

**UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

REPORT NUMBER 59 OF THE ELECTIONS COMMITTEE

March 8, 2010

To the University Affairs Board,
University of Toronto

Your Committee reports that it met on Monday, March 8, 2010 at 3:00 p.m. in Room 9, Simcoe Hall, with the following members present:

Professor Ronald H. Kluger (In the Chair)
Ms Diana Alli
Mr. Stephen Smith
Mr. Olivier Sorin

Regrets:
Mr. Gary P. Mooney

Secretariat:
Mr. Anwar Kazimi, Chief Returning Officer
Ms Mae-Yu Tan

In Attendance:

Ms Andrea Carter, Employment Equity Officer, Accessibility of Ontarians with Disabilities Act Advisor
Appellant 1
Appellant 2
Complainant
Respondent 1
Respondent 2
Respondent 3

In this report, all items are reported to the University Affairs Board for information.

Purpose of Meeting

The meeting was requested by Mr. Anwar Kazimi, the Chief Returning Officer (CRO), to consider charges of campaign violations with respect to the poster rules contained in the *Election Guidelines 2010*. Mr. Kazimi had conducted multiple investigations and had subsequently referred the matters to the Election Overseers for their consideration. As well, two

Purpose of Meeting (cont'd)

candidates in the 2010 Governing Council elections had requested a hearing of appeals they had submitted to the Election Overseers.

Introduction

The Chair welcomed Mr. Kazimi, the respondents, the appellants, and the observers to the meeting. He explained that the Elections Committee was charged with acting as overseers of the elections process for the Governing Council and the Academic Board, hearing any disputes that arose from the process. Decisions of the Election Overseers were final and not open to review.

Details of Allegation 1

Mr. Kazimi summarized his charge that some of Respondent 1's campaign posters violated the rules outlined in the *Election Guidelines 2010*, Appendix B, Guidelines of Posters and the Use of Information and Communication Technology. He noted that, at the Campaign Guidelines Information Session that Respondent 1 had attended on February 11, 2010, he had emphasized the importance of following the poster rules during the 2010 Governing Council election period. As well, he had sent an e-mail to all administrative staff candidates on March 1st reminding them of the rules governing the use of posters in non-designated areas. Mr. Kazimi stated that some of Respondent 1's posters had been placed on the billboard station opposite the Knox College building on 49 St. George Street, which was not a permitted poster area. Upon contacting Respondent 1 about the matter, she had acknowledged her error and had immediately taken steps to remove her posters from non-designated areas. An additional allegation of a campaign violation related to poster rules had been brought to Mr. Kazimi's attention on March 8th, but he had decided it was not necessary to make an additional charge against Respondent 1.

Invited by the Chair to respond to the CRO's report, Respondent 1 apologized to the Election Overseers for having violated the poster rules. She stated that she had not intentionally done so, but rather had been overzealous in her efforts to campaign on campus. Respondent 1 noted that she had been more attentive to ensuring that she did not place her posters in non-designated sites within University buildings, and she had been less vigilant about the placement of her posters on outdoor University property.

Details of Allegation 2

Mr. Kazimi stated that he had conducted an investigation into an allegation that some of Respondent 2's campaign posters violated the rules outlined in the *Election Guidelines 2010*. Mr. Kazimi led the Overseers briefly through his investigation, noting that similar steps as those described above had been taken to inform all student candidates of the poster rules. Upon observing and photographing some of Respondent 2's posters on a telephone booth outside of the Joseph L. Rotman School of Management building at 105 St. George Street, Mr. Kazimi had phoned Respondent 2 to discuss the matter. Mr. Kazimi had subsequently contacted Respondent 2 by e-mail to inform him of a violation of Section 3.03 of the *Procedure on Distribution of Publications, Posters, and Banners at the University of Toronto St. George Campus*, which states the following.

Details of Allegation 2 (cont'd)

Notices, advertisements, posters, flyers or documents of any kind shall NOT be posted on any tree, hedge building, wall, door, window, non-approved lamp post, bench, telephone booth, pole, garbage can, recycling bin, building sign, utility box, mail box, newspaper dispenser or fence on *outdoor* University property (p. 2).

Mr. Kazimi told the Overseers that on March 3, 2010, he had received another allegation that Respondent 2 had violated the postering rules by placing his posters on city property on Devonshire Place and Hoskin Avenue, and on March 8th a further allegation had been made against Respondent 2 of postering on McCaul Street and College Street. Mr. Kazimi had met with Respondent 2 this morning to discuss the most recent allegations, and Respondent 2 had removed the posters from the non-designated areas.

In response to the CRO's report, Respondent 2 acknowledged his violation of the postering rules with respect to the 105 St. George Street and Devonshire Place locations and apologized to the Election Overseers for his error. In order to avoid any further possible problems, Respondent 2 had removed his posters from the St. George campus on March 5th. However, Respondent 2 denied that he or the volunteers who had assisted him with his campaign had placed his posters on McCaul Street. He was of the opinion that someone else had deliberately put his posters in those non-designated areas.

