

DIE Board Ruling 2014-6

Hearing Details:

Style of Cause: Azimi v CRO

Hearing Date: March 6th, 2015

DIE Board Panel Members: Sean Wallace, Chief Tribune

Karamveer Lalh, Tribune

Nikki Way, Tribune

Appearing for the Appellant: Ms. Shakiba Azimi

Appearing for the Respondent: Ms. Jessica Nguyen, Chief Returning Officer

Intervener: Mr. Fahim Rahman

Issues:

[1] What is the appropriate remedy for a “tainted election” as issued by CRO Ruling #7 regarding the Vice President Academic race?

Relevant Material:

[2] From CRO Ruling #7

4. With the new evidence, the Chief Returning Officer does not believe that the intention of the students that testified in the evidence provided in this ruling were reflected and as a result, the Chief Returning Officer believes that this is a tainted election. The Chief Returning Officer believes that in particular, this may affect the outcome of the Vice President Academic race, given the small margin of votes acquired to break the 50% threshold required to win an election in the second round of voting.

5. ...the Chief Returning Officer seeks DIE Board’s recommendation and direction on finalizing potentially tampered election results as there are no governing bylaws directly related to this situation for the Chief Returning Officer to follow and enforce.

[3] From DIE Board Protocols, Section 23 “Burden of Proof for Elections”

With respect to an appeal of a decision by the Chief Returning Officer, a panel may accept as proven any or all facts set out in the Chief Returning Officer’s decision

[4] From Bylaw 1500(29) “General Powers of Enforcement”

If the Board finds an application for action or application for appeal requires action by the Board may make any order proscribing any remedy the Board considers appropriate and just in the circumstances.

[5] From Bylaw 2200(31) “Restrictions on Campaign Activities”

(2) During voting days, no campaign materials or campaign activities shall be within six (6) meters of any polling station.

[6] From Bylaw 2400(15) “By-Election – Executive Committee and Board of Governors”

- (1) Where another Election is required by virtue of Section 8(14) or Section 8(15), the new Election shall be conducted.
- (2) The Campaign for the new Election shall begin a minimum of five (5) days prior to the commencement of voting as set out in Section 15(4).
- (3) The nomination deadline for the new Election shall occur a minimum of fifteen (15) days prior to the commencement of voting as set out in Section 15(4).
- (4) The voting for the new Election shall occur on two (2) consecutive weekdays to be determined and announced by the C.R.O. at least twenty-one (21) days in advance.

[7] From DIE Board Ruling 2010-05

[16] We rely upon our general remedial discretion under s. 29 of Bylaw 1500 to “proscribe [sic] any remedy... appropriate and just in the circumstances” to order a new election for the VP Student Life position, to be governed by the broad outline set out below. We conclude that the broad wording of s. 29 (and the language is *broad*)

authorizes us to make this order, and in doing so to depart, where appropriate and strictly in the interests of restoring procedural fairness to this election, from certain provisions of Bylaw 2000 [at the time]. Again, we adopt as a governing principle that a remedy under s. 29 must be no broader than the bare interests of fairness require.

Decision:

The Panel was unanimous in their decision:

Background

[8] The CRO found in Ruling #7 that evidence of voter tampering “may [have] affect[ed] the outcome of the Vice President Academic race, given the small margin of votes acquired to break the 50% threshold required to win an election in the second round of voting.” The two candidates involved were Ms. Shakiba Azimi and Mr. Fahim Rahman.

[9] Under DIE Board Protocols, section 23, “a panel may accept as proven any or all facts set out in the [CRO’s] decision.” Given the ballot evidence submitted *in camera* by the CRO, and more importantly, that neither party disputes that a “tainted election” may exist, the Panel accepts the CRO’s finding.

[10] However, it is important to note that neither VPA candidate nor their campaign volunteers were accused of voter tampering. Thus, the Panel is left with a “tainted election” where the outcome is already known and no party in the race is at fault.

[11] Despite having won the recent Vice President Academic race, the Appellant has proposed a re-election with a list of terms to reflect the unusual circumstances. Both candidates engaged in what can best be described as negotiations before and during the hearing. The CRO is amendable to these terms provided that both parties are agreeable to the conditions.

[12] The Panel therefore must consider whether a re-election is the most appropriate remedy, and if so, what additional terms are necessary to ensure its fairness.

Analysis

[13] The Panel agrees that the only means by which a re-election can be ordered is through DIE Board's general remedial discretion under Bylaw 1500(29), whereby the "...Board may make any order proscribing any remedy the Board considers appropriate and just in the circumstances."

[14] In DIE Board Ruling 2010-5 (*Yamagishi v CRO*), an analogous situation occurred where the VPSL race was irreversibly tainted by no fault of either candidate. By ordering a re-election Panel found that:

We recognize that this result has occasioned the parties significant personal inconvenience. While this is regrettable, it must be remembered that the fundamental matter at issue here is not a race between two candidates. Rather, it is an electoral process, sanctioned, ultimately, by the Alberta Legislature through the *Post Secondary Learning Act*, and subject to stringent fairness regulation by the elected representatives of the students of this University.

