

**University of Regina Students' Union**  
**Board of Director's Meeting – URSU Boardroom**  
**Tuesday, April 11, 2017**

***Minutes***

**Present:**

Brad Lulik, Chairperson  
Shawn Wiskar, Vice President (Student Affairs)  
Matt Mutschler, Vice President (Operations and Finance)  
Abby Rutko, Vice President (External Affairs)  
Eric Holloway, Business Director  
Derrick Gagnon, Campion Director  
Conor Woolley, Education Director  
Faith Ogundipe, Arts Directors  
Sam Dietrich, Engineering Director  
Emily Barber, LGBTQ Director  
Sena Debia, Kinesiology Director (Exited at ~7:00pm)  
Haris Khan, Science Director (Exited at ~7:30pm)  
Umar Ahsan , International Students' Director (Entered at ~8:15pm)  
Maria Aman, Part Time Director (Exited at ~8:45pm)  
Zach Almond, Fine Arts Director (Entered at ~8:45pm)  
Umair Aslam, Graduate Students' Director (Exited at ~8:45pm)  
Jermain McKenzie, President (Exited at ~9:00pm)

**Regrets (More than 24 hours notice):**

Megan Cousins, Social Work Director  
Khansa Irfan, Women's Director  
Trevor Dubois, First Nations University Students' Director

**Absent (Less than 24 hours notice):**

**1. CALL TO ORDER:** 6:02pm

**2. ADOPTION OF THE AGENDA**

- a. BE IT RESOLVED THAT the URSU Board of Directors approve the agenda for April 11, 2017

Moved: Eric Holloway  
Second: Faith Ogundipe  
CARRIED

**3. APPROVAL OF THE MINUTES**

- a. BE IT RESOLVED THAT the URSU Board of Directors approve the minutes of the March 28, 2017 URSU Board meeting.

Moved: Sena Debia  
Second: Faith Ogundipe  
CARRIED

#### **4. CONFLICT OF INTEREST / CONFLICT OF COMMITMENT DECLARATION**

- a. Shawn Wiskar: URSU General Election
- b. Jermain McKenzie: URSU General Election
- c. Conor Woolley: URSU General Election
- d. Khansa Irfan: URSU General Election
- e. Derrick Gagnon: URSU General Election
- f. Haris Khan: URSU General Election
- g. Maria Aman: URSU General Election
- h. Sena Debia, URSU General Election

#### **5. PRESENTATION**

#### **6. OLD BUSINESS**

#### **7. NEW BUSINESS**

- a. BE IT RESOLVED THAT the Board of Directors move into Executive Session

Moved: Eric Holloway  
Second: Emily Barber  
CARRIED

##### **NOTES:**

- The Board of Directors reviewed the report of the Elections Committee with respect to an appeal regarding an earlier Board decision to disqualify a candidate from the position of Vice President (Student Affairs) in the 2017 URSU Election.
- The Board of Directors passed a motion to append the report from the Elections Committee to the April 11, 2017 public meeting minutes
- The Board of Directors passed a motion in favour of the first recommendation contained within the report.

- b. BE IT RESOLVED THAT the Board of Directors exits Executive Session

Moved: Eric Holloway  
Second: Emily Barber  
CARRIED

- c. BE IT RESOLVED THAT, based on the decisions contained within Executive Session, Shawn Wiskar be acclaimed as Vice President (Student Affairs) for the 2017 URSU Election.

Moved: Eric Holloway  
Second: Emily Barber  
CARRIED (Abstained: Shawn Wiskar, Conor Woolley, Derrick Gagnon)

#### **8. EXECUTIVE AND DIRECTOR REPORTS**

#### **9. COMMITTEE REPORTS AND BUSINESS**

- a. Budget Committee

**10. OTHER BUSINESS**

**11. NOTICE OF MOTIONS**

- a. Changes to Health and Dental Plan coverage and rate
- b. Recommendation of the Board Chair Recruitment Committee
- c. Clarification of previous Board motion to sponsor URSU Got Talent

**12. ITEMS FOR NEXT AGENDA**

**13. NEXT MEETING:**

**14. ADJOURNMENT:** 10:33pm

Moved: Eric Holloway

DRAFT



## URSU Elections Committee Response to Appeal

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Subject: Appeal Regarding The Disqualification Of Maria Aman

Accused: Maria Aman

Date of Offence: March 16, 2017

Date of Investigation: March 17, 2017

Date of Board Decision: March 20, 2017

Board Decision: "That the Board ratifies the recommended decisions of the URSU Elections Committee regarding the report entitled, "Behavioural Misconduct with Respect to Election Process" which resulted in the Accused being disqualified as a candidate in the 2017 URSU Election.

Date Appeal Filed: April 4, 2017

Date of Appeal Hearing: April 7, 2017

Elections Committee Members: Matthew Mutschler, Abby Rutko, Carl Flis

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### Basis of Appeal:

Ms. Aman appeals the decision of the Board of Directors to disqualify her as a candidate in the 2017 USU Election based on the following three reasons:

1. The findings and decisions of the Elections Committee are inappropriate.
2. The Application of URSU Bylaws, Constitution and other documents have been done incorrectly.
3. The process has been unfair and prejudicial to Ms. Aman's rights as a candidate.

## Definitions

<b>URSU</b>	– The Students’ Union of the University of Regina Inc.
<b>Board</b>	– the Board of Directors of URSU
<b>Elections Committee</b>	– a committee comprised of the Executive Committee less any members that were participants in the election plus the General Manager
<b>CRO</b>	– Chief Returning Officer
<b>Bylaw</b>	– The Election and Referendum Bylaw (July 29, 2014)
<b>U of R</b>	- University of Regina

## Overview of Analysis

The following is an analysis provided by URSU legal counsel of the various documents, rules and processes involved in this matter. It is meant to provide guidance to the Elections Committee in compiling its report and any resulting recommendations to the Board.

