

Discipline, Interpretation, and Enforcement (DIE) Board

Ruling of the Board

(1) HEARING DETAILS

Style of Cause:	Khan v. CRO
Hearing Number:	Ruling #8, 2008/2009
Hearing Date:	March 24, 2009
	Jason Morris, Chief Tribune, Chair
DIE Board Panel Members:	Alex Witt, Tribune
	Christiaan Conradie, Tribune
Appearing for the Applicant:	Muhammad Khan
Appearing for the Respondent:	Patrick Wisheu, Chief Returning Officer
Intervener(s):	None

(2) ALLEGED CONTRAVENTION / INTERPRETATION QUESTIONS

[1] Muhammad Khan appeals decisions 11 and 12 of the Chief Returning Officer wherein he is disqualified from the Science Students' Councillor and Science General Faculties Councillor races respectively on the grounds that he exceeded his campaign expense limit.

(3) RELEVANT LEGISLATIVE PROVISIONS

[2] Excerpts from Bylaw 2000

s.2(r) "campaign activity" shall be any act, planned or organized by or on behalf of any candidate, slate or side , that is calculated to convince members to vote in a given way;

...

s.2(t) "campaign expense" shall be any and all expenditures incurred in engaging in campaign activities;

...

s.49(1) No candidate for General Faculties Council or Students' Council shall accrue more than thirty dollars (\$30.00), plus six dollars (\$6.00) for every one thousand (1,000) students' in his or her faculty beyond three thousand (3,000) in campaign expenses, all of which shall be paid by the Students' Union.

...

s.51(1) Each candidate, side and slate shall keep an up to date and accurate record of all campaign expenses he/she/it incurs, and shall be responsible to the C.R.O. for all such campaign expenses.

(2) Each candidate, side and slate shall submit to the C.R.O. the record, as set out in Section 51(1), no less than twelve (12) working hours prior to the commencement of voting.

...

(4) Where the C.R.O. determines that a candidate, side or slate has exceeded or falsified its campaign expense limit

a. the candidate, campaign manager for the side, or the slate shall be disqualified;

...

(4) FACTS

[3] Khan was a candidate in both the Science Students' Councillor and Science General Faculties Councillor election races. Because Khan was nominated as a Science Students' Councillor, he attended the mandatory candidates meeting at which the rules for campaign expenditures were explained on March 10. When the nomination deadline for Science General Faculties Councillor was extended, Mr. Khan subsequently was nominated in that race also. He was therefore aware, or should have been aware, of the rules regarding expenditures in both elections.

[4] The expense limits for Khan's two campaigns were determined in accordance with s.49 of Bylaw 2000 and communicated to Khan.

[5] Over the course of the campaign, Khan requested and received approval for two campaign materials: posters, and shirts. The posters were approved first. They contained the text "Sunny for Science." The shirts were approved separately, and featured individual letters of Khan's nickname ("Sunny") on the front, and the name Sunny with a checkmark on the back. The information received by the CRO indicated that there were six shirts, and that they had cost \$30.

[6] The shirts were painted on the weekend of March 14 and 15.

[7] On the afternoon of March 17, Khan submitted the campaign expense reports required under s.51(2) of Bylaw 2000. In them he indicated that his budget for one race was going to be dedicated to the cost of his posters, and that his budget for the second race was going to be dedicated to the cost of his shirts. At this point, the CRO indicated that because his posters did not specify which campaign they were for, their full cost had to be counted against the budget of both races. That took up the majority of his campaign expense in both races, leaving him no additional room to expense the shirts.

[8] Khan and the CRO then had a conversation in which the CRO explained that the shirts could not be used. The CRO allowed Khan to re-write his expense statements in order to reflect a correct accounting for the posters, and the removal of the accounting for the shirts. Khan did so, and submitted the altered expense statements to the CRO, which were accepted.

[9] In this conversation the CRO also requested that Khan deposit with him the shirts in question. Khan had three shirts in his possession, and gave them to the CRO immediately. Khan

reported that there were another two shirts at his home. The CRO asked him to bring the remaining shirts to him the following morning, March 18.

[10] Khan testifies that he returned two more shirts to a prep room near the CRO's office on the morning of March 18. There was no communication between Khan and the CRO with regard to the delivery of the shirts. Khan did not indicate where they had been left, and the CRO did not ask why they had not been received. The CRO testifies that as of the evening of March 20, the shirts were not found in the CRO's office, the Deputy CRO's offices, or the prep room.

[11] Because the total cost of the shirts was \$30, and because half of the original six shirts had been deposited with the CRO, and because the shirts did not indicate which campaign they related to, the CRO applied an expense of \$15 to both of Khan's campaigns. This put both of Khan's campaigns over their expenditure limits, and the CRO therefore issued the rulings disqualifying Khan from both races in accordance with s.51(4) of Bylaw 2000.

[12] The only substantive factual disagreements at the hearing were on whether or not the shirts were actually returned, and whether or not the requirement of returning them was expressed to Khan by the CRO as being mandatory.

(5) ANALYSIS

(5.1) Is the CRO prevented from disqualifying Khan because he approved the offending campaign expenditures?

[13] Khan submits that at the time the CRO approved the shirts, he was aware of the cost of Khan's posters, the cost of the shirts, and should have advised Khan that the shirts would put him over his expenditure limit. By approving the shirts at that time, he suggests, the CRO is prevented from subsequently disqualifying him for the same expense.

[14] The CRO submits that s.51(1) of Bylaw 2000 clearly places the onus for recording total expenditures on the candidate, not on the CRO, and that in any case it would be unrealistic for the CRO to maintain control of the more than 70 individual campaign budgets involved in the recent Students' Council and General Faculties Council elections.

