

# **DISCIPLINE, INTERPRETATION AND ENFORCEMENT BOARD**

---

**Citation: Reference re: 2024-03-07**

**REQUESTED BY:**

**Jacob Verghese (CRO)**

Applicant

---

## **BYLAW 320 SECTION 11(5) Decision**

---

Panel Members: Leighten Janzen, Associate Chief Tribune (Chair), Navneet Chand, Associate Chief Tribune, Hiba Khan, Tribune

Hearing Date: March 7th, 2023

Witnesses for the Applicant: None

Witnesses for the Respondent: None

---

The reasons for the unanimous Board are delivered by L. Janzen

## **LEGISLATION:**

### **Bylaw 320: Elections, Plebiscites, amd Referenda**

**Section 11(5)** *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 the 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.*

**Section 11(6):** *Should a Candidate or side demonstrate the conditions specified under Section 12(5) 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.*

**Section 17 (1):** *Where a Candidate, Volunteer, or side 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 or side, 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, Campaign manager, or side manager who was or whose Volunteer was guilty of the contravention.*

**Section 17(2):** *Penalties available to the C.R.O. shall include*

- (a) a fine to be counted against the Candidate's or side's Campaign Expenses;*
- (b) the confiscation or destruction of Campaign Materials; and*
- (c) limits, restrictions, and prohibitions on any type of Campaign activities for any period of time up to the commencement of voting.*

**Section 17(3):** *The C.R.O. shall draft a schedule of fines and penalties as an appendix to the rules and regulations concerning this bylaw.*

**Section 17(4):** *A Candidate or side shall be disqualified where they are guilty of a contravention that*

*(a) cannot be counterbalanced by a lesser penalty;*

*(b) is malicious or substantially prejudicial to another Candidate or side; or*

*(c) involves tampering with ballots, voting procedures, or counting procedures.*

**Section 17(5):** *The C.R.O. shall investigate and rule upon every contravention of this bylaw or any other bylaw, rule, or regulation related to the election, plebiscites, or referenda.*

## **FACTS**

[1] This application is an interpretation of legislation regarding the acceptable remedies to the situation of a Students' Union Executive Committee election candidate (unnamed in application). The facts presented in the application is that the candidate received an alleged endorsement from a third party group on campus with whom the candidate is allegedly unaware of having any affiliation with.

[2] This third party group is being claimed as potentially interfering with the election through the communication of inflammatory comments that are allegedly being used to label candidates that they do not align with using disparaging terms.

[3] The DIE Board notes that given the information we have been provided in the interpretation application, there was an alleged secondary distribution of campaign materials to this third party group during their campus tabling activities and the election candidate has allegedly noted that they were unaware of this secondary distribution of campaign materials occurring.

[4] The DIE Board notes that given the information we have been provided in the interpretation application, the candidate was allegedly aware of the third party group's campus tabling activities but has declared non affiliation with this third party group to the Chief Returning Officer. There has been no evidence provided of direct collusion between the third party group and the election candidate.

[5] As a result of this interference the CRO is concerned that Bylaw 320 Section 11 has been breached. The CRO has requested an interpretation of the applicable Bylaws.

### **ISSUE**

[6] What are the powers and remedies available to the CRO in response to a candidate breaching Bylaw 320 Section 11?

### **Analysis of Issue**

[7] The interpretation of Bylaw 320 Section 11 requires the act to be read as a whole in it's normal and grammatical sense. Section 11(5) is about third party interference with elections. Section 11(5) both provides an action that a candidate must perform and a two-part-test to show that the action has been carried out.

[8] Section 11(5) provides two criteria that a candidate must fulfill on the request of the CRO. First, a candidate must demonstrate that a third party acted without their consent. Second, the candidate must make active steps to distance themselves from the third party. Section 11(6) provides that these two steps must be to the satisfaction of the CRO. If the steps are not to the satisfaction of the CRO, Section 11(6) outlines that the CRO is allowed to issue punitive fines.

[9] Section 11(6) provides that the CRO can issue punitive fines if the two-part-test is not met. However even if the two-part-test is met the CRO can still issue a counterbalancing fine. This interpretation shows that the drafters of this section likely wanted fines to be the primary form of remedy for a breach of Section 11(5).

[10] However, Bylaw 320 Section 17 allows for other remedies for breaches as well. Section 17 discusses penalties for breaches of Bylaws more broadly. Section 17(1)(a) says that regardless of intent a counterbalancing fine can be issued. Whereas if the breach was intentional Section 17(1)(b) says that the CRO can issue penalties. The Bylaw goes on to list these penalties in Section 17(2): penalties available to the CRO shall include a fine to be counted against the candidate's or side's campaign expenses; the confiscation or destruction of campaign materials, and limits, restrictions, and prohibitions on any type of campaign activities for any period of time up to the commencement of voting. These penalties are all available to the CRO for potential breaches of Bylaws.

[11] Section 17(4) lays out what disqualification could look like under a breach of a Bylaw. Disqualification in terms of Section 11(5) would have to be egregious enough such that it satisfies one of the three criteria in Section 17(4). The three criteria includes: if a penalty cannot be counterbalanced by a lesser penalty; if activity is malicious or substantially prejudicial to another candidate or side; or if the activity involves tampering with ballots, voting procedures, or counting procedures.

[13] As disqualification is an extraordinary remedy for not abiding by the Bylaw, the actions of a candidate would have to exceed simple behavior of breaching Section 11(5).

### **Conclusion**

[14] The CRO has the power to issue a fine, confiscate materials, limit activities taking place and disqualify a candidate for breaking Bylaw 320 Section 11(5). However each penalty should be based on the wording of the relevant statute.

[15] Bylaw 320 Section 11(5) has a test and discusses a remedy when that test is not met. Section 11(6) discusses fines as the punishment both if the test is met and if the test is not met. Similarly, Section 17(2) discusses the powers of the CRO in relation to bylaws being broken. The first remedy to breaking a bylaw appears to be a fine, confiscation of materials or limiting on activities taking place. Fines, including punitive fines, should be issued prior to disqualification.

[16] Section 17(5) allows for disqualification of a candidate on the part of the CRO. Section 17(5) allows an additional remedy for breaking a bylaw. Breaking a bylaw must fall under one of the three criteria laid out in Section 17(5). Disqualification should not be the first resort of the CRO as this is an extraordinary remedy.

[17] If the CRO decides to disqualify a candidate, the disqualified candidate has the right to appeal the decision to the DIE Board under Bylaw 140 Section 33(3).