

## **Hearing 2010-05**

### **Attachment 1**

This application is in response to the practice followed by the Chief Returning Officer in regards to the email sent out on March 8<sup>th</sup>, 2011 at 7:45:58pm by Dayna Brochu (ovc@su.ualberta.ca). The email is as follows:

Hey Guys!

Its David McBean, the OPC (Orientation Programs Coordinator) of last year. The SU elections are March 9th and 10th

Please come out and vote!

Thanks,

David McBean

It came to my attention at approximately 11:30pm that this email was sent out. I attempted to contact the C.R.O.(11:37pm; March 8<sup>th</sup>, 2011 and 12:09am; March 9, 2011) and Candidate McBean (12:13am; March 9<sup>th</sup>, 2011) via phone to discuss the issue. Neither party answered the phone, so I left a voicemail message with each of them explaining my concern and requesting a return phone call. I sent the C.R.O. the following email at 1:36am, on March 9<sup>th</sup>, 2011. This was the first contact I had with C.R.O. regarding this issue.

Hello Jas,

At approximately 11:45pm Tuesday Mar. 8. It came to my attention that David McBean's campaign had sent out the following e-mail (forwarded below) to over 600 student volunteers using one of the Orientation list-servs at 7:45:58pm Tuesday Mar. 8.

This action clearly breaches 3.12 Internet and Email Policy set out in the Rules and Regulations.

Whereas:

"Mass emails" to unofficial groups (e.g. lists of your friends from your personal address book) are not permitted. IT is permissible, however, to send mass emails to anyone already acting as your campaign volunteer. Emails to official University and student group mailing lists (list-servs) will be considered, given that the following procedures are adhered to:

1. Candidates who wish to send an email must contact the administrator of the mailing list, requesting permission to send the campaign message.
2. If approval is granted, the candidate must forward a copy of this approval to the CRO, who will then send a message to all candidates in that particular race, including the candidate that initiated the request.
3. Each candidate will have 24 hours to submit to the CRO a campaign message no longer than 250 words.
4. The CRO will then send a file containing all campaign messages to the mailing list. Under no circumstances are individual candidates permitted to send a campaign message directly to any mailing lists.

It also states that "candidates are responsible for any inappropriate campaigning by their volunteers on the Internet. The CRO reserves the right to revoke any candidate's right to use Internet-based mediums as a campaign tool, if it is determined that the above regulations have not been followed. Further penalties may also be assessed."

\*This message clearly breaks a number of these regulations and I believe that this act was done with malicious intent to gain an unfair advantage over myself, the opposition. I believe that this message went out to over 600 orientation volunteers. Not only is this a large number of students but a large number of engaged students who are likely to vote in the election.

I am very concerned with these actions and I demand that they be dealt with accordingly with fair and responsive punitive measures. It is also very relevant that this issue be dealt with in a timely matter as voting begins at 9am today. If I am unhappy with the decision, I will not hesitate to file a DIE Board hearing to resolve the issue. Please call me as soon as you receive this message at 780-299-3076.

Thank you,

-Colten Yamagishi

I phoned the C.R.O. at 8:12am on March 9<sup>th</sup>, 2011. I explained my concerns with the process by which the email was sent out. The C.R.O. indicated that he had made an error in approving the email without following the regulations he set out. We agreed that the C.R.O. could have some time to consider appropriate next steps. Upon hearing the information that the email had been approved by the C.R.O., I no longer believed that the message was sent out with malicious intent; however, I was still unhappy with both the content of the email and the process by which it was sent out. At 8:55am Candidate McBean contacted me via phone. Candidate McBean explained the process he went through to get the email approved. This is outlined below. Candidate McBean and I agreed that there was a mistake made by the C.R.O.