[15] On this point, the Board agrees with the CRO. While it would be reasonable to expect the CRO to flag individual expenditures that exceeded the budget alone, it is not reasonable to expect the CRO to keep a running tally of the cost of the campaign materials that candidates have submitted for approval. It is the obligation of the candidate to ensure that they understand the rules and abide by them.

(5.2) Under what circumstances does an expenditure count against a candidate's campaign expense budget?

[16] In order to qualify as a campaign expense, an expenditure must be "incurred in engaging in campaign activities" (Bylaw 2000 s.2(t)). A "campaign activity" is "any act, planned or

organized by or on behalf of any candidate, slate or side , that is calculated to convince members to vote in a given way” (Bylaw 2000 s.2(r)).

[17] A campaign expense, therefore, is an expenditure incurred engaging in any act, planned or organized by or on behalf of any candidate, slate or side, that is calculated to convince members to vote in a given way.

[18] The CRO submitted that by virtue of requesting approval for a campaign material the candidate represents that the material will be a campaign expense, and therefore any expenditure on that campaign material is necessarily a campaign expense.

[19] The Board’s attention was also drawn to Kelly v. CRO, a 2005-2006 decision of the DIE Board in which the Board found that under a similarly drafted section of then Bylaw 2100, a “planned act” was sufficient to meet the test of a campaign activity.

[20] The Board respectfully disagrees. Our interpretation is that s.2(r) of Bylaw 2000 requires an “act ... calculated to convince members to vote in a given way.” We are of the opinion that the production of a campaign material in anticipation of its use is not such an act. Merely producing a campaign material cannot be calculated, on its own, to convince members to vote in a given way. Only when a campaign material is actually communicated to members can it be expected to convince members to vote in a given way.

[21] Where s.2(r) says “planned or organized”, it is modifying the requirement of an “act.” It is not enough that an act calculated to convince members to vote in a given way occurred. It is also necessary that the candidate or their supporters had a hand in causing the act to occur. The words “planned or organized” do not allow an act that is merely planned but never executed to meet the definition of a campaign activity.

[22] The CRO testified that he would have allowed Khan to stand for election if he had returned the shirts, because this would have provided him with some assurance that the shirts had not been used. Clearly, therefore, what was at issue was not whether the shirts had been created or were intended or planned to be used, but whether or not they had actually been used. It is only an actual use of the shirts that would have reduced the fairness of the electoral process.

[23] The Board feels that this interpretation reflects the plain meaning of Bylaw 2000, but that it also serves its purposes. Finding otherwise would require candidates to report all expenditures on materials that were never actually used in a campaign, but which were intended to be. This would restrict a candidate, for example, from re-printing posters if their first printing of posters went awry through no fault of their own. This seems to the Board too harsh a consequence for whatever benefit might be gained by preventing wealthier candidates from using their own funds to compensate for such errors, or to expend money on multiple proposed campaign activities but implement only some.

(5.3) Was the expenditure on the shirts in question a campaign expense?

[24] The question, then, is whether or not the shirts were used. Khan argued that there was no evidence that they had been used. The CRO testified that he was satisfied that the shirts had not been used on March 16 or 17, and that receiving them on March 18 would ensure they were not used afterward. According to the CRO the shirts were not given to him. The CRO provided no evidence that the shirts were used, but argued that it is incumbent on the candidate to prove that materials are not used.

[25] The Board agrees with Khan in this regard. It is not for the CRO to assume that a candidate is going to violate Bylaw 2000 in any particular way, and therefore place preemptive restrictions on the candidate. Candidates should benefit from a presumption of innocence.

[26] The Board recognizes that where there is the consent of the candidate, and more particularly where the campaign materials in question have been produced at the expense of the Students' Union, there may be grounds on which to ask or even require that certain materials be deposited with the CRO's office. However, in the circumstances of this case Khan was under no obligation to provide the shirts to the CRO. They were his personal property. He was merely under an obligation not to use them or allow them to be used in a way that was calculated to convince members to vote for him.

[27] Even if the circumstances had existed in which it would have been within the CRO's discretion to require the deposit of the materials, a failure to do so does not in and of itself constitute a campaign activity, and therefore cannot create a campaign expense where there wasn't one previously.

[28] The CRO provided no evidence that the shirts had been used in a way that constituted a campaign activity. Khan's expense statements, as they were finally accepted by the CRO, did not include the expense for the shirts. There is therefore no evidence that the shirts were used.

[29] Parenthetically, the Board believes that this case is distinguishable from the decision in Kelly v. CRO on the grounds that in the Kelly decision the materials in question had been included in the campaign expense report, and there was evidence they had been used.

(6) DECISION

[30] In order for an unreported campaign expense to be charged against a candidate for election, that expenditure must relate to an actual act, not merely a planned or intended act, calculated to convince members to vote in a particular way.

[31] The production and request for approval of these shirts are not such an act. A failure to meet the CRO's request to deposit the shirts, even if it was within the CRO's authority to impose such a requirement, does not create such an act. The CRO has provided no evidence that any other such act occurred in relation to this expenditure. Therefore, the expenditure on the shirts is

not a campaign expense. The CRO's rulings 11 and 12 are overturned, and Khan is restored as a candidate in both the Students' Council election and General Faculties Council election.

[32] The Board would thank the parties for their helpful submissions and for their good faith efforts to adhere to or enforce the requirements of Bylaw 2000.

The Discipline, Interpretation, and Enforcement (DIE) Board functions as the judicial branch of the Students' Union, and is responsible for interpreting and enforcing all Students' Union legislation. Please direct all inquiries regarding the DIE Board or this decision to the Chief Tribune at: <ea@su.ualberta.ca>.