

# ***Discipline, Interpretation, and Enforcement (DIE) Board Ruling of the Board***

## **(1) HEARING DETAILS**

<b>Style of Cause:</b>	Appeal from C.R.O. Rulings # 7
<b>Hearing Number:</b>	Ruling #4, 2009/2010
<b>Hearing Date:</b>	February 25, 2010
<b>DIE Board Panel Members:</b>	Paul Chiswell, Associate Chief Tribune, Chair; Alexander Witt, Tribune; Chris Le, Tribune;
<b>Appearing for the Appellant:</b>	Jon Osborne; Campaign Manager for Millennium Villages YES; Ruby Sakar, side member for Millennium Villages YES
<b>Appearing for the Respondent:</b>	Jennifer Huygen, Chief Returning Officer, Students' Union
<b>Intervener(s):</b>	N/A

## **(2) The following are the reasons of Witt, Tribune:**

### **BACKGROUND**

The Appellant campaign sought to print a number of handbills. It presented the C.R.O. (Chief Returning Officer) with an invoice of the cost and design of the handbills. The C.R.O. authorized the printing of the handbills. They were printed on sheets of standard paper, with four handbills to a page. These handbills contain with writings intended to convince students to vote in favour of the Appellant's campaign.

The Appellant cut the handbills and circulated one hundred of them without having them first counted and "stamped" (which is to say hole-punch with a certain type of hole-punch tool) by the C.R.O.'s office. The customary procedure, which is enumerated in rule 4.1 of the C.R.O.-prepared "candidates' nomination package", is to have the C.R.O.'s office count and stamp each tangible individual campaign material. When the Appellant realized that the counting and stamping procedure had not been followed with these hundred handbills, the Appellant notified elections staff, according to its duty under section 35(C) of the election Bylaw. No one argues that the Appellant's distribution and circulation of the uncounted and unstamped handbills was intentional. The Parties agree that it was an accidental oversight.

In ruling 7, the C.R.O. fined the Appellant \$100 for circulating unapproved campaign materials, contrary to section 41 of the Election Bylaw 2000. The \$100 fine is based on the Schedule of Fines and Penalties, created by the C.R.O. prior to the election, under the authority of section

71(3) of Bylaw 2000. This schedule sets a \$1.00 standard punitive fine per each unapproved campaign material.

The Appellant challenged the C.R.O.'s decision to the D.I.E. Board under the election Bylaw. (Students' Union Bylaw 2000 section 73(2): “Any member shall be entitled to appeal a ruling of the C.R.O. to the D.I.E. Board.”).

## ISSUES

Do the actions of the Appellant constitute the circulation of unapproved campaign materials?

In the alternative, is the \$100 fine unreasonable?

## POSITION OF THE APPELLANT

### Issue 1

The Appellant submitted that the hundred handbills in question were approved campaign materials. As such, the Appellant should not have been fined \$100 for circulating them. The issue revolves over the meaning of approved campaign materials. Section 41 of the election Bylaw requires that all campaign materials be approved. The Appellant submitted that “approved” means only that the C.R.O. Needs to authorize the printing of campaign materials, such as the handbills. The counting and stamping procedure is not a necessary step in the approval of campaign materials. No where in the election Bylaw does it say that campaign materials need to be hole-punched and counted.

The Appellant submitted that the C.R.O.'s rules in the “Students' Union Elections 2010 Nomination Package” have no legal force and effect. The alleged rule in question is as follows:

#### **4.1 Material Approval**

**All campaign materials must be approved by the CRO or Elections Staff prior to use.** All copies of campaign materials must also be checked, counted and stamped by elections staff prior to being distributed. Materials will be approved on a first-come, firstserved basis with a maximum 24-hour turn-around time.

[“Students' Union Elections 2010 Nomination Package”  
page 15, Reproduced here for reading convenience].

The legitimacy of the C.R.O.'s rules is an issue that has never been addressed. But these rules are not authorized by the elections Bylaw. Rather, they are merely guidelines for candidates.

In the alternative, the first sentence in the nomination package rules is the only one which refers to approval in the context of “unapproved campaign materials” in the section 41 of the elections Bylaw or the Schedule of Fines. The sentence in this rule contemplates only the authorization by the C.R.O.'s office of designs and invoices that are to be printed. The counting and hole-punching that follows is not part of the approval process established in the Schedule of Fines.

