

Discipline, Interpretation and Enforcement (DIE) Board

Ruling of the Board

Style of Cause: Janz vs. CRO

Ruling # 4

Date heard: March 2, 2007

Appearing for the D.I.E. Board:

Presiding Chair: Guillaume Laroche, Chief Tribune

Tribunes: James Koizumi, Vincent Kurata

Appearing for the Applicant: Michael Janz, candidate: SU President, SU elections

Appearing for the Respondent: Rachel Woynorowski, CRO

Interveners present: None

Observers: Brock Richardson, Michael Benusic

Conflicts: James Koizumi declares that he is Executive Coordinator of Student Legal Services of Edmonton, an organization for which Mr. Janz serves as a member of the Board of Directors. Koizumi is confident this matter will not affect his impartiality, and no parties object to Mr. Koizumi sitting on the DIE Board panel.

Case summary:

Mr. Michael Janz, election candidate, alleges that the CRO's fair market value determination of \$12 per day for the use of a video camera is incorrect, arguing that digital video cameras and similar materials are commonplace enough today to warrant them being deemed freely available by the average student as a "universal resource". The Board finds that while such video recording peripherals may be commonplace, they are not universally available.

SUMMARY OF ALLEGATIONS

Mr. Janz is a candidate in the current SU elections, and has created a video as a campaign material. The creation of this video was rendered possible by the use of a digital video camera, which was provided by a volunteer serving on Mr. Janz's campaign team. After completing his video, Mr. Janz contacted the CRO to obtain an evaluation of the fair market value for the use of a digital camera, following procedures from section 45 of Bylaw 2000. The CRO reported that her fair market value assessment of this item was 12\$ per day. Mr. Janz disputes this number and alleges that, under the terms of section 29.1 of Bylaw 2000, and given how common video cameras are today, that the fair market value for the use of the digital video camera should be zero because it is a universally accessible resource.

FACTS

As stated in *CRO Ruling #5*:

1. On Thursday, February 15 at the mandatory candidates meeting the CRO stated that any candidate wishing to use video as a form of campaign material would be assessed the fair market value related to the production of the item in question.
2. Mr. Janz stated that, using a high quality digital video camera provided by a volunteer, he filmed a video to promote his candidacy prior to the start of the campaign on February 26.
3. On February 25, Mr. Janz requested that the CRO provide a fair market value assessment for the production of a campaign video.
4. On February 26, the CRO stated that Mr. Janz would be assessed the fair market value of a basic digital video camera at 12\$ per day.

In Ruling #5, delivered Wednesday February 28th, the CRO ruled that, "should Mr. Janz wish to use the campaign video he previously created he will be assessed the fair market value of \$12 per day for the rental of a digital video camera to be applied against his campaign budget." The video was filmed between February 15 and 26.

RELEVANT LEGAL PROVISIONS

Bylaw 2000, Section 29.1 (No-Use of Non-Universal Resources) states:

- No candidate, side or slate shall make use of any resource that is not
- a. available to all candidates, sides and slates;
 - b. general volunteer labour or expertise; or
 - c. accounted for as part of that candidate's side's or slate's campaign expenses.

Bylaw 2000, Section 45 (Fair Market Value) states:

- (1) Where a product or service has been provided to a candidate, side or slate for no consideration or for consideration less than the official list price of the service provider, that candidate, side or slate shall be considered to have

incurred a campaign expense at the fair market value of the product or service, as determined by the CRO.

- (3) The fair market value shall be determined by the CRO using the price that any other candidate, side or slate would have to pay for a comparable product or service as a guideline.
- (4) Candidates, sides and slate shall have the right, but not the obligation, to receive an assessment of a product or service's fair market value in advance.

ANALYSIS

Mr. Janz constructs his case from the basis that it is his belief that portable video-capturing devices are common enough in modern society to warrant that they be declared a universal resource; consequently, this technology would theoretically be available to all candidates, sides and slates. This would normally result in this technology being declared to have a fair market value of zero by the CRO, such as in the example of laptops. While Mr. Janz recognizes that portable digital video cameras may not in themselves be common, he points to numerous examples of similar technology such as digital cameras and cell phones, most of which can capture video just like the portable digital video camera that was provided to him by a volunteer. Mr. Janz further asserts that, given the compression technology potentially being used to distribute the video, there would effectively be no advantage gained in terms of the image quality of the video compared to more common recording devices. Mr. Janz concludes that the technology contributing to the production of the campaign materials of similar quality is therefore universal, and should therefore be attributed a fair market value of zero, consistent with other practices of the CRO. Mr. Janz asks the Board to consider remedies that would counterbalance the perceived disadvantage that this dispute with the CRO has engendered.

