" Although the nomination deadline was February 13, Ms. Eastham explained, and the Board accepts, that she was simply referring to business days, not calendar days.
- An email exchange between Val Stewart and the CRO. On February 14, the CRO wrote Ms. Stewart to "confirm that Beverly Eastham and Craig Turner have taken Leave of Absence [*sic*] from their duties due to the Executive Election." On February 17, Ms. Stewart replied that "[t]hey had already advised me". The Board accepts that this indicates Ms. Stewart believed, and the CRO was informed, that Ms. Eastham had taken a leave of absence from her position as Vice President (External).
- Ms. Eastham's report to the February 10, 2009 Students' Council meeting, where she writes that: "Due to elections I will be away from February 13th and will be returning on March 6th", and provides the names of persons to contact regarding the Executive profile in her absence.
- Emails and reports from Ms. Eastham to the University Senate and her co-workers that indicate she was no longer coming into the office, attending meetings, or performing the duties associated with her position. (The Senate report was not provided to the Board, but Ms. Eastham confirmed orally that it exists, and the Board accepts this evidence.)
- An email and a report from an official at the Council of Alberta University Students that indicates CAUS believed Ms. Eastham was on leave during the election period.
- Emails from the SU tech department that indicate Ms. Eastham's passwords were changed and voice mail access was revoked as of the nomination deadline.
- Ms. Eastham testified that, since the nomination deadline, she has not attended any of the committees she normally sits on, has not accessed the SU office or her SU email, and in essence, has done nothing associated with her position since the nomination deadline.
- Ms. Eastham also testified that, while she did attend the February 24th Council meeting, she did not attend it in her capacity as a Councillor, did not sign in on the attendance sheet, did not speak during the meeting, and left after about 10 minutes.

- Ms. Eastham finally testified that discussions in the Executive Committee made it clear to her fellow Executive members that she was taking a leave of absence for the election.

[5] Ms. Eastham testified she believed she had done everything necessary to take a leave of absence from her Students' Union duties prior to the nomination deadline. She did not, however, inform the Speaker of Students' Council or the Council Administrative Assistant that she was taking a leave of absence. She indicated that she believed the actions she had taken were sufficient to comply with the bylaw.

[6] The question, then, is whether Ms. Eastham's actions were sufficient to meet the test for a "leave of absence" set out in s. 19(3). Mr. Wisheu acknowledges that Ms. Eastham made a good faith attempt to take a leave of absence from her duties. He contends, however, that in order to take a leave of absence under the meaning of the bylaw, it was necessary for Ms. Eastham to tell either the Speaker of Council or the Council Administrative Assistant that she was taking a leave of absence from Students' Council. The CRO draws a distinction between taking a leave of absence from Ms. Eastham's Executive position and taking a leave of absence from her Students' Council position. The CRO suggests that the failure to take a leave of absence from *each* position means Ms. Eastham has not complied with s. 19(3).

[7] Ms. Eastham instead suggested that it is not the precise words communicated to a specific party that define a leave of absence. Instead, it is the mere act of ceasing her official duties that was sufficient to constitute a "leave of absence." In the alternative, she suggested that even if some formal notification is required, her communications with her fellow Executive members and the Personnel Manager were sufficient for her to be on a leave of absence, and no communication with the Speaker or Council Assistant was required.

[8] Regardless of which of the two approaches suggested by Ms. Eastham is adopted, we are satisfied that there is no question that, in effect, Ms. Eastham was on a leave of absence. She did not perform her duties or in any way act as either a member of the SU Executive or Students' Council, and the CRO accepted as much. Ultimately, we are satisfied that this meets the requirements of s. 19(3). We reject the suggestion of the CRO that a leave of absence is only effective if the Speaker or Council Assistant is informed of the circumstances. It is important to remember *why* Ms. Eastham is a Students' Councillor. Bylaw 100 sets out the nature of the position of a Vice President of the Students' Union:

2. Composition of Students' Council

(1) Students' Council is composed of

...

(b) the Vice Presidents of the Students' Union,

...

[9] It is clear that Ms. Eastham's position of Vice President (External) and Ms. Eastham's position as a Students' Councillor are inexorably linked. We believe a leave of absence from the position of Vice President (External) implies a leave of absence from Council, since Ms. Eastham is only a Councillor because she is a Vice President. Although it might have been helpful for the Speaker to be informed of Ms. Eastham's leave of absence, we cannot construe this as a requirement of the bylaw.

[10] In short, Ms. Eastham's actions were sufficient to meet the definition of a leave of absence under section 19(3) of Bylaw 2000. She took reasonable, positive action to take a leave of absence, and nothing she did subsequent to this was inconsistent with her claim of being on a leave of absence.

[11] Mr. Wisheu discussed an email he sent on February 14, where he requested that candidates inform the Speaker and Council Assistant if they wish to take a leave of absence. We do not construe this informal email as imposing an obligation on Ms. Eastham to inform the Speaker and Council Assistant in order to comply with section 19(3), and in any event, the email was sent after the nomination deadline, so it cannot be interpreted as a retroactively binding requirement on Ms. Eastham.

[12] Ms. Eastham relied on the precedent set by past members of the Executive, who took actions similar to hers in order to take a leave of absence. We note that we do not rely on such a precedent in reaching our decision. Following past practice does not guarantee compliance with Students' Union bylaws.

[13] The DIE Board would like to echo the comments of Ms. Eastham and her agent regarding the deficiencies of section 19(3) of Bylaw 2000. It is, to say the least, very strangely worded. We suggest that Council consider amending this section to make the leave of absence requirements more clear.

[14] The Board therefore rules as follows:

- The decision of the Chief Returning Officer to declare the nomination of Ms. Eastham null and void is set aside. Ruling #4 of the CRO is overturned.
- Ms. Eastham is restored as a candidate in the Executive election. She may carry on with her campaign as though the CRO's ruling was never issued.

[15] We thank the parties for their helpful submissions.

The Discipline, Interpretation, and Enforcement (DIE) Board functions as the judiciary of the University of Alberta 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>.