

Discipline, Interpretation, and Enforcement (DIE) Board

Ruling of the Board

(1) HEARING DETAILS

Style of Cause: Murphy v. CRO
Hearing Number: Ruling #7, 2008/2009
Hearing Date: February 27, 2009
Jason Morris, Chief Tribune, Chair
DIE Board Panel Members: Chris Le, Tribune
Christiaan Conradie, Tribune
Appearing for the Applicant: Aden Murphy
Appearing for the Respondent: Patrick Wisheu, Chief Returning Officer
Intervener(s): None

(2) ALLEGED CONTRAVENTION / INTERPRETATION QUESTIONS

Aden Murphy appeals Ruling #4 of the Chief Returning Officer Patrick Wisheu, declaring Mr. Murphy's nomination papers in the current election for Vice President External null and void in accordance with Bylaw 2000 s. 19(4) on the grounds that Mr. Murphy failed to take a leave of absence from his position as Councillor as required by Bylaw 2000 s. 19(3).

(3) RELEVANT LEGISLATIVE PROVISIONS

Excerpts of Students' Union Bylaw 2000 (A Bylaw Respecting the Elections, Plebiscites and Referenda of the **Students' Union**)

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 Councillor 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.

(4) ANALYSIS

[1] In light of the urgency of the electoral matter under dispute, these reasons will be as brief as possible.

[2] The fundamental issue to be decided in this hearing is what is required under s. 19(3) in order to "take a leave of absence," and whether or not Mr. Murphy has met that requirement. Mr. Murphy submits that the requirements are set out by DIE Board Hearing #6, heard and ruled on earlier today, in which DIE Board found the following:

[The applicant] 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. (DIE Board Ruling #6, 2008/2009)

[3] The C.R.O. maintains that by virtue of Mr. Murphy's failure to submit a letter to the Speaker of Students' Council and the Students' Council Administrative Assistant indicating that a leave of absence was being taken, Mr. Murphy had not at the time of the C.R.O.'s ruling taken a leave of absence. Mr. Murphy had requested this letter in an e-mail to all candidates who held Students' Council positions sent the day after the nomination deadline.

[4] It was agreed that the requirement of a "leave of absence" and the requirements for demonstrating that a leave of absence has been taken are unclear in Bylaw 2000. We agree with the Board ruling of earlier today that there is no specific person to be notified or specific form of notification that is required in order for the leave of absence requirement to be met. We find that it is sufficient under s. 19(3) that a party not act in the official capacity from which a leave is taken during the pertinent time, and that they take whatever actions are necessary in order to ensure that others do not inadvertently involve them in their official capacity during that period of time. As the two cases today have demonstrated, this requirement will necessarily be more complex for Executives than it is for Students' Councillors, but we think it applies equally to all parties to whom s. 19(3) applies.

[5] We are satisfied Mr. Murphy met this requirement. It was agreed that Mr. Murphy had not performed his duties or in any other way acted as a member of Students' Council during the pertinent time. Mr. Murphy also took measures to inform the pertinent people at the pertinent times that he was taking a leave of absence from his position by informing the Speaker of the Students' Council of such prior to the first Council meeting occurring after the nomination

deadline.

[6] Though it doesn't pertain directly to the issue in dispute, the Board is also concerned that the C.R.O.'s ruling would have placed a different requirement on Mr. Murphy than was placed on the remainder of candidates who fell under the same requirement. The C.R.O. testified that he had accepted, as evidence of having met the requirements of s. 19(3) of Bylaw 2000, letters to the Speaker of Students' Council and himself that retroactively initiated leaves of absence effective the nomination deadline.

[7] The C.R.O. could provide no principled reason, nor can DIE Board think of one, that Mr. Murphy should not have been provided the opportunity to do the same. As a matter of fact, it appears that he did take the opportunity to do so upon being notified of the C.R.O.'s ruling. The fact that Mr. Murphy's letter was received much later than others is not a principled grounds on which to distinguish between the two, because the CRO is not entitled to alter the date at which the requirements of s. 19(3) must be met.

[8] We caution that it is not a defence to a mandatory requirement of Bylaw 2000 that one "missed the e-mail." As stated above, we do not believe that the C.R.O.'s e-mail in this case represented a real mandatory requirement of the Bylaw. Nor is it directly pertinent to the question of whether the requirements of s. 19(3) were met in this case that they were applied inconsistently. But we emphasise that the C.R.O. and the Board have an obligation, in whatever interpretation they apply to Bylaw 2000, to apply that interpretation equally in order to ensure the fairest elections possible.

[9] It was suggested by the applicant that the C.R.O. had implicitly accepted Mr. Murphy's leave of absence as required under s. 19(3) by accepting his nomination. We do not accept this view. Doing so would imply that the C.R.O., despite overwhelming evidence that a purported leave of absence had not actually been taken, would be powerless to address the violation. The C.R.O. has an obligation and a right to consider evidence that the requirements of Bylaw 2000 are being met on an ongoing basis.

[10] The Applicant also suggested that the C.R.O. should have requested an interpretation of Bylaw 2000 s. 19(3) by the DIE Board pertinent to this case before having issued the ruling. We disagree. There is a degree of statutory interpretation that is a necessary component of the C.R.O.'s responsibilities, and we find that in this case the C.R.O. was well within his rights to impose consequences on the basis of the Bylaw as he interpreted it. There is no suggestion from anyone that the C.R.O. has acted in anything but a good faith effort to implement the rules as Students' Council has enacted them.

[11] The C.R.O., however, has been hampered by the quality of the Bylaw. The DIE Board reiterates its concern that the requirements of s. 19 of Bylaw 2000 are unnecessarily vague, and that Students' Council should seriously consider amending it in order to provide good notice to members of the Students' Union of the requirements that they will be asked to either enforce or adhere to, as the case may be.

(5) DECISION

[12] The C.R.O.'s Ruling that Mr. Murphy's nomination is null and void is overturned. Mr. Murphy is restored as a candidate in the race for Vice President External, and may continue to campaign as if the C.R.O.'s ruling had not been issued. We sincerely thank the parties for their helpful submissions.

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>.