

DISCIPLINE, INTERPRETATION AND ENFORCEMENT BOARD

Citation: Reference re: 2024 HA08 *Glock v Naidoo*

REQUESTED BY:

LISA GLOCK

Applicant

-and-

SITHARA NAIDOO

Respondent

CRO Ruling #17 Appeal

Hearing Date: March 20th, 2024

The following are the reasons for the unanimous decision from the DIE Board.

LEGISLATION:

Bylaw 320: Elections, Plebiscites, and 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.*

PROCEDURAL HISTORY

[1] This decision was ruled on in DIE 2024-02-R, but the DRO made another decision based on new evidence and the wording of the previous DIE Board ruling.

[2] The DIE Board ruled at paragraph 14 of 2024-02-R, that when a friend of Glock was present during the filming of a video they became a volunteer. This is because the term volunteer is defined very broadly in the Bylaws.

FACTS

[3] This is an appeal of ruling number 17 made by the Deputy Returning Officer (“DRO”). The Applicant, Lisa Glock (“Glock”) alleges the DRO (“Naidoo”) decision should be overturned.

[4] The DRO made a decision to disqualify Glock as a presidential candidate because she contravened Bylaws. The DRO is relying on Bylaw Section 17(4)(a) to disqualify Glock. Under Section 17(4)(a) a candidate can be disqualified when a contravention “cannot be counterbalanced by a lesser penalty.”

[5] Glock was alleged to have a friend “X” within the SJP. The SJP is a non-student’s union affiliated group. The information presented by X to the DIE Board was that the SJP is a group that has no formal organization aside from a President, Vice President, a group chat of around 40 people and an Instagram page. The evidence presented is that the group operates through word of mouth or by decisions of the two executive members. X claimed they were not one of the two executive members and did not have access to the group’s Instagram account.

[6] SJP impacted the election by posting on Instagram a list of “picks,” tabling in a university building, and members being present during the creation of a campaign video made by Glock. X was present during the tabling.

[7] The DRO provided evidence of Glock’s behavior, including a voicemail which showed Glock’s knowledge of the SJP. Glock admitted to knowing certain aspects of what the SJP planned to do in the election, but denied having knowledge of the inner workings of SJP.

[8] The DIE board was presented with the additional evidence through a witness “Y” who had communicated with Glock throughout the campaign. Y stated that Glock had knowledge of what SJP was doing. But Y was unaware of the structure of SJP.

ISSUE

[9] Was X a volunteer for Glock, and did X contravene a Bylaw?

[10] Did Glock contravene a Bylaw?

[11] Is a disqualification an appropriate remedy?

Analysis of Issues

Ms. Glock’s relationship with X.

[12] The evidence presented to the DIE board was that Glock’s relationship with X was that he and Glock were friends. Both Glock and X went to activism events together. In that way, the lines get blurred regarding when X becomes a volunteer and when X is a friend. Glock’s

campaign manager testified that X was not a volunteer and did not help with the campaign. While Glock's campaign manager does not get to decide who is and who is not a volunteer - that is decided by the Bylaws - their evidence is persuasive to the fact that to the campaign manager's knowledge, X did not take an active role in the campaign.

[13] The strongest evidence that Glock's friend X was a volunteer is that X helped with a campaign video. X was a member of SJP, but because SJP is not a formally organized group it is difficult for the DIE board to analyze what kind of influence that X had.

[14] Saying that X was a volunteer and thus Glock is responsible for everything that X did through his time in the campaign can set a dangerous precedent. Glock being responsible for every post X made and every action that X did simply because X assisted with a campaign video is unjust. X being labeled a volunteer in 2024-02-R is not a silver bullet which makes Glock responsible for everything that X did.

Breach of Bylaws

[15] The Bylaws in question are Bylaw 320 Section 11(1), Section 11(5) and Section 11(6).

[16] Section 11(1) says that each volunteer and party need to be aware of the Bylaw and act in good faith and that the volunteers adhere to the Bylaws. The DRO is claiming that Glock did not act in good faith by lying or misleading the elections office. The DIE board was presented with evidence that Glock may have withheld information that she knew when asked by the DRO. The DIE board believes that Glock omitted evidence of her knowledge about the SJP and that she was willfully blind in what the SJP was doing.

