

Election Tribunal Appeal (10 November 2020)

Jurisdiction

1. The appeal is to be submitted against the result of the election in writing within five days of the declaration of the result as required (r.35.1).
2. The tribunal must be satisfied there is a prima facie case and there has been a defect in the conduct of the election which has materially affected the result (r.35(2) &(3)).

The MONSU election declaration was issued on 4 November 2020. On 9 November 2020, the Election Tribunal (“the Tribunal”) received submissions including an “Attachment Reference List” from Mr. Daniel Stonehouse, the Vice President of MONSU before the election declaration. Mr. Stonehouse is seeking to void the election on several grounds. The Returning Officer filed submissions in reply that there is no prima facie case to grant the appeal. Both submissions are summarised below.

Appellant Evidence

The appellant relied on a video demonstrating the online voting process as evidence in support of the following claim.

The video demonstrates that the Women’s Officer position did not display the necessary disclaimers, nor was it included on a separate ballot. Further, this demonstrates the alteration to the items available for Riley Fenn.

The appellant also presented online chat group messages as evidence to support the following claims:

1. *Jett Foggarty’s claim to ‘Ignite’ candidates belonging to him.*
2. *Evidence of members of the prohibited group chat utilising data from the group chat to campaign on behalf of ‘Ignite’.*
3. *Attempts to influence votes by Nidzam Shah Hussain and Alex Bourikas in contravention of r. 31.4.*
4. *Evidence of knowledge of the pervasive influence of James McDonald by candidate Maxi Hunt.*
5. *Untrue claims made either on behalf of or by ‘Ignite’ candidates.*
6. *Screenshots pertaining to the outside and pervasive influence by non-students upon MONSU Caulfield elections.*
7. *An image containing the members of Ignite including Riley Fenn.*

Appellant Submission Summary

1. Application of Sanctions

The appellant submitted that the ruling of the Returning Officer in September 2020 regarding “Campaigning by Ignite Candidates” failed to sufficiently mitigate the unfair impacts it sought to resolve, compromising the position of the Returning Officer to properly govern this election. The appellant submitted the results of the election for Vice President must be recalled, as should all positions in this election on the following basis:

1. *Sanctions were not applied to Zhen Zheng at any point despite equal grounds to do so.*
2. *The Returning Officer has not acted with due diligence with regards to materials made available to him in the course of applying sanctions.*
3. *Sanctions placed were not sufficient in rectifying the material benefit afforded to ‘ignite candidates.*
4. *This has materially affected the result of the election by*

protecting the image of the 'Ignite Candidates', with particular regard to Zhen Zheng.
5. *These sanctions were not sufficient in balancing the material benefit that has affected the result of the election.*
6. *These sanctions were circumvented to the material benefit of Ignite.*

2. Women's Officer / Ballot Draw / Election Timeline

The appellant submitted the following:

1. the Returning Officer has failed to comply with Election Regulations pertaining to the Autonomy of Women's Officer;
2. the Returning Officer has failed to comply with Election Regulations pertaining to the drawing of the ballot;
3. the Women's Officer result was materially affected as a result;
4. candidates have not been afforded a fair process as they are entitled in regard to the Ballot Draw;
5. the lack of this process has caused reasonable doubt as to the governance of this election given the apparent occurrence of exceptions that candidates ought to have been given the opportunity to identify; and
6. with particular regards to Riley Fenn, exceptions or anomalies appear to have occurred in regard to the Election Timeline that is unfair to other persons attempting to run in this election, who were unable to do so as they were not afforded the same flexibility of timeline.

The appellant also claimed the following:

1. the Women's Officer Ballot is, by regulation, required for avoidance of doubt to be a separate ballot. The ballot paper must be in the form of an electronic booklet;
2. the Returning Officer did not email all candidates; and cause a notice to be published on the MONSU website stating when, where, and how the draw will take place;
3. there is a question of if a ballot draw has occurred as a result, and there has been confusion amongst candidates regarding the order of the ballot draw;
4. in addition to this, changes to nomination information appear to have occurred. This is particularly noticeable in the matter of Riley Fenn. The Returning Officer mistakenly approved publication of material which circumvented his election ban on Riley Fenn, as "at the time it did not register with me that the photo of Riley was included". Upon the initial release of candidates and their manifestos, no image was included of Riley Fenn. However, upon the release of the ballot Riley Fenn image, identical to that included in Ignite's campaign material that was required to be removed, was supplied. This demonstrates either:
 - 1) a failing of the Returning Officer to exercise due diligence in the review of items released for publicity; or
 - 2) reason to believe that Riley Fenn was afforded provision to include items after their due date, contrary to the election regulations.

