

# **ADELAIDE UNIVERSITY UNION ELECTION TRIBUNAL**

*Report of Decision: Allegations of prohibited  
electoral conduct and contraventions of a  
requirement of the Returning Officer*

**September 2014**

## **ADELAIDE UNIVERSITY UNION ELECTION TRIBUNAL**

*Report of Decision: Allegations of prohibited electoral conduct and contraventions of a requirement of the Returning Officer*

### **1. JURISDICTION OF ADELAIDE UNIVERSITY UNION ELECTION TRIBUNAL**

- 1.1 The *Rule Concerning the Conduct of Annual Elections, By-Elections and Referenda (Election Rules)* has been enacted by the Adelaide University Union (**AUU**) under clause 18.1 of the Constitution of the AUU.
- 1.2 Clause 7 of the Election Rules establishes the AUU Election Tribunal (**the Tribunal**). All electoral powers and duties of the AUU have been delegated by the AUU to the Tribunal by clause 7.1, which provides as follows:

*The AUU Board delegates its powers and duties regarding all aspects of the conduct of Annual Elections, to the AUU Election Tribunal. The AUU Board or Executive will not overturn any resolution of the Election Tribunal. The determination of the Election Tribunal on any matter in relation to the Annual Elections is conclusive, and may not be challenged or appealed within the AUU.*

- 1.3 As provided above, the AUU will not overturn any determination of the Tribunal.
- 1.4 Pursuant to clause 7.3 of the Election Rules, all members of the Tribunal must have certain legal qualifications and/or be a member of the academic staff in the School of Law, and must not have been candidates at an AUU annual election within the five years prior to their appointment.

### **2. PROCEDURE**

- 2.1 The Tribunal may regulate its own proceedings, subject to acting in accordance with the Election Rules and the AUU Constitution. Pursuant to clause 7.13 of the Election rules, the Tribunal may not report on its proceedings (other than any formal written decision).
- 2.2 The Tribunal must decide questions of fact on the balance of probabilities. In accordance with the rule in *Briginshaw v Briginshaw* (1938) CLR 336, the Tribunal will, when taking into account whether this standard has been met, consider matters including the likelihood of the occurrence of the relevant circumstances, the seriousness of the allegation/s and the consequences should the allegation/s be upheld.

### **3. ALLEGATIONS**

- 3.1 The Tribunal has reviewed complaints and evidence disclosing the following allegations:
  - 3.1.1 That, between 1 September 2014 and 5 September 2014 (inclusive), candidate Renjie Du (of the 'Progress' ticket) and other Progress campaigners led prospective voters to the company of persons inside the defined area of a polling place, who then led such prospective voters directly to the ballot area and engaged in conduct that could be considered 'campaigning' (including the provision of instructions

regarding how to vote), contrary to clause 43.4.15 of the Election Rules;

3.1.2 That, on 2 September 2014, Mr Du attempted to deceive the Returning Officer regarding alleged contraventions of the Election Rules, contrary to clause 43.1 of the Election Rules;

3.1.3 That, on 2 September and 3 September 2014, during times at which persons were prohibiting for campaigning for the 'Progress' ticket pursuant to a determination of the Returning Officer, progress ticket campaigners nevertheless continued to campaign, including by purporting to campaign for other tickets and distributing concealed Progress flyers, contrary to Clauses 43.2.20 and 43.2.30 of the Election Rules.

#### **4. ACTIONS OF RETURNING OFFICER**

It is relevant to this decision to set out the following actions of the Returning Officer in these circumstances, which are evidenced in the Returning Officer's report submitted in accordance with clause 47.1 of the Election Rules.

4.1 At approximately 1:00pm on 2 September 2014, the Returning Officer, being satisfied that, contrary to the Election Rules, Renjie Du and other campaigner for the Progress ticket had:

4.1.1 Campaigned with the defined area of a polling place; and

4.1.2 Engaged in dishonesty by this conduct and by denying this conduct when questioned by the Returning Officer (with Renjie Du and other campaigners formulating their alleged deception in Mandarin directly in the presence of the Returning Officer in the incorrect assumption that the Returning Officer did not speak Mandarin);

exercised power under clause 9 of the Elections Rules to require Progress ticket campaigners to remove banners and electoral material within 1 hour, and to immediately ban Renjie Du and other Progress ticket campaigners until 4:00pm on 2 September 2014.

4.2 At approximately 1:45pm on 2 September 2014, the Returning Officer, being satisfied that Progress ticket campaigners were in contravention of the earlier direction, extended this ban until 12:00pm on 3 September 2014.

4.3 The Returning Officer extended the ban until 4:00pm on 3 September 2014 after observing Progress ticket campaigners purporting to campaign for the 'Fresh' ticket, but handing out Progress flyers.

4.4 At approximately 5:00pm of 3 September 2014, the Returning Officer observed an email from Progress campaign administrator Jack Lienert with attached induction form, drafted in both English and Chinese, which the Progress campaign now used to induct its campaigners. The form outlines relevant obligations under the Election Rules. Jack Lienert also asserted to the Returning Officer that approximately 300 Progress campaigners were called with reminders regarding the bounds of acceptable campaigning conduct.

- 4.5 On 12 September 2014, having become aware of allegations of similar prohibited conduct occurring on 4 September 2014, 5 September 2014 and being in receipt of video footage of the alleged contraventions, the Returning Officer sought to meet with Renjie Du. As Renjie Du was unwell, the Returning Officer met with Progress campaign administrator Jack Lienert on that day. The Returning Officer showed Mr Lienert complaints and video footage that the Returning Officer had received, and provided Mr Lienert with an opportunity to comment. No explanation was provided for the conduct.