In paragraph 3 of the C.R.O. ruling # 6 - 2010, the C.R.O. stated the following justification for considering why materials must be stamped and counted:

Without marked materials, the CRO is unable to determine whether or not campaign materials have been accurately budgeted for in the candidate's expense report.

The Appellant stated that the C.R.O. counts and stamps campaign materials for convenience's sake, not because it is necessary under any rule.

The Appellant also argued in the alternative that individually handbills are not individually campaign materials. Rather, the sheet which handbills are printed on is a campaign material. As there are four handbills per page. Therefore, the fine for the hundred handbills should be more appropriately only \$25.

The Appellant submitted that for these reasons, the punitive fine of \$1.00 for unapproved campaign materials should not apply. However, it may be fair to apply a counter-balancing fine of \$25.

## Issue 2

The Appellant submitted that the \$100 fine is based on the unreasonable premise that all campaign materials are equal. First, all campaign materials do not have the same effect. In a previous decision of the C.R.O. ruling # 6 - 2010, a candidate was fined \$4 for posting four posters which had not been approved. Posters target all passers-by and therefore have a much wider audience than handbills, which target individuals. Further, the Appellant stated that the handbills in question were really not all that great and merely provide its campaign with the opportunity to provoke human contact with its volunteers and the general public. It is the human contact which is more valuable than the handbills.

The Appellant submitted that as handbills do not have as wide an audience as posters, the fine for circulating unapproved handbills should be lower than that for campaign materials. The Appellant proposed that a smaller fine, such as \$0.10 per unapproved campaign material would be more reasonable. In C.R.O. ruling # 5 – 2010, a fine of \$0.10 per person was levied for each person who was a member of an unauthorized facebook group (\$5.00 for 36 persons, including an additional 39% punitive fine of \$1.40). Handbills are also even less effective in swaying voters than websites because handbills have less content. Since handbills reach only one person each, a \$0.10 fine per handbill is more reasonable.

In response to a question from the Board, the Appellant conceded that the Schedule of Fines was set out in advance in the "Students' Union Elections 2010 Nomination Package". The Appellant conceded that the Schedule of Fines does not discriminate between campaign materials in prescribing a fine of \$1.00 for each unapproved campaign material.

The Appellant also argued that the \$1.00 fine per campaign material is unfair, even if it is prescribed by the Schedule of Fines. This is the first year that such a schedule has ever existed. That it treats all campaign materials the same, regardless of their power of influence, is a fault to be ironed out. The Appellant entreated the Board to lower the fine. As it was explained to the

Board, the Appellant campaign is not yet over budget, but it is close to being over-budget with the two fines that have been levied. It would be unfair to have the campaign disqualified on a technicality, and the campaign manager wants more “wobble room”. It was also stated that an opposing side to the Appellant's campaign has recently been certified and the Appellant wants a greater budget to campaign at the end of the campaign period.

## **POSITION OF THE RESPONDENT**

### Issue 1

The Respondent stated that it has the power to make rules regarding the election. In the alternative, the two-step approval process is so widely established, known and adhered to that there should be no question that the campaign materials in question were not approved.

The Respondent submitted that section 4.1 of the “Students' Union Elections 2010 Nomination Package” (cited above) established a rule requiring a two part test for approval. First, the C.R.O. must authorize the printing of campaign materials after a review of their content and cost. Second, the C.R.O.'s office must count and stamp each campaign material before it may be circulated. Any campaign material must meet these two requirements to be considered approved.

Approval in these two steps is necessary as, without the second step, a candidate could create more materials than were authorized to be created. If the actual tangible copies of campaign materials cannot be controlled, the Respondent said that the C.R.O. would be unable to determine whether or not campaign materials have been accurately budgeted for in the candidate's expense report. The counting and stamping process is onerous, but necessary. The Appellant has by its conduct tacitly accepted that the approval process is two-step by adhering diligently to it in all cases except this one, where the Appellant conceded an error had been made by the Appellant's staff.

### Issue 2

The Respondent stated that the Schedule of Fines is mandated by the elections Bylaw. It was created to remedy what had been the arbitrary power of the C.R.O. to make fines at its discretion. Section 71 now states:

71. Penalties Available

(3) The C.R.O. shall draft a schedule of fines and penalties as an appendix to the rules and regulations concerning this bylaw.

The \$1.00 per item fine is fixed by the Schedule of Fines. It would be unfair to not apply the fixed fine as the rule treats all candidates equally.