During the subsequent questioning and discussion, members of the Election Overseers determined that Respondent 2 had read the *Election Guidelines 2010* and had a general understanding of the rules it contained.

Details of Allegation 3

Mr. Kazimi outlined his charges against Respondent 3 with respect to violation of the postering rules contained in the *Election Guidelines 2010*, providing similar material to that presented for Allegation 2 above. Mr. Kazimi had received complaints and accompanying photographs from three candidates in the Governing Council elections, alleging that Respondent 3 had placed her campaign posters in non-designated areas on campus. Mr. Kazimi himself had observed Respondent 3's posters in a number of unauthorized locations, including on a door and signs in the Woodsworth College building, on a garbage bin at the corner of Hoskin Street and St. George Street, and on city parking meters and utility boxes between College Street and Bloor Street West. Mr. Kazimi also noted that the size and quantity of Respondent 3's posters were in violation of Section 3.02 of the *Procedure on Distribution of Publications, Posters, and Banners at the University of Toronto St. George Campus*, which stated that "Notices should not exceed the size of four 8 ½" x 11" (or one 17" x 22") posters on one kiosk" (p.2). As in the previous two cases, further allegations of campaign violations related to postering against Respondent 3 had been brought to Mr. Kazimi's attention on March 5th and 8th. Mr. Kazimi had conducted an investigation and Respondent 3 had subsequently removed the posters from the non-designated areas.

Details of Allegation 3 (cont'd)

Invited to respond, Respondent 3 informed the Overseers that she had carefully studied the *Election Guidelines 2010* in order to avoid committing any violations. Having participated in the 2009 Governing Council elections process, Respondent 3 had been especially cautious in ensuring that neither she nor her volunteers posted her campaign posters over those of other candidates. However, Respondent 3 did acknowledge her responsibility for her instructions to and actions of her volunteers. She agreed that she had violated the postering rules, and she thanked the complainant for drawing her errors to her attention. Respondent 3 noted that upon notification of her violations, she had immediately removed her posters from the unauthorized locations of which the CRO had notified her. In her defense, Respondent 3 stated that she had sought permission from the appropriate authorities to place her posters within University buildings. Specifically, she had obtained authorization from the Woodsworth College Students' Association to place her posters within the Woodsworth College building.

Details of Appeal 1

Appellant 1, a candidate in the part-time undergraduate student constituency, presented his case, stating that he found the accommodations that had been offered to him by the CRO with respect to campaigning during the Governing Council election period to be unacceptable. Because Appellant 1 was an individual with a disability, the CRO had offered to provide reimbursement at a rate of \$15 per hour for twenty-eight hours per week for the three weeks of the campaign period (February 19 to March 12, 2010) for the attendant that Appellant 1 needed to assist him. In Appellant 1's view, it was unfair that he would only receive reimbursement for an attendant for limited hours, rather than for the full campaign period. That restricted his ability to campaign, and, in his opinion, created an inequity between him and the able-bodied candidate in his constituency. Appellant 1 elaborated on his personal status that required him to retain a qualified attendant who could assist him with his medical needs at home; in his experience, the typical rate of pay for such a professional was at least \$25.00 per hour.

In response, Mr. Kazimi stated that he had had a conversation with Appellant 1 on February 24, 2010 to discuss possible accommodation arrangements to facilitate his participation in the elections. Subsequently, he had corresponded with Appellant 1 by email about the matter. Mr. Kazimi acknowledged that accommodation was a shared responsibility and he had expressed his willingness to work with Appellant 1 in that regard. Appellant 1 had requested reimbursement for the cost of retaining an attendant to assist him for twelve hours per day for each day of the election period. In Mr. Kazimi's view, such a request, which would result in a cost of at least \$3,780, was not reasonable in relation to the nature of the elections activity. Mr. Kazimi indicated, however, that he was willing to reconsider the hourly rate that would be reimbursed by the Office of the Governing Council.

Members of the Election Overseers asked a number of questions in order to better understand Appellant 1's needs for accommodation in the Governing Council elections.

Details of Appeal 2

A second candidate in the part-time undergraduate student constituency, Appellant 2, also presented her appeal of Mr. Kazimi's decision with respect to reimbursement for an attendant during the Governing Council campaign period. Her request was similar to that of Appellant 1. Appellant 2 noted that there were many visual aspects of a campaign process for which she required assistance. That included having an attendant to guide her to unfamiliar locations and buildings on campus, photocopying campaign materials, reviewing her blog, and identifying and speaking with her constituents. Appellant 2 also commented that, in her view, it was inappropriate for the CRO to suggest that she should consider her academic commitments as a part-time student when assessing the amount of time she might spend campaigning.

