



Judgment of the USC Appeals Board in the matter of:

Team DiBrina v Elections Governance Committee, 2017:2

Hearing Date: February 14, 2017

Judgment Date: February 28, 2017

Intervenors: Team Tobi, Eddy Avila, Stephen Franchetto, Cassandra Cervi

Panel: Laura Lepine (Chair), Danielle D’Alonzo, Tamara Kljakic, Ryan Wolfe, Kevin Spykerman

Reasons for Judgment: The Board

PART I: OVERVIEW

Summary of Findings

1. This is an appeal from several decisions of the USC Elections Governance Committee (EGC) with regard to alleged violations of USC election rules by 2017 USC President and Vice-President candidates Tobi Solebo and Landon Tulk, collectively “Team Tobi.” This appeal was launched by 2017 election candidates David DiBrina and Harry Orbach-Miller, collectively “Team DiBrina.”

2. These appeals occur in the context of the 2017-2018 USC executive election. The Appeals Board is aware of the effect that its decisions would have on the outcome of the election. However, this potential outcome did not influence the Board’s decisions in these appeals. Pursuant to section 2.02 of By-Law #6, the Appeals Board operates in accordance with the principles of natural justice, including fairness and good conscience. The Board did not make decisions based on whether it agreed with the decisions of the EGC, but rather whether the EGC’s decisions were reasonable.

3. The Board heard submissions at an oral hearing on February 14, 2017. In recognition of the impact of further delays on the ability of the USC to begin transitioning to the new executives, the Board announced that it was dismissing all appeals on February 14. However, in accordance with sections

14.03 and 14.04 of By-Law #6, the Board reserved its right to provide written reasons within two weeks of the oral hearing. These are those written reasons.

Parties to the Appeal

4. Team DiBrina, as the party that applied to initiate this appeal, is the Petitioner. The Elections Governance Committee, as the authority whose decision is being appealed, is the Respondent.

5. Section 12.03(2) of By-Law #6 allows the Appeals Board to “at [its] discretion, recognize intervening parties where those parties may be necessary for a fair and complete resolution of the Case.” The definition of “Intervening Third-Party” in section 1.09 of By-Law #6 requires that parties “demonstrate that they or their office would be materially affected by the outcome of the Case and therefore ought to be heard as part of the hearing” in order to be granted Intervenor status.

6. Team Tobi applied for Intervenor status in these appeals. The success of one or more appeals of the EGC’s rule violation decisions could vary the demerit points assigned to Team Tobi, and could potentially result in their disqualification as candidates. As such, they are materially affected by the outcome of these appeals. Accordingly, Team Tobi was recognized as an Intervening Third-Party and was granted full participation rights in these appeals.

7. Section 12.03(1) of By-Law #6 requires the Appeals Board to inform the President of the USC and the Chairman of the Board of Directors of the pending case such that they may apply to intervene. The Appeals Board accepted the applications of Eddy Avila, President of the USC, and Stephen Franchetto, Chair of the Board of Directors, to act as Intervenor on a limited basis. Mr. Avila and Mr. Franchetto were provided the opportunity to make a brief oral opening or closing statement at the oral hearing. Mr. Avila was permitted to make submissions on the effect that these appeals would have on the USC and the student body. Mr. Franchetto was permitted to make submissions regarding how this appeal and the timeliness of its resolution may affect the USC Corporation.

8. In accordance with section 12.03(2) of By-Law #6, the Appeals Board made a public call for intervenors on the USC website. Cassandra Cervi, President of the University of Western Ontario Debate Society, was granted Intervening Third-Party status as her submissions were deemed to be necessary for a fair and complete resolution of the Case. Her participation in the appeals was limited to brief oral submissions with regard to Petition 4 only, specifically, how this appeal has the potential to affect club executives’ ability to endorse candidates.

PART II: ISSUES

9. These appeals were initiated by an application from Team DiBrina, received by the Appeals Board on February 2, 2017. The appeals are in the context of an election for the 2017-2018 USC executive.

10. Between January 18 and 31, 2017, Team DiBrina submitted various violation allegations against Team Tobi to the USC Elections Governance Committee. The Petitioners applied to the Appeals Board to appeal seven decisions of the EGC. All seven appeals were accepted, but the Petitioner withdrew one appeal prior to the oral hearing. This judgment is with regard to the remaining six appeals.

11. The first issue on appeal (“Petition 1”) is with regard to an alleged violation of section 11.1 of By-Law #2 for not campaigning in accordance with the rules of fair play. The Petitioner alleges that a post was made in the Facebook Group “Dumbledore’s Army,” which is a USC ratified club, by an individual who attempted to defame the character of Team DiBrina and/or misrepresent facts. The post was written by David Seston, who the Petitioners allege is a volunteer for Team Tobi. The EGC found that there was no violation. The Petitioner argues that Team Tobi should be sanctioned with a major violation for this offence.

12. The second issue on appeal (“Petition 2”) is with regard to an alleged violation of section 11.11 of By-Law #2 for campaigning during the voting period. The Petitioner alleges that Landon Tulk, the vice-presidential candidate, and a Team Tobi volunteer, wore Team Tobi t-shirts during the voting period. The EGC found that there was no violation. The Petitioner argues that Team Tobi should be sanctioned with a minor violation for this offence.

