

DIE BOARD RULING 2013-08

HEARING DETAILS:

Style of Cause: Lau vs CRO

Hearing Date: March 12th, 2014

Hearing Number: Ruling #08 2013/2014

DIE Board Panel Members: Cian Hackett, Associate Chief Tribune, Chair
Harvir Mann, Associate Chief Tribune
Nicholas Trofimuk, Tribune

Appearing for the Applicant: William Lau, applicant and candidate for President
Qingyan (Rissa) Cao, witness
Siyang Chen, witness
Linh Lu, witness
Sangram Hansra, witness

Appearing for the Respondent: None

Note: One response was received. The respondent requested to remain anonymous and did not attend the hearing. The written response was read during the hearing and can be found in Appendix 1.

Intervener(s): None

BACKGROUND:

Mr. William Lau, candidate in the race for Students' Union President, submitted an appeal of CRO Ruling 16. In Ruling 16, the CRO levied a counter-balancing fine on Lau's campaign of \$403.70. Lau had previously reported \$346.62 in campaign expenses. With the additional fine, Lau exceeded the budget limit by \$200.32 and was disqualified according to Bylaw 2200 Section 42.

The activities in question can be found in the CRO's Ruling 16. Two posts were made on February 27, one at 4:51 pm and one at 11:35 pm by the Chinese Students and Scholars' Association (CSSA) on its Renren page. The first post was of two images used by Lau's campaign, images which were obtained

from the Lau Facebook campaign page by Mr. Chen who made the posts. The second post was translated from Chinese as follows by Ms. Cao during the hearing:

He is the one who is leading the international student tuition fee and participates in our national gala playing a song on the erhu. He is 'you are the one' [a reference to a role Lau played at a past CSSA event]. He is William Lau. This year he will run for President of the SU again. For more information, see his campaign FB homepage <http://rrurl.cn/5jdJmD> [a link to Lau's Facebook campaign page]. This year voting will be on March 5 and 6. I hope everyone will participate in the voting, make your serious decision before you vote.

Lau stated that the complaint was submitted an hour before the polls closed, about 6:00 pm on March 6. This timing was confirmed by the CRO. Lau submitted that because the activities in question took place on February 27, there was a violation of Bylaw 2200, Section 47.

Secondly, Lau argued that Bylaw 2200, Section 30 implies that endorsements are an exception to campaign activity, and that the activities in question were at most an endorsement and should not be considered third party campaign activities under Bylaw 2200, Section 27.

Lastly, Lau argued that he had been cautious to avoid contraventions of bylaw and regulations throughout the campaign. At roughly 1:30 pm on March 6 Lau received communication that there were concerns about an email sent by a student group. Mr. Hansra testified that as a candidate in the race for Undergraduate Board of Governors Representative, Hansra received some text messages about an email endorsement that had been sent. Shortly following that, he observed Lau making several phone calls to volunteers, including those within the CSSA. Lau stated the volunteers he called were not aware of the any social media activity or email. The CRO sent an email at 3:06 pm on March 6 to alert candidates that the Chinese Students' Club was encouraging members to vote in support of certain candidates, and that more information was needed before action was taken.

Following this email, Lau contacted the CRO to clarify that the Chinese Students' Club was not the correct organization, but in fact this was the CSSA. Lau at this point was aware of the posts on Renren, having seen them briefly on a friend's computer, and communicated this to the CRO. Lau sought guidance from the CRO to see if distancing might be required from what might be deemed a third party activity under Bylaw 2200 Section 27. Lau was told to wait for further instructions. At this time of the day, Lau became busy with takedown of campaign materials around the university. Lau did not receive further communication from the elections office until Monday night when he received Ruling 16.

Lau argued he did everything he could to be in close communication with the CRO and DRO and listen to instructions. The CRO was unavailable until approximately 6:00 pm on March 6.

Ms. Cao, a Vice President of the CSSA, stated that Renren is not a private mailing list, it is social media, akin to Facebook for Chinese users. She stated that the status on the public page was not an endorsement of Mr. Lau, but rather a promotion of democracy and an encouragement to viewers to exercise the right to vote. Ms. Cao stated she used the names of candidates who had attended CSSA events in the past to promote the elections.

Mr. Chen, Vice President Marketing for the CSSA stated that Renren was a public social media page not an emailing list. Chen made the two posts on February 27. Chen asserted that he wanted to promote the SU elections, not Lau specifically. Chen stated that he was a friend of Lau's and that many members know Lau while they do not know other candidates, and therefore the references to Lau made the reference to elections more recognizable for members. Chen obtained the photograph from Lau's Facebook page and did not ask anyone before posting the photograph. Chen stated no one had told him to make the posts.

The text of the respondent's submission can be found at the end of this document. It was read aloud during the hearing's proceedings.

