

Discipline, Interpretation, and Enforcement (DIE) Board

Ruling of the Board

HEARING DETAILS

Style of Cause: Babic v C.R.O.

Hearing Number: 2011-08

Hearing Date: April 4, 2012

DIE Board Panel Members: Megan Mickalyk, Chief Tribune (Chair)
Kathleen Elhatton-Lake, Associate Chief Tribune
Eve Coppinger, Tribune

Appearing for the Applicant: Mario Babic, Avril Fisher

Appearing for the Respondent: Zach Fentiman, Chief Returning Officer

BACKGROUND:

Applicant Mario Babic ran uncontested for positions in both the Students' Council and General Faculties Council 2012 elections. He was successful in the Students' Council election, but not the General Faculties Council. The Chief Returning Officer, Zach Fentiman found that the Law GFC seat would remain vacant. Mr. Babic had received 6 votes in this race, and so had "None of the Above." Bylaw 2400 s. 7(1) provides that when there is a tie, a "random or quasi-random method" must be employed to determine the winner. The CRO used a coin toss in the presence of two individuals to resolve the tie, and "None of the Above" was successful.

Mr. Babic appealed the CRO's decision on the grounds that 1) "None of the Above" is not a candidate, and 2) s. 7(10) of Bylaw 2400 is only applicable where there has been a tie between two actual candidates, not "None of the Above" and a (human) candidate. He also contended that the CRO ought to have explicitly informed him, and other parties running uncontested, of the possibility of "None of the Above" being declared victorious if it were to receive more votes.

ISSUE

Is "None of the Above" a candidate? Can it be declared victorious when there is only one other candidate running for the position, who has received an equal number of votes?

RELEVANT LEGISLATIVE PROVISIONS

Bylaw 2400

5. 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;

7. Balloting and Counting– Executive, Board of Governors and Councillor Elections

(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 places 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 places 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 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 7 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 7 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.

DECISION

We find that “None of the Above” is a candidate, both during the election process, and when the situation of a tie occurs. As such, a tie breaking method would need to be employed, as provided by Bylaw. This was done, and as “None of the Above” was selected, it must be deemed victorious. The fact that the candidate was personally not aware that “None of the Above” could win is not sufficient grounds to overturn the CRO’s decision. The onus is on the candidate to be familiar with the relevant Bylaws. We do not find that the CRO had any additional obligations with respect to informing the candidate as to the specific process employed when running against “none of the above” or when a tie occurs. This is outlined in Bylaw, and candidates are informed that they must be familiar with the Bylaws.

THE FOLLOWING ARE THE REASONS OF MICKALYK, CHIEF TRIBUNE

Bylaw 2400 explicitly states that “None of the Above” is to be deemed a candidate for the purposes of balloting and vote counting (s. 5(3)(a)). By providing the possibility of “None of the Above” as a viable choice, voters have an option if they are not satisfied with any of the other (human) candidates. To respect the intent to give voters this option, it must be possible for “None of the Above” to be deemed victorious if they receive the most votes. The Bylaw does not intend for the possibility of acclamation, whereby a candidate is elected solely because no other candidates have come forward.

Ultimately, Mr. Babic conceded that “None of the Above” could be declared victorious if they received a majority of the votes. However, he contended that they should not be deemed victorious if a tie were to result. D.I.E. Board disagrees and finds that “None of the Above” can still be deemed victorious in this instance, provided a random or quasi-random method is employed as per Bylaw. This is what would occur if two human candidates tied. We see no reason why “None of the Above” ought to be treated differently from how any other candidate would be treated in the event of a tie.

Further, we find that the CRO was not negligent in any of his duties regarding this matter. Candidates are informed that they must be familiar with the relevant Bylaws. We do not find that the CRO had any additional obligation to specifically inform candidates that they can lose in a race against “None of the Above.” It is reasonable to assume that if “None of the Above” is provided as an option on a ballot, it can be

declared victorious. There is no reason to believe, and nothing in the Bylaw to indicate that when "None of the Above" ties with another candidate this would be treated differently from a situation where two human candidates had tied.

THE FOLLOWING ARE THE REASONS OF ELHATTON-LAKE, ASSOCIATE CHIEF TRIBUNE

I agree.

THE FOLLOWING ARE THE REASONS OF COPPINGER, TRIBUNE

I agree.