

## **DIE BOARD RULING 2013-03**

### **HEARING DETAILS:**

Style of Cause: Zeng vs CRO

Hearing Date: February 20<sup>th</sup>, 2014

Hearing Number: Ruling #03 2013/2014

DIE Board Panel Members: Cian Hackett, Associate Chief Tribune, Chair  
Sean Wallace, Chief Tribune  
Robert Berget, Tribune

Appearing for the Applicant: Dao Cun Zeng, applicant  
Brent Kelly, witness  
Bashir Mohamed, witness  
William Lau, witness

Appearing for the Respondent: None

Intervener(s): Sangram Hansra, Candidate for Undergraduate Board of Governors Representative

### **BACKGROUND:**

Mr. Dao Cun Zeng submitted a complete nomination package for the position of Undergraduate Board of Governors Representative before the nomination deadline of 5:00 PM on February 14, 2014. Following this, the CRO issued Ruling #2 disqualifying Mr. Zeng as a candidate due to a violation of Bylaw 2200, section 12 subsection 2.

Mr. Zeng is a Councillor sitting on the 2013-2014 Students' Council. Mr. Zeng sent an email to Students' Council at 3:16 AM on February 15, 2014 indicating he would be taking a leave of absence from Students' Council effective "Feb 15, 2014 at 3:20 AM". In the CRO's Ruling #2, the CRO disqualified Mr. Zeng as he had violated Bylaw 2200, section 12 subsection 2 which requires members of Students' Council, if running for election, to take a leave of absence for a period beginning with the nomination deadline and ceasing with the conclusion of voting of the election in which they are contesting a position. The penalty for this is indicated in Bylaw 2200, section 12 subsection 3. Specifically, Bylaw states that the member's nominations shall be declared null and void.

Mr. Zeng indicated the CRO violated Bylaw 2200, section 11, subsection 2(a) by excluding copies of Bylaw 2200 and Bylaw 1500 in the nomination packages for the election. Mr. Zeng and his witnesses argued that since these were not included, the responsibility of the violation of Bylaw 2200 section 12 subsection 2 should be shared by Mr. Zeng and the CRO. Mr. Zeng believed that this violation was a minor violation and should have a penalty lesser than disqualification.

Mr. Hansra argued that Mr. Zeng was the only Students' Union Councillor not to take a leave of absence by the nomination deadline. Mr. Hansra argued that Mr. Zeng cannot plead to be ignorant as he is a Students' Union Councillor and that an individual interested in becoming a candidate should be aware of the Bylaw 2200 given the multiple references to Bylaw 2200 in the nomination package. Mr. Hansra argued that there is a positive responsibility for a potential candidate to find out how to take a leave of absence even though it is not outlined in Bylaw 2200.

Section 3 of the nomination reads as follows:

Students' Union Elections are governed by SU Bylaws. A copy of the Bylaw 2200 is included in the nomination package, and is available online at [www.su.ualberta.ca](http://www.su.ualberta.ca). It is each candidate's responsibility to ensure his or her nomination form complies with bylaw. In addition, each candidate must ensure that all aspects of his or her campaign, and the actions of any campaign volunteers, do not violate the provisions of bylaw or any other election rules or regulations.

Mr. Mohamed stated that there is no legal responsibility for a Students' Union Councillor to know the bylaws. Mr. Mohamed stated that the first indication to him of the requirement for a leave of absence was when he received emails, as a member of Students' Council, from other Councillors who were taking leaves of absence.

Mr. Kelly argued that Bylaw 2200 was not being interpreted in the way it was originally intended. He argued that the bylaw was reasonable in its original intention, preventing representatives from using their positions to their advantage during a contested election. Mr. Kelly believed the interpretation demonstrated by Ruling #2 is contrary to the original intent of the Bylaw, and ultimately hurts the Students' Union by disqualifying candidates who do not gain advantages over other candidates in some circumstances. Mr. Kelly stated that he believed there were more challenges for potential candidates than in previous years, such as the challenge created for candidates by not including the relevant Bylaws in the nomination package. He proposed that the panel either re-open nominations or enforce a lesser sentence upon Mr. Zeng.

Mr. Zeng indicated that he overheard other Councillors talking about the requirement to take a leave of absence, in general terms, before the nomination deadline, but had no knowledge of the specific requirements.

Mr. Lau indicated that although Bylaw 2200 section 12 indicates candidates must take a leave of absence, it does not indicate how a candidate should take a leave of absence.

Mr. Zeng indicated that he had spoken to the CRO on Sunday, February 16, at which point the CRO informed Mr. Zeng that he had accepted the nomination package from Mr. Zeng on Friday at 7:00 PM.

**ISSUES:**

- [1] Should the CRO's decision in Ruling #2 be upheld?
- [2] If the CRO's decision to disqualify Mr. Zeng should not be upheld, what alternative action shall be enforced by the panel?

**RELEVANT BYLAWS:**

[3] **From Bylaw 2200 Section 11:**

- (2) The C.R.O shall produce nomination packages which shall contain, at minimum
  - a. complete and current copies of Bylaw 2200 and the Judiciary of the Students' Union Bylaw, Bylaw 1500;

[4] **From Bylaw 2200 Section 12:**

(2) Members of Students' Council and its standing committees, in order for their nomination papers to be valid are 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. The following exceptions apply:

- a. Any member of Students' Council contesting an executive position when the race is uncontested,

For the purpose of this section, any race solely contested by a joke candidate shall be considered uncontested.

(3) Where a member contravenes Section 12(2), all of the member's nominations shall be declared null and void.

[5] **From Bylaw 2200 Section 49:**

- (1) A candidate shall be disqualified where he/she/it is guilty of a contravention that
  - a. cannot be counter-balanced by a lesser penalty;
  - b. is malicious or substantially prejudicial to another candidate or slate; or
  - c. involves tampering with ballots, voting procedures, or counting procedures.

**DECISION:**

The following decision was made unanimously.

[6] The panel finds that Mr. Zeng violated Bylaw 2200, section 12 subsection 2, by failing to take a leave of absence which began at the nomination deadline.

[7] The panel finds that although this violation was due to an honest oversight and that this violation did not provide an advantage to Mr. Zeng over any other candidate, the penalty for a violation of Bylaw 2200, section 12 subsection 2 is clearly stated in Bylaw 2200, section 12 subsection 3.

[8] The responsibility of the Discipline, Interpretation and Enforcement Board is to interpret and enforce Students' Union legislation. The DIE Board does not modify existing legislation unless it is untenable or contradictory with other legislation. Although the nomination packages did not contain a complete printed copy of Bylaws 1500 and 2200, Bylaw 2200 shall still be applied in full as written.

[9] The panels finds that the references to Bylaw 2200 made in section 3 of the nomination package provided to all potential candidates are sufficient to inform potential candidates of the relevant elections bylaws, including the requirement to take a leave of absence that begins at the nomination deadline.

[10] The penalty outlined in Bylaw 2200, section 12 subsection 3 is that the nomination shall be declared null and void. The panel rules that the decision of the CRO to disqualify Mr. Zeng as a candidate shall be changed to the declaration of Mr. Zeng's nomination as null and void.