

## Discipline, Interpretation, and Enforcement (D.I.E.) Board

### Ruling of the Board

#### (1) HEARING DETAILS

Style of Cause:	Ross vs. CRO
Hearing Number:	Ruling #1, 2010/2011
Hearing Date:	October 27, 2010
DIE Board Panel Members:	Chris Le, Co-Acting Chief Tribune, Chair Ashvin Singh, Co-Acting Chief Tribune Mary McPhail, Tribune
Appearing for the Applicant:	Michael Ross
Appearing for the Respondent:	Jaskaran Singh, the Chief Returning Officer
Intervener(s):	None
Observer(s):	Marc Dumouchel Jay Ward Craig Turner

#### (2) ALLEGED CONTRAVENTION / INTERPRETIVE QUESTIONS

Upon reviewing the results from the 2010 Students' Council by-election, Engineering Councillor Michael Ross submitted the following request to the D.I.E. Board ("the Board"):

"As a differential existed between the two candidates on the very first round of voting, it is the understanding of the applicant that this differential should be the one examined under Bylaw 2000, Section 63 (8), in its application to the by-election results. As this conflicts with the results of the differential used to determine the winner, it is requested that the results of the by-election are recalculated in accordance with bylaw, and that the current process by which election results are determined be re-examined."

#### (3) RELEVANT LEGISLATIVE PROVISIONS

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

##### **63. Balloting and Counting– Executive, Board of Governors and Councillor Elections**

(1) Balloting shall be conducted by preferential balloting, in which each voter shall rank his/her choices for each position using natural numbers with one (1) representing the first choice, and increasing numbers representing less desirable choices.

(2) A candidate shall require a majority of voters to indicate him/her as their first choice in order to be elected.

(3) Voters shall be entitled to mark as few as zero candidates for any given position or as many as all of them.

- (4) A section of a voter's ballot shall be considered spoiled where
- a. that voter has indicated the same number for more than one (1) candidate;
  - b. that voter has not included the number one (1) next to any candidate;
  - c. that voter has indicated more than one (1) number next to the same candidate;
- or
- d. that voter has used non-consecutive numbers.
- (5) In the event that no candidate receives a majority of first place votes in a given race, the candidate with the fewest first place votes shall be eliminated.
- (6) Any voter who has indicated an eliminated candidate with a number shall have the candidate marked with the next highest number following the number by which the eliminated candidate has been indicated take the place of the eliminated candidate, and so on, in such a way that all candidates indicated by that voter as less desirable than the eliminated candidate are registered as being one (1) step more desirable than originally indicated.
- (7) Where a ballot is left with no first place vote for a given race, the section of that ballot in question shall be considered spoiled.
- (8) Where all remaining candidates have an equal number of first place votes, or where the remaining candidate with the fewest first place votes is tied with another remaining candidate, the candidate that had the fewest first place votes on the first count in which a differential existed shall be eliminated.
- (9) Where all remaining candidates have an equal number of first place votes, or where the remaining candidate with the fewest first place votes is tied with another remaining candidate, and where this tie has existed on every count, and the C.R.O is a Students' Union member eligible to vote in that race, then the C.R.O. shall cast a ballot.
- (10) Where all remaining candidates have an equal number of first place votes, or where the remaining candidate with the fewest first place votes is tied with another remaining candidate, and where this tie has existed on every count, and the C.R.O is not a Students' Union member eligible to vote in that race, then the candidate to be eliminated shall be selected from those candidates with the fewest first place votes by a random or quasi-random method selected by the C.R.O.
- (11) The process set out in Section 63 shall continue for each position until such a time as a candidate receives a majority of first place votes for that position at which point that candidate shall be declared the victorious and removed from the ballot, and the process repeated with the remaining candidates not yet declared victorious.
- (12) The process set out in Section 63 shall continue for each position until such time as all the candidates are preferentially declared victorious.
- (13) Candidates shall be allocated seats as specified in Bylaw 100.
- (14) Where "None of the Above" is declared victorious, no further candidates shall be declared victorious.
- (15) Where a joke candidate is declared victorious, the seat to which that joke candidate has been elected shall be considered vacant.

#### **(4) FACTS**

[1] Mr. Ross reviewed the results from the September 2010 Students' Council by-election and saw that after Sangram Hansra was declared the first winner, a tie occurred for the next ranking of Science Councillor. The tie was resolved in reference to a differential in votes found in "round 1". Arlo Grundberg was eliminated and Robert McDougall was declared the next winner.

[2] The election results show multiple "round 1". The first "round 1" in the Science Councillor race had 27 first-place votes for Mr. Grundberg and 22 first-place votes for Mr. McDougall. The second "round 1", which followed after Mr. Hansra's victory and reflected redistributed votes as per Bylaw 2000, Section 63 (6), had 30 first-place votes for Mr. Grundberg and 32 first-place votes for Mr. McDougall.

[3] Students' Union election results are determined by a computer code. The results appear to have been calculated according to the second "round 1".

[4] Section 63 (8) states that in the event of a tie, "the candidate that had the fewest first place votes on the first count in which a differential existed shall be eliminated."

[5] Mr. Ross requested that the Board recalculate the election results in accordance to the bylaw.

[6] Mr. Ross presented the results from 2007 Council election. He pointed out that after the first winner was declared in round 8 of the Science Councillor race, the next round of counting was labelled "round 9". When a tie was found in round 10, a candidate was eliminated based on the differential in round 1.

[7] Mr. Ross presented the results from the 2008 Council election. He used the Arts Councillor race to demonstrate the label for the rounds was reset after each winner was declared. For example, Patrick Wisheu won after round 10, and the next round of counting was labelled "round 1".