### **Standard of Review**

The Bylaws do not provide any clarity on the standard upon which the original decision maker is to be reviewed. In appellate courts, the standard of review is traditionally one of correctness on matters of law, and one of reviewing for “overriding and palpable error” or “unreasonable” or “unsupported by the evidence” in review of matters of fact.

The structure of the analysis for the appeal is relatively simple. This appeal panel will review the authority of the original decision maker to impose discipline in the manner described, and to consider if any errors of law [and fact] have occurred in that decision making process. In doing so, the Appeal Panel will review *The Non-Profit Corporations Act*, the URSU Constitution, the Elections Bylaw, and the principles of natural justice.

### **The URSU Constitution and Elections Bylaw**

There are a few relevant decision in Saskatchewan dealing with the review of student association elections by the Court of Queen’s Bench. In *Weider v Students’ Assn. Wascana Campus, SIAST Inc*, 112 Sask R 92, the applicant was precluded from running for an election for President of the Association following a vote of non-confidence when he previously held that role.

The applicant was subject to a board policy of not allowing members run for a position in the subsequent election to when they are removed by a vote of non-confidence. The election was run in accordance with the rules and regulations created by the executive, which included this policy. These rules were not passed as a Bylaw of the corporation. The Applicant sought an order of the court setting aside the election by acclamation for the office of president of the Council of The Students’ Association of Wascana Campus (“SAWC”), and directing a new election be held.

The court reviewed *The Non-Profit Corporations Act*, the SWAC Constitution and Bylaws, and the board policy that included this restriction. The court determined that the board had the

authority to restrict candidates from participating in the election by passing an ordinary motion at a properly constituted board meeting. As such, the applicant's motion was denied.

This decision makes it clear that the core consideration in assessing a private corporation's election process is to ensure that it complies with the governance established for this purpose.

As such, we will look at the discipline and appeal process below.

Ms. Aman was subject to two discipline actions. The first being the discipline decision of the CRO which Ms. Aman appealed on March 14, 2017, the second behavioural misconduct with respect to the election process which infractions occurred on March 16, 2017. By the time of the second action, Ms. Aman had already filed for appeal and scheduled the hearing of the same for March 17, 2017.

Given one of the grounds of appeal was that the CRO was biased towards Ms. Aman the CRO felt it best to recuse herself from all matters dealing with discipline of Ms. Aman. The Board of Directors therefore determined an alternative means by which the discipline matters could be dealt with and formed the Elections Committee to do so. It was the Elections Committee who met with Ms. Aman on March 17, 2017, at which time they explained their purpose and that the hearing would be not only for the appeal but also to investigate the behavioural misconduct allegations. Ms. Aman has now challenged the authority of the Board of Directors and the Elections Committee.

### ***Formation of Elections Committee***

The Board of Directors acted within the authority of the Bylaws and the Constitution in forming the Elections Committee. The Bylaws provide at s. 3.4.3 that the CRO shall be appointed by the Board of Directors and shall retain all residual and discretionary power not otherwise delegated in relation to elections. Further ss. 3.4.1 and 3.4.2 of the Bylaws specifically state that "[t]he Board of Directors (*or the relevant committee*) shall" (emphasis added) and "[t]he Executive Committee shall" assist the CRO in completion of their duties. All authority over the URSU elections and referendums is delegated in the Bylaws. It is provided to the CRO with assistance from the Board of Directors and the Executive Committee.

In the present matter the CRO recused herself from all discipline matters relating to Ms. Aman. This required the Board of Directors and Executive Committee to assist her in fulfilling her duties, which in accordance with s. 3.1.18 of the Bylaws, includes dealing with offences against the same. The Board of Directors and Executive Committee under Article XVII of the Constitution "have the authority to enact committees as may be required from time to time", given the recusal of the CRO the Board of Directors determined that the Executive Committee would assist the CRO in this discipline matter. The Elections Committee, composed of members of the Executive Committee not involved in the current election, then formed as a *relevant committee* to assist the CRO.

Further the Bylaws states at s. 1 that at any point where there is a conflict between the Bylaws and the Constitution, the Constitution is to take precedence and the Bylaws is considered to be invalid. At Article 5, s. 3 the Constitution states that between all meetings of the Board of Directors all residual powers regarding day to day management and operations of the URSU shall reside with the Executive Committee. Any decisions made during that time shall then be ratified

by the Board. This bolsters the authority of the Board of Directors under the Bylaws to appoint the Election Committee when the CRO recused herself. Therefore the actions of the Board of Directors and Executive Committee in appointing the Elections Committee are within the authority granted under the Bylaws.

Composition of the Elections Committee also appears to have been selected in accordance with the Bylaws. The Board of Directors in deciding that the Executive Committee, minus any members participating in the current election, would compose the Elections Committee complied with the spirit of the Bylaws regarding conflicts of interest. There is no requirement as to the composition of such a panel in the Bylaws, but at s. 3.1.19 Appealing an Offence it states “the Executive Committee (less any members who are participating in the current election or bi-election)” must be forwarded an appeal. Also at s. 4.1 General, looking at Consequences of Noncompliance with the Bylaws it states “[a]ny member who participated in the election or who has another Conflict or a Conflict of Interest (as laid out in the Conflict of Interest and Conflict of Commitment bylaw of the URSU) may not participate in determining disciplinary actions”.

The Elections Committee had a limited number of individuals given the Board of Directors compliance with the Bylaws in terms of conflict, which was an appropriate and required exercise of the Board of Directors authority.

### ***March 17, 2017 Hearing***

The appeal of Ms. Aman from the CRO’s initial discipline decision and the investigation into the behavioural misconduct allegations of March 16, 2017, were conducted at the same hearing on March 17, 2017. Ms. Aman was informed of this process at the beginning of the hearing and again at the end. Questions were asked by the Elections Committee in relation to both the appeal and the new investigation.

