

Ruling #7

## **Ruling of the Discipline, Interpretation, and Enforcement Board**

### ***Jones v. Chief Returning Officer***

#### **Date Heard:**

March 7, 2005

#### **Members of the D.I.E. Board Present:**

Alex Ragan, Chairman

Mark Rogers

Catherine Lepine

#### **Appearing For the Appellant:**

Chris Jones

#### **Other Parties Respondent:**

Dane Bullerwell, Chief Returning Officer

#### **Facts**

The facts of this case are set out in the Chief Returning Officer's Ruling #4, 2005. This ruling is attached to these reasons.

#### **Issue**

The Appellant submits that the punishment issued by the Chief Returning Officer (Respondent) was insufficient to serve the remedial and penal purposes of Bylaw 2400. The Appellant requests additional sanctions on the infringing party, namely a \$100 fine and the disqualification of the "Yes" campaign manager.

#### **Decision**

The DIE Board feels that some deference to the Chief Returning Officer is necessary when reviewing his decisions. This is required to ensure that the decisions of the CRO remain an important facet of the electoral process as envisioned in bylaw 2400. Moreover, this is appropriate given the CRO's specific knowledge of the facts in question and their relevant context. Finally, it serves the purpose of judicial efficiency by ensuring that insignificant matters are not appealed to DIE Board.

The DIE Board feels that the penalty issued by the CRO is both remedial and punitive. A purely remedial measure would have entailed preventing Safewalk members from minding Health Referendum "Yes" side tables. Preventing *all* "Yes" side members from minding tables, therefore, went beyond a remedial measure and was punitive. The DIE Board believes this to have been an appropriate remedy.

The DIE Board believes that the removal of the "Yes" side campaign manager would be excessive in these circumstances. Such a remedy should be reserved to where there was a flagrant violation that can be shown to have significantly impacted the election. This does not appear to be the case in this instance.

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The DIE Board believes that the Appellant's submission that the fine should be increased has some merit. Although the CRO clearly believed that a monetary fine was appropriate so as to deter future violations, he placed the fine at only \$10. The DIE Board believes this amount to be an inadequate deterrent and punishment. So as to better carry out the purpose of deterrence, the DIE Board believes that this fine must be increased. Moreover, the DIE Board believes the "Yes" side campaign manager had been sufficiently warned against this specific conduct so as to warrant a greater punishment in this case. In determining the appropriate level for the fine, the DIE Board considered that some deference to the CRO's decision was appropriate but that the original fine was insufficient to deter similar future conduct and punish the conduct in this case. Accordingly, the DIE Board sets the fine at \$35.

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The Discipline, Interpretation and Enforcement (D.I.E.) Board functions as the judicial branch of the Students' Union, and is responsible for interpreting and enforcing all Students' Union legislation. For any questions please contact [dieboard@su.ualberta.ca](mailto:dieboard@su.ualberta.ca).



*March 2005 Executive & BoG Elections and Health Plan Referendum*

**Summary of Complaint**

The Yes Side campaign manager and a Yes Side volunteer posted a call for volunteers on the Safewalk internal message board.

**Parties to the Complaint**

- Mr. Sean Vigneau  
Campaign Manager, Health Plan Referendum Yes Side

**Applicable Bylaws, Rules, and Regulations**

- Bylaw 2400:
  - Section 22 (Prohibition on Campaigning)
  - Section 24 (No Use of Non-Universal Resources);
  - Section 25 (Restriction on Campaign Activities); and
- March 2005 Election Regulations as Printed in Candidates' Meeting Agenda Package (Email & Webboard Guidelines)

**Facts**

1. Mr. Scott Nicol forwarded the CRO the following messages, that were posted on an internal Safewalk message board/email system:

From: Sean (139)  
Sent: Tuesday, February 22  
Message: Hello all you Crazy SafeWalk Volunteers! Hmmm..... Volunteer, such an interesting word. It means people who are willing to do work for free, and thats exactly who I'm looking for! I am heading up a most imporotant referendum that will be voted upon is this years upcomming Student Union election. The undergraduate student health care plan. I am looking for people who would like to help me do this. You may commit as little as 1 hour a week sitting at a table, or putting up some posters. If you would like to help out or if you have any questions about the plan and how it works, you can e-mail me at: [email addressed removed –CRO] Thank You Sean Vigneau

From: Caroline (102)  
Sent: Friday, February 25  
Message: Just a follow up to Sean's post a while back... I'm heading up the table sitting for the health care referendum and we desperately need help!! Volunteers are needed to sit at tables...you only need to some out for an hour or so and you can study and do homework whilst you're sitting there!! If anyone can help out message me or email me at [email address removed –CRO]

2. The CRO initiated an investigation into the Yes Side's actions without a formal complaint form being submitted.
3. Mr. Vigneau confirmed via email that the messages Mr. Nicol forwarded to the CRO were, in fact, sent.
4. Ms. Samantha Maxson, Director of Safewalk, estimated for the CRO that approximately 200 students have access to the Safewalk system.

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### **Ruling**

1. The Yes Side Campaign Manager and the Yes Side volunteer were in violation of Bylaw 2400, Section 22, which prohibits engaging in campaign activities between when a referendum question is ratified by Students' Council and the beginning of campaigning. Students' Council ratified the Health Plan Referendum question on February 8. Sean Vigneau was selected Yes Side Campaign Manager at the Candidates' Meeting on February 17. Campaigning began on February 28. Thus, both Mr. Vigneau and the Yes Side volunteer were in violation of Section 22.
2. The Yes Side Campaign also violated Section 24 of Bylaw 2400, which prohibits use of non-universal resources. Since not all students have access to post on the Safewalk message board, posting access constitutes a "resource."
3. The Yes Side Campaign violated the Election Regulations which sets out the conditions under which candidates may send out mass emails and post to online webboards. While the CRO is not certain whether the Safewalk message board more closely resembles an email system or a webboard, the Yes side is in violation in either case. Posting on Webboards other than the Students' Union Webboard is forbidden, and sending out mass emails requires Referendum sides to follow procedures that the Yes side did not initiate.
4. Finally, a strong argument could be made that posting on the Safewalk system constituted campaigning "in" an SU-owned business or service, prohibited by Section 25 of Bylaw 2400. Since the posts were clearly forbidden for other reasons, the CRO will not rule on whether the Yes side violated Section 25.

### **Penalty**

1. At the candidates' meeting, the Chief Returning Officer specifically instructed candidates and campaign managers not to:
  - a. Engage in precampaigning, as defined by Bylaw 2400;
  - b. Post to external webboards or send out "mass emails" without following the email guidelines in regulations; and
  - c. Use any position within any organization to further a campaign.
2. Due to the lengths to which the CRO went to inform referendum sides of the regulations, the CRO can only conclude that the violation was intentional or so reckless as to be indistinguishable from being intentional.
3. The Yes Side is prohibited from having volunteers and campaign side members sit at or remain near any of its tables booked through the CRO's office for the remainder of the campaign. The Yes Side is also forbidden from using other tables not booked through the CRO's office for campaign activities for the remainder of the campaign.
4. The Yes Side may still set up campaign materials on their tables, but all posters and/or banners will count against the Yes Side maximum of 10 per building.

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5. As an additional penalty that penalizes the Yes side for an intentional violation, the Yes side is fined \$10.00, to be deducted from its campaign budget.

So decided Sunday, March 6 at 23:00.

Deadline for appeal: Tuesday, March 8 @ 13:00.

Dane Bullerwell

Chief Returning Officer, University of Alberta Students' Union