13. The third issue on appeal (“Petition 3”) is with regard to an alleged violation of section 11.7 of By-Law #2 for campaigning prior to the campaign period. The Petitioner alleges that Team Tobi volunteers shared a link on Facebook to a Western Gazette article announcing Team Tobi’s candidacy for USC executive prior to the campaign period. The EGC found that there was no violation. The Petitioner argues that Team Tobi should be sanctioned with a major or minor violation for this offence.

14. The fourth issue on appeal (“Petition 4”) is with regard to an alleged violation of section 11.4 of By-Law #2 for using in the campaign any service or tangible benefit conferred on them by virtue of any position in any organization on campus. The Petitioner alleges that Heather Lamourie, Social Science Head Soph for 2016, and Olivier Goldhar, a Soph, posted in the Social Science Soph Team Facebook group encouraging people to vote while expressing a clear preference for Team Tobi. The Petitioners allege that Ms. Lamourie and Mr. Goldhar are Team Tobi campaign volunteers. The EGC found that there was no violation. The Petitioner argues that Team Tobi should be sanctioned with a major violation for this offence.

15. The fifth issue on appeal (“Petition 5”) is with regard to the EGC’s classification of door-to-door campaigning in two residences as one major violation, rather than two major violations. Team Tobi was found to have campaigned in two residences, Essex Hall and Delaware Hall, during unauthorized hours. The EGC sanctioned Team Tobi with one major violation for this offence. The Petitioner argues that these events should be categorized as two separate violations and that Team Tobi should be sanctioned with two major violations for these offences.

16. The sixth issue on appeal (“Petition 6”) is with regard to an alleged violation of Rule 6 of the Flyers, Posters and Social Media section of the Policy on USC Campaigning in Residence for posting on residence-managed social media platforms. Tobi Solebo and Landon Tulk, the Team Tobi candidates, were found to have posted in the Ontario Hall and Hellmuth residence Facebook groups. The EGC sanctioned Team Tobi with four demerit points. The Petitioner argues that the EGC should have also considered posts by other Team Tobi volunteers and arm’s length parties. The Petitioner alleges that Ryleigh Chapman posted in the Medway Sydenham Hall 2015-2016 Facebook group encouraging students to vote for Team Tobi. The Petitioner alleges that Ms. Chapman is a Team Tobi volunteer. The Petitioner argues that Team Tobi should be sanctioned with four demerit points for this violation.

PART III: STANDARD OF REVIEW

17. Before progressing to the Board’s analysis of the Elections Governance Committee’s decision, the applicable standard of review must be determined. Current Canadian administrative law provides for two general standards upon which decisions of tribunals should be reviewed: reasonableness and correctness. In each individual case, the Appeals Board must determine the standard of review that applies.

18. The standard of reasonableness requires the Appeals Board to determine whether the EGC reached a decision that falls within a range of acceptable and defensible outcomes (*Dunsmuir v New Brunswick*, [2008] SCR 190). The standard of reasonableness requires deference to the decision-maker. Reasonableness will be likely be the standard of review for administrative tribunals, unless the requirements under the correctness standard are met.

19. The standard of correctness is more restrictive. Where a correctness standard applies, the Board, in finding that a decision was incorrect, is entitled to substitute its decision. In determining whether an issue should be reviewed on a correctness standard, the Appeals Board should consider the presence or absence of a privative clause, the administrative regime of which the decision-maker has special knowledge or expertise, and the nature of the question and purpose of the tribunal. If the Appeals Board were to find that a lower decision-maker lacks relevant special expertise or if the subject matter of the dispute concerns a general question affecting the USC or its governance, this would suggest that the Board’s own precise determination should be favoured over allowing deference to the lower decision-maker.

20. In the present case, the EGC is interpreting its home statute. The EGC is considered an expert body on the interpretation of By-Law #2, as it is the EGC’s statutory duty under s. 3.1 of the By-Law to administer it and enforce its visions and principles. The EGC also has the sole authority to enforce the provisions of the By-Law. As the expert on By-Law #2, a considerable level of deference should be granted to the EGC’s interpretation and enforcement of By-Law #2. The standard of reasonableness achieves the necessary level of deference and the decisions of the EGC will therefore be evaluated under this standard.

PART IV: PETITION 1 - FAIR PLAY

Background

21. On January 27, 2017, Facebook user David Seston made a post in a club group concerning the USC elections. As of February 1, 2017, the USC ratified club, "Dumbledore's Army," had 254 members.

22. On January 30 2017, the Petitioner submitted a violation complaint, alleging that Team Tobi had violated section 11.1 of By-Law #2, which states:

"11.1 Fair Play Candidates shall campaign in accordance with the rules of fair play. Breaking the rules of fair play include, but are not limited to, libel, slander, general sabotage of the campaigns of other candidates, misrepresentation of fact, and malicious or intentional breach of this By-law or applicable regulations."

23. The Petitioner claims that Facebook user David Seston is a campaign volunteer for Team Tobi and that his post used "targeted defamatory statements" and "numerous misrepresentations of fact" against Team DiBrina.

24. At the oral hearing, the Petitioner raised two main concerns about Mr Seston's post: his comments in relate to the Indigenous Student's Club being de-ratified, and his claim that some slates have entered into negotiations with outside businesses before being elected and before consulting students.

25. After consulting with the EGC, the CRO dismissed the complaint on the following basis:

"In consultation with members from the EGC we have come to the conclusion that this isn't a violation of section 11.1. This maintains the spirit of elections, it is a post that does not directly slander or libel another team, though they are being critical of opponents they are not being offensive."

26. The Petitioner submitted an appeal, suggesting that the CRO and EGC were unreasonable in their dismissal of the violation and that the Appeals Board should sanction Team Tobi with a major violation for this offence.