This process appears to have been irregular. However, there is nothing in the Bylaws which precludes such a process. Section 3.4.3 of the Bylaws provides that the CRO is to “hear, in confidence, any appeal or request for review on the conduct of any candidate(s), officials or members” and “investigate all offences, claims and questions brought before the office”. No specific format or process is prescribed in the Bylaws. Given this fact the Elections Committee had the authority to conduct the hearing of the appeal and the investigation in whatever format they deemed most prudent.

No Record of Discipline Sheet (as per Appendix 2 of the Bylaws) was completed by the Elections Committee. This does not appear to be a fatal flaw in the process conducted by the Elections Committee. Nowhere in the Bylaws, aside from Appendix 2 itself, is the Record of Discipline Sheet referred to. The Record of Discipline Sheet itself states that the same *should* be filled out by the CRO to record discipline actions; however, it is not a mandatory document required by the Bylaws.

### ***April 7, 2017 Appeal Hearing***

On April 7, 2017, the same Elections Committee of Mr. Matthew Mutschler, Ms. Abby Rutko, and Mr. Carl Fils, heard the appeal of Ms. Aman in relation to the URSU Elections Committee Record of Decision of the Behavioural Misconduct with Respect to the Election Process. The process followed in any instance of disciplinary action under the Bylaws is as follows:

1. CRO performs an investigation;
2. CRO makes a decision and imposes sanctions;
3. The above decision of the CRO can be appealed by a candidate in writing to the CRO and the Executive (Elections) Committee;
4. The CRO will hear the appeal and make a recommendation to the Board;
5. The Board makes a decision based on the report of the CRO;
6. The above decision of the Board is binding unless new information is brought forward to the CRO that is deemed to be significant.

The above process is in accordance with the Bylaws. Section 3.1.18 gives the CRO the authority to investigate alleged offences and enforce the consequences of infractions. Section 3.1.19 provides that the CRO “shall have the power to invite any member to appear before their office in order to better understand the situation”. This is the only reference made in the Bylaws to an “appeal hearing” of any type, and it is the CRO which conducts it. Beyond this at s. 3.4.3 in the duties of the CRO the Bylaws specifies that any appeal or request for review is to be conducted by the CRO.

The Bylaws seems to state that appeals are conducted by the CRO. The same CRO who applied the initial disciplinary actions. The final appeal decision is then ratified by the Board of Directors. Therefore it follows that the Elections Committee in this matter had the authority to hear the appeal of Ms. Aman in accordance with the Bylaws. The Board of Directors must still ratify the appeal decision of the Elections Committee for the same to be binding. The Bylaws does not state that only the CRO can impose sanctions/disciplinary action. While the sections of the Bylaws dealing with the powers of the CRO, offences, and consequences refer to the CRO, it does not state that *only* the CRO can affect the same. Given the position of the Board of Directors and the Executive Committee and their duty to assist the CRO, it follows that when the CRO recuses themselves from such disciplinary actions it is, in this instance, the Elections Committee which then has the authority to carry out such duties.

Based on the process it does appear at first glance as if Ms. Aman’s right to procedural fairness has been violated. However, the same was not the case based on the Bylaws and the authority of the CRO and Board of Directors. The process conducted was within the authority of the Board of Directors and complied with the Bylaws.

### **Oppression**

The decision is *Mowat v University of Saskatchewan Students Union*, 2007 SKCA 90. In that decision, the court reviewed the trial court decision, and upheld the result. In the lower court decision, the relief of overturning the referendum result was granted. The court noted the oppression section of *The Non-Profit Corporations Act*, but determined that it was granting the relief sought due to the failure to adhere to the principles of natural justice.



The Court of Appeal reviewed the basis upon which the decision was made. It identified that the trial court had mixed up the concepts associated with an oppression application, and those related to a judicial review for natural justice. The court noted that while it is possible that the natural justice concepts may inform the oppression remedy that combining the two concepts should be done carefully.

### Section 225 of *The Non-Profit Corporations Act*:

#### Application to court re oppression

225(1) A complainant may apply to the court for an order pursuant to this section and the court may make an order to rectify the matters complained of where the court is satisfied that the result of any act or omission of the corporation or any of its affiliates, the manner in which any of the activities or affairs of the corporation or any of its affiliates are or have been carried on or conducted, or the manner in which the powers of the directors of the corporation or any of its affiliates are or have been exercised:

- (a) is oppressive or unfairly prejudicial to any member, security holder, creditor, director or officer or, where the corporation is a charitable corporation, the public generally; or
- (b) unfairly disregards the interests of any member, security holder, creditor, director or officer or, where the corporation is a charitable corporation, the public generally.

(2) In connection with an application pursuant to this section, the court may make any interim or final order it considers appropriate, including an order:

- (a) restraining the conduct complained of;
- (b) appointing a receiver or receiver-manager;
- (c) amending the articles or bylaws or creating or amending a unanimous member agreement to regulate a corporation's affairs;
- (d) directing an issue or exchange of securities;
- (e) appointing directors in place of or in addition to all or any of the directors then in office;
- (f) directing a corporation, subject to subsection (5), or any other person, to purchase securities of a security holder;
- (g) directing a corporation, subject to subsection (5), or any other person:
  - (i) to pay to a member any part of the moneys paid by the member for a membership interest; and
  - (ii) to pay to a security holder any part of the moneys paid by the security holder for securities;
- (h) varying or setting aside a transaction or contract to which a corporation is a party and compensating the corporation or any other party to the transaction or contract;
- (i) requiring a corporation, within a time specified by the court, to produce to the court or an interested person financial statements in the form required by section 142 or an accounting in whatever form the court may determine;
- (j) compensating an aggrieved person;
- (k) directing rectification of the registers or other records of a corporation pursuant to section 227;
- (l) liquidating and dissolving the corporation;
- (m) directing an investigation pursuant to Division XVII to be made;
- (n) directing a corporation as to the future investment, disposition and application of its property or property under its control;
- (o) upholding, modifying or setting aside a decision made pursuant to section 119; or
- (p) requiring the trial of any issue.

