

## ***Discipline, Interpretation and Enforcement (DIE) Board***

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### ***Ruling of the Board***

Style of Cause: ***Michelle Kelly v. C.R.O.***

**Ruling # 14**                      **Date heard:** March 7, 2006

Appearing for the D.I.E. Board: **Presiding Chair:** Alex Ragan, **Tribunes:** Justyna Herman, James Koizumi

**Appearing for the Applicant:** Michelle Kelly

**Appearing for the Respondent:** Rachel Woynorowski, C.R.O.

#### **Interveners present:**

Greg Harlow, Speaker of the Students' Council  
Teresa Chapman, candidate in SU elections

**CASE SUMMARY:** Michelle Kelly, former Presidential Candidate, is appealing the ruling of the C.R.O. which denied her reinstatement as a candidate in the 2006 Executive Elections. The D.I.E. Board dismissed the appeal by Ms. Kelly on the grounds that the bottle of green paint was a campaign expense and could not be taken off the candidate's final budget. The purchase of the paint could not be characterized as a buffering expense.

#### **FACTS**

Michelle Kelly exceeded the allowed budget of \$500.00 in campaigning expenses and was disqualified by the C.R.O. pursuant to s.79 of Bylaw 2100. Ms. Kelly's internal and external expenditures totalled \$491.06. In addition to that sum, Ms. Kelly was fined \$5 for failing to set up a table and was further fined \$10 for failing to attend the Daily Candidates Meeting. As such, Ms. Kelly's budget reached \$506.06 and she was disqualified by the C.R.O. Ms. Kelly argued that the final budget submitted for her campaign was incorrect as it included the cost of one bottle of paint that was not used in her campaign. Ms. Kelly argues that she should be allowed to deduct the cost of the said bottle (\$8.80) because it is not a campaign expense incurred in engaging in campaign activities. This deduction would cause Ms. Kelly to fit within the prescribed \$500 campaign expense limit. Ms. Kelly argues that her candidacy should be reinstated.

The C.R.O. contends that Bylaw 2100 does not provide for amendment to the budget once submitted by the candidates. Further, the C.R.O. argues that it is not possible for her to verify that the bottle of paint that Ms. Kelly claims to have bought but not used in her campaign is in fact the same bottle that was purchased by Ms. Kelly and evidenced on the receipt, or whether the paint was acquired at a later date. The C.R.O. believes that she has no ability to reinstate a disqualified candidate.

#### **RELEVANT LEGAL PROVISIONS**

*Bylaw 1500*

*s.2 The Board is the organ of the Students' Union responsible for the interpretation*

*and enforcement of Students' Union legislation.*

*Bylaw 2100*

*s.2(d) a "campaign activity" shall be any act, planned or organized by or on behalf of any candidate or slate, that is calculated to draw attention to that candidate or slate's candidacy;*

*s.2(f) a "campaign expense" shall be any expenditures incurred in engaging in campaign activities;*

*33. On every weekday during the Campaign, the C.R.O. shall hold a daily meeting, at which he/she shall review complaints, rulings, regulations, procedures, and announcements.*

*34. Each candidate shall either attend each daily meeting himself/herself or designate, in writing, a representative who will attend.*

*35. Where a candidate contravenes Section 33, he/she shall be fined ten dollars (\$10.00) for each meeting at which he/she is in contravention, and he/she shall not be assessed any further penalty.*

***63. No candidate shall accrue more than five hundred dollars (\$500.00) in campaign expenses, all of which shall be paid by the Students' Union.***

*s.78 The C.R.O. shall review all campaign expense records, and shall post summaries of same more than twelve (12) working hours prior to the commencement of voting.*

***s.79 Where the C.R.O. determines that a candidate or slate has exceeded or falsified its campaign expense limit, that candidate or slate shall be disqualified, and notice of this shall be posted with the campaign expense records, and communicated directly to the candidate or slate in question.***

*s.80 The D.I.E. Board shall convene a meeting less than twelve (12) working hours prior to the commencement of voting for the purpose of hearing and ruling on all appeals of the C.R.O.'s rulings.*

