

DIE Board Ruling 2012-2

Style of Cause: Lau v CRO

Hearing Date: February 25th, 2012

Hearing Number: Ruling # 02 2012/2013

DIE Board Panel Members: Sean Wallace, Chief Tribune

Eve Coppinger, Tribune

Becky Gormley, Tribune

Issues:

[1] Is there any remedy available to Mr. Lau to relink his website following CRO Ruling #2?

[2] What is Mr. Lau permitted to post on his website during its non-operational period?

Relevant Legislation:

[3] From Bylaw 2200 § 48:

- . “(1) Where a candidate, side 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. “

Decision:

The Panel was unanimous in their decision

[4] All parties, including the Panel, agree that Mr. Lau engaged in pre-campaigning when his election website was published live and freely accessible for 39.5 hours from February 19-21.

[5] The applicant, Mr. Lau, does not dispute the fine levied or the 39.5 hour website shutdown period beginning on February 27th at 9:00 AM. However, he requested an opportunity to redirect his election website to his Facebook election page, to avoid voters from visiting a non-operational website.

[6] The Panel agrees that Mr. Lau did not intend to have his website posted early, and that this was an honest mistake. However, an unfair advantage was nonetheless gained. The Panel also recognizes that Mr. Lau did not take immediate steps to notify the CRO of the error.

[7] The Panel finds that Mr. Lau's proposed remedy is untenable with Bylaw requirements. Pursuant to Bylaw 2200 § 48(1)(a), penalties must fully counter-balance any advantage gained. Allowing Mr. Lau to redirect his website to a Facebook page comparable in content would not counter-balance the advantage gained, as it would merely circumvent the penalty.

[8] The Panel also finds that Mr. Lau is only permitted (but not required) to post the following information on his website: (1) a statement that the website is non-operational (2) the time and date the website will be operational again (3) the reason the website is non-operational (i.e., CRO Ruling #2). The website cannot refer to any social media or other external websites.