(3) Where an order made pursuant to this section directs amendment of the articles or bylaws of a corporation:

- (a) the directors shall immediately comply with subsection 182(4); and
- (b) no other amendment to the articles or bylaws shall be made without the consent of the court, until the court otherwise orders.

(4) A member is not entitled to dissent pursuant to sections 177 to 181 if an amendment to the articles is effected pursuant to this section.

(5) No corporation shall make a payment to a member pursuant to clause (2)(f) or (g) where there are reasonable grounds to believe that:

(a) the corporation is or would after that payment be unable to pay its liabilities as they become due; or

(b) the realizable value of the corporation's assets would be less than the aggregate of its liabilities if the payment were made.

(6) An applicant pursuant to this section may apply in the alternative for an order pursuant to section 198.

As noted above, while some of the processes may have unusual, they were contemplated by the Constitution and the Bylaws of the corporation. The reasonable expectations of the parties need to be informed by the governance established by the organization.

### **Natural Justice**

The appeal panel needs to be concerned with the application of natural justice to the discipline process that has already occurred. While the concept of natural justice is a fluid one, depending on the reasonable expectations of the parties in the specific circumstances, there are some basic concepts that are usually expected to be part of a discipline proceeding. However, it is clear from jurisprudence in this area that the requirement of natural justice will be modified by the governance of the organization. By becoming a member of this private organization, you become subject to its rules and processes.

There are examples of these variations within the Bylaws. As an example, one would normally expect that they be notified of a complaint and they would be permitted to provide an opportunity to respond to these complaint at first instance. The Bylaws, on the other hand, describes an investigatory and decision making role by the CRO. This is intended to allow for quick and efficient dispute resolution that needs to occur in the context of an election with limited timelines. Upon receipt of the decision, the accused individual can appeal it, including returning it back to the CRO for reconsideration. While an unusual outcome to appeal to the decision making body that made the initial decision, it is the process that needs to be followed.

### **The Purpose of the Restrictive Nature of the Election Policies**

Every election has issues that arise. Unfortunately, in this case, there was confusion over which time the polls closed. The previous decision of the CRO considered all relevant issues with that problem, and made a decision that tried to resolve any disparity that resulted from that confusion.

The purpose in part of the CRO is to protect the integrity of the election. The CRO provides timely and impartial decision making on problems and complaints that arise through the election process. This timely decision-making is core to allowing for the fairest election given the multitude of problems that can arise over the entire election process.

It is key that the CRO be respected by all candidates. Recognizing that the CRO's decisions may not be popular with all candidates, they are still required to accept the CRO's decisions and move forward as a candidate with that decision in mind. To the extent that there is an ability to appeal

the CRO's decisions, the candidates must do so in a manner that is respectful to and that maintains the integrity of the election.

I am not convinced that the decisions provided by counsel for the appellant regarding the freedom of expression apply to the elections of the private not for profit corporations. However, if they do, the importance of maintaining both the integrity and appearance of integrity of the election process is a reasonable basis for restricting certain forms of expression. This is especially the case when an individual is looking to be part of the executive of this organization.

## **Appeal submitted by Ms. Aman**

### **Section 1: The Findings and Decisions of the Elections Committee are Inappropriate**

#### *Appeal Submission*

The Board of Directors voted to disqualify me as a candidate based on a report prepared by Matthew Mutschler, Abby Rutko and Carl Flis. This report was prepared without interviewing me or gathering facts from me in an appropriate manner (using my appeal of another situation as the same method of finding information). This was done without informing me of the situation of my "review" until the very ending of the meeting.

The report makes several incorrect statements and reaches findings, which are false or improper. I was not given an opportunity to present my position to either the authors of the report or the Board of Directors.

#### *Response*

A meeting was held between the Elections Committee and Ms. Aman on March 17 at 10:00 am to hear an appeal filed by Ms. Aman regarding a previous decision of the CRO with respect to allegations of bias against the CRO. As additional allegations against the Ms. Aman of behavioural misconduct regarding activities of Ms. Aman on the prior day of March 16, the final day of voting, had been brought forward to the Elections Committee, the Elections Committee deemed it prudent to investigate these allegations immediately as the outcome of the investigation and/or ruling of the Elections Committee could have an impact on the release of the election results on March 17. As part of the Elections Committee's investigation it had met earlier that morning with the CRO to obtain additional details surrounding the allegations. The Elections Committee deemed it prudent to take advantage of both parties (the Elections Committee and Ms. Aman) being together, as time was of the essence, to not only hear Ms. Aman's appeal but to also investigate the allegations of her misconduct the preceding date. It was explained to Ms. Aman by the Chair of the Elections Committee, Mr. Flis, that the Elections Committee would be hearing evidence at the same time regarding both matters, rather than scheduling another appointment specific to the allegations of behavioural misconduct, but that the Elections Committee

would be proceeding in its deliberations and recommendations as two separate and distinct matters. Ms. Aman indicated her consent to this process contrary to her allegation that she as was not informed of the situation of her "review" until the very ending of the meeting. Mr. Flis once again reiterated the process of the Elections Committee's direction moving forward at the end of the meeting.

It is the opinion of the Elections Committee that Ms. Aman was fully aware of the process otherwise there would have been no reason for her to address and engage in discussion regarding the chain of events on March 16 as it would have had no bearing on the other matter, that being her appeal on another unrelated matter.

### Appeal Submission

The allegation that I "disrespected the decision and the office of the Chief Returning Officer" is untrue. When I was informed that times had changed I expressed my concern first and foremost and finally my frustration. I conducted my own background research into the matter, and informed other candidates running in the election of my opinions out of concern of the processes being carried out by URSU. Being able to investigate situations that I oppose and communicate my opposition is allowed within a space such as the URSU elections that promotes democratic engagement and free speech. At no time did I disrespect the officer or the decision of the CRO.

