

# **Discipline, Interpretation, and Enforcement (DIE) Board**

## **Ruling of the Board**

### **HEARING DETAILS**

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<b>Style of Cause:</b>	Cox v. C.R.O.
<b>Hearing Number:</b>	Ruling #4 2010/2011
<b>Hearing Date:</b>	February 23, 2011
<b>DIE Board Panel Members:</b>	Megan Mickalyk, Chief Tribune, Chair; Joanna Waldie, Associate Chief Tribune; Imane Semaine, Tribune;
<b>Appearing for the Applicant:</b>	Natalie Cox
<b>Appearing for the Respondent:</b>	Jaskaran Singh, Chief Returning Officer, Student's Union
<b>Intervener(s):</b>	Craig Turner

### **BACKGROUND**

The Regulations and Guidelines released by the C.R.O. contain a provision stating that the elections website supplement is mandatory, and failure to submit will bar a candidate from campaigning activity until the supplement is submitted.

Section 71(1) of Bylaw 2000 indicates what conduct would justify a penalty against a candidate. It stipulates that:

Where a candidate, campaign manager or volunteer has contravened a bylaw, rule, or regulation, regardless of the cause or the intent of the parties involved, and that *contravention has provided an unfair advantage to a candidate*, the C.R.O. shall assign a penalty that a. fully counter-balances any advantage gained; and b. where the contravention was intentional, penalizes the candidate or campaign manger who was or whose volunteer was guilty of the contravention [emphasis added].

Applicant Natalie Cox has requested that the mandatory component of the website supplement rule be overturned, and that candidates not be penalized for failing to submit their supplement.

Ms. Cox further requested that it be noted on record that her actions in bringing this appeal forward do not constitute pre-campaigning on behalf of any candidate she may volunteer for.

At no point did the C.R.O. suggest or imply that Ms. Cox's actions could constitute pre-campaigning, or that bringing a motion to D.I.E. Board would constitute campaigning activity.

There was also initial confusion as to whether this rule applied to the gateway supplement as well as the website supplement, however the C.R.O. clarified that it was only the website supplement.

### **ISSUE**

Is the mandatory requirement that candidates submit a website supplement or else not be allowed to campaign consistent with the authority conferred to the C.R.O. to penalize candidates under s. 71(1)?

### **RELEVANT LEGISLATIVE PROVISIONS**

Excerpts from Bylaw 2000:

#### **71. Penalties Available**

(1) Where a candidate, campaign manager or volunteer has contravened a bylaw, rule, or regulation, regardless of the cause or the intent of the parties involved, and that contravention has provided an unfair advantage to a candidate, the C.R.O. shall assign a penalty that

- a. fully counter-balances any advantage gained; and
- b. where the contravention was intentional, penalizes the candidate or campaign manager who was or whose volunteer was guilty of the contravention.

(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

### **POSITION OF THE APPLICANT**

Ms. Cox submitted that it is beyond the scope of Bylaw 2000 for a C.R.O. to dictate that certain campaigning activities are mandatory; the only activities which are mandatory are those stated in Bylaw 2000.

Ms. Cox further protested the severity of this penalty, contending that the C.R.O. is prescribing the second most severe penalty for this violation (prohibition on campaigning).

Ms. Cox proposed that the mandatory component be removed and an alternative consequence be put in place where failure to provide a supplement by the deadline results in the supplement not being published.

### **POSITION OF THE RESPONDENT**

The C.R.O., Mr. Singh, contends that these supplements have been requested of candidates since the Students' Union has had the website. This information is provided to assist voters, not candidates.

He maintains that the consequences of not submitting a supplement are greater for voters than candidates, as this minimizes access to candidate information. Although Mr. Singh agrees that there is no specific authority in Bylaw 2000 requiring that candidates submit these supplements, he noted that voters in the September councillor by-elections were concerned that this information was not available.

Mr. Singh further submits that while he was careful to not contravene the bylaw when phrasing this rule, he did acknowledge that it might be more appropriate to have a later deadline. He consequently extended this year's deadline to Sunday, February 27<sup>th</sup> at 5:00 pm.

### **SUBMISSIONS OF CRAIG TURNER, INTERVENOR**

Mr. Turner is a former C.R.O. He spoke on the scope of a C.R.O.'s power to make rules. He contended that it is necessary that a C.R.O. have authority to draft a certain number of rules and regulations and has always had the power to do so. The C.R.O. requires this authority to ensure appropriate

regulations are put in place to make things fair, as changing a bylaw to include certain regulations can be unfeasible, particularly within the short time period of elections.

Mr. Turner was of the opinion that the lack of clear language in Bylaw 2000 conferring authority on a C.R.O. to create rules was an oversight. It was the intent of Student Council that the C.R.O. be able to make these rules within appropriate bounds. He noted the external consistency currently in place to ensure the C.R.O.'s regulations are appropriately drafted is D.I.E. board.

### **DECISION**

The rule penalizing candidates for not submitting their website supplements cannot stand as it goes beyond the scope of what a C.R.O. may do in response to a contravention, as per s. 71 of Bylaw 2000.

D.I.E. Board recommends that a rule be implemented requiring candidates to submit their materials by a specific deadline. Failure to provide a supplement by the deadline would mean a candidate could not submit their supplement at a later date and expect it to be posted online.

D.I.E. Board recommends that Bylaw 2000 be amended to recognize the C.R.O.'s ability to develop Regulations and Guidelines. It would also be beneficial for Bylaw 2000 to provide a definition outlining what ought to be encompassed by "regulations and guidelines." It is further recommended that a body external to the C.R.O. review the candidates' package containing these regulations prior to dissemination.

### **THE FOLLOWING ARE THE REASONS OF MICKALYK, CHIEF TRIBUNE**

The D.I.E. Board acknowledges that the rule regarding mandatory website supplements was devised to enhance exposure of candidates and their platforms to voters. However, the Board finds that this rule contravenes s. 71(1) of Bylaw 2000. This provision stipulates that a penalty may be imposed where contravention of a bylaw, rule, or regulation provides a benefit to the candidate.

Failure to provide a website supplement does not benefit a candidate, nor does it provide them with an unfair advantage. It is beyond the scope of Bylaw 2000 to implement a penalty where no benefit has been obtained. Consequently, the rule cannot stand.

The need for some regulation regarding the website supplemental is recognized. In the interests of efficiency and fair play, D.I.E. Board would recommend a rule specifying a set deadline by when materials must be received. Candidates who do not provide their supplement by this deadline would not have it published on the website, regardless of whether it was received at a later date. Website supplements are one of several ways in which a candidate may campaign. D.I.E. Board does not find that a hard deadline for submitting website supplemental would seriously hinder voter disclosure.

D.I.E board finds that there is no clear authority in Bylaw 2000 for the C.R.O. to create and implement rules and regulations. It is recommended that Bylaw 2000 be amended to provide clear authority for the C.R.O.'s ability to implement necessary rules and regulations. A proper check on the C.R.O.'s authority would be to have an external body review the candidate's package which contains these regulations, prior to dissemination to candidates. D.I.E. Board is of the opinion that having the regulations vetted by an external body would provide a more efficient check than D.I.E. Board hearings after the regulations have already been distributed. D.I.E. Board also recommends that "regulations and guidelines" be defined in Bylaw 2000 to provide further clarification as to what these entail.

**THE FOLLOWING ARE THE REASONS OF WALDIE, ASSOCIATE CHIEF TRIBUNE**

I concur.

**THE FOLLOWING ARE THE REASONS OF SEMAINE, TRIBUNE**

I concur.