In his closing, Lau argued there is nothing to define an endorsement in bylaw, nor are there restrictions on a student group's ability to make endorsements. Lau provided evidence of other student groups making posts on social media supporting other candidates. Lau stated that sharing of approved campaign material on social media was difficult for a candidate to control, and that he took reasonable steps to contact the CRO and DRO once he was made aware of the potential issue. Lau argued that the activity in question was not campaigning but rather sharing of a campaign material.

ISSUES:

[1] Should the CRO's decision in Ruling #16 be upheld?

RELEVANT BYLAWS:

[2] From Bylaw 2200 Section 2:

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

[3] From Bylaw 2200 Section 27:

(1) A candidate or side in a Students' Union election may distance themselves from a third party in the event the third party effectively conducts campaign activities under the following conditions:

- a. the candidate or side must demonstrate to the C.R.O. that the third party acted without consent of the candidate or side; and
- b. the candidate or side must demonstrate to the C.R.O. that steps have been taken to distance themselves from the third party and to attempt to halt unauthorized campaign activity by that third party.

(2) Should a candidate or side demonstrate the conditions specified under Section 27(1) to the C.R.O.'s satisfaction, the candidate or side would not be subject to punitive fines as a result of the third party's actions, but could still be subject to counterbalancing fines.

[4] From Bylaw 2200 Section 28:

No individual candidate or side shall make use of any resource that is not

- a. available to all candidates and sides;
- b. general volunteer labour or expertise; or
- c. accounted for as part of that candidate's or side's campaign expenses

[5] From Bylaw 2200 Section 30:

- (1) Any member with the exception of the C.R.O, the D.R.O.s, and incumbent members of the Executive Committee who are not also candidates shall be free to endorse any candidate.
- (2) Any member with the exception of the C.R.O, the D.R.O.s, candidates, and incumbent members of the Executive Committee shall be free to act as a volunteer for any candidate.
- (3) Notwithstanding Section 30(1), regulations regarding the endorsement of candidates by Students' Union employees not referenced in Section 30(1) shall be subject to the Students' Union operating policy.
- (4) Notwithstanding Section 30(2), regulations regarding the capacity of Students' Union employees not referenced in Section 30(2) to act as a volunteer shall be subject to the Students' Union operating policy.
- (5) Incumbent members of the Executive Committee and the incumbent Board of Governors Representative are allowed to endorse sides in a Students' Union election.

[6] From Bylaw 2200 Section 35:

The C.R.O. shall be kept privy to elections-related social media and public internet ventures undertaken by candidates, and reserves the right to penalize candidates for any violation of this bylaw or related regulations

[7] From Bylaw 2200 Section 47:

(2) Where a complaint is received within twelve (12) working hours of the alleged contravention, and where the original complaint form is provided to the C.R.O., the C.R.O. shall rule on that complaint.

[8] From Bylaw 2200 Section 47:

(4) Where a complaint is received and is found to be complete as set out in Section 47(1), the C.R.O. shall rule on the complaint within twelve (12) working hours of receiving the complaint.

[9] From Bylaw 2200 Section 49:

(5) The C.R.O. shall be empowered to investigate and rule upon every contravention of this bylaw or any other bylaw, rule, or regulation related to the election, plebiscite or referenda.

DECISION:

The following is the unanimous decision of the panel:

Issue 1: Binding Nature of Precedent

[10] Though DIE Board panels may find it useful to read past decisions of the CRO and of DIE Board panels, the DIE Board is not bound by any precedent actions or rulings.

Issue 2: Alleged Contraventions

[11] The alleged contraventions occurred on February 27 at 4:51 pm and 11:35 pm. Other posts were made by the CSSA on its Renren page referencing Mr. Lau after voting had concluded, and therefore were not deemed to be material to this hearing.

Issue 3: Bylaw 2200, Section 47 subsection 2

[12] Under Bylaw 2200, section 47 subsection 2, where a complaint is received within 12 working hours of the alleged contravention, the CRO shall rule on that complaint. Although over 12 working hours had elapsed from the time of the contravention to the time of the complaint, there are no regulations in Students' Union Bylaw that refer to complaints after these 12 hours have elapsed. Where bylaw is silent, the CRO is empowered to make decisions relating to elections as manifested in the CRO through Bylaw 2200 section 49 subsection 5.

Issue 4: Bylaw 2200, Section 47 subsection 4

[13] The CRO did not rule on the complaint within 12 working hours as directed by Bylaw 2200, section 47 subsection 4. However, again bylaw is silent with respect to direction should Bylaw 2200 section 47 subsection 4 be violated, and again, the panel rules that a decision may be made by the CRO to rule on complaints after these 12 working hours have elapsed. As with any other CRO ruling, the ruling may be appealed to the DIE Board. If the CRO does not issue a ruling within 12 working hours of receiving the complaint and should 12 working hours elapse without a ruling, a complainant may submit an application for a DIE Board hearing under Bylaw 1500, section 3 subsection (a) to challenge the contravention of Bylaw 2200, section 47 subsection 4.