### Response

In any review of the term outlined in any policy or regulation, one must try to establish what the original intent was of the authors. In its review of the Election and Referendum Bylaw and in it's the deliberation of this matter, the Elections Committee has interpreted the term "respect" as in the context of Section 3.4.5 "respect the decisions made by the CRO" to mean the same as to honour, obey or abide by such decisions. So in determining whether or not there was an offence committed under the Bylaws the Elections Committee had to determine if Ms. Aman abided by the decision. In reviewing the various correspondence and actions of Ms. Aman, it is the opinion of the Elections Committee that she did not abide by the decision of the CRO.

A large part of Ms. Aman's appeal is based on an allegation that there was a deliberate change to the closing time of the polls on March 16, 2017 from 5:00 pm to 11:59. The Elections Committee acknowledges that there was confusion surrounding poll closing times, but confirms that there was no deliberate attempt to change polling end time from that of what was originally established, that being Mar 16, 2017 at 11:59 pm. As part of her responsibilities, the CRO provided the Registrar in an email dated February 17, 2017 at 14:27 the following instructions;

*"I have an All Candidates Meeting today to confirm the nominees for the election and then I will be sending you the ballot information. There is also a referendum question included on the ballot form. Voting begins March 13th at 12AM and will close March 16th at 11:59PM. I will come early March 17th to collect the results from your office."*

The CRO testifies that this same information was provided to all candidates during the All Candidates Meeting held on February 17, 2017 at 3:00 PM. Ms. Aman was present at this meeting. There is not reason to believe that the CRO would have presented the candidates information that would have been contrary to her instructions to the Registrar just 30 minutes earlier.

In all of URSU's publications (posters, banners, TV ads) in promoting the election and the voting period, there was never a definitive end time of day published. The voting period was advertised as March 13 – 16. Hence it is only logical that this would be interpreted as being March 13 12:00 am to March 16 at 11:59 pm. However the Elections Committee acknowledges that there were two communiqués issued that could have led to confusion;

1. A mass "How To Vote" email was issued by U of R Student Services on March 14 that did indicate that voting would close at 5:00 pm on March 16. This email was drafted by URSU Communications department and forwarded to Mr. Shawn Wiskar, VP Student Affairs for proofreading and ultimate forwarding to U of R Student Services for dissemination. The reference to 5:00 pm was an error overlooked by Mr. Wiskar.
2. The odd post was made by URSU Communications to the URSU website and its' social media in the early days of the voting period that referenced 5:00 pm. This was in error, as it appears that the actual polling times were not clearly communicated to URSU Communications by the CRO. Clarifications regarding the 11:59 deadline were sent out on March 16. Many of URSU's social media posts though did reference that polling stations closed at 4:00 pm however voters could cast their ballots online. It is suspected that this may have confused some as to the actual voting period deadline.

The CRO nor URSU officials received any inquiries or concerns regarding clarification of poll closing deadlines from the general electorate. There were a few comments received by a few candidates but not until after Ms. Aman had brought the matter to their attention.

The Elections Committee is unable to confirm Ms. Aman's statement that her post of March 16 at 9:21 am was subsequently edited later on to reflect a change to a midnight deadline as edit history to Events pages on Facebook are not tracked.

It appears that the confusion in this matter arose from a lot of assumptions by Ms. Aman and others based on their experiences in previous elections. This is not a justifiable reason for Ms. Aman to not abide by determinations or clarifications made by either the CRO or the General Manager. It is the view of the Elections Committee that a debate on what time polls were communicated to be closed has no relevance in determining whether or not Ms. Aman respected the decision and actions of the General Manager or the CRO. The nature of her actions and behaviours in response to decisions made by the CRO and the General Manager constitute not respecting a decision and is a violation of Section 3.4.5..

### Appeal Submission

The allegation that I “did not respect the decision and actions of the General Manager” is untrue. Respecting a decision is different from disagreeing with a decision and conducting research into a decision. Ultimately the decision to keep polls open until 11:59pm was made and when I asked the General Manager about the reason for reviving the voting outcomes the next day. I (much later) updated my Facebook status to encourage students to vote until 11:59pm, as it was clear the polls were not going to close at the advertised time of 5:00pm.

### Response

Based on the earlier interpretation of “respecting a decision”, it is the opinion of the Elections Committee that Ms. Amana did not abide by the decision of the General Manager.

### Appeal Submission

The allegation that I “directly contacted independent third party Election Officials tasked with conducting proper election proceedings” is an inappropriate finding. The CRO may appoint and oversee Election Officials however at no time were candidates informed that employees of the Registrars’ Office were appointed as Elections Officials and were now overseen by the CRO. In contacting that Registrar I was acting in good faith in an attempt to learn more about issues raised by URSU and he can attest to this.

### Response

While it is true that according to the Bylaw, the CRO may appoint and oversee election officials, this does not infer that the CRO is the only party solely responsible for this function. The authority to engage or employ certain election officials cannot solely rest with the CRO due to the occasional and brief work assignments of the position. Due to logistical limitations, certain positions or responsibilities must be in place prior to a CRO assuming his/her responsibilities. Such is the case in having the Registrar’s Office manage the logistics of URSU’s voting process. Ever since URSU has moved to electronic voting there has been a long-standing relationship between URSU and the Registrars Office whereby the responsibility for vote collection using the Banner system is awarded to the Registrar’s Office. As such the Registrar’s Office must be construed as an election official of URSU.

There is no requirement or duty of the CRO to identify to candidates who all of the elections officials are. There is no need for candidates to know such detail. All they need to be aware of is the role, responsibility and authority of the office of the CRO.