Issues

27. The Board must decide whether it was reasonable for the CRO to find that this post was in line with the parameters of fair play and that Team Tobi did not violate section 11.1 of By-Law #2.

Positions of the Parties

28. In its submission, the Respondent (EGC) asserts that it completed a diligent investigation, making two findings:

1. The post was critical but not offensive, slander or libel.
2. Mr. Seston was not in fact a campaign volunteer.

Finding 1

29. The EGC posits that it “encourages student engagement” and that the “ability to critique and challenge the platform of different candidates” is crucial to the spirit of elections. It found the post to be critical, rather than hateful, and in line with the guidelines of the By-Law.

Finding 2

30. The EGC found the individual (Mr. Seston) was not a campaign volunteer as per By-Law #2. The EGC investigated the individual’s social media page and the Campaign Volunteer List provided by Team Tobi. Mr. Seston was not on the Campaign Volunteer list and the EGC’s investigative findings lead the EGC to determine that Mr. Seston was a supporter rather than a campaign volunteer as per the EGC’s interpretation of section 1.6 of By-Law #2.

31. The EGC stresses that these findings were a reasonable exercise of its authority.

32. The Petitioner submits that the denial of a violation in this situation is problematic. It suggests the language of the post targets Team DiBrina and their campaign. It argues that Mr. Seston attempts to defame or lower the standing of Team DiBrina by “falsely attributing negative campus events to them even when there was no direct connection and no context provided.” The Petitioner argues that the CRO did not address the misrepresentation of facts in her response although it was central to its violation submission.

33. Team Tobi argued that the post was an opinion and that the defense of fair comment rests in this matter. Team Tobi highlights that the comment was a matter of public interest and that commentary during elections is integral to the function of a democratic process. Further, they suggest that the comment was based on facts and/or a factual foundation sufficient enough for students to be able to make up their own minds.

34. Team Tobi was concerned that the Petitioner’s issue with the post was that it did not conform to the image that it wished to convey to students and that “the point of critical political commentary is not to echo the sentiments of the candidates.”

Analysis

35. The Board reviewed section 11.1 of By-Law #2. The By-Law states that:

“11.1 Fair Play Candidates shall campaign in accordance with the rules of fair play. Breaking the rules of fair play include, but are not limited to, libel, slander, general sabotage of the campaigns of other candidates, misrepresentation of fact, and malicious or intentional breach of this By-law or applicable regulations.”

36. Section 11.1 does not refer to Campaign Volunteers and therefore cannot be reasonably expected to be applied as such by the EGC. The EGC used appropriate discretion in identifying Mr. Seston as a supporter rather than a Campaign Volunteer (re: its investigative findings and absence of Mr. Seston on the Campaign List) pursuant to its interpretation of section 1.6 and moreover, in finding Mr. Seston not equivalent to a candidate as defined in section 1.7 of By-Law #2.

37. Mr. Seston does provide some information in his post that is arguably a misconstruction of fact (as explicitly focused on in the oral hearing: the de-ratification of the Indigenous Students Club and the entering of negotiations with outside businesses) however, the EGC was reasonable to maintain that the comments did not reach a threshold of libel, slander, general sabotage, etc. as an average reader would have the ability to discern the given information for themselves and the information provided could be interpreted as not offensive in nature.

38. The Board finds that the EGC acted within its discretion to find the overall post critical, rather than hateful or slanderous. In his post, Mr. Seston does indicate that his words are his own opinion, reviews the other campaigns namelessly and urges the reader to vote and become informed on the issues. As stated in one of the principles of the Elections Procedure Code, the By-Law exists:

“To raise the level of debate surrounding student issues.”

39. Given the spirit of the By-Law to encourage discussion and debate, the interpretation by the EGC is reasonable and within its authority.

Held

40. The Appeals Board dismisses this appeal.

PART V: PETITION 2 - CAMPAIGNING DURING THE VOTING PERIOD

Background

41. On January 15, 2017, the CRO, Erin McCauley, sent an email to all the USC election candidates. The portion of her email that is relevant to this appeal is as follows:

“In response to a question asked at the all candidates meeting, you do not need to remove bag tags or any other campaign material during the polling period. You are not allowed to distribute any more materials, but those that have already been distributed may remain in the public.”

42. Sometime after Ms. McCauley sent the aforementioned email, but prior to the beginning of the polling period, Landon Tulk, Team Tobi vice-presidential candidate, claims to have had a conversation with Ms. McCauley. Mr. Tulk testified at the oral hearing that he asked Ms. McCauley whether his campaign team members could wear Team Tobi t-shirts during the polling period, and that Ms. McCauley told him that they were permitted to wear t-shirts during the polling period. Ms. McCauley does not remember this conversation, but does not deny that it occurred.

43. The polling period for the 2017-2018 USC executive election ran from 8:00 am on January 30, 2017 to 5:00 pm on January 31, 2017.

44. On January 30, 2017, members of the Team Tobi campaign team were seen wearing Team Tobi t-shirts. On January 31, 2017, Landon Tulk, as well as an unnamed female, were seen in Weldon Library wearing Team Tobi t-shirts. This is evidenced by a date- and time-stamped photo provided by the Petitioner. Furthermore, Team Tobi did not deny this allegation.

45. The Petitioner submitted a violation complaint to the EGC, alleging that Team Tobi had violated section 11.11.2 of By-Law #2, which states:

“11.11 Campaigning During the Voting Period

...