*82. The D.I.E. Board shall, at the meeting set out in Section 78, either:*

- a. rule on all appeals; or*
- b. order a delay to the Election*

*128. Penalties available to the C.R.O. shall include:*

- a. a fine, to be counted against the candidate's campaign expenses;***

*132. Any member shall be entitled to appeal a ruling of the C.R.O. to the D.I.E. Board.*

## ANALYSIS

**Issue: Is one bottle of unused paint, purchased with the intent to be used in a campaign activity, but not actually used in the candidate's campaign, a campaign expense for the purposes of Bylaw 2100?**

**Held: Yes.**

Ms. Kelly concedes that she purchased the bottle of paint with the intent to use it in a campaign activity. She argues that she did not actually use that bottle of paint in her campaign activity, and therefore the paint should not be included in the budget as a campaign expense.

Bylaw 2100 defines "campaign expense" in s.2(f) as *any expenditures incurred in engaging in campaign activities*. "Campaign activities" is defined in s.2(d) as *any act, planned or organized by or on behalf of any candidate or slate, that is calculated to draw attention to that candidate or slate's candidacy*. The D.I.E. Board holds that the bottle of paint, purchased on February 23, 2006 together with five other campaign expenses, is a campaign expense even though it was not actually used by the candidate. The definition of "campaign activity" is clearly set out in Bylaw 2100. It states "any act, ***planned or organized ... that is calculated to draw attention*** to that candidate." The Bylaw does not require that the activity be actually carried out. Ms. Kelly bought the paint with the intent to use it in her campaign activities. In other words, the purchase of the disputed bottle of paint and other campaign expenses, was a planned act that was calculated to draw attention to Ms. Kelly as a Presidential Candidate.

**Issue: Is the bottle of paint a buffering expense which can be taken off the budget if not used in the campaign activity?**

**Answer: No.**

The C.R.O. concedes that candidates are allowed to buffer certain sums in the final budget. The two instances of buffering are (1) budgeting a sum for potential fines incurred in the campaign (2) budgeting a sum for last minute campaigning expenses to be used on the Monday and Tuesday before the elections. This means that candidates are allowed to budget an estimate amount for unforeseen or uncertain expenses. If the candidates do not, in fact, use the estimated amount, or use only a portion of it, the C.R.O. will adjust their budget accordingly. Clearly, the candidates are not allowed to exceed the allowed \$500.

Ms. Kelly argues that the bottle of unused paint was not used in her campaign, therefore the cost of the paint should be taken off the budget. She argues that this was an instance of buffering.

The D.I.E. Board holds that the purchase of the paint was not buffering. Ms. Kelly purchased the paint on February 23, 2006, therefore it is hardly a last minute campaigning expense. Moreover, Ms. Kelly wished to take off the cost of the bottle of paint of the budget after it exceeded the allowed \$500. Had Ms. Kelly not incurred the fines of \$5 and \$15, she would satisfy the requirement of s.63 of Bylaw 2100.

**Issue: Should the \$10 fine for missing a campaign meeting have been a fine against materials in kind rather than a fine against campaign expenses?**

**Answer: No.**

Ms. Kelly argues that the \$10 fine required under Bylaw 2100 for missing the Chief Returning Officer's daily meeting should have been levied in a manner that would not affect her campaign expenses. More specifically, Ms. Kelly suggests that the CRO should have fined her \$10 in kind (i.e. by denying her some campaign materials) rather than \$10 against her campaign expenses.

This avenue of argument is untenable in light of the wording of s. 35, which states "Where a candidate contravenes Section 33, he/she shall be fined ten dollars (\$10.00) for each meeting at which he/she is in contravention, and he/she shall not be assessed any further penalty." This specifically mandates a fine to the candidate to the exclusion of other remedies.

### **DISPOSITION**

For all of the above reasons, Ms. Kelly's appeal of the C.R.O ruling is dismissed. The C.R.O. followed the rules which required her to disqualify a candidate who exceeds \$500 in campaigning expenses. Pursuant to s.79, the C.R.O was justified in disqualifying Ms. Kelly from the 2006 Executive Elections.

*The Discipline, Interpretation And Enforcement (D.I.E.) Board functions as the judiciary branch of the Student's Union, and is responsible for interpreting and enforcing all Student's Union legislation. If anyone has any questions regarding the D.I.E. Board, feel free to contact the Chair, Alex Ragan, at ea@su.ualberta.ca*