## **5. FINDINGS OF TRIBUNAL**

- 5.1 Campaigning for the Progress ticket occurred within the defined area of a polling place on the following days, in contravention of clause 43.4.15 of the Election Rules:
- 5.1.1 2 September 2014;
  - 5.1.2 3 September 2014; and
  - 5.1.3 5 September 2014.
- 5.2 Progress ticket campaigners failed to adhere with directions of the Returning Officer on the following days, in contravention of clauses 43.4.20 and 43.4.30 of the Election Rules:
- 5.2.1 2 September 2014;
  - 5.2.2 3 September 2014; and
  - 5.2.3 5 September 2014.
- 5.3 Renjie Du directly abetted these contraventions on 2 September 2014 and 5 September 2014.
- 5.4 Progress ticket campaigners including Renjie Du engaged in dishonest conduct by attempting to deceive the Returning Officer on 2 September 2014, in contravention of clause 43.1 of the Election Rules.
- 5.5 The actions and directions of the Returning Officer were appropriate.
- 5.6 Contraventions by Progress campaigners apart from Renjie Du may to some extent have been exacerbated by language issues.
- 5.7 Jack Lienert and others took adequate measures to mitigate ongoing contraventions through producing English and Mandarin language induction materials, and through directly contacting campaigners.
- 5.8 It could be held that contraventions by Progress campaigners which occurred after the production of the induction material on 3 September 2014 were incited and orchestrated by Renjie Du.
- 5.9 On the material provided to the Tribunal, there is insufficient evidence to establish that campaigning for the Progress ticket occurred within the defined area of a polling place on 1 September 2014 and 4 September 2014.

## 6. DECISION OF TRIBUNAL

- 6.1 The Tribunal notes that clauses 45.2.4 – 45.2.6 of the Election Rules provide as follows:
- 45.2.4 *The Election Tribunal may, whether it finds there has been a breach of these Rules or not, give such directions as it sees fit.*
- 45.2.5 *If the Election Tribunal finds there has been a breach, it may formally reprimand the person reported.*
- 45.2.6 *If the Election Tribunal finds there has been a serious breach, it may disqualify the person from standing in that election, and may as a result declare that that candidate not be elected.*
- 6.2 The Tribunal notes that clause 46.6 of the Election Rules Provides as follows:
- 46.6 *If satisfied that there has been a defect in the conduct of the election which has materially affected the result, the tribunal may:*
- 46.6.1 *Order the Returning Officer to conduct a recount or recounts;*
- 46.6.2 *Declare that a Candidate not be elected;*
- 46.6.3 *Declare that another Candidate be elected;*
- 46.6.4 *Declare that an entire election or elections be declared void.*
- 6.3 The Tribunal notes that, by operation of clause 43.2 of the Election Rules, candidates are responsible for the conduct of their campaigners.
- 6.4 The Tribunal has considered whether to impose a reprimand, disqualification or other directions upon all Progress candidates for the above contraventions of Elections Rules by Progress campaigners.
- 6.5 The Tribunal considers that it would be unjust to disqualify or otherwise impose sanctions upon all Progress candidates and will not impose any such measures upon all Progress candidates. The Returning Officer imposed satisfactory measures against the Progress campaign, and there appear to have been genuine efforts by Jack Lienert and others to rectify contraventions.
- 6.6 The Tribunal has considered whether to impose a reprimand, disqualification or other directions upon Renjie Du for the above contraventions of Elections Rules by Progress campaigners and by Renjie Du personally.
- 6.7 **The Tribunal hereby reprimands Renjie Du for all contraventions attributed to him in this report.** The Tribunal notes that Renjie Du continued to oversee contraventions of the Election Rules after measures had been taken within the Progress campaign to rectify contraventions.
- 6.8 The Tribunal is not satisfied that the contraventions warrant the disqualification of any candidate or the declaration of the election as void.

**7. RECOMMENDATIONS**

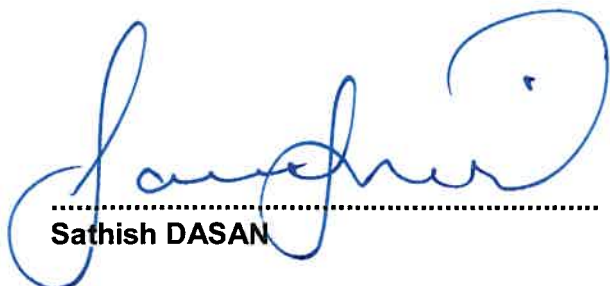
- 7.1 That the Election Rules be amended by the AUU to require mandatory briefing sessions for all candidates in relation to the conduct of campaigning (including information regarding candidates' responsibility and sanctions for the actions of campaigners), with such session to be conducted by the Returning Officer.
- 7.2 That such briefing sessions and/or alternative materials be accessible and comprehensible to all candidates, including candidates with a first language that is not English.
- 7.3 That the AUU provide a letter of reprimand to Renjie Du outlining these findings and decisions and stating clearly that any further misconduct on his part as a student of the University of Adelaide will be referred to the University. A copy of that correspondence should also be provided to the University for inclusion on Renjie Du's student file.

**DECISION OF:**

**Associate Professor Dr Paul BABIE  
Mr Andrew COLLETT  
Mr Sathish DASAN**

**being the members of the ADELAIDE UNIVERSITY UNION ELECTION TRIBUNAL.**

**EXECUTED with the approval of all members:**



.....  
**Sathish DASAN**

**23 September 2014**