11.11.2 Candidates and their volunteer(s) shall not campaign at any location, on or off of the University’s campus. This prohibition includes, but is not limited to, the distribution of physical campaign materials, campaign rallies, and approaching students to solicit votes.”

46. The CRO dismissed the complaint on the following basis:

“Existing physical campaign materials are allowed to still exist, similarly to leaving bag tags on backpacks. T-shirts and campaign material that have been previously distributed by candidates during the campaign period are not a violation of post-campaigning.”

47. The Petitioner appeals this decision and asks the Board to sanction Team Tobi with a minor violation.

Issues

48. The question that the Board must answer is whether it was reasonable for the CRO to find that wearing a Team Tobi t-shirt during the polling period was not contrary to section 11.11.2.

Analysis

49. Based on both the email sent by Ms. McCauley and the official decision dismissing the complaint, it is evident that a t-shirt constitutes campaign material. However, in its interpretation of section 11.11.2 of By-Law #2, the CRO created an exception to the rule against campaigning during the polling period for campaign materials that have been previously distributed during the campaign period.

50. In permitting slate t-shirts to be worn during the polling period, the CRO used the analogy of bag tags on backpacks. The CRO's reasoning is that it would be unreasonable to remove bag tags from backpacks that have already been affixed to the backpack. However, the slates are not permitted to distribute new bag tags during the polling period. Similarly, the CRO found that t-shirts that had already been distributed were permitted to be worn during the polling period, but that new t-shirts were not permitted to be distributed.

51. The Petitioner argued that the CRO created a false equivalency between bag tags and t-shirts due to the different degrees of affixation that each entail. In its written submissions, the Petitioner defined bag tags as "a binary type of campaign material in the sense that once they are attached to a bag it is reasonable that they would not be removed throughout the duration of the election period." The Petitioner argued that wearing a t-shirt is an active choice made with the intention of influencing voters. The Petitioner argued that, "t-shirts are an item that would be reasonably put on and taken off intermittently throughout the election period. Moreover, someone would have to choose to take off the t-shirt and to put it back on, a choice that is not available with most types of bag tags."

52. Team Tobi argued that they relied on the January 15 email, as well as Mr. Tulk's conversation with Ms. McCauley, as permission to wear the t-shirts during the polling period. Team Tobi submitted that but for the permission granted to them, the individuals would not have worn the t-shirts.

53. At the oral hearing, Ms. McCauley explained that she permitted campaign t-shirts to be worn during the voting period because it is not an active campaigning tactic. When asked by a Board member, Ms. McCauley explained that she interpreted the spirit of section 11.11.2 as prohibiting the active distribution of campaign materials, not the passive display of such materials.

54. Given the examples of prohibited behaviour in section 11.11.2, the Board finds that Ms. McCauley's interpretation was reasonable. Section 11.11.2 prohibits "the distribution of physical campaign materials, campaign rallies, and approaching students to solicit votes." While this is not an exhaustive list of prohibited actions, these examples in the By-Law are all active behaviours, which informs the reasonableness of the EGC's finding that wearing a t-shirt is not prohibited.

Held

55. The Appeals Board dismisses this appeal.

PART VI: PETITION 3 - PRE-CAMPAIGNING

Background

56. On Monday, January 9th, 2017, a Western Gazette article announcing Team Tobi's candidacy for USC Executive was shared on Facebook. The post received 40 shares by students on Facebook, some of whom became active volunteers for Team Tobi during the campaign period. The post was shared prior to the official start of the campaign period. Some of the shares were accompanied by supportive or excited text from the individual sharing the post.

57. On Wednesday, January 18, 2017, the Petitioner submitted a complaint against Team Tobi alleging violation of section 11.7 of By-Law #2, the rule against pre-campaigning. The CRO consulted with the EGC and investigated the complaint. Pursuant to her investigation, the CRO dismissed the Petitioner's complaint.

58. The Petitioner submits that the EGC erred in finding that the sharing of the Western Gazette article did not constitute a violation of section 11.7 of By-Law #2. The Petitioner requests that the Appeals Board sanction Team Tobi with a major or minor violation.

Issue

59. The Board must determine whether it was reasonable for the EGC to decide that the sharing of the Western Gazette article did not constitute a violation of the rules of pre-campaigning.

Analysis

60. It is alleged by the Petitioner that Team Tobi violated section 11.7 of By-Law #2, which states:

"Pre-Campaigning Candidates and prospective candidates are not permitted to influence or attempt to influence voters prior to the campaign period, including, for example, through the posting of material designed and/or likely to influence voters. Candidates and prospective candidates may engage in activities related to planning a campaign or assembling a campaign team and may answer questions from the media with regard to election plans."

61. Under section 1.7 of By-Law #2, "candidate" is defined as "any individual or group of individuals that appears as a single political entity on the voting ballot." Under section 1.20 of By-Law #2, "prospective candidate" is defined as "an individual or group of individuals who have expressed an interest in running in a USC Election, regardless of having submitted a Declaration of Candidacy. One shall be considered a prospective candidate up until the moment one submits a valid nomination form."

62. The Petitioner alleges that the sharing of the Western Gazette article constituted a violation of section 11.7 of By-Law #2. It is argued by the Petitioner that the Western Gazette article was likely to influence voters. Additionally, the Petitioner argues that the article was shared by campaign volunteers for Team Tobi. In support of its argument, the Petitioner contends:

“...many of the students who shared the post were active volunteers for Team Tobi throughout the campaign period...Moreover, many of the students who shared the post are members of Western’s Greek community, including Phi Gamma Delta (FIJI), which both Mr. Solebo and Mr. Tulk of Team Tobi are active members of.”

