

**UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL**

REPORT NUMBER 43 OF THE ELECTIONS COMMITTEE

March 9, 2006

[Secretary's Note: The decision contained in this report was declared invalid at a later meeting of the Elections Overseers. Please see Report #44 of the Elections Committee.]

To the University Affairs Board,
University of Toronto.

Your Committee reports that it met on March 9, 2006 in the Falconer Room, Simcoe Hall, as Elections Overseers, in accordance with Chapter III (10) of the *Election Guidelines 2006*, with the following members present:

Professor Michael Marrus (In the Chair)
Mr. P.C. Choo
Mr. Mahadeo Sukhai

Secretariat:

Dr. Anthony Gray (Chief Returning Officer)
Ms Cristina Oke (Secretary)

In Attendance:

Ms Saswati Deb, respondent
Ms Coralie D'Souza, complainant

Observers:

Mr. Paul Bretscher, President, Students' Administrative Council (SAC)
Mr. Terry Buckland, Executive Assistant, Arts and Science Students' Union (ASSU)
Mr. Yasser Habeeb, President, Arts and Science Students' Union (ASSU)
Ms Parinita Rajagopalan, Campaign Manager for Ms Deb

The meeting was held in closed session.

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

Purpose of Meeting

The meeting was requested by Dr. Gray, the Chief Returning Officer (CRO), to hear two complaints registered by Ms. Coralie D'Souza, a candidate in the 2006 student elections for the Governing Council. Her complaints concerned actions taken by Ms Saswati Deb during the elections campaign which, it was alleged, violated the rules of campaigning as set out in the *Elections Guidelines 2006*.

Dr. Gray had conducted an investigation and referred the two complaints – one involving inappropriate postering by the respondent, and one involving inappropriate use of tangible benefits by the respondent – to the Overseers for decision.

Alleged Postering Violations

Dr. Grey briefly summarized the alleged postering violation. During an initial investigation, he had identified seven examples of clear violations of the University of Toronto's *Procedure on distribution of Publications, Posters and Banners at the University of Toronto St George Campus*. He had found posters:

- on a phone booth outside the Medical Sciences Building;
- on the garbage and recycling cans in front of the Medical Sciences Building;
- on an Emergency pole on the north west corner of King's College Circle;
- on a utility box outside Robarts' library;
- on a construction fence on the west side of St. George Street, next to Innis College;
- on a lamp post on the east side of St. George Street, next to a Fraternity house;
- on a mailbox on the east side of St. George Street, next to the Woodsworth residence.

The location of these posters was in clear violation of the *Procedure on distribution of Publications, Posters and Banners at the University of Toronto St George Campus*.¹

Invited to comment, Ms D'Souza stated that, in her view, the placement of the posters in unauthorized locations had provided Ms Deb with an unfair advantage during the current election campaign.

Invited to respond, Ms Deb acknowledged that a number of her posters had been placed in unauthorized locations. In her view, she had made every effort to inform her campaign team of the rules regarding postering. She observed that she had seen posters of other candidates in unauthorized locations as well.

Alleged Use of Tangible Benefit

Dr. Gray reported that he had conducted an initial investigation into the allegation that Ms Deb, in the course of her campaign, had used confidential contact information provided to the Arts and Science Students' Union (ASSU) for the sole purpose of official ASSU business.

Invited to comment, Ms D'Souza explained that she had received complaints from two Union Course Heads who had been contacted by Ms Deb using private telephone numbers that they considered to be confidential.

Invited to respond, Ms Deb stated that she had received an official endorsement from ASSU which had resulted in the provision of contact information and infrastructure support consistent with past practice. Moreover, Ms Deb expressed the view that, once she had been endorsed by ASSU, the election, and specifically her campaign, were now part of ASSU's official business. Accordingly, Ms Deb argued, it was appropriate to use ASSU's confidential contact information and infrastructure to promote her campaign.

Following questions from Committee members and final statements from the claimant and the respondent, the non-members withdrew from the meeting, and the Committee moved *in camera* to deliberate, with the CRO and Secretary remaining.

¹ Section 3.03 of the *Procedure* reads:

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.

Decision

The Committee was unanimous in reaching the following decision.