The Respondent also stated, when asked by the Board, that if the \$1.00 fine did not apply, she would have levied a \$0.50 fine per unapproved campaign material. When asked why, she could not say specifically why \$0.50 each was appropriate, except to point out that that the conundrum of the

correct amount of fines was indeed arbitrary, and this is why the Schedule of Fines is a necessary device.

## **DECISION**

The fine of \$100 is confirmed.

### **The actions of the Appellant constitute the circulation of unapproved campaign materials**

The election bylaw says the following: “2. t. “campaign materials” shall be any physical or electronic media produced or distributed as part of campaign activities;”. I conclude that the use of the term “distributed” refers to the circulation of the campaign material as a handbill is distributed individually, which is to say apart from the sheet on which it is printed. Section 41 of the elections Bylaw does not use the term “distribution”, but instead “use” of campaign materials: “41(1) All campaign materials shall be approved in form, content, and cost by the C.R.O. before they may be used in campaign activities.” I conclude that “used” should be defined in terms of actual distribution of campaign materials, based on the definition in 2(t). Logic supports this conclusion, as campaign materials are used to convince student voters, and do not do so when stored in the Candidates' room in the SU tower. Accordingly, the C.R.O. correctly concluded that there were one hundred campaign materials in question, not twenty five.

### **The meaning of “approved”**

While the parties argued over the customary meaning of “approved” and whether the C.R.O.'s rules are validly authorized by the elections Bylaw, the answer can be determined by looking to the authority of Bylaw 2000 alone. It states as follows:

#### **41. Campaign Materials**

(1) All campaign materials shall be approved in form, content, and cost by the C.R.O. before they may be used in campaign activities.

(2) Candidates, sides and slates wishing to have campaign materials approved shall provide the C.R.O.

with

a. a written estimate of the cost of the proposed campaign material, including the source of that cost; and

b. the complete contents of the proposed campaign material, including text, images and layout.

(3) The C.R.O. shall provide in confidence a written approval or refusal of campaign materials within eight (8) working hours of receiving a request as set out in Section 39(2).

Subsection 1 lists three levels of approval before a campaign material may be used in campaign activities: form, content and cost. Content and cost are defined by subsection 2(a) and (b). Subsection 2(b) refers to the meaning of “content”, which appears to be analogous to a campaign material's layout and design, including words or pictures. “Form”, as used in the bylaw, is not defined. It cannot mean the same thing as “content”. It would be unreasonable to conclude that the Bylaw contains a list of three requirements which all mean the same thing.

Therefore, I must consider the meaning of “form.” The word has many different meanings. The elections Bylaw enumerates two different categories of campaign materials: social media and

tangible materials. The handbills fall in the latter category. Beyond its content, the “form” of a handbill is its physical manifestation, which means both the type of item and the physical copy. The form of one hundred handbills is both the nature of a handbill as a small sheet of paper, and the physical fact that there are one hundred copies.

The C.R.O. asked the Board to agree that approval in form of a campaign material must mean that the C.R.O.'s office has seen (counted) and approved (hole-punched or stamped) of the circulation of each individual campaign material object before it is used (which is to say distributed to voters). This interpretation has been implemented as the customary practice of the elections office for many years. The C.R.O. opined that it would be impossible to ensure the fairness of the election campaign if the two-step approval process were not necessary.

A one-step approval process, of the approval of an invoice cost and content, would have the effect of not verifying that the materials that were approved were the only ones actually used by a candidate or side. The election Bylaw is very strict in limiting the amount of money any candidate or side may use during a campaign. A monied and zealous candidate or campaign manager could easily exploit a one-step approval process and produce many more copies of campaign materials than the elections office or another candidate could ever determine. A one-step approval process would deeply undermine the C.R.O.'s ability to ensure fairness to all candidates and sides in the election. A one-step approval process would lead to such a perverse and unexpected result that I would use the Board's powers under section 29 of Bylaw 1500 to mandate a two-step approval process until such a time that the Students' Council could debate the worthiness of such a rule, and either properly and explicitly enact such a two-step process or renounce it and reconsider the implementation of the election bylaw altogether.

