

DISCIPLINE, INTERPRETATION, AND ENFORCEMENT BOARD

Citation: Singh v. Elections Office, 2020-03

BETWEEN:

Chanpreet Singh

Applicant

- and -

Muneeb Ahsan (Elections Office, Chief Returning Officer)

Respondent

SECTION 3.1(a) DECISION BYLAW 1500

Panel Members:	Christian Zukowski, Chief Tribune (Chair) Darren Choi, Tribune Emily Stolz, Tribune
Hearing Date:	March 11, 2021
Witnesses for the Applicant:	Levi Flaman
Witnesses for the Respondent:	Robyn Jenkins

The Board is unanimous in the following decision:

FACTS

[1] On March 10, 2021 at 5:23PM, the Elections Office issued an elections regulation in response to an inquiry from the Applicant regarding candidate endorsements in the Students' Council and General Faculties' Council election.

[2] The elections regulation reads as follows:

The elections office would like to release an official statement regarding the questions about candidate endorsements. We agree that the language used in Bylaw 2300 22(1) is confusing. Bylaw 2200 24(1) will be the ultimate authority in this matter. This bylaw states that "No two (2) or more candidates shall jointly use any resources, including tables, posters, banners, and budgets but excluding volunteers." This includes but not limited to photos, words, digital media, and stories. Therefore we will not be allowing candidates to endorse one another in this election.

[3] On March 10, 2021, the Applicant referred to this Board an appeal of the Elections Office's ruling. The Applicant is seeking a ruling of whether the above elections regulation is in conflict with Bylaw 2300.

LEGISLATION

[4] Students' Council has created a legislative scheme to regulate elections to Students' Council and General Faculties' Council in Bylaw 2300. As the sole bylaw governing the election of individuals to Students' Council and General Faculties' Council, Bylaw 2300 will be the only legislation considered.

Bylaw 2300: Councillor Elections to Students' Council and General Faculties' Council

[5] Bylaw 2300 governs the electoral process for elections to the Students' Council and General Faculties' Council. Section 21 (1) mandates that no two or more candidates shall jointly use any resources, reproduced below.

21. No Joint Use of Resources

1. *No two (2) or more candidates shall jointly use any resources, including tables, posters, banners, and budgets.*

...

[6] Bylaw 2300 section 22 (1) regulates endorsements of candidates for positions within Student's Council and General Faculties' Council. Section 22 (1), reproduced below, forbids only the Chief Returning Officer, the Deputy Returning Officers, and incumbent members of the Executive Committee who are not also candidates from endorsing any candidate within a Students' Council and General Faculties' Council election.

22. Endorsements

- 1. Any member with the exception of the C.R.O. , the D.R.O.s, and incumbent members of the Executive Committee who are not also candidates shall be free to endorse any candidate.*
- 2. Any member with the exception of the C.R.O., the D.R.O.s, candidates, and incumbent members of the Executive Committee shall be free to act as a volunteer for any candidate.*
- ...

Section F: Election Regulations and Guidelines

[7] In an preambulatory statement the nomination package states, among other things, that the election rules and regulations are subject to change:

Preamble

Due to the pandemic, election rules and regulations are subject to change without prior notice. However, all candidates and campaign managers will be informed of the changes.

[8] Section F: Election Regulations and Guidelines, sub-section 2.7, of the nomination package for the March 2021 Student's Council and General Faculties' Council Election reflects Bylaw 2300, reproduced below.

2.7 Collusion

Candidates are free to endorse each other, but are prohibited from acting as a volunteer for any other candidate. Candidates are also prohibited from sharing resources (i.e.: tables, posters, banners, budgets, etc.), other than universal materials, with any other candidate.

ISSUES

[9] The issues before this Board are as follows:

1. Did the election regulation issued on March 10, 2021 contravene Bylaw 2300 section 22(1)?

- a. Was the Election Office's interpretation of 'joint resource' in section 21(1) of Bylaw 2300 reasonable?
- b. Do sections 21(1) and 22(1) of Bylaw 2300 conflict in this case? If so, to what extent?

PRELIMINARY MATTERS

Scope of Action

[10] The original application in this matter was brought to the Board as an appeal of a Chief Returning Officer ruling under section 3(1)(c) of Bylaw 1500.