[17] Section 11(5) states that a candidate must distance themselves from a third party. SJP is a third party. Lisa Glock was already fined for this breach through ruling CRO decision number 6.

[18] Ms. Glock has already been punished for breach of Bylaws. The CRO is now claiming that X being a volunteer also breached Bylaws. Even if X is labeled a volunteer, and if X

violated Bylaws, it is difficult to hold Glock accountable due to the ambiguity in the relationship and the lack of control that Glock had over X.

Analysis of Bylaws and Remedy

[19] As stated in DIE Board decision 2024-03-7, the penalties for breach of By-laws can be found in Section 11(6) and Section 17. Disqualification is a remedy that the CRO can use in breach of a Bylaw as per Section 17(4). However disqualification must meet one of the three criteria: when a contravention (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. If the CRO wishes to disqualify a candidate it must be through one of these criteria.

[20] Glock is not alleged of tampering with ballots so she cannot be disqualified under Bylaw 320 Section 17(4)(c).

[21] It can be argued that Ms Glock's conduct cannot be counterbalanced by a lesser penalty. However the DIE board does not find this argument to be persuasive. While there are a number of things that cannot be defined through a dollar amount, the DIE board believes that the DRO is capable of coming up with a fine whether counterbalancing or punitive that could have been applied. The DIE board finds the use of Bylaw 320 Section 17(4)(a) to disqualify Glock to be unpersuasive.

[22] While the DRO did in fact fine Glock and was able to find a punishment earlier, they claim that the new evidence provided is enough to show that Glock was withholding information. While there is new evidence, the DIE board did not find that the new evidence rose to the level of disqualification.

[23] There is no doubt that Griffiths experienced conduct directed towards him that affected his campaign and his mental health. Bullying and harassment is prejudicial and should not be condoned by any party. However, Glock signed a pledge to distance herself from this harassment. Furthermore, there is no evidence that Glock condoned, purported or encouraged

this harassment. Additionally, Glock lying to the CRO about her knowledge of the SJP while not proper, does not rise to the level of malicious or substantially prejudicial. For those reasons the DIE board finds that the use of Bylaw 320 Section 17(4)(b) to disqualify Glock is also unpersuasive.

[24] Bylaw 320 Section 11(6) lays out what the CRO can do if there is a breach of the third party affiliation. The only substantial breach that the DIE board finds is filming a video with a member of the SJP. Fines are the appropriate response as filming a campaign video with a friend's camera is not malicious nor is it substantially prejudicial.

[25] Lying to the CRO is also a breach of Bylaw Section 11(1). However, the DIE board does not find that the actions of Glock were not malicious or substantially prejudicial to Griffiths.

Conclusion

[26] The CRO made a decision based on conduct of Ms. Glock that violates election By-laws. However the conduct does not rise to the level of disqualification. Thus the DIE board will be overturning CRO decision 17. The DIE board is ruling that CRO's Decision 17 was incorrect.

[27] The violation that the DIE Board found was the campaign video. The DIE board finds that this campaign video is not malicious or substantially prejudicial and thus a fine is the highest penalty that the DIE Board finds is reasonable. The DIE board finds that Glock is not responsible for every action of X.

[28] Glock lying about her knowledge of the SJP does not rise to the level of disqualification. The DIE board finds that Glock lying is a breach of bylaw Section 11(1) and the DIE board does not condone this action in an election. However, disqualification is an extraordinary remedy. The DIE board finds that Glock lying to the CRO is not malicious or substantially prejudicial and thus a fine is the highest penalty that the DIE Board finds is reasonable and that the decision to disqualify Glock was an incorrect decision.

[29] The DIE board would like to reiterate that any forms of bullying or harassment will not be condoned by the board. The DIE board will not tolerate any forms of bullying that results in any party to this ruling fearing for their safety. Bullying and harassment are forms of behavior that are not representative of the many people who serve the student body.

[30] The DIE board would like to say that members of the elections office, Griffiths and Glock all acted professionally and respectfully in their communication and participation with the DIE board. The vast majority of harassment has come from anonymous members on social media and not the parties to the rulings themselves. The DIE board cannot restrict students freedom of expression however we know that the words and comments said on social media have a real effect on people's lives and have already caused a great deal of mental harm to many parties involved. We ask that the students conduct themselves in a professional manner so that the executive team can best serve the student body.