

Discipline Interpretation and Enforcement Board

Ruling of the Board

1. Hearing Details

Style of Cause:	Cox vs. CRO
Hearing Number:	Ruling #2, 2010/11
Hearing Date:	November 4, 2010
DIE Board Panel Members:	Ashvin Singh, Chair, Acting Chief Tribune Kathleen Elhatton-Lake, Tribune Mary McPhail, Tribune
Appearing for the applicant:	Natalie Cox, Councillor
Appearing for the respondent:	Jaskaran Singh, Chief Returning Officer
Intervener(s):	None

2. Alleged Contravention

Chief Returning Officer Jaskaran Singh refused to fill the open Science councillor vacancy following the resignation of former Councillor Cheung in early September. In refusing to appoint a new councillor, the CRO argued that Bylaw 0100 (Students' Council), s.6 (2) stipulated that the position could only be offered to delegates from the March 2010 elections. He offered the position to "None of the above" per Bylaw 0100, s.6 (4), given that s.76(3) of Bylaw 2000 does not allow by-elections to be called for resignations after August 15th. Councillor Cox argued that s.6(2) of Bylaw 0100 referred to the September 2010 by-elections, for which there were available candidates who should be appointed per Bylaw 0100, s.6(4).

Both parties clarified that they held common interpretations of Bylaw 0100, s.6 (4) and Bylaw 2000, s.76(3), and their controversy hinged upon the timelines and definitions used in reading s.6(2) of Bylaw 0100. Should councillors be drawn from the March 2010 elections or the September 2010 by-elections? Thus, this panel chose to focus its analysis on the correct interpretation of that legislative provision and the corresponding rights and obligations of the CRO.

3. Relevant Legislation

Bylaw 0100 reads (excerpt):

Section 6: Replenishment

(2) In the event of a vacancy in the office of Councillor, the Chief Returning Officer of the Students' Union shall offer the position to the candidate who would have been elected had another Councillor been allocated to the resigning Councillor's faculty during the last election before which nominations were open for that faculty.

4. Facts

1. In early September, Councillor Cheung resigned from his post of Science Councillor. There is thus a vacant seat which used to be allocated to the Faculty of Science on Students' Council.
2. The March 2010 general elections produced no Councillors in waiting for the Faculty of Science. From the September 2010 by-elections, nominations were opened for Science Councillors; as a result, there are six Councillors in waiting for the Faculty of Science.
3. Nominations were open for the position of Science Councillor preceding both elections.
4. The CRO refused to fill the seat in early September after conversations with Councillor Cox, contending:
 - a. That Bylaw 0100, s.6(2) referred to the March election instead of the September by-elections,
 - b. That Bylaw 0100, s.6(4), when applied to the March election, resulted in a conclusion of "None of the above", and
 - c. That Bylaw 2000, s.76 did not permit him to hold another by-election.
5. Councillor Cox did not contend with points b. and c. of his argumentation, but responded that she believed that the phrasing of s.6(2) referred to the September by-elections.

5. Analysis

Issues regarding s.6(2) centred around the meaning of "last election" (qualified by the clause which followed) and the definition of "election" in a legislative context. After thorough consideration, the board felt that section 6(2) of Bylaw 0100 was best interpreted as follows:

5(1). The meaning of "last election"

It is the belief of this panel that the meaning of Bylaw 0100, s.6(2) is relatively clear. If the "last" election is taken to mean the most recent election that satisfies the underlying conditions ("before which nominations were open for that faculty"), then the board must to evaluate whether both elections qualify under those conditions. As nominations were opened for the position of Science Councillor both in the March 2010 general elections and the September 2010 by-elections, we believe that both of these elections qualify as elections for "which nominations were open for [the Science] faculty".

5(1). The definition of election

CRO Jaskaran Singh contended that the word "election", as used in Bylaw 0100, s.6(2) might refer to only general elections, and not to by-elections. It was thus his argument that

it was from the most recent general election for which Science nominations were taken, and not the most recent by-election, that he should appoint a Councillor-in-waiting .

While the argument was interesting, the panel did not find it compelling. First, in absence of explicit definitions in the header of the Bylaw, we found it appropriate to look to the use of the word “election” throughout Bylaw 0100. In numerous areas, such as s.7(2), we found that it would not make sense to constrain the meaning of those legislative tenets to only general elections. Both in practice and in law, those uses of the word refer to general elections and by-elections, and so it is not consistent to conclude that s.6(2) would exclude by-elections.

In order to grasp the meaning of the word within the greater legislative context of the Students’ Union, we also analyzed Bylaw 2000, s.76, pertaining to the conduct of by-elections and situations in which they could be conducted. Noting that s.76(4), s.76(5) and s.76(6) all used the term “election” to refer to the by-election, and noting that the remainder of Bylaw prescribes specific regulations for “elections” that still apply to by-elections, it was our belief that there was no legislative basis for the belief that the term “election” necessarily excluded by-elections.

6. Decision

Based on the analysis cited in 5(1) and 5(2) below, the panel rules in favour of the applicant. We:

1. Rule that Bylaw 0100, s.6(2) refers quite clearly to the September 2010 by-elections, and more generally, to the most recent election for which nominations for the faculty in question were accepted.
2. Rule that the use of the word “election” in Bylaw 0100 pertains contextually to both by-elections and general elections.
3. Direct the Chief Returning Officer to appoint a Councillor from the September 2010 elections in accordance with the relevant bylaw provisions.

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 via our registrar at: <sga@su.ualberta.ca>.