Issue 5: Bylaw 2200, Section 50(3)

[14] The respondent contended that this appeal should not be taking place, as section 50(3) of Bylaw 2200 states that:

All appeals of the CRO's rulings, with the exception of those arising out of voting and Election results, shall be heard and ruled upon by the DIE Board prior to the commencement of voting.

[15] The current Student's Union bylaw available on the organization's website does not contain this provision. This appears to be a provision from a previous version of the bylaw. The DIE Board only uses current Student's Union bylaws. Therefore this argument of the respondent has no merit.

Issue 6: Bylaw 2200, Section 28

[16] The respondent contended that the candidate violated section 28, which states:

No individual candidate or side shall make use of any resource that is not

- a. Available to all candidates and sides;
- b. General volunteer labour or expertise; or
- c. Accounted for as part of that candidate's or side's campaign expenses.

[17] In this case the appellant was not aware of the actions of the CSSA. Upon finding out that there were posts related to him on Renren, the appellant immediately contacted the CRO for advice on how to proceed.

[18] This panel finds that the appellant did not "make use" of this resource. The endorsements made by the CSSA were made without the consent or knowledge of the appellant. The CSSA made use of Renren, a media platform that for all intents and purposes is available only to the Chinese community. The candidate was not involved. Therefore this panel finds that there was no violation of section 28.

Issue 7: Bylaw 2200, Section 27

[19] The respondent contended that the appellant violated section 27, which states:

A candidate or side in a Student's Union election may distance themselves from a third party in the event that the third party effectively conducts campaign activities under [certain] conditions.

[20] Bylaw 2200, Section 2(p) states:

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

[21] This panel finds that the actions of the CSSA were not planned or organized by the appellant as the appellant's campaign had no knowledge of their actions. At issue is whether the CSSA acted on behalf of the appellant. The CSSA posted the appellant's name, and shared photos from the appellant's Facebook page without his consent or knowledge. The CSSA witnesses contended that this was not an endorsement of the appellant, but was merely an attempt to convince their fellow students to vote for any candidate.

[22] The posts specifically referenced the appellant and did not reference his competition. Only photos of the appellant were posted. Therefore this panel finds that this was an endorsement of the appellant, even if this was not the intention of the CSSA.

[23] The appellant's campaign did not direct the actions of the CSSA or have any knowledge of them. The CSSA was not connected to the appellant's campaign in any significant way. This panel finds that there must be a significant pre-existing campaign related connection between the candidate or campaign and the CSSA in order to find that the CSSA acted on behalf of the candidate. In this case, the panel acknowledges that there was a personal association between the appellant and the CSSA due to past participation at events, existing friendships and campaign volunteers who are CSSA members. However, there was no significant pre-existing communication or association connecting the appellant's campaign and the actions of the CSSA. Therefore this panel finds that the CSSA was not acting on behalf of the candidate. Furthermore, this panel accepts the submissions of the CSSA that the posts were not "calculated" to convince members to vote in a given way, even if they may have had that effect.

[24] The actions of the CSSA do not constitute "campaign activity". Section 27 which deals with third parties who conduct campaign activity, is not applicable. Therefore this panel finds no breach of Section 27.

Issue 8: Bylaw 2200, Section 30

[25] Bylaw 2200, section 30 subsection 1 states that any member, excluding the CRO, DRO and incumbent Executive Committee members, is free to endorse any candidate. Member is defined by Bylaw 2200 as "anyone who is an undergraduate student currently enrolled in at least one course for credit at the University of Alberta." Since the bylaw is silent with regard to organizations, the respondent cannot claim that organizations are prohibited from endorsing candidates. Therefore, the CSSA's endorsement of Mr. Lau is not prohibited by bylaw.

Issue 9: Section 3.17 of the March 2014 General Election of the Executive Committee and the Undergraduate Board of Governors Representative Nomination Package

[26] The panel agrees with the appellant's assertion that section 3.17 of the nomination package does not apply as the activities were not emails.

Issue 10: Section 3.18 of the March 2014 General Election of the Executive Committee and the Undergraduate Board of Governors Representative Nomination Package

[27] Section 3.18 of the Nomination Package states:

Facebook, Twitter, etc. may only be used for campaign purposes within the campaign period. Like physical materials, campaign materials used on Facebook, etc. must be approved by the CRO before being made public.