The Board rejects Mr. Janz's arguments on numerous grounds. First, the Board interprets the phrase "any resource" of Section 29.1 of Bylaw 2000 to mean peripherals or mechanisms aiding in developing campaign materials or promoting a campaign activity, and not the end results that these peripherals or mechanisms produce. Therefore, the question centres on if digital video cameras are universal (and not videos themselves). Secondly, the Board finds that free-moving digital video cameras, while common, are not universal. The Board concludes this through the application of a reasonability test. Therefore, the question posed is as follows: "Can all candidates reasonably be found to have access to this technology, free of charge?" The answer determined by the Board is that no, the technology is not universally available free of charge. Asked another way, "is it unreasonable to find a student on this campus that does not have common, free access to a free-range video-recording peripheral?" Again, the Board finds that the answer is no, especially when dealing with free-range technology. Consequently, the Board upholds the conclusion that digital video recording cameras currently qualify as a "resource that is not available to all candidates, sides and slates."

Secondly, the Board disputes the assertion that no unfair advantage is gained with the use of a peripheral such as a digital video camera, despite Mr. Janz's claims about the

abundance of technologies producing similar end results. Mr. Janz has argued that the compression process a digital file must undergo before being posted on a website reduces the video quality to such an extent as to make it indistinguishable from the quality of videos recorded with other devices such as cell phones and digital still cameras. The C.R.O. did not contest this assertion. Even if we were to accept Mr. Janz's argument on this point, the board does not believe that "visual quality" is the only metric by which one can evaluate the production of video-file campaign materials. Mr. Janz compares using one or the other of the aforementioned technologies to using either a screwdriver or a power drill as a method of getting a screw into a piece of wood; the end result is the fundamentally the same, regardless of the methodology employed. The Board disputes the fundamental fairness of this conclusion, as it dismisses the *process* by which a peripheral device attains its intended result. To illustrate this point using Mr. Janz's comparison, while a screwdriver and power drill may essentially yield the same result, the power drill is able to more efficiently deliver the same result; consequently, more screws could be affixed in an identical period using a power drill than in using a screwdriver. In this sense, if a finite amount of resources can be dedicated to the production of campaign materials, using a non-universal tool with a higher efficiency either reduces the time dedicated to producing a similar quantity of resources compared to the time expended by one's competitors in achieving a similar volume, or allows more resources to be produced in the same amount of time. Consequently, the Board believes that the use of such technology is an affront to fundamental fairness in the electoral process. Even if the Board were to accept that free-range video technology is universal, the efficiency and ease of use of a high-tech video camera in capturing footage provides an advantage over similar technologies that feature video capture as a secondary function. Furthermore, as a point of *obiter dicta*, the prospect of better sound capturing technologies built into the video camera versus a cell phone or digital camera is raised; this advantage would indeed be substantial. The Board concludes that an unfair advantage is gained in the total audiovisual quality that can be offered by the digital video camera employed by Mr. Janz versus the other highlighted technologies. The Board also finds that the use of a high-tech peripheral when only the lower-tech versions could conceivably be described as universal (a claim the Board rejects, as previously explained) is inequitable and further dismisses Mr. Janz's claims.

DISPOSITION AND REMEDY IMPOSED

The panel affirms the decision of the CRO, as it finds that free-moving video capture technologies are not universally accessible free of charge at this time. The Board also rejects Mr. Janz's call for compensation to his campaign due to the CRO's actions.

Appeal dismissed.

RECOMMENDATIONS

The Board recommends that all candidates, sides and slates make use of the CRO's expertise concerning the evaluation of resources' fair market values in advance of the campaign. The Board reminds all candidates, sides and slates that evaluations can be

made in advance, pursuant to Section 45.5 of Bylaw 2000, and recommends that parties make use of this opportunity so that, should a dispute about the fair market value of a resource arise, the issue can be resolved in a timely manner early in the campaign.

The CRO has clearly stated that she remains open to the option of revising her fair market value assessments of any resource if candidates, sides or slates provide evidence that the current assessments do not reflect economic reality. The Board recommends that parties pursue this avenue wherever possible if they believe the fair market value has incorrectly been assessed on a resource.

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 Chief Tribune, Guillaume Laroche, at ea@su.ualberta.ca.