Nowhere in the Bylaw is it clearly stipulated that a candidate may not engage in any form of correspondence with election officials. While the Registrar did express concern and frustration to the CRO at the time as to why he would be approached by anyone other than the CRO, further investigation also indicated that Ms. Aman was not

disrespectful in any way to the Registrar. Their exchange was cordial and brief. While the Elections Committee has determined that Ms. Aman's exchange was not of harassment in nature, it remains the position of the Elections Committee that Ms. Aman's actions were highly inappropriate at the time, and as such is deemed an offence of the Bylaw.

### Appeal Submission

The allegation that I "attempted to interfere with the election process by trying to solicit support from other candidates to change polling times" is not correct and an misapplication of the Bylaws. Again the Registers Office can attest to this. In encouraging candidates to contact the CRO I was acting within my rights as a candidate to express concerns with the electoral process. Candidates are not prevented or forbidden from express concerns. Express concerns and interfering with the election process are two different matters. At no time was the election process interfered with and at no time did my actions impact the operations of the elections, the ability for candidates to participate in the election or the ability for students to vote. I do acknowledge that my actions may have inconvenienced the CRO but I would suggest that disqualification for inconvenience is not appropriate.

### Response

Ms. Aman claims that her communications regarding the discrepancy in voting times as defensible due to her rights with respect to freedom of speech and freedom of expression. The right by candidates to voice their concerns regarding electoral process is not disputed by the Elections Committee. In determining whether or not there was a deliberate attempt by Ms. Aman to solicit support from other candidates to change polling times, the Elections Committee once again reviewed all of the correspondence to determine if in fact there was intent. Ms. Aman claims that she "encouraged candidates to contact the CRO". A review of the correspondence does not support this claim;

1. Within minutes of leaving the Registrar's office, Ms. Aman sent an email (Mar 16, 1:36 pm) to all candidates indicating, "...we have two options". The options outlined were:

- a. Closing the polls at 4 pm
- b. Keeping the polls open until midnight

The email further went on to explain, "the CRO would have to be the one to notify the Registrar's Office to confirm what **we have decided.**"

The CRO was not included in this correspondence.

The email was directly addressed to the General Manager but did not solicit any input or clarification by the General Manager .

The email was sent within one hour of the General Manager issuing a clarification ruling as to the poll closing time.

While there were no responses in support of Ms. Aman's plea, a few respondents did indicate some frustration as to the confusion, while several others expressed their dissatisfaction with Ms. Aman's unprofessional behaviour and asked to be removed from any and all similar email threads.

Based on the above, the Elections Committee maintains its position that Ms. Aman did indeed intentionally attempt to have the polling times changed by soliciting support from other candidates with the intent of mobilizing a majority to influence the CRO to provide the Registrar with alternate instructions. As such the Elections Committee upholds its decision that Ms. Aman's actions are in violation of the Election and Referendum Bylaw, specifically

Section 3.4.5 – Candidates

Candidates shall;

- Respect the decisions made by the Chief Returning Officer
- Keep elections positive in understanding that negative actions by candidates could reflect negatively on the URSU, and;

Section 3.1.18 – Offences

An offence is committed when a person:

9. attempts to alter... a secure method of voting

Appeal Submission

The allegation that I “failed in [my] fiduciary duties in untrue. At all times I acted in good faith as a candidate and acted in a way that I believed was in the best interest of the corporation. The process to deal with concerns related to my role as a Director is outlined separately in the URSU constitution and states: “*An investigation process will be followed in order to determine the validity and severity of the incident and the resulting disciplinary actions.*” If concerns exist related to my conduct as a board member than the appropriate course of action is the raise the concerns at the board.

Second, in all my actions I acted respectfully and in good faith.

Response

Ms. Aman defends that her actions as a candidate were in good faith and in the best interests of the corporation. While the Elections Committee may differ whether or not Ms. Aman's actions were in the best interests of the corporation, it concedes that the responsibility of the Elections Committee (and that of the CRO) is limited to the enforcement of the Election and Referendum Bylaw and the URSU Constitution. As such the Elections Committee repeals its allegation of failure of fiduciary duties. Whether or not Ms. Aman failed in her fiduciary responsibilities as an employee, candidate and/or director as per the URSU Constitution, any URSU policies, any U of R policies, and/or The Non-profit Corporations Act, 1995 is the responsibility of the URSU Board of Directors.



### Appeal Submission

Finally, various sections of the Bylaws state that board members involved in URSU elections must remove themselves from their role as a board member when the board deals with election related matters. This is because the Bylaws recognize the importance of separating the roles.

### Response

More specifically,

Section 4.1 states “Any member who participated in the election or who has another Conflict or a Conflict of Interest ...may not participate in determining disciplinary actions”, and;

Section 3.1.19 states, “appeal about CRO’s interpretation of this Bylaw....must be forwarded in writing to the Chief Returning Officer and the Executive Committee (less any members who are participating in the current election or bi-election.)

URSU and the Board Chair have been consistent in application of these rules.

1. Board members who were candidates in the recent election have not been allowed to participate in Executive Sessions of Board Meetings regarding any Bylaw offences and possible disciplinary actions.
2. The Elections Committee is composed of the Executive Members that were not involved in the election plus the General manager.

## **Section 2: Misapplication of URSU Bylaws, Policies and University Policies**

### Appeal Submission

I have also been provided with a document of highlighted sections of various URSU governing documents and other policies and legislation. I have outlined my response below.

#### **A. Improper Interpretation and Application of My Role as a Director**

The reasons for disqualification included alleging that I breached my responsibilities as a member of the board of directors. I appeal this allegation.

First, the proper process to deal with concerns related to my role as a Director is outlined in the URSU constitution and states: “*An investigation process will be followed in order to determine the validity and severity of the incident and the resulting disciplinary actions.*” If concerns exist related to my conduct as a board member than the appropriate course of action is the raise the concerns at the board.