63. By virtue of these connections, the Petitioner infers that Team Tobi enlisted students to share the Western Gazette article on their behalf.

64. Although the CRO of the EGC conceded in the oral hearing that the article may have been likely to influence voters, the CRO interpreted section 11.7 to apply only to “candidates” and “prospective candidates”. The Appeals Board accepts this as a reasonable interpretation of section 11.7. As such, the argument that Team Tobi violated section 11.7 via campaign volunteers sharing the article does not contravene a proper interpretation of section 11.7. This provision does not apply to the actions of campaign volunteers without sufficient connection to a candidate or prospective candidate. Additionally, the students who shared the article do not qualify under the definitions of “candidate” or “prospective candidate” pursuant to sections 1.7 and 1.20 of By-Law #2, respectively.

65. The Petitioner’s argument that the Board should infer a connection between the sharing of the article and Team Tobi is problematic. The fact that students who shared the article belong to the same organization/community as Team Tobi does not provide a sufficient basis to draw the conclusion that Team Tobi enlisted these students to share the article on its behalf. As stated by Team Tobi in its submissions, allowing the appeal “would effectively prohibit anyone with even a tenuous link to a candidate from sharing a Gazette article.”

66. The Petitioner has failed to present adequate evidence that section 11.7 applies to the sharing of the Western Gazette article. It is unreasonable to infer that, by virtue of membership in the same organization/community, Team Tobi initiated the sharing of the article. The CRO’s decision to dismiss the complaint was reasonable.

Held

67. The Appeals Board dismisses the appeal.

PART VII: PETITION 4 - BENEFITS CONFERRED BY VIRTUE OF OFFICE

Background

68. On January 30, 2017, Heather Lamourie, Social Science Head Soph for the 2016 Orientation Week, posted the following in the Social Science Soph Team Facebook Group, with a link to the Western votes website:

“Everyone make sure you go online and vote and get your froshies involved to do the same, changes will impact them more than us and the earlier they begin to care about these sorts of things, the more they can make a difference themselves going forward

Tobi was a social sci soph last year and is a beautiful human, so he had both my heart and my vote, but I encourage you all to educate yourselves on the various platform points from Team Tobi, Dabrina and Jan/Mohammed and then have your say, the polls are open until 8pm tmo!!!!”

69. On January 31, 2017, Olivier Goldhar, a Social Science Soph, posted the following in the Social Science Soph Team Facebook Group, with a link to the USC online voting website:

“Make sure to vote if you have not yet! Support our boy Tobi!”

70. On January 31, 2017, Team DiBrina submitted a violation complaint to the EGC, alleging that Team Tobi had violated section 11.4 of By-Law #2, which states:

“11.4 Benefits Acquired by Virtue of Office Candidates and campaign volunteers are not entitled to use in their campaign any service or tangible benefits conferred on them by virtue of hold any position in any organization on campus. This includes, but is not limited to, mailing lists, office space, office supplies, equipment, advertising space, and secretarial services.”

71. The CRO dismissed the complaint on the following basis:

“The EGC has come to the conclusion that the posts made by sophs in their respectful groups do not warrant further investigation. It is the EGC’s findings that neither Heather Lamourie nor Olivier Goldhar are volunteers of Team Tobi, and thus Team Tobi cannot be held responsible for their actions. The EGC believes that Team Tobi could not have reasonably foreseen that these individuals would post in their soph Facebook group. Due to the fact that these individuals are not campaign volunteers, section 11.4 can not be applied.”

72. The Petitioner appeals this decision and asks the Board to sanction Team Tobi with a major violation.

Positions of the Parties

Team DiBrina

73. The Petitioner argues that the EGC dismissed the complaint solely on the basis that Ms. Lamourie and Mr. Goldhar are not Team Tobi volunteers. It is the Petitioner’s position that should Ms. Lamourie and/or Mr. Goldhar be found by the Board to be Team Tobi volunteers, then section 11.4 will have been violated.

74. The Petitioner argues that Ms. Lamourie was a campaign volunteer because she provided an endorsement on the Team Tobi website and social media channels. The Team Tobi website and social

media channels were removed following the close of balloting, so the Petitioner provided a screenshot of a Google Image search for “heather lamourie team tobi,” which appears to have resulted in a photo of Ms. Lamourie on the website teamtobi.ca. The Petitioner also provided evidence of Ms. Lamourie commenting “#TEAMTOBI” on a Facebook post encouraging students to vote, and changing her Facebook cover photo to an image of Landon Tulk and Tobi Solebo that states “I VOTED TEAM TOBI” with the caption “#TEAMTOBI Team Tobi.” The Petitioner argues that since Ms. Lamourie posted multiple times to her Facebook account in support of Team Tobi, she distributed “more than one of the same type of campaign item” within the meaning of section 1.6, making her a volunteer.

75. The Petitioner further argued that Ms. Lamourie and Mr. Solebo had a pre-existing relationship through Western’s Orientation program, although no evidence was provided to support this assertion.

76. The Petitioner argues that Ms. Lamourie’s post on the Social Science Soph Team Facebook group has the potential to have a significant impact on the outcome of the election, as there are approximately 90 people on the Social Science Soph Team and 1,590 first year students in the Social Science faculty in 2015-2016.

