

DISCIPLINE, INTERPRETATION, AND ENFORCEMENT BOARD

Citation: Hansen v Varghese, 2023-HA03; Warfa v Naidoo, 2023-HA04

BETWEEN:

Andie Hansen

Applicant

- and -

Jacob Varghese

Respondent

Naima Warfa

Applicant

- and -

Sithara Naidoo

Respondent

**SECTION 3.1(a) DECISION
BYLAW 1500**

Panel Members:

**Sarah Rhydderch, Chief Tribune
Navneet Chand, Associate Chief Tribune
Hiba Khan, Tribune**

Hearing Date:

March 14, 2024

Witnesses for the Applicants: N/A

Witnesses for the Respondents: N/A

The reasons for the unanimous board are delivered by H. Khan.

LEGISLATION

Bylaw 330.08

1. *The C.R.O. or at least one (1) D.R.O. shall*
 - a. *supervise the counting of ballots electronically, when necessary;*
 - b. *post final results within two (2) Business Days of all complaints and appeals being resolved;*
 - c. *notify the Speaker of the Students' Council and President of the Students' Union of the final results in writing;*
 - d. *for GFC Elections, notify the Vice President (Academic) of the Students' Union and the GFC Secretary of the final results in writing;*
 - e. *post unofficial results at any time, including during counting; and*
 - f. *store the ballots in a secure place for at least two (2) weeks after completing the last recount.*
2. *The C.R.O. shall prepare a paper ballot before the close of voting as if their capacity as C.R.O. did not restrict their voting privileges.*
 - a. *The C.R.O. shall place this ballot in a sealed and signed envelope and give it to the D.R.O. before any results from an election are available to the C.R.O.*
 - b. *The envelope shall only be opened if the C.R.O.'s vote is required to break a tie.*
 - c. *If required, a D.R.O. shall open the envelope and oversee the C.R.O. as they implement the tie-breaking mechanism as outlined in Regulation 330.05 - Elections Preferential Balloting.*
 - d. *If this procedure is not followed, the C.R.O.'s ballot will be considered spoiled.*

FACTS

[1] The applications at hand were initiated to determine whether the Chief Returning Officer (“CRO”) and the Deputy Returning Officer (“DRO”) breached Bylaw 330.08 in posting final election results pending all complaints and appeals being resolved. As both applications involved similar facts and parties, they were heard together.

[2] On Thursday, March 7th, the University of Alberta Students' Union (“UASU”) posted election results on the public UASU Instagram account.

[3] On the same day, the official student newspaper, The Gateway, also posted election results in an article, as well as on a Reddit post. The Gateway article mentioned that the DRO had confirmed Farah Elgaweesh’s (“Elgaweesh”) disqualification from the race.

[4] Both posts listed Layla Alhussainy as the elected candidate for the VP (Academic) position. The posts did not specify whether the listed results were unofficial or final.

[5] Applicant Andie Hansen (“Hansen”) contended that the CRO’s actions implied that the results posted were official, as opposed to unofficial. Hansen claimed that the postings by both the UASU and The Gateway contributed to confusion amongst the voters.

[6] Applicant Naima Warfa (“Warfa”) reiterated these concerns, and stated that the Gateway article was being used as a source of information by voters.

[7] Both applicants emphasized the importance of fairness and maintaining a democratic election environment.

[8] Both applicants further claimed that the CRO and DRO had breached Bylaw 330.08(1)(b) by posting final election results while Elgaweesh’s appeal to her disqualification was still ongoing.

[9] In response to these claims, the CRO stated that the votes were unofficial, and that at the time of being announced, no complaints or appeals had yet been filed. The CRO also noted that The Gateway operated separately from the Elections Office, and they had no say over what The Gateway posted or how it was perceived by readers.

[10] The DRO also noted that results are assumed to be official when posted. Election results are only deemed to be official once the Students’ Council ratifies them in a subsequent meeting, which had not occurred.

[11] The DRO stated that Elgaweesh’s appeal to her disqualification came in *after* the unofficial results were posted. Thus, Bylaw 330.08(1)(b) did not apply as no complaints or appeals were pending at the time of the posting of the results.

ISSUES

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

1. *Did the CRO and DRO breach Bylaw 330.08 by posting final election results when an appeal was still pending?*
2. *If there was a breach, what is an appropriate remedy?*

ANALYSIS

Issue 1: Did the DRO and CRO breach Bylaw 330.08 by posting final election results when an appeal was still pending?

[13] Determining whether a breach of Bylaw 330.08 occurred requires first ascertaining whether final results were posted.

[14] According to Bylaw 330.08(1)(e), unofficial results may be posted at any time, including during the counting process.

[15] Based on the submissions made by the DRO, election results are not considered final until they are ratified.

[16] As well, the March 7th post made by the UASU did not specifically state that the results were final.

[17] Based on the above, it does not appear that the CRO and DRO posted final election results on March 7th.

[18] In the alternative, if the posts are to be considered final, a breach of Bylaw 330.08 would still not be substantiated. This is because Elgaweesh's appeal was filed after the posting of the results, not before. Thus, there were no complaints and appeals at the time of the post, and Bylaw 330.08(1)(b) was not contravened.

[19] With regard to the Gateway article and Reddit post, these posts do not factor into a determination of finding a breach of Bylaw 330.08 on behalf of the CRO and DRO. This is because The Gateway functions independently from the Elections Office.

[20] As noted by the parties, Bylaw 330.08 does not clearly distinguish between posting final results as opposed to unofficial results.

[21] The Board is in agreement with the Applicants that voters should have access to clear information. Given the confusion that Bylaw 330.08 has the potential to cause, the Board recommends that Bylaw 330.08 be revised with an additional clause indicating the difference between final and unofficial results.

Issue 2: If there was a breach, what is an appropriate remedy?

[22] As no breach was found, no remedies will be granted.

DISPOSITION

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

1. *Did the CRO and DRO breach Bylaw 330.08 by posting final election results when an appeal was still pending?*

[24] The CRO and DRO did not breach Bylaw 330.08. The postings were of unofficial results. In the alternative, if final results were posted, a contravention of Bylaw 330.08 would still not be found as an appeal or complaint had not been filed at the time of the post.

2. *If there was a breach, what is an appropriate remedy?*

[25] Since no breaches were found, no remedies are proposed.

Applications dismissed.