- (a) The Committee determined that the postering rules contained in the *Election Guidelines 2006* have been violated, and noted that Ms Deb herself had acknowledged that some of her posters were in unauthorized locations. In the opinion of the Committee, the presence of a number of posters in multiple unauthorized locations constitutes a serious violation of the *Election Guidelines 2006*.²

The Committee wishes to emphasize that candidates for election to the Governing Council are responsible for the actions of those who work on their behalf, officially or otherwise, and that it is extremely important for candidates to ensure that their staff members are familiar with the election's rules and acting in compliance with them. In addition, while the Committee recognizes that violations of the University's policies on the placement of posters occur with some frequency outside the framework of elections, citing the frequency of such offences is neither an acceptable defense of the behaviour nor a mitigating factor.

² In principle, a *Severe* violation is one characterized by a deliberate and substantial effort to undermine the elections process; in contrast, a *Serious* violation is one which contravenes the spirit and letter of these *Guidelines* in an attempt to gain an unfair advantage in the elections process but does not itself constitute a substantial effort to undermine that process. The Elections Overseers have the sole authority to determine the category into which a particular violation falls, guided by the following observations, and acknowledging that the degree of a violation may influence its classification:

- (i) *Serious* violations might include, but are not limited to:
- violations of the regulations concerning posters and information technology outlined in Appendix B of these *Guidelines*;
 - including, in the course of a campaign, material explicitly forbidden by these *Guidelines* (e.g. University Crest);
 - violations of any restrictions imposed by University faculties, departments, or administrative services;
 - inappropriate use of property, including but not limited to chalk messages on sidewalks, adhesive stickers/signs affixed to furniture and/or equipment;
 - unauthorized solicitation of votes, including but not limited to speaking in class without the prior permission of the instructor;
 - the use in a campaign of any service or tangible benefit conferred on a candidate by virtue of his/her holding any position in any organization on campus. This includes, but is not limited to, office supplies, equipment, advertising space, secretarial service and funding;
 - unauthorized use of University resources, including but not limited to printing, copying, office supplies, equipment and secretarial service;
 - deliberate misrepresentation of facts;
 - spending marginally over the maximum spending limit as set by the *Election Guidelines*;
 - making frivolous and/or vexatious campaign violation allegations.
- (ii) *Severe* violations might include, but are not limited to:
- spending grossly over the maximum spending limit as set by the *Election Guidelines*;
 - intentionally misrepresenting campaign expenditures;
 - attempting to interfere in the election process as regulated by these *Guidelines*;
 - soliciting Student Information System (SIS) and/or Personal Identity Number (PIN) numbers.

- (b) The Committee determined that the use of confidential contact information by Ms Deb was also a serious violation of the *Election Guidelines, 2006*. The Committee does not accept Ms Deb's contention that she was entitled access to and the use of ASSU's confidential contact information by virtue of ASSU's endorsement of her candidacy in the present elections campaign. In the Committee's view, such use constitutes an impermissible tangible benefit conferred on Ms Deb by virtue of her association (through endorsement) with the Arts and Science Students' Union.

The Committee also believes that endorsing a candidate for election does not make that candidate's campaign the business of the endorsing body. Accordingly, Ms Deb and ASSU in general should not have used ASSU's confidential contact information to promote Ms Deb's election campaign. In doing so, Ms Deb violated the *Guidelines'* provisions on campaigning and, in letter or spirit, the University's stated policies on access to information.

The Committee wishes to register its concern with ASSU's "best practice" on the endorsement of candidates and its past practice of providing endorsed candidates with confidential contact information. The Committee questions whether this practice is in compliance with the University's policies on access to information.

At the same time, the Committee believes that these practices place Ms Deb's actions in a mitigating context. However culpable, Ms Deb's actions may have been consistent with past practices of the ASSU Executive, and, indeed, her actions in the present circumstances seem to have been acknowledged, authorized and encouraged by that body.

Penalty

The Committee has determined that Ms Deb has committed two serious campaign violations, and Appendix C.12.(1) of the *Elections Guidelines, 2006*, the Committee has the authority in such circumstances to disqualify the candidate from the election. However, in the present matter, the Committee uses its discretion not to disqualify Ms Deb as a candidate in the Governing Council election, citing in justification the mitigating circumstances mentioned above. The Committee emphasizes that Ms Deb's infractions are serious, but they note that, with respect to the second violation, there is shared culpability.

In light of the unfair advantage obtained through the campaign violations, the Committee assesses the following sanction against Ms Deb:

- (1) That pursuant to Appendix C.12.(j).(iv) of the *Election Guidelines, 2006*, the details of these violations, together with the name of the offender, be published on the University's elections websites for the duration of the election; and**
- (2) That Ms Deb's reimbursement for campaign expenses be eliminated for the current campaign in the Full-time Undergraduate, Constituency 1 election for Governing Council.**

March 9, 2006