The election regulations allow for the submission of three core items pertaining to election materials:

- 1) a photo
- 2) a policy statement
- 3) a nomination form

These items all hold the same deadline, and providing an extension for one such item and not all others, including that of Nomination Forms without due notice, infringes upon the progress of this election.

5. The Returning Officer's failure to abide by Clause 15 provides space for reasonable doubt for the governance of this election. Candidates were to be afforded the opportunity to mutually confirm the items that had been provided as present and to confirm the legitimacy of this draw. The Returning Officer has breached the Election Regulations and has not provided a reason as to why this has not been provided.
6. It is highly of doubt that only 20-50 persons who do not identify as a woman have voted in this election, as can be assumed most generously by the differential between votes for President and Women's Officer. Least generously, only 9 persons who do not identify as a woman are to be assumed to have voted in this election by comparison with votes cast for Welfare Officer.

This is further complicated by the fact that the Returning Officer failed to publish at the opening of elections notice instructing persons to only vote upon the position of Women's Officer as is required.

It is entirely unreasonable to assume that this has not affected the result of the election, and as such requires the ballot to be recalled.

3. Outside Influence

The appellant made the following claims:

1. the Returning Officer has not been able to govern the conduct of this election due to the pervasive influence of non-student;
2. the involvement of non-students can reasonably be assumed to have been the impetus for the existence of a set of candidates, which would, in turn, ought to invalidate their ability to participate in these elections; and
3. the involvement of non-students has allowed candidates to receive material benefit affecting the result of the election.

Public Comments: A number of individuals involved with Together made public comments with the intent of either a) influencing persons to vote for Ignite Candidates and b) that were untrue and with the intent of influencing persons to vote against incumbent candidates. This is in addition to those comments published by Melbourne Campus Micro News, which at the time was identified as being from non-students. However, at a later point, the Returning Officer has determined that posting on Melbourne Campus Micro News was campaigning by candidates, and as such permissible. The use of this forum as a whole is highly problematic due to the lack of clarity regarding its organisation and as such reason for the belief that the use of this platform may not occur without eliciting sanctions due to the involvement of non-students in its operation. This is further aggravated by the matter of the 'Together' party having used the same platform in the RUSU and MSA elections.

Involvement in the organisation of 'Ignite': It has been demonstrated that James McDonald created the group for candidates and campaigners of Ignite. In addition to this, Jett Foggarty has publicly taken responsibility for the members of Ignite as his 'candidates' in the MONSU election. Through this, it is of doubt that 'Ignite' would exist without the presence of these persons, as they are positioned as having been responsible for creating the platforms by which organisation has occurred. This is in addition to evidence that has been tendered to the Returning Officer regarding statements from Maxi Hunt regarding James McDonald having been organising a ticket

to run in the MONSU elections.

Group Chats: The Returning Officer's instructions that candidates of 'Ignite' leave the group chats made through the use of prohibited conduct was not followed, nor was it sufficient in ensuring that the ruling was not circumvented. Candidates were added back to the chat by a person of the screen name "Mr. Alex Wang" - who is believed to be an associate of Together and assumed to be Alex Wang a person associated with the SDA faction and a non-student. The Returning Officer believed that the candidates were unaware that this was the same group chat, and as such were again instructed to leave with new provisions for the formation of a group chat: most notably that they were not to use the same names of persons in the previous group chat. The action of persons that are non-students, or are otherwise as such yet to be identified, poses a hazard in the RO's ability to govern these elections in that the capacity for these breaches to occur has come as a direct result of the influence and presence of such persons external to the reprimand of the Returning Officer.

This is further complicated by the fact that persons, as yet unidentified, from the group chat, continued to use the data obtained from the group chat to campaign on an individual basis. This has circumnavigated the election ruling regarding the use of these group chats for campaigning.