To the best of my knowledge, the facts are as follows. Candidate McBean contacted the C.R.O. and the individual responsible for the moderation of the listserve in question. The moderator indicated to the C.R.O. that use of this listserve was acceptable. The C.R.O. gave permission to Candidate McBean to write and send an email 24 hours later. Candidate McBean indicated concern that sending out the email via the ovc@su.ualberta.ca account was inappropriate and a violation of Regulation §3.12(4) by inquiring if the C.R.O. was sure that the email shouldn't come from the C.R.O. account. This concern was raised three times and the C.R.O. confirmed that he thought the email should be sent out by the listserve moderator. The C.R.O. also indicated that email should be sent out before 9:00pm as per campaign timeline allocations. The C.R.O. indicated that it was acceptable to send the email. Candidate McBean wrote the email and sent it forward after allowing for a 24 hour grace period as per Rules and Regulations §3.12 (as cited in the above communication). Shortly after the email was sent out, the C.R.O. read the content of the email and indicated the phrase "the OPC (Orientation Programs Coordinator)" should not be included in the email. Candidate McBean indicated that the email had already been sent out with that phrase included. The C.R.O. indicated that it was too late to change the email and if a complaint was raised, a fine would be levied.

I then contacted the C.R.O. via phone and the C.R.O. indicated that a fine would be levied (Ruling not yet published).

The fact that this listserve was used by Candidate McBean is a violation of Bylaw 2000 §37 No-Use of Non-Universal Resources:

*No individual candidate, side or slate shall make use of any resources that is not*

- *available to all candidates, sides or slates;*
- *general volunteer labour or expertise; or*
- *accounted for as a part of that candidate's, side's or slate's*

*campaign expenses.*

This listserve does not meet this criteria as it is not accounted for in campaign expense, nor is it general volunteer labour or expertise. Most importantly, this resource is not available to all candidates, sides or slates. The C.R.O. has set out Rules and Regulations that facilitate the implementation of this bylaw. This is outlined in the Candidate's Meeting Agenda material, Rules and Regulations §3.12. The C.R.O. violated sub-sections 2 and 4.

2. If approval is granted, the candidate must forward a copy of this approval to the CRO, who will then send a message to all candidates in that particular race, including the candidate that initiated the request.

4. The CRO will then send a file containing all campaign messages to the mailing list. Under no circumstances are individual candidates permitted to send a campaign message directly to any mailing lists.

The C.R.O. did not send a message to the candidates in the Vice President (Student Life) race. The C.R.O. did not send out the email in question to the listserve. Rather, he gave permission for the email to be sent by ovc@su.ualberta.ca. This is a clear violation of the Rules and Regulations which were designed to facilitate the implementation of bylaw. This is also a clear violation of Bylaw 2000§37.

When the C.R.O. phoned me after my conversation with Candidate McBean, the C.R.O. presented a possible solution. The C.R.O. indicated that I could sent out an email to the same listserve or that the C.R.O. would send out an email to the same listserve providing direction to the elections website supplement that holds information on both Candidate McBean and myself. I turned down this offer, as sending out a message during the no-campaigning period is a violation of Bylaw 2000 §61(1) Limitations During Voting.

*During voting candidates, campaign managers, members of sides and volunteers shall not encourage members to vote or engage in any campaign activities.*

I also felt that, in addition to the C.R.O.'s recommendation being a violation of bylaw, it was not a just counterbalance as this particular listserve was directed towards potential voters that were more familiar with Candidate McBean than I. Had the C.R.O. followed Bylaw 2000 and the Rules and Regulations, I would have had the opportunity to prepare a similar message geared towards students that are more familiar with my candidacy. I had particular issue with the fact the Candidate McBean's previous position as OPC was highlighted in the email.

I have been advised by Candidate McBean that he was initially fined \$70 for this offence, however this was withdrawn. Both of these exchanges were by phone.

I do not feel that a fine alone would remedy this situation. I therefore ask that DIE Board make any order which would restore the fairness and reputation of this election.

Thank you,

-Colten Yamagishi