[11] Bylaw 2300, in regulating rulings made by the Chief Returning Officer, provides a process that includes the making of a complaint against an electoral candidate and a subsequent ruling on the issue by the Chief Returning Officer.

[12] The issue in this case concerns a regulation, not a ruling, issued by the Elections Office. Given this, this Board sought submissions from the Applicant and Respondent as to whether justification could be provided for hearing the case as an appeal of a ruling. Both parties deferred to the judgement of this Board.

[13] To that end, this Board modifies the scope of this application to a contravention complaint. This makes the most logical sense as the election regulation in question is argued to contravene Bylaw 2300.

Legislation in Dispute

[14] The election regulation in dispute in this matter, as well as the resulting hearing application, both reference Bylaw 2200, which governs the election of the Executive Committee and Board of Governors Representatives, in addition to the bylaw governing Students' Council and General Faculties' Council elections: Bylaw 2300.

[15] This discrepancy was resolved prior to arguments on the issues before the Board with both parties agreeing that the bylaw at issue is Bylaw 2300. As such, this Board will not consider the relevance of Bylaw 2200 to this case.

ANALYSIS

- 1. Did the election regulation issued on March 10, 2021 contravene Bylaw 2300 section 22(1)?*

[16] Both the Applicant and Respondent in this case made a number of submissions as to whether the March 10, 2021 election regulation contravened Bylaw 2300. In order to fully consider the validity of the various arguments made, they will briefly be summarized here.

[17] The Applicant, in arguing that the regulation did contravene Bylaw 2300, made two primary arguments. First, the Applicant argued that the broad definition of joint resource adopted by the Elections Office, in regard to Bylaw 2300 section 21(1), was necessarily in conflict with section 22(1) of that bylaw. Second, the Applicant further argued that the impugned regulation was too much of a departure from the original election nomination package, which the Applicant argued was a formal agreement between the Elections Office and candidates.

[18] The Applicant called Witness Levi Flaman, a candidate in the business Students' Council and General Faculties' Council election, to provide support and context for the first argument. Mr. Flaman argued against the impugned regulation's assertion that the language in Bylaw 2300 section 22(1) is "confusing." Flaman instead pointed to section 22(1) as being unambiguous in allowing the endorsement of candidates by most members of the Students' Union, including other candidates.

[19] Conversely, the Respondent made a number of arguments in support of the impugned regulation. The arguments generally stemmed from the dual assertions that 1) bylaw is paramount to the election nomination package, and 2) the Chief Returning Officer should be given deference in the interpretation of election bylaws. From these assertions, the Respondent at various points argued that the regulation is consistent with bylaw in being flexible with the irregularity of an online election environment and the need for enforceable regulations.

[20] Robyn Jenkins, Deputy Returning Officer, supported the Respondent's arguments and relayed that the March 10, 2021 election regulation was implemented with the best interests of the candidates in mind.

[21] In our opinion, the March 10, 2021 election regulation did contravene Bylaw 2300 section 22(1) insofar as it entirely precludes candidates from exercising their rights to endorse fellow candidates under this bylaw. This conclusion is supported by our analysis of the following sub-issues.

(a) Was the Election Office's interpretation of 'joint resource' in section 21(1) of Bylaw 2300 reasonable?

[22] Per section 21(1) of Bylaw 2300, candidates are not permitted to jointly use any resources for the purposes of the election. While the bylaw explicitly includes tables, posters, banners, and budgets as potential joint resources, 'resources' or 'joint resources' are not clearly defined and thus must be interpreted in harmony with the rest of the legislation.

[23] The Respondent argued that, in light of the online nature of the elections, the term resources in the context of section 21(1) must be interpreted in such a way as to include all posts to social media. The Respondent argued that posts to social media are analogous to physical posters or banners, which are explicitly listed as potential joint resources under section 21(1).

[24] The Respondent further argued that all social media posts endorsing another candidate, including posts and stories, constitute joint resources since they are posted about one candidate yet posted to another candidate's account.

[25] Conversely, the Applicant argued that not all social media content falls within the definition of a joint resource. The Applicant argued that text-only testimonies endorsing another candidate, but posted only to the endorsing candidate's social media accounts without being shared by the endorsee, should not be considered a joint resource as they only use a single candidate's resources.

