

Discipline, Interpretation and Enforcement (DIE) Board

Ruling of the Board

Style of Cause: Complaint

Ruling # 5 in the matter of: Nicol vs. Samuel

Date heard: March 4, 2008

Appearing for the D.I.E. Board:

Presiding Chair: Guillaume Laroche, Chief Tribune

Tribunes: James Koizumi, Rachel Woynorowski

Appearing for the Applicant: Scott Nicol, Applicant
Natalie Cloutier, Witness
Hayley Shannon, Witness
Craig Turner, Witness

Appearing for the Respondent: Christopher Samuel (Agent for Bobby Samuel)

Intervenors present: Craig Turner, CRO

Case summary:

Mr. Scott Nicol alleges that Mr. Bobby Samuel violated DIE Board *Ruling #3* by failing to turn in all campaign materials to the CRO by noon on February 29th, 2008, as ordered by the Board. The Board finds that Mr. Samuel was in violation of *Ruling #3* by omitting to take down 17 posters and one banner, and that a marginal benefit was accrued from this violation. However, given Mr. Samuel's good faith in observing *Ruling #3*, the Board is convinced that these violations were not maliciously intended. There was also a lack of evidence to establish the high standard of malicious intent. Consequently, the Board fines the Samuel campaign 20\$ for violating *Ruling #3*, and further fines the Samuel campaign 10\$ to counterbalance for any advantage gained through the violation.

SUMMARY OF ALLEGATIONS

Mr. Scott Nicol alleges that Mr. Bobby Samuel violated DIE Board ruling #3 by failing to turn in all campaign materials to the CRO by noon on February 29th, 2008, as ordered by the Board:

[T]he Board requires that Mr. Samuel turn in all campaign materials (as defined by Bylaw 2000) currently in existence to the CRO by noon on Friday, February 29th 2008.

FACTS

Numerous allegations were made during the hearing, but at the end, only a few items could be upheld as facts, due to conflicting yet equally credible testimonies from the applicant and respondent. The pertinent facts established during the hearing were:

- On Friday February 29th in the afternoon, the CRO removed seven (7) posters from the Bobby Samuel campaign from the 2nd floor atrium of the Agriculture and Forestry building.
- On Saturday, March 1st between the hours of 2 and 4pm, the CRO spotted four (4) posters and one (1) banner belonging to the Samuel campaign in the Tory/Business Atrium.
- On Sunday, March 2nd, by the admission of Mr. Christopher Samuel, the Samuel campaign removed six (6) posters from various buildings on campus, including in the Heritage Medical Research Centre and the Medical Sciences building.

RELEVANT LEGAL PROVISIONS

Bylaw 1500 grants the Board the authority to enforce its rulings.

ANALYSIS

There exist a number of issues requiring resolution in this case. The first concerns the conflicting testimonies between the applicant, the applicant's witnesses and the respondent. Absent any additional evidence, the Board chooses to accord equal validity to all actors in the hearing, since the credibility of all who testified was never effectively called into question. Given this standard, in attempting to resolve issues such as the alleged presence of six (6) posters in the Clinical Sciences Building, the Board finds the testimony inconclusive and insufficient to determine fact in the matter. Because it is the Applicant's responsibility to provide sufficient evidence to back up any claims, and that the applicant was unable to discredit the respondent's testimony or produce documents confirming his own allegations, the Board is unable to support the Applicant's position that his witnesses' testimony met the minimum burden of proof in the case at hand. As

for the posters brought forth by Mr. Nicol featuring a stamp from Faculté Saint-Jean, the Board is unable to verify that these posters had actually been displayed at FSJ at a time after noon on February 29th, 2008. In the end, the evidence that was admitted as fact by the Board was comprised of the statements made by the CRO or the respondent that were left uncontested by any party. The “Facts” section above describes the accepted statements.

Having established the eligibility of the evidence presented, the second issue concerns the substantive matters of the allegations, as to whether or not actions, or lack thereof, constituted a violation of *Ruling #3*. Indeed, given the facts admitted as evidence, it appears that a total of 17 posters and one banner were not removed by the Samuel campaign by noon on February 29th, as follows: 7 posters were removed by the CRO on Friday afternoon, 4 posters and one banner were removed by the CRO on Saturday, and 6 posters were removed by the Samuel campaign on Sunday. These 17 posters and one banner represent a clear violation of *Ruling #3*, since these materials were not submitted to the CRO by the indicated deadline. However, given the diligence demonstrated by the respondent and upheld by the CRO’s testimonial judgement, the Board feels that these materials were not maliciously ignored by the Samuel campaign. Rather, their neglect were honest mistakes that were overlooked in an otherwise reasonable effort to comply with *Ruling #3*, given the limited time frame the Samuel campaign possessed to take down all campaign materials. The Board thus recognizes that, while a violation of *Ruling #3* has occurred, said violation was not the result of the Samuel campaign maliciously defying the Board’s orders; therefore the Board concludes that the penalties associated with the infraction must consequently be minimal.

In terms of whether or not a substantial benefit was gained by the Samuel campaign for having these 17 posters and one banner on display until Sunday evening, the Board finds that a benefit does exist, but that it too held a minimal impact. The Board dismisses the claim that 17 posters across campus could have significant impact in this case for two reasons. First, the fact that few visual campaign materials from Bobby Samuel’s campaign were in circulation necessarily limits the impact with which the materials can promote the candidate. Second, because the materials that remained were displayed over a weekend, and that relatively fewer students visit the University campus during this period, the Board feels that any attention the materials did draw to Mr. Samuel’s campaign was inherently limited. The Board thus finds that, while the materials may have brought some benefit to Bobby Samuel’s campaign, these benefits were inherently quite limited, given the circumstances in which the materials were displayed.

DISPOSITION AND REMEDY IMPOSED

The Board finds that, by having 17 posters and one banner in circulation after noon on Friday, February 29th, Bobby Samuel’s campaign was in violation of *Ruling #3*. Furthermore, the Board finds that this violation resulted in a limited, but nonetheless present, benefit to the Samuel campaign. The Board fines the Samuel campaign 20\$ for failing to remove 17 posters and 1 banner within the time allotted by *Ruling #3*. The

Board further fines the Samuel campaign 10\$ to counterbalance any advantage gained by leaving the above items for the extended period.

RECOMMENDATIONS

Given some of the allegations entertained by the Board during this hearing, the Board would like to remind all candidates in all elections that they are bound by Bylaw 2000, S. 34 to “act reasonably and in good faith” regarding all electoral matters. The Board will deal very seriously with candidates or third parties caught tampering or interfering with other candidates’ campaigns.

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 .