Second, in all my actions I acted respectfully and in good faith.

## Response

Ms. Aman defends that her actions as a candidate were in good faith and in the best interests of the corporation. While the Elections Committee may differ whether or not Ms. Aman's actions were in the best interests of the corporation, it concedes that the responsibility of the Elections Committee (and that of the CRO) is limited to the enforcement of the Election and Referendum Bylaw and the URSU Constitution. As such the Elections Committee repeals its allegation of failure of fiduciary duties. Whether or not Ms. Aman failed in her fiduciary responsibilities as an employee, candidate and/or director as per the URSU Constitution, any URSU policies, any U of R policies, and/or The Non-profit Corporations Act, 1995 is the responsibility of the URSU Board of Directors.

## Appeal Submission

Finally, various sections of the Bylaws state that board members involved in URSU elections must remove themselves from their role as a board member when the board deals with election related matters. This is because the Bylaws recognize the importance of separating the roles.

## Response

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URSU and the Board Chair have been consistent in application of these rules.

1. Board members who were candidates in the recent election have not been allowed to participate in Executive Sessions of Board Meetings regarding any Bylaw offences and possible disciplinary actions.
2. The Elections Committee is composed of the Executive Members that were not involved in the election plus the General manager.

## Appeal Submission

The Chair of URSU also took action to separate my candidacy from my role as a director. My role as a director was ignored when I was being forced to sign a confidentiality agreement. In an email exchange I asked why I was required to sign an agreement to review the documents related to my disqualification if other board

members were not. The chair responded that “*Members who were privy to the discussion have a fiduciary duty to the organization. This duty includes exercising confidentiality when required.*” The Bylaws already contemplate the directors distance themselves during the election which I did. Further, it is inappropriate to assert I have no rights as a board member in certain circumstances, such as the one raised by the Chair of URSU, and then assert that I am a board member in other circumstances.

### Response

It was communicated to Ms. Aman on several occasions that the report of the Elections Committee recommending the disqualification of Ms. Aman as a candidate was ratified by the Board of Directors in Executive Session and as such could not be released until the minutes of that Executive Session were approved at the next meeting. Once approved, all directors including Ms. Aman would have access to the report. The Board Chair was merely fulfilling his duties and applying Roberts Rules of Order.

As Ms. Aman continued to plea for the report’s release and in order to retard the further degradation of URSU’s integrity as a result of Ms. Aman’s push for social outcry, the Elections Committee offered the early release of the report to Ms. Aman conditional upon signing a confidentiality agreement. Such an agreement was necessary as Ms. Aman was being afforded access to confidential information prior to the Board having the opportunity to approve the minutes of the Executive Session.

Upon questioning Ms. Aman as to her understanding of the requirement for a confidentiality agreement, it became clear that she made several wrong assumptions as to its requirement and its possible contents. Ms. Aman never asked to see a copy of the proposed confidentiality agreement that she was asked to consider.

### **B. Improper Application of University “Respectful University Policy”**

#### Appeal Submission

The reasons for disqualification included allegations that I violated the University of Regina *Respectful University Policy* (“Policy”).

Relying on this Policy is inappropriate and forms part of the reason for my appeal.

The policy already outlines both a process to handle complaints and consequences for actions that fall within this policy. Section 4.1.c of the *Respectful University Policy Procedures* states:

“Coordinator will assess complaint and may conduct a preliminary investigation in order to determine if the complaint establishes a prima facie case. If the complaint does not

meet criteria of a prima facie case, the complainant will be informed and referred to alternate services if applicable.” Here the Coordinator refers to the Respectful Workplace Coordinator.

The URSU Executive and the URSU Board of Directors does not have authority to conduct investigations or issue discipline under the Policy.

Secondly I disagree that my actions constitute harassment, discrimination or intimidation and would suggest that nothing provided demonstrates action in contravention of this policy. In contacting the University Registrar, I was acting reasonably and with respect. In raising concerns with other candidates and people at URSU I was again acting reasonably.

### Response

Ms. Aman defends that her actions as a candidate were in good faith and in the best interests of the corporation. While the Elections Committee may differ whether or not Ms. Aman’s actions were in the best interests of the corporation, it concedes that the responsibility of the Elections Committee (and that of the CRO) is limited to the enforcement of the Election and Referendum Bylaw and the URSU Constitution. As such the Elections Committee repeals its allegation of failure of fiduciary duties. Whether or not Ms. Aman failed in her fiduciary responsibilities as an employee, candidate and/or director as per the URSU Constitution, any URSU policies, any U of R policies, and/or The Non-profit Corporations Act, 1995 is the responsibility of the URSU Board of Directors.

### Section 3: Procedural Fairness

#### Appeal Submission

As a candidate in the election I has a reasonable expectation that the Bylaws governing the election would have been followed, including when investigating offenses and issuing consequences. In this section I have outlined several issues of procedural fairness which form part of my appeal. Had the process to investigate offences been properly followed I would have had the opportunity to provide a response to the allegations prior to this appeal. I believe that had I been given that opportunity I would not have been disqualified.

#### **A. The process to investigate offenses and issue consequences was not followed.**

The Bylaws outline the following process is to be followed:

- The CRO investigates any offence that is committed. (Section 3.1.18 and Section 3,4,3)
- The Bylaws provides a list of offences but also provides the CRO with the authority to consider other offences subject to an investigation and judgement. (Section 3.1.18)

- If an offence has been committed, the offender will be subject to the consequences for non-compliance section of the Bylaws (Section 3.4.3)
- The consequence for non-compliance will be determined by the Chief Returning Officer (section 4.1)
- The CRO may solicit recommendations from the Board of Directors but they are recommendations only. The CRO must make a decision regarding a consequence. (Section 4.1.1)
- A record of discipline sheet must be completed by the Chief Returning Officer (Appendix 2)
- Appeals to decisions of the CRO may be resolved by the Board of Directors (Section 3.4.1 and Section 3.4.3)

This process was not followed. Instead, from emails received from the Chair of URSU it appears that a small group of members of the Board of Directors met and disqualified me. The Chair confirmed that it was not the decision of the CRO but rather the decision of the Board of Directors. No investigation took place that involved me and I was not given an opportunity to provide my perspective on any alleged offence.