The dual meaning of “form” is fair. Under section 8 of Bylaw 2000, the C.R.O.'s duties include: “(1) a. overseeing the implementation of Bylaw 2000”. It is consistent with this reasoning to determine that the C.R.O.'s role as implementer includes the duty to interpret the rules to the Candidates. On page 15 of the Students' Union Elections 2010 Nomination Package”, the C.R.O. explained the implementation of the approval process: “All copies of campaign materials must also be checked, counted and stamped by elections staff prior to being distributed”. This sentence is an explanation to candidates of the requirement process of approval of campaign materials. The Appellant had notice prior to the campaign of the C.R.O.'s interpretation of the two-step approval process. Furthermore, as it appears that the Appellant has complied in all but one other case (the subject of C.R.O. Ruling # 8 – 2010; below) with implementation of the C.R.O.'s interpretation of the approval process, I conclude that the Appellant will not be taken off-guard by this definition to the detriment of its campaign.

In the case at hand, one hundred handbills were distributed without having first been counted by and stamped with approval of the C.R.O.'s office. This omission makes them unapproved campaign materials.

**The \$100 fine is not unreasonable**

The Appellant also made a spirited argument that the Schedule of Fines is unfair because it treats all campaign materials identically, regardless of their actual persuasive value. The Schedule of Fines is mandated by section 71(3) of the elections Bylaw. It is a regulation of the elections Bylaw and has binding force and effect. It is true that it treats all unapproved campaign materials the same. Each is subject to a basic \$1.00 punitive fine. The Appellant asserted that handbills are not as persuasive as other campaign materials, like posters and banners, that are also subject to a \$1.00 fine. I am not sure of the veracity of this assertion. Handbills may be cheap, but they facilitate human contact. Because of the human contact they facilitate, the persuasive power of a handbill may be much more than other campaign materials, although the scope of a handbill's audience is more narrow. On the other hand, a poster alerts students to the presence of a candidate or slate, but may not go very far in convincing a student to vote in a particular direction. Campaign materials may each have a different effect, but the rule is that when unapproved, they are each prescribed the same fine. I accept the rule as it is written.

The Appellant concedes that it is bound by the rules in the election bylaw. Section 35 sets certain requirements upon all candidates:

35. Requirements of All Candidates and Plebiscite/Referendum Sides

Each candidate, campaign manager and slate shall act reasonably and in good faith, and specifically shall

- a. ensure that each volunteer engaging in campaign activities on his/her/its behalf is aware of all bylaws, rules, regulations, and orders;
- b. ensure that each volunteer is in compliance with all bylaws, rules, regulations, and orders while engaging in campaign activities on his/her/its behalf; [...]

It appears that the Appellant wants some sort of equitable remedy. Under section 29 of Bylaw 1500, “the Board may make any order proscribing any remedy the Board considers appropriate and just in the circumstances.” The Appellant stated that it did not want to be disqualified on a technicality. However, the Appellant stated that, after the two fines in Rulings #7 and #8, it has not exceeded its budget, although it is close. The Appellant also stated it is trying to save money because an opposing side has arisen to contest its election platform, and the Appellant wants to end the election with a “bang”. Exercising the section 29 power to save a side from being disqualified by a technicality may be warranted in some situations. However, as this is not the case. The decision to lower the fine just to allow the Appellant to spend more money campaigning would be a political decision on the Board's part. It would be totally inappropriate for the Board to make any political decisions. The \$100 fine is reasonable.

**(3) The following are the reasons of Le, Tribune:**

I concur with the reasons of my colleague, the Tribune, Mr. Witt.





**(4) The following are the reasons of Chiswell, Associate Chief Tribune, DISSENTING:**

[1] I have had the opportunity to read the draft reasons of my colleague, Mr. Witt. With respect, I cannot agree with his interpretation of the term “approved campaign material” and therefore disagree with the result he achieves.

**Facts**

[2] The facts are stated by Mr. Witt in his reasons, but for clarity, a few facts should be restated. The Millennium Village YES side was circulating handbills to students as part of their campaigning activities. The CRO fined the side \$1 per “unapproved” handbill for a total of \$100 based on the “March 2010 Executive & BoG Election Schedule of Fines & Penalties” published in the “March 2010 Students’ Union Executive and Board of Governors General Election Nomination Package”.

[3] Section 71(3) of Bylaw 2000 authorizes the CRO to draft a schedule of fines and penalties. It states:

71. Penalties Available

(3) The C.R.O. shall draft a schedule of fines and penalties as an appendix to the rules and regulations concerning this bylaw.