77. The Petitioner argues that Mr. Goldhar was a campaign volunteer on the basis that he posted in the Social Science Soph Team Facebook group, and that Tobi Solebo saw the post. Mr. Goldhar posted on his public profile “Vote #TeamTobi!” with a link to the USC voting website, which Mr. Solebo “liked.” Mr. Goldhar also posted on his public Facebook profile a link to a Western Gazette article announcing Team Tobi’s candidacy, with the caption “Tobi Solebo [tagged] is a straight beauty. Would love to see this guy as USC prez.” The Petitioner argues that Mr. Goldhar has expressed a clear preference for Team Tobi, and that since Ms. Solebo saw and “liked” the posts made by Mr. Goldhar in support of Team Tobi, Mr. Solebo knew, or reasonably ought to have known, that Mr. Goldhar would assist him in his campaign; thus, making him a volunteer.

78. The Petitioner also argued that access to a Facebook group for Sophs is equivalent to a mailing list, which is a prescribed “tangible benefit” in section 11.4 of By-Law #2.

EGC

79. The EGC argues that its decision to dismiss the complaint was reasonable. In its oral submissions, the EGC explained the process it engaged in in coming to its decision to dismiss the complaint. The EGC considered three questions:

1. Are Ms. Lamourie and/or Mr. Goldhar “campaign volunteers”?
2. Were their posts “campaign materials”?
3. Is access to the Social Science Soph Team Facebook group a “benefit acquired by virtue of office”?

80. The EGC answered all three questions in the negative.

81. The EGC found that Ms. Lamourie and Mr. Goldhar were merely Team Tobi supporters, not volunteers. In making this decision, the EGC considered the fact that neither Ms. Lamourie nor Mr. Goldhar were on the official volunteer list, and that its investigation did not uncover a close connection between them and the campaign.

82. The EGC found that changing Facebook cover photos does not constitute “distributing campaign materials” for the purpose of section 1.6 of By-Law #2. Rather, changing Facebook cover photos in support of a candidate is an “endorsement.”

83. The EGC found that having Soph status is not the same as being the President of a club. Therefore, access to a Facebook group designed for Sophs is not a “tangible benefit” acquired by virtue of office.

Team Tobi

84. Team Tobi’s position is that it was a reasonable possibility that Ms. Lamourie and Mr. Goldhar were not campaign volunteers. Team Tobi argues that the Petitioner’s “attempt to paint anyone who supports a slate as a ‘campaign volunteer’ is far too sweeping.” It is Team Tobi’s position that making an endorsement on social media should not “*de facto*” make someone a campaign volunteer. Team Tobi argues that acceptance of the Petitioner’s position would result in a chilling effect on free expression as students will refrain from supporting their preferred candidate on social media for fear of harming the candidate’s chance of success.

Cassandra Cervi

85. Cassandra Cervi, President of the University of Western Ontario Debate Club, was permitted to make submissions about this petition as an Intervenor. She argued that conflating campaign “supporters” with “volunteers” is problematic, particularly for club executives. She argued that if posting support for a candidate in a Facebook group, as Ms. Lamourie and Mr. Goldhar did, automatically makes the author of the post a “campaign volunteer,” this would take power away from club executives.

86. Ms. Cervi argued that, should the Petitioner’s argument succeed, club executives would not be able to express their support for candidates that would be good for their club in fear of harming their preferred candidate’s chance of success. It was Ms. Cervi’s position that if club executives are not able to express to their club a preference for a particular candidate, then the candidates will be disincentivized to create platforms that cater to clubs. She argues that this takes power away from the clubs as the candidates will not want the support of clubs.

Issues

87. The Board must determine whether it was reasonable for the EGC to find that there was no violation of section 11.4. In determining the reasonableness of the decision, the main issue that must be considered is whether it was reasonable to find that Ms. Lamourie and Mr. Goldhar were not campaign volunteers.

Analysis

88. The EGC used a three-step process for assessing the complaint. In assessing the reasonableness of the EGC's decision, the Board considered the reasonableness of the process used to come to this decision. Determining whether Ms. Lamourie and Mr. Goldhar are campaign volunteers is a reasonable first step as this will determine whether it is necessary to continue the investigation. Determining whether access to the Social Science Soph Team Facebook group was a "benefit acquired by virtue of office" is also a reasonable step in the investigation. However, the Board finds that the second stage in the EGC's inquiry is unnecessary. It is unnecessary to determine whether changing Facebook cover photos in support of a candidate constitutes "distributing campaign materials." This consideration will have already been accounted for in assessing whether Ms. Lamourie and Mr. Goldhar are volunteers. Nevertheless, considering this issue does not make the EGC's decision-making process unreasonable.

89. Whether Ms. Lamourie and Mr. Goldhar are campaign volunteers is central to this appeal. Section 1.6 of By-Law #2 defines "campaign volunteer" as:

"an individual, group, or organization who a Candidate knew, or reasonably [ought] to have known, would assist that candidate with campaigning. An organization will be deemed to be a volunteer of a Candidate if the candidate is a member of the organization. Knowingly and actively distributing more than one of the same type of campaign item to an individual shall result in that individual being deemed a volunteer."

90. The EGC considered that neither Ms. Lamourie nor Mr. Goldhar were on the Team Tobi volunteer list. Presence on a campaign team's volunteer list necessarily makes an individual a campaign volunteer. However, absence from the volunteer list does not mean that an individual is not a campaign volunteer. It is possible to be a campaign volunteer without appearing on the volunteer list. Therefore, although Ms. Lamourie and Mr. Goldhar were not on the volunteer list, it was possible for them to be volunteers.