...as there is nothing more fundamental to student democracy than the fairness and transparency of our electoral processes, we are satisfied that our actions are appropriate here. Nothing short of a new election could effectively remedy the damage that was done in this case.

[15] The Panel agrees with these findings, and finds them applicable in this instance. Although a re-election is inconvenient, undesirable, and should be regarded as a last-choice option, the Panel finds no other suitable option to remedy this tainted election.

[16] Therefore, the Panel orders the March 5-6 results of the VP Academic election quashed, and a re-election to be ordered pursuant to the Appendix attached to this document (and otherwise in accordance with Bylaw 2200).

[17] With regards to the additional terms proposed to govern the by-election, the Panel recognizes that additional rules are necessary given the unusual circumstances of this situation. The Panel considers these with full regard to what is "appropriate and just in the circumstances".

[18] The terms are included in an Appendix attached to this document. The

Panel will only discuss the contentious terms raised at the hearing

[19] Given that a two-candidate race was derailed here, the Panel finds that the by-election must also, in fairness, be a two-candidate race, involving the same two candidates.

[20] With regards to the start of the campaign period, Ms. Azimi had argued for Monday, March 16 at 12:00PM, whereas Mr. Rahman preferred a Tuesday or Wednesday start. Both cited personal scheduling conflicts as part of their reasoning. The CRO expressed a preference for starting as early as possible.

[21] The Panel agrees with the CRO's sentiments. The Panel recognizes that Bylaw 2400(15), which governs executive by-elections in instances where "None of the Above" or a joke candidates wins, requires a five (5) day minimum campaign period prior to voting. This is not binding to this situation, but acts as a useful guideline.

[22] Given that it would be most appropriate to adjoin the VP Academic By-Election with the SU Councillor/GFC election on March 19 & 20 (to improve voter turnout), and that the two candidates require time to re-prepare their campaigns and receive CRO approval of campaign materials, the Panel agrees that starting at Monday at 12:00 PM would extend the campaign period to its reasonable limits.

[23] With regards to the use of electronic devices on voting days, all parties agreed that as the source of controversy and the unwieldy potential for voter tampering, a temporary rule scheme should be implemented.

[24] The Panel notes that the only Bylaw that restricts campaign activities on Voting Days are found in Bylaw 2200(31), whereby "no campaign materials or campaign activities shall be within six (6) meters of any polling station."

[25] Noting that polling stations are no longer used in SU elections, as online voting has allowed many electronic devices (e.g., phone, tablet, laptop) to become a *de facto* polling station, the Panel recognizes that the intent of the Bylaw was to restrict campaign activities within areas where electronic ballots are being cast.

[26] Accordingly, the Panel agrees that while candidates/volunteers may engage in campaign activities on voting days, and even inform students on how to vote (i.e., check their email, provide the website link), their actions should be limited once the student has reached the voter login screen (requiring CCID/password), turning their electronic device into a *de facto* polling station. At this point, candidates/volunteers must move beyond six (6) metres of that student before they have passed the login screen.

[27] The Panel emphasizes that this is a temporary rule scheme under an exceptional judicial remedy, and that Bylaw Committee and Students' Council is best suited to address election policy.

[28] The parties also agreed that as an additional measure of precaution, all candidates/volunteers shall be forbidden from using electronic devices (phone, tablet, laptop) when engaging with students on voting days.

[29] With regards to the campaign budget, the Panel pro-rated the \$550 campaign limit for Executive Committee & Board of Governors elections according to weekdays available, resulting in a \$275 budget limit.

[30] It is important to note that the parties further agreed that these rules shall be binding and included under the CRO's discretion to issue fines & penalties, as per the *Election Regulations and Guidelines* and *Schedule of Fines & Penalties* for the Executive Committee and Board of Governors elections.

APPENDIX: 2015 Vice-President Academic By-Election Terms

- The VP Academic By-Election will be closed to two candidates:
 - Ms. Shakiba Azimi
 - Mr. Fahim Rahman
- Campaigning will begin on Monday, March 16th, at 12:00 PM
- Voting days will be concurrent with SU Council/GFC elections on March 19th and 20th.
- Campaign budget: \$275.00
- No use of electronic devices (phones, tablets, laptops) by candidates or their volunteers on voting days (March 19/20).
 - Candidates/Volunteers may still approach students on voting days and engage in campaign activities.
 - Candidates/Volunteers may inform students on how to vote (i.e., provide the website link). However, once a student has reached the voter login page on their electronic device, candidates/volunteers must move beyond six (6) metres before the login screen has passed.
- The two candidates will release a joint official statement concerning the re-election (subject to CRO approval)
- Campaign materials (including all posters, banners, and handbills) from the previous election may not be reused.
 - All campaign material must reflect the new voting days
 - All campaign material remains subject to CRO approval
 - No banners shall be affixed prior to the beginning of the campaign period
 - No banners shall be affixed in SUB
- Candidates must use the same social media (Facebook, Twitter) outlets,

but may use new personal websites.

- The parties agree that these rules shall be binding and included in the CRO's discretion regarding fines & penalties, as per the *Election Regulations and Guidelines* and *Schedule of Fines & Penalties* for the Executive Committee and Board of Governors elections.