[4] The 2010 Schedule of Fines and Penalties contains the following portion of the table applicable during the campaign period, reproduced below:

Violation	Counterbalancing Fine	Punitive Fine
Unapproved campaign materials	Removal of said campaign materials plus equal number of materials	\$1.00 per material with additional possibility of discretionary fines

[5] The handbills, the size of a quarter of an eight and half by 11 page, had information on them intending to persuade members of the Students’ Union to vote Yes to the Millennium Village referendum. Therefore, the handbills qualify under the definition of “campaign materials” provided by Bylaw 2000 under section 2(t) through the definition of “campaign activity” described in section 2(q), both of which are reproduced below:

t. “campaign materials” shall be any physical or electronic media produced or distributed as part of campaign activities;

q. “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;

**Issue 1**

[6] Were the campaign materials, the handbills that were circulated in this case, unapproved campaign materials?

**Campaign Material Approval Procedure**

[7] Both parties to this appeal agree that the CRO had implemented a two step campaign material approval procedure. The first approval step required the CRO to approve the campaign material as to “form, content, and cost” as referred to in section 41 of Bylaw 2000 (discussed below). The second approval step requires a campaign to submit all copies made of the approved campaign material to the CRO to allow the CRO to count and stamp (or hole punch in this case) the material.

[8] Millennium Village YES submits that the violation contained in the Schedule of Fines and Penalties of “unapproved campaign materials” applies only to this first step. All parties agree that the campaign had complied with this first step. The CRO submits that the violation of “unapproved campaign materials” applies to both steps, inclusive of the counting and stamping. All parties agree that the campaign had not complied with this second step.

[9] Mr. Witt, in his reasons, points to the wording of section 41, which requires that “campaign materials” be approved in “form, content, and cost” by the CRO prior to being used in campaign activities. Section 41 states:

41. Campaign Materials

(1) All campaign materials shall be approved in form, content, and cost by the C.R.O. before they may be used in campaign activities.

(2) Candidates, sides and slates wishing to have campaign materials approved shall provide the C.R.O. with

a. a written estimate of the cost of the proposed campaign material, including the source of that cost; and

b. the complete contents of the proposed campaign material, including text, images and layout.

(3) The C.R.O. shall provide in confidence a written approval or refusal of campaign materials within eight (8) working hours of receiving a request as set out in Section 39(2).

[10] As an aside, section 39(2) of the bylaw referred to in section 41(3) relates to endorsements and does not speak to “requests” for approval or refusal of campaign materials. In my opinion, this requires the attention of Students’ Council.

[11] Mr. Witt, in his reasons, correctly states that the word “content” in the phrase “form, content, and cost” in section 41(1) is described as requiring approval of the “text, images and layout” per section 41(2)(b). Likewise, the word “cost” in section 41(1) is described as requiring approval of a “written estimate of the cost of the proposed campaign material, including the source of that cost.” Mr. Witt further states, and I agree, that the word “form” in the phrase “shall be approved in form, content, and cost” in section 41(1) is left undefined by the bylaws.

[12] However, Mr. Witt has a curious approach for interpreting the intended meaning of the word “form”. He suggests that the campaign material’s “content” is “analogous to the campaign material’s design.” He then attempted to define “form”, reasoning that it

“...cannot mean the same thing as ‘content’. [...] The elections Bylaw enumerates two different categories of campaign materials: social media and tangible materials. The handbills fall in the latter category. Beyond its content, the “form” of a handbill is its physical manifestation, which means both the type of item and the physical copy. The form of one hundred handbills is both the nature of a handbill as a small sheet of paper, and the physical fact that there are one hundred copies.”

[13] With respect, I do not see how the use of the word “form” allows Mr. Witt’s to reach that conclusion. In any event, his reasons ignore the plain and ordinary meaning of the word “form”. It means the medium. Is it a poster, a video, a handbill, or a banner? To suggest that it also means something akin to quantity of the medium stretches the plain and ordinary meaning of the word. This is especially the case since Mr. Witt would have the word “form” be applied at two different times. When the CRO first receives the invoice and approves the campaign material and the second when the CRO counts the copies. I find it beyond reasonable that Students’ Council intended the word “form” to have so many meanings and applications.

[14] Further, Mr. Witt’s approach ignores the fact that when the CRO first receives the invoice from the campaign seeking approval, the CRO approves copies to be made as part of the cost. Counting and stamping is a separate procedure from the approval of the campaign’s plan to make campaign materials with a certain form, content, and cost, with the estimated cost taking into consideration the intended number of copies. Counting and stamping the campaign materials to ensure that the campaign did not exceed the approved number of copies as factored into cost, is not part of the approval of the campaign material as worded in section 41. Instead it is a supervision mechanism to ensure that the campaign is properly reporting its costs as part of its budget. The supervision of the budget by the CRO through counting posters must be viewed as a separate act from the approval of the campaign materials in “form, content, and cost.”