91. The EGC also found that there was an insufficiently close connection between Team Tobi and Ms. Lamourie and Mr. Goldhar to create a volunteer relationship. There is evidence that Ms. Lamourie and Mr. Goldhar preferred Team Tobi as candidates; however, their conduct, as evidenced to the Board, does not rise to the level of "campaigning." "Campaigning" is defined in section 1.5 of By-Law #2 as follows:

"1.5 Campaigning means any attempt by an individual or organization to encourage a student to cast a ballot in favour or in opposition of a candidate. This may occur with or without campaign material."

92. Interpreted strictly, section 1.5 would appear to make any person a campaign volunteer who expressed support for, and encouraged others to vote for, a particular candidate. However, this is not the only reasonable interpretation of section 1.5. It is reasonable to find that the spirit of section 1.5 was

to include only those people who actively participated in activities designed to promote the campaign and accumulate votes. To be classified as a volunteer, an individual must do more than simply express their support for a candidate. Given the increasing use of social media, it would be unreasonable to find that every person who expressed support for a particular candidate on Facebook is a volunteer for that campaign. It is reasonable to find that Facebook posts, such as those made by Ms. Lamourie and Mr. Goldhar, are endorsements for candidates. Endorsing a candidate does not automatically make an individual a campaign volunteer.

93. While it is evident that Ms. Lamourie expressed a preference towards Team Tobi in her Facebook post, she was advocating for people to become informed about their choices and to vote accordingly. It is reasonable to find that her Facebook post was not an attempt to persuade people to “cast a ballot in favour or in opposition of a candidate.” Similarly, it is reasonable to find that Mr. Goldhar’s post was a general call for support of Team Tobi, not an attempt to persuade people to vote for Team Tobi.

94. The Petitioner argued that as Ms. Lamourie had made multiple Facebook posts in support of Team Tobi, she had distributed “*more than one of the same type of campaign item.*” The Board finds that this is an incorrect interpretation of section 1.6. The last sentence of section 1.6 is directed towards situations where an individual is provided more than one physical campaign item. The rationale is that since this individual has more than one of the same item, the intention is for the individual to distribute the excess items to others, which would be actively engaging with others to promote the campaign, thereby making the individual a volunteer.

95. For these reasons, the Board finds that the EGC’s decision to find that Ms. Lamourie and Mr. Goldhar were not volunteers was reasonable. It was reasonable to find that Ms. Lamourie and Mr. Goldhar had not participated in “campaigning,” therefore, could not be volunteers. As this criterion is not met, the Board need not consider the reasonable foreseeability of Ms. Lamourie’s and Mr. Goldhar’s actions.

96. Accordingly, the decision to dismiss the complaint was reasonable. Given this finding, it is unnecessary for the Board to assess whether access to a Soph Facebook group is a “benefit acquired by virtue of office.”

Held

97. The decision of the EGC was reasonable. This appeal is dismissed.

PART VIII: PETITION 5 - CLASSIFICATION AS SINGLE VIOLATION

Background

98. On Tuesday, January 31, 2017, Team DiBrina submitted a violation complaint against Team Tobi. This violation concerned Rule #2 of the Division of Housing and Ancillary Services Policy on USC Campaigning in Residence, which states,

“Door-to-door campaigning may take place from Monday to Friday, between 4:30 pm to 8:30 pm only.”

99. The EGC investigated the complaint, and found campaigning in both Essex Hall and Delaware Hall on January 28, 2017. The EGC thus sanctioned Team Tobi with a major violation, constituting eight points.

Positions of the Parties

100. Team DiBrina submitted that the EGC erred in combining campaigning in two residences into one major violation instead of considering the events separately. Team DiBrina maintained that each act of campaigning should be considered separately because the acts occurred at different residences. The Team further relied on this Board’s decision in Team Sophie v Elections Committee, 2015:2 Election, which it argued set a precedent of the EGC treating violations occurring in different residences as separate. Team DiBrina further submitted that each act of campaigning should be found to constitute a major violation, owing to the number of potential voters reached.

101. The EGC submitted that its decision to consider the acts as a single infraction was rooted in precedent. It submitted that “[residence] infractions have previously been grouped together in similar circumstances”, citing its decision in Bonofiglio (2015) as an example. The EGC submitted that it awarded eight demerit points as a high award, after considering scope, intent, repetition, legality, and obstruction as per section 6(3) of the Violations Procedure. In particular, the EGC submitted that Team Tobi did not repeat the act after it became aware it was a violation, and the act was not illegal. As both residences were visited during a single outing, the EGC considered the acts to be a single “decision” by Team Tobi, and thus awarded a major violation for the entire outing.

102. The Intervenor, Team Tobi, highlighted how every election is different. It urged that the Board not put significant weight on precedent, as context is important.

Issue

103. Like the other 5 petitions, the Board determined that the appropriate standard of review for this petition was the standard of reasonableness. The issue on appeal was therefore whether the EGC acted reasonably when it sanctioned Team Tobi with a major violation for campaigning in the two residences.

Analysis

104. The validity of the sanction against Team Tobi was not in question in this appeal. The only issue was to scope – whether the eight point, major violation was a reasonable sanction. The EGC confirmed that Team Tobi violated the Policy on USC Campaigning in Residence by campaigning in both Essex Hall and Delaware Hall.

105. While both the Petitioner and the Respondent cited two different decisions as precedent, neither case cited was sufficiently analogous to the question on appeal to be of significant use to the Board.