Given that the group chat from which this evidence of connection has come forward contains over 140 members, it is entirely reasonable to assume that additional votes may have been cast in favour of Ignite Candidates due to this practice. This is in turn further complicated by the fact that there are known to be at least three of these group chats, presumably of comparable size, which were not accessible to informants and as such were not vetted for the occurrence of breaches.

While it is unreasonable to assume that all such members of groups have voted in favour of Ignite (as this would contribute to almost the entirety of votes cast for Ignite), it is reasonable to assume that at least 120 votes may have been cast as a result of these actions, which would have materially affected the result of the election.

Returning Officer Submission Summary

1. Application of Sanctions

Zhen Zhang was not included for two reasons:

1. the Ignite candidates, through Riley Fenn, had provided me with the publicity that showed each of their candidates except Zhen Zhang, and the WeChat article the sanction was made about also listed all of the Ignite candidates except Zhen Zhang. This made me doubt Zhen was an Ignite candidate; and
2. many of the Ignite candidate's nomination forms were submitted in bulk, Zhen Zhang submitted his own nomination form directly to me.

Accordingly, based on the information I had viewed at the time I had sufficient doubt that Zhen Zhang was an Ignite candidate such that it would have been inappropriate to include him as one of the candidates in the case he was not an Ignite candidate.

Regardless of the above, the omission of Zhen Zhang from the ruling could not have made a material impact on the result of the election for the following reasons:

1. no evidence has been provided to me or as part of this appeal to the contrary that Zhen Zhang did not campaign at any time during the application of the sanction on the Ignite candidates. As such, as Zhen Zhang complied with the ruling based on the evidence provided, no

change would have occurred had Zhen Zhang been listed on the complaint;

2. had Zhen campaigned during this period he could have only done so in a way that benefited him and no other Ignite candidates and did not use any Ignite campaign publicity. If this did occur and had a material effect on the result, there would have been a distinct difference in the vote tally between Zhen Zhang and other candidates which were not present; and
3. no limit was placed on 'items of truth' as candidates can make statements, they believe to be true if they have evidence of this. At no point did I disallow any publicity that claimed Zhen Zhang was an Ignite candidate. Regardless, this had no material impact on the result as other candidates, such as Caitlyn Dunne, would have done significantly better in her vote tally than Daniel Stonehouse since she had the ability to campaign on this item. No significant vote difference was present.

2. Women's Officer

Clause 23.5 states:

23.5. The electronic ballot paper for the Women's Officer must have in writing either above or below the ballot "Please only vote in this ballot if you identify as a woman."

As can be seen in the video provided this text was included in a bolded font at the top of the page for the Women's Officer ballot.

Clause 23.1 states:

23.1. The ballot paper must be in the form of an electronic booklet. Ballot papers for the Queer Officers and Women's Officer will be separate.

The voting system provided by MONSU Caulfield for this election is limited in how it allows the ballot to be set out. In particular, Clause 23.2 of the Regulations could not be followed as each position had to be on a separate page, noting that no definition is provided in the Regulations of an electronic booklet.

Regardless of the above, 599 valid votes were cast in the Women's Officer ballot. Based on 2019 data, which is unlikely to have changed significantly, 43% of students are male, hence we can assume, based on no men self-selecting out of voting for this position, that 257 men voted in this ballot. Based on the results of 423 votes for Hannah Cohen and 176 votes for Anne Gordon, for the result of men to have overturned this result would have only occurred if less than 2% of men voted for Anne Gordon and more than 98% of men voted for Hannah Cohen. This is exceedingly unlikely to have had a material impact on the result.

Accordingly, as the requirements of the Regulations were followed and the gender-split of results would need to be extreme beyond any reasonable statistical chance.

3. Ballot Draw

There was no discernible advantage to candidates based on the order they are listed on the back end of the voting system and especially no discernible advantage to the extent required to materially affect the result.

4. Election Timeline/Riley Fenn

Riley Fenn's nomination form, candidate statement, and candidate photo were submitted via email at 2:23 pm on Monday, October 19, before the deadline of 4 pm on Monday, October 19. There is therefore no basis for being allowed to submit items after the

deadline. It is not uncommon for items of publicity to be authorised and subsequently have the authorisation revoked, with Regulation 19.4 providing the manner for this to occur. In accordance with Regulation 19.4.1 once I became aware the item breached publicity rules, I revoked the authorisation, and it was removed.