Invited to respond, Mr. Kazimi said that he would need to verify that an attendant had been paid at a rate of \$25 per hour in the 2009 Governing Council elections, as Appellant 2 had stated.

Following the questions asked by the Election Overseers of Appellant 2, the Chair thanked Mr. Kazimi, the respondents, and the appellants for their comments. A member also thanked Mr. Kazimi for his dedication in carrying out his duties as the Chief Returning Officer. The non-members then withdrew from the meeting, and the Committee moved *in camera* to deliberate, with the Secretary remaining.

Decisions

After deliberation, the Committee unanimously reached the following decisions.

(a) Respondent 1: Postering Violations

The Committee determined that the postering rules contained in the *Election Guidelines 2010* had been violated by Respondent 1, an administrative staff candidate in the Governing Council elections. In the opinion of the Committee, this constituted a "serious"¹ violation of the *Guidelines*. The Committee noted that Respondent 1 had accepted responsibility for the fact that some of her posters had been placed in unauthorized locations, and she had taken steps to remove them after having been alerted to the violation by the CRO.

Penalty:

The Committee reprimands Respondent 1 for the campaign violation.

¹ The Election Overseers may determine that a serious violation has been committed even if it appears that the candidate did not intentionally seek to gain unfair advantage in the electoral process (p. 102, *Election Guidelines 2010*).

Decisions (cont'd)**(b) Respondent 2: Postering Violations**

The Committee determined that the postering rules contained in the *Election Guidelines 2010* had been violated by Respondent 2, a full-time undergraduate student constituency I candidate in the Governing Council elections. In the opinion of the Committee, this constituted a “serious” violation of the *Guidelines*. The Committee noted that Respondent 2 had acknowledged his error and had already voluntarily removed his posters from outdoor locations on the St. George campus.

Penalty:

The Committee assesses the following sanction against Respondent 2:

That Respondent 2 be required to remove all of his campaign posters that have been placed outdoors on campus forthwith and that he refrain from putting up any additional posters outdoors during the remainder of this 2010 Governing Council election period (until Friday, March 12, 2010 at 5:00 p.m.).

(c) Respondent 3: Postering Violations

The Committee determined that the postering rules contained in the *Election Guidelines 2010* had been violated by Respondent 3, a full-time undergraduate student constituency I candidate in the Governing Council elections. In the opinion of the Committee, this constituted a “serious” violation of the *Guidelines*. The Committee noted that Respondent 3 had accepted responsibility for the fact that some of her posters had been placed in unauthorized locations, and she had taken steps to remove them after having been alerted to the violation by the CRO.

Penalty:

The Committee assesses the following sanction against Respondent 3:

That Respondent 3 be required to remove all of her campaign posters that have been placed outdoors on campus forthwith and that she refrain from putting up any additional posters outdoors during the remainder of this 2010 Governing Council election period (until Friday, March 12, 2010 at 5:00 p.m.).

Pursuant to Appendix A of the *Election Guidelines 2010* (Publication of Confirmed Violations, page 103), details of the confirmed violations, including the names of the offenders, will be published on the Governing Council elections website (<http://www.governingcouncil.utoronto.ca/elections.htm>). The Committee has determined that such information will be posted immediately and will remain posted on the website until Friday, March 12, 2010 at 5:00 p.m.

Decisions (cont'd)

(d) Appellant 1: Appeal of Accommodation for Candidates in Governing Council Elections

The Committee finds to be reasonable and confirms the Chief Returning Officer (CRO)'s decision pursuant to Section 6.0, Commitment Regarding Individuals with Disabilities, of the *Election Guidelines 2010* with respect to determination of reimbursement for Appellant 1 of up to 28 hours per week for a maximum of three weeks. The Committee accepts the CRO's offer to reconsider the hourly rate for reimbursement of specific services on the basis that the CRO's decision as to such hourly rate shall be final.

The decision of the Election Overseers is final and is not subject to any further review or appeal.

(e) Appellant 2: Appeal of Accommodation for Candidates in Governing Council Elections

The Committee finds to be reasonable and confirms the Chief Returning Officer (CRO)'s decision pursuant to Section 6.0, Commitment Regarding Individuals with Disabilities, of the *Election Guidelines 2010* with respect to determination of reimbursement for Appellant 2 of up to 28 hours per week for a maximum of three weeks. The Committee accepts the CRO's offer to reconsider the hourly rate for reimbursement of specific services on the basis that the CRO's decision as to such hourly rate shall be final.

The decision of the Election Overseers is final and is not subject to any further review or appeal.

The assessment of needs for accommodation and personal support are not matters that the Committee itself can assess; that is the responsibility of the CRO, who consults as appropriate with and obtains guidance from suitable officers of the University. The Committee does, however, have responsibility to determine whether or not decisions made by the CRO are reasonable.

The meeting adjourned at 5:15 pm.

Secretary
March 10, 2010

Chair