[8] Mr. Ross suspects that there was a change in the code between the 2007 election and the 2008 election that changed the way the algorithm looked for "round 1". He argued that the way the 2007 code performed should be the way that election results are calculated.

[9] Mr. Ross further highlighted that the term "position" in Section 63 (11) was ambiguous. He said that "position" can mean "Councillor" in general or it can mean a specific seat, i.e. "Science Councillor #1", "Science Councillor #2", and so on.

[10] Mr. Ross requested that the Board clarify the term "position" in Section 63 (11).

[11] Mr. Singh explained that he brought up this case with Mr. Jay Ward, the current primary IT support for the Students' Union. Mr. Ward believed that Mr. Ross' reading is correct.

[12] Mr. Singh deferred to Mr. Ward to explain the current situation. Mr. Ward looked at the differences between the code from the 2007 Students' Council election and the 2008 Students' Council election. He found three changes but stated that none of them affected the code for breaking a tie.

[12] Mr. Ward stated that the election code was made public when it was first created. Bugs were corrected through such external, independent review. The code was also available to all candidates for review.

[13] Mr. Ward reran the election results according to Mr. Ross' interpretation, and the outcome was different from the current election results. The results are listed below.

- 1 - Sangram Hansra
- 2 - Arlo Grundberg (SC)
- 3 - Robert McDougall (SC)
- 4 - Antoinette Chamoun
- 5 - Finbarr Timbers
- 6 - Daniel Bell (SC)
- 7 - None of the Above (Science SC)

[13] Mr. Marc Dumouchel, the IT person who was in charge of running the 2008 election, was not clear where the changes came from.

[14] Mr. Dumouchel objected to Mr. Ross' interpretation of the election results and said that the current bylaws support the manner in which the election results were determined. He argued that the word "repeat" in Section 63 (11) is not clear whether it directs the CRO to return the beginning of the entire race or to the race after a winner had been declared.

[15] Mr. Turner pointed out that Bylaw 2000 was created in the summer of 2007. It was the consolidation of several bylaws that governed elections, plebiscites, and referenda.

[16] Mr. Ward stated that the computer code was written based on the old bylaws and not on Bylaw 2000.

[17] Mr. Dumouchel gave a demonstration of how the computer code counts the votes on a ballot. He raised the issue of valuing the votes marked by voters. Should the second-place votes (i.e. second preference) have a bearing on the election results? Are those second-place votes of equal importance to first place votes?

## **(5) ANALYSIS**

[18] Section 63 outlines how balloting and counting shall occur during the elections. Section 63 (1) calls for the use of "preferential balloting".

[19] The Board agrees with Mr. Ross that the term "position" is ambiguous. We created arbitrary terms to clarify to the two situations. We will use "position" to refer to a general "Councillor" where there is one position and candidates receive votes to determine where they rank relative to each other. We will use "seat" to refer to the concept that voting selects "Councillor #1", "Councillor #2", and so on.

[20] Having the terms "position" and "seats" is helpful because it helps the Board determine whether to emphasize the first-place vote or the second-place vote. Another way of stating the situation

is that the Board is trying to see whether the bylaws are calling for a big race or a race with several positions.

[21] Section 63 (11) and (12) calls for a repetition of “the process” of declaring victorious candidates until all candidates are “preferentially declared victorious”.

[22] There is no clear explanation of what “the process” is. This was important to the Board in determining whether voting was for a “position” or “seats”.

[23] If voting selects for “position”, then Mr. Ross’ interpretation is correct; elections are a “big race”. If voting selects for “seats”, then Mr. Singh’s election results stand; elections are “a race with several positions”.

[24] Given that Section 63 (8) is the central point of contention, the Board sought to clarify whether Section 63 (8) was included in the process. Since Section 63 (8) occurs in the cluster of instructions found in Section 63 (5)-(7) and (9)-(10), we inferred that Section (8) is included in the process.

[25] Upon further examining Section 63 (8), the Board noted that the tie breaker was determined by the first-place votes on the “*first count* in which a differential existed” (emphasis added). “First count” suggests that the elections are “a big race”. In this case, it does not matter whether there are multiple “round 1”. The wording gives clear instruction that the CRO should have referred to first “round 1” (“the first count”) and should have eliminated Mr. McDougall and not Mr Grundberg.

[26] The Board discussed the wording in Section 63 (1) and Section 63 (3). Those two subsections make a point of stating that any candidate that receives a vote after the first choice is “less desirable”. The Board sees this to mean that the candidate that receives the first-place vote is the voter’s most desired preference. This is significant because these subsections precede the process described in Section 63 (5)-(10). Hence, the Board interprets that the spirit of the process, and specifically Section 63 (8), is to use the voter’s most desired preference to break ties.

[27] Based on the discussion in [25] and [26], the Board found that elections vote for a “position” and that Section 63 placed priority on first-place votes.

## **(6) DECISION**

[28] The Board rules in favour of Mr. Ross. The election results from the September 2010 Students’ Council by-election for the Science Councillor race are overturned.

[29] The Board interprets Bylaw 2000, Section 63 to mean that voting occurs for a “position” and that candidates are ranked in order of preference for that position. Voting does not occur for “seats”.

[30] The Board directs Mr. Singh to recalculate the September 2010 Students’ Council by-election Science Councillor race in light of this ruling.

[31] The Board directs Mr. Singh to update the computer code for Students’ Union elections in light of this ruling.

[32] Given that candidates were given the opportunities to scrutinize election results and to appeal them, the Board does not recommend recalculating past election results.

[33] The Board suggests that Students' Council update Bylaw 2000, Section 63 to clarify the terms "position" and "process".

*The Discipline, Interpretation, and Enforcement (D.I.E.) 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 D.I.E. Board or this decision to the Chief Tribune at: <sga@su.ualberta.ca>.*