5. Outside Influence Public Comments

It is outside of the bounds of my role as Returning Officer to govern the conduct of individuals who are not students but make public comments on the election unless those people are supported in some way by students who are involved in the election.

Should a new poll be called for this, it is entirely possible that a person could cause MONSU to continually re-hold their elections by constantly making comments in support of a single or group of candidates for the sole purpose of stopping MONSU Caulfield from operating. This would be ludicrous.

6. Involvement in Organisation of 'Ignite'

James McDonald was directed to leave any Ignite groups or chats on 19 October 2020 and to cease to have any further involvement in the election. Mr. Stonehouse was notified of this at the time and did not appeal this decision. I have not been provided any complaints about McDonald's involvement after this date.

The comments produced are not sufficient proof that he had a pervasive influence over a set of candidates.

7. Group Chats

The Ruling on Ignite candidates directed that the candidates leave the WeChat group and the group cease to be used for campaigning. The candidates did indeed leave the group. As one of the candidates was the admin of this group, they had to make a different person the admin for the group, with Alex Wang chosen. Approximately 2 days later Alex Wang changed the name of the group and after more time had passed added the candidates back into the group which they stated they believed was a different group. The candidates then provided me with access to the group to ensure I could see what was being posted. A small number of authorised campaign publicity posts were made in the group during the week before polling opened.

I received a complaint from Mr. Stonehouse that the group was the same group that was discussed in the ruling. The Ignite candidates stated that they believed they were following the ruling as they believed it was a new group for the purpose of the ruling. After reviewing the evidence, I directed the candidates to leave the group again and made clear that this group could not be used again in any form, including by changing the name and re-joining it. No campaign material was posted in this group following this, including during the time that polls were open. Accordingly, I do not believe this group could have had any impact on the result of the election in any meaningful way.

Tribunal Ruling

The appellant must present a prima facie case to avoid dismissal of the appeal, this requires the enough evidence on all elements to support the claims and shift the burden of evidence. If the plaintiff fails to make a prima facie case, the Tribunal must dismiss the appeal, even without the need for the Returning Officer to produce any evidence to rebut the evidence the appellant has presented. This is because the burden of persuading the Tribunal rests with the appellant.

1. Application of Sanctions

This tribunal has made previous rulings on the sanctions including the Tribunal decision dated 27 October 2020 that stated:

- 1. In deciding on sanctions, the RO considered all matters raised in the appellant's submission including the seriousness of the breaches and the impact on the election.*
- 2. The RO made a comparison with the other beaches found to have occurred.*
- 3. The RO provided a logical and balanced basis for deciding on the severity of the sanctions.*
- 4. The RO complied with the relevant provisions of the Election Regulations.*
- 5. There are no additional facts submitted in this appeal that were not presented to the RO at the time of the ruling.*
- 6. The previous appeal, seeking to overturn the ruling and remove the sanctions, was dismissed by this tribunal in its decision published on 23 October 2020, on the same basis that this appeal is also dismissed.*

After considering the submissions, this tribunal finds there is no new evidence to support a prima facie case on this ground and no basis to overturn the previous rulings on 23 and 27 October 2020.

2. Women's Officer

Pursuant to r.23.1 and 23.2, there should have been two pages containing ballots, the first page containing all ballots excluding the Women's Officer ballot, and the second page containing the Women's Officer ballot. Although this did not occur, it is not a defect that would materially affect the election result. As such, this appeal ground is dismissed.

3. Ballot Draw

The ballot draw followed the correct election process and complied with the election regulations. There is no prima facie case on this ground.

4. Election Timeline

One image of a candidate available for less than 24 hours would not have had a material effect on the result of the election. There is no prima facie case on this ground.

5. Outside Influence

It is the role of the Returning Officer to govern the actions of those who are involved in the election, this did occur. The Returning Officer is unable to govern the conduct of individuals who are not students that make public comments on the election. Third parties making such comments, while frustrating, cannot be considered the responsibility of candidates who did not request or encourage such comments. Based on the material provided, including the fact that there is no evidence of campaign material posted following the Returning Officer's directive, the tribunal finds there is no prima facie evidence to support this ground of appeal.

Summary

The material relied upon by the appellant identified as "Attachment Reference List" is insufficient to support a prima facie case on the grounds claimed.

The appeal is dismissed.

Election Tribunal

10 November 2020