[15] It cannot be denied that Millennium Village YES had approval in “form, content, and cost” since the CRO had approved the form (a handbill), the content (the words, their images and their arrangement), and the cost (an estimate of the cost) as required by section 41.

[16] Millennium Village YES further submits, correctly in my view, that the Rules included in the nomination package and published by the CRO reinforce this interpretation. Rule 4.1 states:

4.1 Material Approval

**All campaign materials must be approved by the CRO or Elections Staff prior to use.** All copies of campaign materials must also be checked, counted and stamped by elections staff prior to being distributed. Materials will be approved on a first-come, first-served basis with a maximum 24-hour turn-around time. [emphasis in original]

[17] Millennium Village YES submitted, and I agree, that the first sentence of Rule 4.1 requires the approval of the campaign materials as to “form, content, and cost.” This sentence is what the scheduled fine and penalty for “unapproved campaign material” is directed towards. The second sentence then states that “All copies of campaign materials must also be checked, counted and stamped by elections staff prior to being distributed.” The words “must also” add an additional and separate requirement from the requirement to seek approval of the CRO of a campaign’s materials.

[18] Rule 4.1 makes it clear that having campaign materials “counted and stamped” is not part of the approval of the campaign materials as used in the Schedule of Fines and Penalties but is something extra.

[19] It was discussed by the parties and by members of the Board during this hearing that it was the common understanding of those involved in Students’ Union elections that the “approval of campaign materials” included the counting and stamping of campaign materials. However, as was stated recently by the Board, a “common understanding”, or popular agreement as to the interpretation of the bylaws is not necessarily representative of the Bylaws or enforceable. To hold

otherwise would prejudice those who are not within the “in” group, removes their right to rely on the Bylaws as posted, and makes it difficult for students at large to participate in the election process as a candidate, a campaign manager, or volunteer. Ruling #3, 2009/2010 stated:

“The Board’s role is to interpret the intent of Students’ Council through the provisions of the bylaws – the understanding of members of Students’ Council is not equivalent to Students’ Council’s intent as expressed in the bylaws. This is especially true in bylaws providing for elections and referendums. For example, referendums are designed to hear directly from all members of the Students’ Union on a particular issue, with the express intent of bypassing Students’ Council. Members must be able to determine in advance how to run a campaign for a side even if they do not possess the same common understanding as members of Students’ Council.”

[20] Mr. Witt’s reasons are problematic in another way since it means that a campaign that does not seek the pre-approval of campaign materials from the CRO is fined the same amount as a campaign which seeks the pre-approval of campaign materials but that neglects to have them counted and stamped. This would be the case despite the first is a greater mischief than the second. My interpretation provides fines proportional to the mischief they are directed at abating. Likewise, I would like to add here that if a party were to distribute campaign material with the *intention* of avoiding either approval step, then additional penalties could be awarded under section 71(1)(b).

## **Issue 2**

[21] Is there a binding obligation on campaigns to have campaign materials counted and stamped?

### **A binding obligation to have campaign material counted and stamped by the CRO**

[22] Having established that Millennium Village YES did not have “unapproved campaign materials” as set out in the Schedule of Fines and Penalties leaves the issue of whether the campaign has violated a separate binding obligation.

[23] The respondent, the CRO, submitted that the second step, counting and stamping of campaign materials, is vital to ensuring that the campaign has printed the material as approved and in the quantity approved. Without the second step, any campaign could make as many of the campaign materials in the approved “form, content and cost”. As a result, the CRO would have no way of knowing if a campaign was accurately reporting its budget for the approved number of copies of the approved campaign material. As the CRO stated in her ruling at para. 3:

The distribution of unmarked materials is an activity that causes the Elections Office to worry. Without marked materials, the CRO is unable to determine whether or not campaign materials have been accurately budgeted for in the candidate’s expense report.

[24] I do not disagree with the CRO that the counting and stamping of campaign material facilitates the performance of her office’s duties as set out in Bylaw 2000. However, this does not create a binding obligation in and of itself.

