

Discipline, Interpretation and Enforcement (DIE) Board

Ruling of the Board

Style of Cause: Richardson v. Samuel (re. violation of pamphlet injunction)

Ruling # 4

Date heard: 3 March 2008

Appearing for the D.I.E. Board:

Presiding Chair: Alan Cliff

Tribunes: Mike Benusic, Brandon Mewhort

Appearing for the Applicant: Brock Richardson

Appearing for the Respondent: Chris Samuel (agent for Bobby Samuel)

Present: Ryan Heise, Gateway. Craig Turner, Chief Returning Officer.

Case summary:

Richardson alleges that Samuel's pamphlets and other campaign materials violated the Board's injunction in *Richardson v. Samuel* (2007-8 #2) preventing Mr. Samuel from using material from a past pamphlet in future political campaigns. The Board finds, as a jurisdictional matter, that it has the authority under Bylaw 1500 to consider complaints alleging violations of previous DIE board orders and remedies. Secondly, the board finds that Mr. Samuel's campaign did in fact violate the injunction in producing the materials, and is therefore subject to punitive damages of \$120. However, because Mr. Samuel did not obtain an electoral advantage through the use of the materials, he is not subject to "counter-balancing" damages.

SUMMARY OF ALLEGATIONS

DIE Board Ruling *Richardson v. Samuel* (2007-8 #2) contains an injunction preventing Mr. Samuel from using textual content contained in or derived from a design for a pamphlet improperly commissioned by Mr. Samuel in his role as Vice President (Academic). Mr. Richardson alleges that Mr. Samuel acted in contravention of the ruling by creating and disseminating pamphlets and other campaign materials containing such material.

Two questions are before the Board. Firstly, does the Board have the authority under *Bylaw 1500* to consider allegations of contraventions or orders made by the Board? Secondly, do the pamphlets in question actually contravene the board's earlier injunction?

FACTS

In his capacity as Students' Union Vice President (Academic), Bobby Samuel commissioned a department of the Students' Union to create an informational pamphlet describing his achievements as VP Academic and soliciting feedback. On the basis that the creation of the pamphlet constituted a self-interested act of pre-campaigning for the position of Students' Union President, Mr. Samuel was subsequently censured by the Students' Union Executive Committee on January 29th, and then by Students' Council on February 5th. In the ruling *Richardson v. Samuel* (2007-8 #2), the DIE Board imposed several remedies on Mr. Samuel, including that he be forbidden from "using the design of the pamphlet, including the slogan and textual contents, or any portion or derivative thereof, for the purpose of any future political campaign."

As a Students' Union presidential candidate, Mr. Samuel used campaign funds to create and disseminate a new pamphlet. The pamphlet, as well as other campaign materials, used a substantially distinct design and layout from the original document. However, language and headings similar to that in the original VPA pamphlet did appear as part of the new campaign pamphlet, on Mr. Samuel's facebook campaign group, and elsewhere. Mr Richardson therefore initiated the present complaint, alleging that these materials violated the injunction laid down in the previous ruling.

Chris Samuel, a representative of Bobby Samuel, initiated a "counter-complaint" asserting that Mr. Richardson's complaint ought to be considered in light of *Bylaw 2000* governing elections, rather than *Bylaw 1500* governing the DIE Board. This matter was considered by the Board at a hearing on the 28th of February. The Board found firstly that the matter did fall within the scope of *Bylaw 1500* and secondly that Mr. Richardson's application was "correctly made" and should be heard by the Board. In the interim, the Board ordered that Bobby Samuel's campaign material be impounded until the present hearing could be held.

RELEVANT LEGAL PROVISIONS

Bylaw 1500 s.3(a) limits the Discipline, Interpretation, and Enforcement Board to considering complaints alleging "a contravention of Students' Union legislation." *Bylaw 1500* s. 29 gives the Board the right to "make any order proscribing any remedy the Board considers appropriate and just in the circumstances."

ANALYSIS

Jurisdiction

Brock Richardson is a member of the Students' Union, and therefore has standing under *Bylaw 1500* s.4(a)(i) to submit complaints to the Discipline, Interpretation, and Enforcement Board. Although *DIE Board Ruling #3 (2007-8)* established that Mr. Richardson's complaint falls within

the domain of *Bylaw 1500*, Chris Samuel argues that a literal reading of *1500 s.3* means that the Board's scope does not extend to considering allegations about violations of previous rulings of the Board. He claims that, according to *DIE Board Ruling #3 (2007-8)*, where "words are plain and unambiguous, the Board is bound to understand them in their ordinary sense." Accordingly, the omission of violations of DIE Board orders from the list of actionable causes in *s.3* should be read as signifying that the Board was not to consider such cases.

However, the Board must not interpret statutes in a manner that would lead to absurd results contrary to the legislative intent of Students' Council. If a reasonable student could draw two conclusions about the meaning of a passage on the basis of the text, context, and apparent intent of the passage, with one leading to an absurd result, then the Board ought to adopt the reading that is not absurd. In this case, the ability of the Board to order remedies under *Bylaw 1500 s.29* is obviated if there is no mechanism for enforcement of the orders. It is disingenuous to claim that Students' Council would have intended to create a right for the Board to issue orders, without such a mechanism of enforcement. However, one plausible reading of *Bylaw 1500* would suggest that violations of orders or injunctions issued under *s.29* effectively constitute a violation of that section by the infringing party. A reasonable student would see a failure of an individual to comply with an injunction as a substantive contravention of *s. 29*. Allegations of such violation may therefore properly fall within the scope of the board under *s.3(a)*.

Violation of the Injunction

"The Board further places an injunction on Mr. Samuel against using the design of the pamphlet, including the slogan and textual contents, or any portion or derivative thereof, for the purpose of any future political campaign." *Richardson v. Samuel (2007-8 #2)* at 4.

