

Discipline, Interpretation, and Enforcement (DIE) Board

Ruling of the Board

HEARING DETAILS

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| Style of Cause: | Reference Re: Bylaw 2000 |
| Hearing Number: | Ruling # 03 2011/2012 |
| Hearing Date: | June 21, 2011 |
| DIE Board Panel Members: | Megan Mickalyk, Chief Tribune, Chair; Kelsey Norton, Tribune; Imane Semaine, Tribune |

ISSUE

[1] What is the outcome when “None of the Above” wins a seat in a multi-seat race, such as faculty councillor elections? Would subsequent seats remain unfilled, or would only one seat be unfilled, while subsequent seats are filled with successful candidates? Would the replenishment process of Bylaw 100(6)(2) be used to fill any vacant seats?

RELEVANT LEGISLATIVE PROVISIONS

[2] **From Bylaw 100:**

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) The process for replenishment of Councillor positions shall continue until

- (a) no vacancies remain for the faculty in question,
- (b) the list of candidates from the last election before which nominations were open for the faculty in question is exhausted, or
- (c) the position would be offered to None of the Above

From Bylaw 2000

58. Voting

(3) On each ballot, there shall be an explanation of the balloting procedures which shall

include, at minimum, the following

a. that "None of the Above" shall be considered a candidate;

61. Balloting and Counting- Executive, Board of Governors and Councillor Elections

(29) Where "None of the Above" is declared victorious, no further candidates shall be declared victorious.

(30) Where a joke candidate is declared victorious, the seat to which that joke candidate has been elected shall be considered vacant.

DECISION

[3] When "None of the Above" is declared victorious, all subsequent seats appear to also be left unfilled, as the Bylaw declares that no further candidates can be declared victorious.

THE FOLLOWING ARE THE REASONS OF MICKALYK, CHIEF TRIBUNE

[4] Section 61(29) of Bylaw 2000 is vague and does not provide a clear indication as to what ought to occur when "None of the Above" wins a seat in a multi-seat race while there are still several positions to be filled. DIE Board was presented with two possible interpretations. The first is to take a plain meaning approach, and to find that where the Bylaw states that no further candidates will be declared victorious, this applies to all races, including multi-seat races. The other would be to read in an assumption that this only refers to a single seat in a multi-seat race.

[5] On its face, this provision appears to indicate that if "None of the Above" wins a seat, all subsequent seats also remain unfilled. Bylaw 2000(61)(29) clearly states that when "None of the Above" is "...declared victorious, no further candidates shall be declared victorious," meaning subsequent seats also cannot be filled. The situation of "None of the Above" winning does not appear to be intended to create a vacancy, as it is clearly stated in Bylaw 2000(58)(3)(a) that "None of the Above" is considered a candidate. Unlike in the situation where a joke candidate is elected, as in s. 61(30), nothing indicates that the election of "None of the Above" can be deemed to create a vacancy. Consequently, "None of the Above" would hold a seat. Additionally, the legislation does not provide for the ability to fill further seats in a multi-seat race, as it states that no further candidates can be declared victorious. This is consistent with what we find in Bylaw 100 with respect to replenishment, which states that the replenishment process for councillors would end at the point where "None of the Above" is declared victorious.

[6] If the drafters of Bylaw 2000 intended, in the event of "None of the Above" winning a seat in a councillor election, that subsequent seats still be filled, stipulating as such would give greater clarity to the Bylaw.

THE FOLLOWING ARE THE REASONS OF NORTON, TRIBUNE

[7] I concur.

THE FOLLOWING ARE THE REASONS OF SEMAINE, TRIBUNE

[8] I concur.