106. The Board considers therefore only the steps taken by the EGC when determining that the two outings merited a single sanction against Team Tobi. Under section 6(3) of the Violations Procedure, the EGC is to consider, among other factors, the degree of: scope, influence, intent, repetition, legality of action, and obstruction. The EGC was candid in its oral submissions as to its consideration of these factors. In addition, the Board agrees with the EGC that it must have the authority to assess the impact of the entire violation.

107. The Board finds that grouping the two acts together on the basis of the total impact is reasonable so long as the EGC still assesses the six factors required in section 6(3) of the Violations Procedure. It was clear that grouping the acts together did not cause the EGC to limit its consideration of these factors. Furthermore, the sanction awarded – eight demerit points, the highest possible deduction for a major violation – was a reasonable outcome in assessing these six factors.

Held

108. The Board finds that the EGC acted reasonably when it sanctioned Team Tobi with a major violation for campaigning in the two residences. This appeal is dismissed.

PART IX: PETITION 6 - POSTING ON RESIDENCE-MANAGED SOCIAL MEDIA PLATFORM

Background

109. On January 31, 2017, the Petitioner submitted a violation complaint to the EGC regarding posts made in various residence-managed Facebook groups by Tobi Solebo, Landon Tulk, and individuals that the Petitioner claimed were campaign volunteers. This violation complaint was submitted pursuant to Rule #6 of the Flyers, Posters and Social Media section of the Policy on USC Campaigning in Residence, which states:

“Candidates and campaign volunteers are not permitted to post on residence-managed social media platforms (e.g., building Facebook pages, Twitter feeds, etc.)”

110. The EGC conducted a thorough investigation consisting of a hearing, online investigative actions on social media and referring to the submitted volunteer list. Following this investigation, the EGC decided to award four demerit points to Team Tobi for the posts made by Tobi Solebo and Landon Tulk.

111. The impugned Facebook post was made by Ryleigh Chapman on the 2015-2016 Medway-Sydenham Hall Residence group. Ms. Chapman's post encouraged members of the group to vote in the election, and specifically to vote for Team Tobi, as evidenced by her use of the hashtag #VoteTeamTobi at the end of her post. Ms. Chapman is a member of the sorority Alpha Phi, a sorority which endorsed Team Tobi at the beginning of the campaign.

112. The EGC determined that Ms. Chapman was not a campaign volunteer and thus was not in contravention of Rule #6. Consequently, the EGC did not award demerit points to Team Tobi for Ms. Chapman's post. The Petitioner claims that the EGC erred in not awarding demerit points to Team Tobi for the Facebook post made by Ms. Chapman.

Issue

113. The Board must determine whether it was reasonable for the EGC to find that Team Tobi did not violate Rule #6.

Analysis

Who is a "Campaign Volunteer?"

114. The definition of campaign volunteer is found in section 1.6 of USC By-Law #2 (reproduced below).

"1.6 Campaign Volunteer means an individual, group, or organization who a Candidate knew, or reasonably ought to have known, would assist that candidate with campaigning. An organization will be deemed to be a volunteer of a Candidate if the candidate is a member of the organization. Knowingly and actively distributing more than one of the same type of campaign item to an individual shall result in that individual being deemed a volunteer."

115. From this definition, it is clear that there are three avenues to becoming a campaign volunteer:

- (i) Be an individual, group, or organization who a Candidate knew, or reasonably ought to have known, would assist that candidate with campaigning;
- (ii) Be an organization that the candidate is a member of; or
- (iii) Receive more than one of the same type of campaign item, as was knowingly and actively distributed by a Candidate.

Analysis of “Campaign Volunteer” Definition

116. The second avenue does not apply in this case, as Ms. Chapman’s post was made from her personal Facebook account and no member of the Team Tobi slate is a member of Alpha Phi.

117. The third avenue similarly does not apply in this case, as no evidence was presented that Ms. Chapman received more than one of the same type of campaign item as distributed by the candidate.

118. It is the Petitioner’s position that Ms. Chapman is a campaign volunteer through the first avenue. The Petitioner claims that Team Tobi reasonably ought to have known that Ms. Chapman would assist with campaigning due to her membership in Alpha Phi and Alpha Phi’s endorsement of Team Tobi. While the Board considered whether certain behaviour would rise to the level of campaigning in the fourth appeal, above, the subjective or objective knowledge of an individual’s assistance with campaigning was particularly at issue in this appeal.

119. The Petitioner’s position is untenable. Alpha Phi has 75 members, and no evidence was forwarded to suggest that Ms. Chapman’s involvement in the organization rose above that of an ordinary member. Furthermore, the EGC’s investigation turned up no evidence that Ms. Chapman had participated in Team Tobi’s campaign. The sole connection established between Team Tobi and Ms. Chapman is Ms. Chapman’s membership in an organization that endorsed Team Tobi.

120. Candidates received endorsements from several organizations whose combined membership number in the hundreds. It cannot be said that the actions of every member of these organizations are reasonably foreseen by a candidate by the fact of endorsement alone. It would be impractical and unfair to require that candidates monitor the actions of hundreds of individuals throughout the campaign to avoid EGC sanctions. To accept the Petitioner’s interpretation of “reasonably ought to have known” would expose candidates to indeterminate liability.

Held

121. The EGC’s decision not to sanction Team Tobi for Ms. Chapman’s post was reasonable. This appeal is dismissed.

PART X: DISPOSITION

122. *All six appeals are dismissed.*