[26] It is the opinion of this Board that the Respondent's interpretation of 'joint resources' is too broad and is therefore unreasonable.

[27] However, in ruling that the Respondent's interpretation was unreasonable, this Board also agrees with the Respondent that the Chief Returning Officer should be given a degree of deference in their interpretation and enforcement of the election bylaws. To be clear, the Chief Returning Officer may regulate instances where an endorsement may contravene bylaw, but any such regulation must be consistent with bylaw itself. Mainly, a regulation may not override the bylaw provision allowing candidates to make endorsements.

[28] It follows, then, that the Elections Office, through the Chief Returning Officer, does have flexibility, to the extent that bylaw allows, in responding to unique situations such as an entirely online campaign. The approach that this Board envisions is one in which bylaw is not read so rigidly that varying situations cannot be accounted for, while also not reading bylaw so loosely that sections of bylaw may be disregarded.

[29] Finally, the Applicant asserted that the nomination package constitutes a formal agreement between the Elections Office and candidates and that, on that basis, the election regulation is not valid. Given that bylaw is paramount to the nomination package, any (valid) interpretation of bylaw by the Chief Returning Officer is not confined to what is stated in the nomination package. Even if the nomination package was interpreted as a binding agreement between the Elections Office and candidates, the preamble to the Election Regulations and Guidelines makes clear that they may be changed without notice. It is not appropriate to determine in the case at hand whether candidates are owed a degree of procedural fairness.

(b) Do sections 21(1) and 22(1) of Bylaw 2300 conflict in this case? If so, to what extent?

[30] A plain reading of Bylaw 2300 suggests that sections 21(1) and 22(1) do not necessarily conflict. In fact, they fundamentally address two separate issues: the regulation of resources available to candidates to ensure fairness in campaigning and an allowance of endorsements, with the exception of certain members by virtue of their positions.

[31] Any conflict between these two sections derives from the unreasonable interpretation of joint resources discussed above. To that end, it must be remembered that specific sections of bylaw are not to be read in solitude.

[32] With this in mind, sections 22(1) and 22(1) must be interpreted in relation to each other, with the issue of endorsements falling at some point in between. While candidates may endorse one another, they may not jointly use resources, reasonably understood, in doing so.

DISPOSITION

[33] The issues before this Board, and the answers to those issues, are as follows:

1. *Did the election regulation issued on March 10, 2021 contravene Bylaw 2300 section 22(1)?*

The election regulation issued on March 10, 2021 did contravene Bylaw 2300 section 21(1).

- a. *Was the Elections Office's interpretation of 'joint resource' in section 21(1) of Bylaw 2300 reasonable?*

The Elections Office's interpretation of 'joint resource' in section 21(1) of Bylaw 2300 was not reasonable insofar as that interpretation rendered the endorsement

section of Bylaw 2300 ineffectual.

- b. *Do sections 21(1) and 22(1) of Bylaw 2300 conflict in this case? If so, to what extent?*

Sections 21(1) and 22(1) of Bylaw 2300 do not necessarily conflict. The conflict in this case is the direct result of the unreasonable interpretation of ‘joint resource.’

[34] Given that the elections regulation contravened Bylaw 2300 section 22(1), this Board must strike down the regulation to the extent that it disallows candidates from endorsing each other in the present election.

[35] The Elections Office is hereby ordered to provide official guidelines to candidates regarding appropriate candidate endorsements for the purposes of this election. This order must be complied with within 48 hours of this decision being rendered. The current regulation will remain in effect until a new regulation is issued or, failing that, until 48 hours has passed.

[36] This Board will not prescribe how the guidelines for endorsements must be set out other than to mandate that some form of endorsement between candidates must be allowed in this election. The responsibility rests with the Chief Returning Officer to ensure the guidelines are compliant with Bylaw 2300 sections 21(1) and 22(1).

[37] If the Elections Office is perceived to have failed in this regard, an additional application may be made to this Board.

RIGHT OF APPEAL

[38] This Board, as a preliminary matter, changed this application from an appeal of a Chief Returning Officer ruling to the investigation of a contravention complaint.

[39] As a result, this ruling may be appealed to a Discipline, Interpretation, and Enforcement Board panel of appeal. Any appeal applications must be made within seven days of the posting of this ruling.

Application allowed.