[25] Rule 41 purports to set out an obligation on campaigns to have their campaign materials “counted and stamped.” The issue then becomes whether the CRO’s published Rules are binding. For the Rules to be binding, the CRO must have the jurisdiction or the authorization to proscribe Rules governing elections.

[26] Section 8(1) of Bylaw 2000 sets out the Duties of the CRO. It states:

8. Duties of the Elections Staff

(1) The duties of the Chief Returning Officer shall include:

- a. overseeing the implementation of Bylaw 2000;
- b. such duties as may be required of the Chief Returning Officer under Bylaw 2000; and
- c. the submission to Students' Council of a written report of activities and recommendations prior to May 31.

[27] Only subsection (1)(a) of section 8 creates an independent duty on the CRO which is applicable. Does "overseeing the implementation of Bylaw 2000" provide the CRO with the jurisdiction to create binding Rules?

[28] Section 8(1)(a) is by no means as clear as the authorization of the Board to create rules governing its procedures, as set out in section 31 of Bylaw 1500. Section 31 states:

31. Tribunes may make rules and orders

The Board may make general rules and orders:

- (a) for regulating the procedure of and in the board and the bringing of cases before it, and for the effectual execution and working of this bylaw;

[29] Although similar wording to section 31 of Bylaw 1500 might be clearer, it is insufficient to suggest that Students' Council had a contrary intention in passing section 8(1)(a) of Bylaw 2000. The wording "overseeing the implementation" in section 8(1)(a) must be read in the context of the bylaw as a whole. Bylaw 2000 sets out in numerous instances the phrase "bylaws, rules, regulations and orders". In that context, the only independent officer introduced by Bylaw 2000 who could have been authorized to make rules is the CRO. To suggest that Students' Council passed Bylaw 2000 with the intention of their being additional rules made, but without authorizing a rule maker implies that Students' Council had left a gap or made a mistake. There is obviously a presumption against such an interpretation. Further, the word implement can mean "to fill out" and therefore the CRO could be said to be implementing or "filling out" Bylaw 2000 by passing Rules or Regulations. In any event, Students' Council should take note and it is recommended Bylaw 2000 be amended to provide greater certainty of the jurisdiction of the CRO to make rules. This is especially the case since Board decisions are not binding on other Board decisions.

[30] Therefore, Rule 41 is validly enacted and has full force and effect. It sets out a requirement to have campaign materials counted and stamped.

[31] Millennium Village YES, did not comply with all the requirements of Rule 41, such that the rule was violated and a penalty must be imposed.

### **Issue 3**

[32] What is the penalty that should be assessed?

#### **The CRO has discretion to issue a fine**

[33] The Schedule of Fines and Penalties provides no specific penalty for this violation. Nonetheless, section 71(1) requires the CRO to assign a penalty for the contravention of a bylaw to "fully counter-

balance any advantage gained” and section 71(2) lists the penalties available to the CRO. Section 71(2) states:

- (2) Penalties available to the C.R.O. shall include
  - a. a fine, to be counted against the candidate’s campaign expenses;
  - b. the confiscation or destruction of campaign materials;
  - c. limits, restrictions, and prohibitions on any type of campaign activities for any period of time up to the commencement of voting; and
  - d. disqualification of the candidate or campaign manager.

[34] In this case, the CRO has correctly removed the campaign materials in question plus removed an equal number of campaign materials. In addition, the CRO stated that if the \$1.00 fine per campaign material as outlined in the Schedule of Fines and Penalties was not applicable, then she would have fined Millennium Village YES \$0.50 per handbill for a total of \$50.00. This is a reasonable amount, and I order the same.

[35] Millennium Village YES had argued that there were mitigating circumstances that should reduce the appropriate fine because they self-reported the violation to the DRO. I cannot agree. Such an argument ignores Millennium Village YES’s independent duty of good faith during the election process as provided for in section 35 of Bylaw 2000. Section 35 states:

- 35. Requirements of All Candidates and Plebiscite/Referendum Sides  
Each candidate, campaign manager and slate shall act reasonably and in good faith, and specifically shall
  - a. ensure that each volunteer engaging in campaign activities on his/her/its behalf is aware of all bylaws, rules, regulations, and orders;
  - b. ensure that each volunteer is in compliance with all bylaws, rules, regulations, and orders while engaging in campaign activities on his/her/its behalf; and
  - c. report any contravention of a bylaw, rule, regulation, or order to the C.R.O. immediately.

## **Decision**

[36] The CRO’s fine of \$100.00 shall be reduced to \$50.00.