[28] Section 2(s) of bylaw 2200 states:

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

For the reasons discussed above, this panel finds that the actions of the CSSA were not part of campaign activities. Therefore the posts cannot be considered “campaign materials” and as such, section 3.18 does not apply.

Issue 11: Bylaw 2200, Section 35

[29] Bylaw 2200 section 35 refers to social media and public internet ventures “undertaken by candidates.” Though Renren is reasonably defined as a social media interface, section 35 does not apply to this hearing as the activities in question were not undertaken by the appellant, but instead occurred without his knowledge.

Issue 12: Contraventions and Penalties

[30] This panel finds that the appellant’s campaign did not contravene any Students’ Union bylaw nor elections regulations as defined in the nomination package. Therefore, this panel overturns the CRO’s Ruling 16. No fines shall be levied on the appellant’s campaign. Since the appellant’s campaign expenses did not exceed the allowed budget, he shall not be disqualified.

Response to 2013-08 Lau v. C.R.O.

March 12, 2014

Under Section 50 (3) of Bylaw 2200, this appeal should not even be taking place, as Section 50(3) states that:

All appeals of the C.R.O.'s rulings, with the exception of those arising out of voting and Election results, shall be heard and ruled upon by the D.I.E. Board prior to the commencement of voting.

As this ruling does not deal with voting or election results, the D.I.E. Board should not be convening to discuss it, as voting has already commenced. The illegality of the application notwithstanding, regarding Mr. Lau's first point, in which Mr. Lau claims that

The evidence provided does not indicate a mass emailing, but rather a social media post, like any other (see attachments 1, 2 and 3).

Under Section 30(1) of Bylaw 2200, bylaw states that

Any member with the exception of the C.R.O, the D.R.O.s, and incumbent members of the Executive Committee who are not also candidates shall be free to endorse any candidate.

In part 2 of the preamble to Bylaw 2200, "Definitions," a "member" is defined as "anyone who is an undergraduate student currently enrolled in at least one course for credit at the University of Alberta." Mr. Bill Pickering and Ms. Katherine Melnyk (the people who are making endorsements in attachments 1, 2, and 3 of Mr. Lau's application) are both undergraduate students taking at least one course for credit; consequently, their endorsements are protected under the bylaws of the Students Union. In comparison, the CSSA is not an undergraduate student, nor is it currently enrolled in any courses for credit. Consequently, the CSSA's activities are not protected by bylaw.

Moreover, although the CSSA's activities could be (wrongly) construed as social media, under bylaw, Section 3.18 of the executive nomination package must still be followed for the activities to be legal. Both aspects of Section 3.18 were violated; the CRO was not made aware of the activity nor appointed an administrator on the Renren page. Ultimately it was impossible for the C.R.O. to monitor the page. We can see under Section 3.17 of the executive nomination package that

The use of forums, webboards, or any other similar Internet-based mediums for the purposes of campaigning are prohibited without the express permission of the CRO. Requests will be evaluated on a case-by-case basis.

As Renren was not expressly permitted by the CRO, its use is prohibited. A proper treatment of the Renren page falls under Section 28 a. and b. of Bylaw 2200, as Renren was not (effectively) available to all candidates and sides due to an early decision by the CSSA to restrict their support to Mr. Lau.

Furthermore, Mr Lau did not demonstrate Section 27(1) of Bylaw 2200 to the C.R.O.'s satisfaction; as Section 27(1) specifically establishes that it is up to the C.R.O.'s satisfaction to determine whether or not a third party has "acted without consent of the candidate," and Mr. DeFehr has ruled that Mr. Lau has

not established that fact to his satisfaction, the D.I.E. Board must uphold the C.R.O.'s decision and reject the appeal. Precedent was set in the D.I.E. Board's ruling in 2013-6, Woods v. CRO, which held that even though the D.I.E. Board disagreed with the C.R.O.'s decision, the board was forced to uphold the ruling as the bylaw left the decision as to which campaign material was to be permitted up to the discretion of the C.R.O.

Another relevant area of Bylaw 2200 is part (2) of Section 27, which states that:

Should a candidate or side demonstrate the conditions specified under Section 27(1) to the C.R.O.'s satisfaction, the candidate or side would not be subject to punitive fines as a result of the third party's actions, but could still be subject to counterbalancing fines.

Even if Mr. Lau was not aware of the third party campaigning and took no part in it, he can still be made subject to counterbalancing fines at the C.R.O.'s discretion, making the C.R.O.'s ruling legally defensible. A precedent for the C.R.O.'s ruling in the current case can be seen in Ruling 12 of the C.R.O. in 2013, where an email was sent out endorsing Mr. Petros Kusmu that Mr. Kusmu was not aware of. The then C.R.O. imposed counterbalancing fines equal to \$10 plus \$0.10 per person reached by the email, as was done by the current C.R.O. in the current case.