The Board is not empowered in this case to consider the fairness of the initial injunction, which was not appealed. We are obligated instead to rule on whether the injunction, as written, was violated. In this case, the operative question is as follows: Would a reasonable student see the campaign material as using a "portion or derivative" of the "textual contents" of the original pamphlet? The injunction is not limited to merely prohibiting Mr. Samuel from replicating the original pamphlet design in its entirety. The campaign pamphlet under consideration does not do that. Rather, the use of the word "portion" in the injunction indicates that he was also prevented from using parts of the original text in a way that a reasonable student would see as replication. The use of very similar language, as well as identical headings in an identical order could clearly be seen as such a use. The Board therefore finds that Mr. Samuel violated the injunction in the production of the campaign material.

Reasonable Steps to Avoid Violation

Chris Samuel argues that the campaign team exercised the same level of duty that a reasonable student would in the situation, by making significant changes to the campaign material from the original pamphlet. Moreover, he claims that the campaign did its best to seek advice on the compliance of the campaign material with the bylaw prior to the dissemination of the material. Because *Bylaw 1500 s.4(b)* does not grant electoral candidates the ability to bring requests for interpretation before the Board, and because the Chief Returning Officer declined to advise the campaign on the consistency of the pamphlets and other material with the injunction, Mr. Samuel argues that there was no way to obtain an official ruling on whether the material was in violation until Mr. Richardson's complaint emerged. While Mr. Richardson points out that Bobby Samuel was able to use his privilege as a member of Council to request an interpretation, the Board is not convinced that Mr. Samuel would have been permitted to use his membership on Council – even before he went on leave for the duration of the campaign – to seek interpretation on a matter

related to his personal election campaign. Secondly, Mr. Richardson suggests that DIE Board's willingness to grant a request for interpretation to Chris Samuel in hearing *DIE Board Ruling #3 (2007-8)* speaks to a broader willingness to interpret injunctions despite the limitations on standing laid out in *1500 s.4(b)*. Again, the Board is not convinced that this channel for seeking interpretation was necessarily open to Bobby Samuel at the time that the materials were produced. Finally, there is the possibility that Mr. Samuel could have sought a request for interpretation from the Board through the Chief Returning Officer, who does have standing under s. 4(b)(iii). However, the C.R.O. states that it did not occur to him to make such a request. We cannot therefore expect that a reasonable student would be able to bring a request for interpretation to the Board.

Nevertheless, there is still a responsibility on Bobby Samuel, as the subject of the Board's order, to ensure that his conduct did not violate the injunction. The Board has found repeatedly that "it is a candidate's responsibility to ensure that they comply with all the requirements and regulations listed in Bylaw 2100. Candidates should err on the side of caution if confronted with possible breaches" *DIE Board Ruling #4 (2003-4)* qtd. in *Appeal of CRO Ruling #1 (2006-2007)*. The same principle should to apply equally to individuals subject to orders issued by the Board.

DISPOSITION AND REMEDY IMPOSED

Mr. Richardson suggested a fine of \$240 be levied against Mr. Samuel's campaign budget. Of this, half would serve as compensation for the advantage gained by Mr. Samuel from using resources not universally available to other candidates, namely, the work done on the original brochure by the Students' Union design department. However, because the new pamphlet uses a new layout designed independently, it is not clear what tangible electoral advantage Mr. Samuel actually gained from the use of the design department. Accordingly, there is no need to levy damages on Samuel's campaign for the purposes of levelling the playing field or compensating for unfair benefits. The second half of Mr. Richardson's proposed fine, however, was a punitive measure aimed at preventing individuals from violating DIE Board Injunctions in future. This is clearly an important consideration for the Board. Where individuals violate orders laid down by the Board, the credibility of the Students' Union's system of rules is undermined. Accordingly, we direct the Chief Returning Officer to levy a fine of \$120 against Mr. Samuel's campaign budget. Given the precedent of decisions such as *Appeal of CRO Ruling #1 (2006-7)*, in which a \$900 fine was upheld, we believe that this fine is proportionate to the wrong committed.

Because the pamphlet is in violation of the injunction, we cannot allow it and similar materials to be used for the remainder of the campaign. Instead, these materials should be removed and recycled. We direct the CRO to ensure that this takes place. However, Mr. Samuel's other campaign materials, website, facebook group, and so forth, should be permitted to be used so long as they do not violate the injunction. Because of the limited amount of time remaining in the campaign period, the Board delegates to the Chief Returning Officer the discretion to approve or deny materials on the basis of their compliance with the injunction and the content of this ruling. For the purposes of this delegated discretion, Mr. Samuel, and the CRO, are advised to interpret the injunction broadly, so as to exclude material using any design, slogan, or textual content which *could be deemed* by a reasonable student, and therefore by the Board, to be derived from the original pamphlet. For instance, posters using the same headings or very similar sentences should not be permitted. However, substantive ideas, goals, promises, or claims of past performance as outlined in the original pamphlet may be used, provided that they do not use language that would be reasonably seen as being directly derived from the initial pamphlet. Mr. Samuel may therefore reopen his facebook group and website, provided that the offending text is removed.

We further order under s.32 of *Bylaw 1500* that any appeals of this ruling that would affect the operation of the Students' Union election be made no later than 4:00pm today, March 4th.

RECOMMENDATIONS

In future, the Board ought to consider jurisdictional objections to an application for a hearing as a preliminary matter as part of the hearing itself, rather than before a separate panel.

Members of the Students' Union, especially candidates in elections, should exercise the greatest amount of caution in acting in ways that could potentially violate a Bylaw or an Order.

If there are allegations of failures to fulfil the orders created by *Ruling #3*, they should be brought forward as separate complaints.

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