

**UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

REPORT NUMBER 50 OF THE ELECTIONS COMMITTEE

March 26, 2008

To the University Affairs Board,
University of Toronto.

Your Committee reports that it met on March 26, 2008 at 3:00 p.m. in the Council Chamber, Simcoe Hall, as Elections Overseers, in accordance with Chapter III (10) of the *Election Guidelines, 2008*, with the following members present:

Mr. Stephen Smith (In the Chair)
Mr. P.C. Choo
Mr. Arya Ghadimi
Professor William Gough *

Regrets:

Dr. Shari Graham Fell

Secretariat:

Ms Nancy Smart (Chief Returning Officer)
Ms Mae-Yu Tan (Deputy Returning Officer and Secretary)

In Attendance:

██████████, appellant

*participated by teleconference

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

Purpose of Meeting

The meeting was called to hear the appeal of ██████████ concerning the election results of the full-time undergraduate student Constituency I¹.

Introduction

The Chair welcomed ██████████ to the meeting. He explained that the Elections Committee was charged with developing the *Election Guidelines*, acting as overseers of the elections process for the Governing Council, and hearing any disputes that arose from the process. The Committee considered such appeals seriously; it was in the University's interest to ensure that the Governing Council elections were conducted in a fair manner.

¹ Constituency I is defined as "All full-time undergraduate students registered in Arts and Science on the St. George campus, at the University of Toronto at Mississauga (UTM) and at the University of Toronto at Scarborough (UTSC)..."

Introduction (cont'd)

Outlining the procedures, the Chair stated that ██████ would be invited to present her case and to respond to questions from the Committee. The Chief Returning Officer (CRO), Ms Nancy Smart, would also be invited to comment on the matter. The Chair stated that, in his view, the basic facts of the case were not in dispute. It was known that ██████ candidate statement had been omitted from the full-page notice that the Governing Council had placed in the March 3, 2008 issue of *The Varsity* campus newspaper. It was also clear that ██████ had drawn attention to the omission, and a corrected version of the notice had been subsequently published in *The Varsity* on March 10th. The Chair explained that the Committee's task would be to examine the case and to determine whether or not an appropriate remedy had been taken.

Details of the Appeal

██████ distributed some supporting letters to the Committee. She presented her case, stating that, in her view, she had been greatly disadvantaged by the error in *The Varsity*. *The Varsity*, which was published twice a week, unlike other campus newspapers, was likely the most widely-distributed and read paper. Upon discovering the error, she had immediately contacted Ms Smart to discuss the problem. ██████ had requested that only her statement be reprinted in the newspaper, together with an apology to her. She was greatly disappointed that such an approach had not been taken, and she suggested that the other candidates may have benefitted from having their statements produced twice. ██████ noted that her middle name had been excluded from the apology, which had created further confusion to her supporters. Some had wondered whether she had withdrawn from the election. 825 students had voted for ██████, whereas 836 had voted for the candidate who had won with the second greatest number of votes. ██████ believed that had her proposed solution been followed, the election results might have been different, given the small difference of 11 votes between candidates.

Invited to comment, Ms Smart stated that she perceived her role as CRO to be to ensure that the election process was held in a manner that was fair to all candidates. During an initial discussion about the matter, a staff person at *The Varsity* had offered to reprint just ██████ statement. However, Ms Smart believed that highlighting one candidate's statement could disadvantage others in that constituency. The staff person then suggested that he re-run all the candidates' statements from the full-time undergraduate student Constituency I, of which ██████ was a member. Ms Smart pointed out that that, too, would be inequitable, since members of the other constituencies would not receive as much free advertising as those in the Constituency I. Ms Smart then made the decision to have all of the candidates' statements reprinted with an apology placed on the front page. In her view, that was the most equitable solution. As the Chair of the Committee had been unavailable, Ms Smart had instead consulted with and received agreement on her proposed solution from a majority of the Committee members. Further, Ms Smart submitted that the Committee had earlier, in effect, considered the appellant's appeal when she had consulted the available members before making her decision on re-printing *The Varsity* advertisement and that the present appeal was therefore not well-founded as a matter of procedure.

In Ms Smart's opinion, it was unlikely that the omission of ██████ middle name from the apology would have caused confusion for students, since her full first and last name had appeared. As well, her full name, along with her statement, could be viewed by students on ROSI when they accessed the website to vote. Information intended to promote awareness of the elections and of the candidates had been made widely available through advertisements placed in five different campus newspapers and on the Governing Council website. In addition, emails had been sent to all students twice during the voting period to inform them that the elections were underway, where they could find candidates' statements, and where they could vote.

