

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

## **(1) HEARING DETAILS**

<b>Style of Cause:</b>	Appeal from C.R.O. Ruling # 8
<b>Hearing Number:</b>	Ruling #5, 2009/2010
<b>Hearing Date:</b>	February 26, 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

## **BACKGROUND**

The Appellant uploaded a video on its website. Although the website had been approved by the C.R.O.'s office, the video was not on the website at the time the website was approved. Further, the video was not ever approved by the C.R.O.'s office. The video contains "public figure" content. The C.R.O. was unsure whether it rested within her purview to approve the video, and posed a reference question to the Board which was dealt with in Board decision # 2 - 2010.

The C.R.O. ruled that the video was an unapproved campaign material. For having posted it, the Appellant was subject to a penalty against its campaign. The C.R.O. said in her decision: "Here, the nature of the video lends itself to counterbalancing and punitive fines of an amount that cannot be determined by this formula. As a result, the CRO feels that a fine in the amount of \$100 to be levied against the [Appellant's] side is justified."

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.").

## **POSITION OF THE APPELLANT**

The Appellant submitted that the \$100 fine was excessive. The Appellant conceded that it had made a mistake in posting the video, but the correct fine should be lower. The video is social media, and as such, the social media penalty in the Schedule of Fines should apply. Page 29 of

the “Students' Union Elections 2010 Nomination Package” contains this information under the “Precampaigning” fines.

<b>Violation</b>	<b>Counterbalancing Fine</b>	<b>Punitive Fine</b>
Use of social media for public campaign purposes	\$0.10 to be applied for each individual contacted	TBD

The Appellant said that it would be fair to subject the video to the use of social media fine. The violation is most analogous to mis-use of social media. The Appellant said that there were 367 members of the website, and a further 44 people saw the website over the two days that the video was posted. The fine should reflect the 401 potential viewers, at \$0.10 each, and a further punitive fine could be levied so long as it is consistent with previous fines issued by the C.R.O.'s office.

The Appellant presented the following decisions and fines for the Board's consideration:

- C.R.O. ruling # 6 – 2009: A pre-campaign facebook group merited a fine of \$0.05 per person who was a member, for a total of \$12.15
- C.R.O. ruling # 3 – 2009: A pre-campaign facebook group merited a fine of \$5.00.
- C.R.O. ruling # 1 – 2009: A referendum side invited 190 people to an unauthorized facebook group. The C.R.O. fined \$0.15 per person, for a total of \$30.45.
- C.R.O. ruling # 5 – 2010: An unapproved facebook fan page with 36 members was fined \$0.10 per member, and a further \$1.40 discretionary punitive fine was levied.

The Appellant stated that the relative persuasive value of campaign materials should not be considered in this fine. The Appellant conceded in the discussion regarding the appeal of C.R.O. Ruling # 7 (above) that if the outcome is that the Appellant must abide by the Schedule of Fines which treats all campaign materials the same, then the Board must be consistent and not find that a video is more persuasive than other media.

The Appellant requested that the fine be lowered to \$0.10 per person. In the event that a further discretionary punitive fine be issued, it should be relative to previous decisions, such as C.R.O. ruling # 5 – 2010, where it was 39% more than the original scheduled fine.

## **POSITION OF THE RESPONDENT**

The Respondent stated that this video is more potent campaign material than the materials in the Appellant's examples of lower fines. This potency is due to the content and the length of the video. The Respondent chose to levy a high fine for penal purposes; she had already seen the video and not approved it at the time it was posted.

The Respondent also stated that the Schedule of Fines does not have different outcomes for candidates or referendum sides.

## **ISSUE**

Is the \$100 fine reasonable?

## **DECISION**

The fine is reduced to \$56.00

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

The Board notes that the C.R.O. offered no justification the quantum of the fine beyond a feeling that \$100 is the right amount for a fine. The Board seeks to review the fine on a principled approach.

The Schedule of Fines proscribes a fine of \$1.00 for unapproved campaign materials produced during the campaign. It has a series of fines for pre-campaigning offences. The social media fine to which the Appellant has drawn the Board's attention is a pre-campaigning fine, and strictly not applicable to the campaigning term.

No one contests the fact that this video was not approved. Hence, a basic punitive fine of \$1.00. The Board agrees with the Respondent, however, that a greater discretionary punitive fine is necessary. A mere \$1 fine for unapproved social media, with its potentially unlimited scope of access, makes a mockery of the Schedule of Fines. If there were no possibility of a discretionary fine, it would be, as the Appellant put it during the appeal of C.R.O. Ruling # 7 – 2010, a serious wrinkle to iron out of the Schedule of Fines.

However, the Schedule of Fines allows for a possibility of discretionary fines as well. These may be appropriate when a candidate or side not unintentionally contravenes due election process. Such a contravention has happened in this instance, so a further discretionary fine is appropriate. The Board finds that a reasonable discretionary fine should be based on the pre-campaigning fine as recommended by the Appellant. Possibly, all unapproved social media should carry the same fine, regardless of when it is used, either before or during the campaign. As 401 people have seen the video, a basic fine of \$40.10 is appropriate.

The actions of the Appellant have been inconsistent with the principles of fair play outlined in the election Bylaw. The Board finds that it is reasonable and consistent to add a discretionary punitive fine as well. A further 39% of that should be added, \$15.66, as was done in C.R.O. ruling # 5 – 2010. The Board has rounded the total to \$56.00.

### **The following are the reasons of Le, Tribune:**

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

### **The following are the reasons of Chiswell, Associate Chief Tribune:**

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