Details of the Appeal (cont'd)

In response to a question from a Committee member, ██████ stated that she was unclear of the extent of the Overseers' jurisdiction and of the possible solutions that she might request to address the error that had occurred. However, she outlined some of the options that she had contemplated and her subsequent thoughts on those options:

- 1) Add a ninth student seat on Governing Council to allow additional student representation, but she felt it was unlikely that such a solution would be permitted.
- 2) Accept a co-opted position on a Governing Council board or committee, but she preferred to be an elected student representative on the Governing Council.
- 3) Offer the successful candidate with the second greatest number of votes the co-opted position and grant her that candidate's seat on the Governing Council, but that would be unfair to the other candidate.
- 4) Re-open the elections for twenty-four hours on ROSI, but since the elections had closed, it was unlikely that such a solution would be permitted.

█████ reiterated that she believed the Committee should be responsible for making an equitable decision, rather than asking for her proposed solution.

The Chair informed ██████ that the Election Overseers did not have authority to alter the number of seats on the Governing Council. Any amendments to the *University of Toronto Act* would require legislative intervention.

A member commented that it appeared that the statement of ██████, a candidate in the graduate student Constituency II, was contained in the March 10th issue of *The Varsity*, but not in the March 3rd issue. At that point, the member also noted that the length of ██████ statement seemed to be lengthier in the March 3rd issue than that of March 10 . Upon closer examination of the text, members discovered that the March 3rd issue in fact contained both ██████ and ██████ statement in the same paragraph. Because ██████ name and statement had been included with that of Mr. Darcovich, it had been overlooked by everyone present. Similarly, ██████ statement had been included under ██████ statement.

A member asked whether Ms Smart had been able to specify the location of the apology to ██████ in *The Varsity*. Ms Smart replied that she had requested that it be placed on the front page, but she had no authority to determine the size of the apology that had been published in the newspaper.

A member commented that ██████ had stated that she had been unaware of the possibility of submitting an appeal to the Elections Committee during the elections process. The member said that, in his view, all candidates were responsible for reading the *Elections Guidelines* and for informing themselves of matters concerning the elections process. ██████ responded that she had read the *Guidelines*, but had found no information on the possibility of appealing an appeal decision. The member explained that while ██████ had reportedly discussed her concerns of the proposed solution with Ms Smart, she had not submitted a prior appeal to the Election Overseers.

In response to a question from a member, ██████ stated that she had placed posters and distributed flyers around campus as part of her campaigning efforts.

The Chair thanked the ██████ and Ms Smart for their comments. The non-members then withdrew from the meeting, and the Committee moved *in camera* to deliberate, with the Secretary remaining.

Decision

After deliberation, the Committee unanimously reached the following decision.

It was most unfortunate that the candidates' statements had not appeared in the March 3rd issue of *The Varsity* as originally formatted by the Office of the Governing Council staff. The CRO had acted within her authority in making the decision to have all of the candidates' statements reprinted, along with an apology, in order to address *The Varsity's* typesetting error. While one member commented that he would have preferred *The Varsity* to have highlighted only the appellant's statement in the subsequent issue, the Committee was unanimously of the opinion that the CRO had acted within her jurisdiction in making her decision to re-publish the corrected advertisement in its entirety with an apology to the appellant on the first page of the paper. All members concluded that the error that had occurred was not reasonably likely to have affected the result of the election. Information about the Governing Council elections and the elections website (on which all candidates' statements were available) had been widely distributed throughout the University community using multiple means. As stated in Chapter VI, section e) of the *Elections Guidelines, 2008* (p. 25), an irregularity, failure, non-compliance or mistake in any proceedings relating to the election, or to the election in any constituency, did not invalidate the election if it appeared to the Election Overseers that the election had been conducted in accordance with the principles of the Guidelines and that the irregularity, failure, non-compliance or mistake was not reasonably likely to have affected the result of the election.

The Committee was unanimously of the opinion that the consultation by the CRO with Committee members prior to making her decision to re-publish the advertisement did not constitute an appeal of her decision as it had not yet been made or implemented and in any case the appellant had not made such an appeal to the Committee or been heard.

Recommendation for Future Actions

The Election Overseers suggested that the CRO encourage *The Varsity* to print the decision of the Election Overseers on [REDACTED] appeal in a future issue.

The Election Overseers noted that in the future, it would be preferable for the CRO to independently make decisions concerning the implementation of the election process, rather than to consult with the Elections Committee in the event that the Chair was unavailable to provide guidance. By following that practice, the Committee could not be viewed as having been prejudiced if they were subsequently called upon to hear an appeal of a ruling or decision of the CRO.

The meeting adjourned at 4:15 p.m.

Secretary

Chair

March 27, 2008