### Response

The decision to disqualify Ms. Aman was made by the Board of Directors after review of the report and recommendations of the Elections Committee. As per Robert's Rules of Order and URSU policies several board members had to remove themselves from this process and as a result the size of the Board is diminished in such a case. This practice would continue throughout any matter before the board until such time that the matter is resolved. Such governance procedures need to be respected.

As stated earlier, Ms. Aman was afforded the opportunity to address allegations of behavioural misconduct during an interview with the Elections Committee on March 17.

The CRO had recused herself from this matter due to allegations of bias brought forward by Ms. Aman against the CRO in a previous matter. The Elections Committee is of the opinion that this decision of the CRO was fully justified and made out of consideration of conflict of interest reasons and for no other purpose.

In the absence of the CRO, the CRO's responsibilities must fall upon the Board of Directors and/or the Executive Committee. The Bylaw does not allow or suggest any alternative.

Section 3.4.1 states "The Board of Directors (or the relevant committee) shall;

- assist the Chief Returning Officer in the completion of their duties
- follow the rules and regulations of the Election...that are laid out within this Bylaw"
- resolve appeals of decisions of the Chief Returning Officer

Section 3.4.2 states “The Executive Committee shall;

- assist the Chief Returning Officer in the completion of their duties
- follow the rules and regulations of the Election...that are laid out within this Bylaw”

The Board assigned the responsibility of dealing with any pending first appeal by Ms. Aman to the Executive Committee (less any members who were participants in the election please the General Manager. Hence this “Elections Committee” was formed as a relevant committee of the Board of Directors. As such, as per Section 3.4.3 the CRO/Elections Committee “retains all residual and discretionary powers, not otherwise contained in this Bylaw, in regard to Elections, By-Elections and Referenda.

The Elections Committee's responsibility was to investigate allegations of misconduct and then present its findings and sanction recommendations to the Board. The Elections Committee did not impose any sanctions. The decision to disqualify was that of the Board.

In any other instance of Bylaw violation or infractions the process outlined in the Bylaw is;

1. CRO performs an investigation.
2. CRO makes a decision and imposes sanctions.
3. The above decision of the CRO can be appealed by a candidate in writing to the CRO and the Executive (Elections) Committee
4. The CRO will hear the appeal and make a recommendation to the Board
5. The Board makes a decision based on the report of the CRO.
6. The above decision of the Board is binding unless new information is brought forward to the CRO that is deemed to be significant.

The process outlined above is the same process that has been afforded to Ms. Aman by the Board by virtue of the rules set out in the Bylaw. The only difference in the process is that the CRO is replaced by the Elections Committee as the acting CRO for reasons previously outlined.

Hence due process has been followed.

1. The Elections Committee investigated an allegation of behavioural misconduct (Section 3.1.18 and Section 3.4.3)
2. The Bylaw provides a list of offences but also provides the Elections Committee with the authority to consider other offences subject to an investigation and judgement. (Section 3.1.18)
3. If an offence has been committed, the Elections Committee shall disqualify candidates, materials, representatives or members who, in the opinion of the Elections Committee have broken the rules laid out in this Bylaw and other relevant documents (Section 3.4.3) or discipline candidates by imposing penalties as recommended by the Elections Committee and/or the Board of Directors (Section 4.1.1)

4. The activity of Ms. Aman was found to be an offence by the Elections Committee (Section 4.1) and as such will be put forward as an addition to the above referred to list and any disciplinary action ratified by the Board will be added to the list found in Section 4 of the Bylaw.
5. Ms. Aman was afforded the opportunity to appeal the decision made by the Board. Ms. Aman filed her appeal on April 4, 2017 (Section 3.1.19)
6. The Elections Committee heard the appeal of Ms. Aman on April 7.
7. The Elections Committee will put forth a report and recommendations to the Board for its consideration.
8. The Board of Directors will either ratify the report and recommendations of the Elections Committee or determine its own ruling or sanctions/penalties of applicable.
9. The decision of the Board referred to in item 8 is binding unless new information that the Elections Committee deems to be significant is brought forward.

Ms. Aman's interpretation of the Bylaw that the CRO may solicit recommendations from the Board of Directors but they are recommendations only and that the CRO must make a decision regarding a consequence (Section 4.1.1) is incorrect.

The Record of Discipline Sheet included in the Bylaw as Appendix 2 is provided as a recommended format for documenting disciplinary actions taken. It in no way is defined as being the sole instrument to be used for such a purpose. The Record of Decision as issued by the Elections Committee conforms to the format of and serves the same purpose as the Record of Discipline Sheet.

The Elections Committee is in agreement of Ms. Aman's observation that "if an offence has been committed, the offender will be subject to the 'consequences for non-compliance' section of this Bylaw." as outlined in the Roles and Responsibilities of the CRO (Section 3.4.3). This section further defines the responsibilities of the CRO to;

- investigate all offences, claims and questions brought before the office
- develop and enforce appropriate disciplinary actions (subject to recall by the Board of Directors)
- take immediate action to rectify any infraction identified during the course of an election

As outlined previously, the aforementioned responsibilities have been tasked to the Elections Committee as a result of the CRO recusing herself in this matter.

It is important to not that the penalties listed in Section 4.1.1 regarding offences of a candidate are not all encompassing. They only list some of the possible sanctions that the CRO may impose and most notably include "other penalties as recommended by the CRO and/or the Board of Directors.

The Elections Committee does not dispute Ms. Aman's observation that appeals of a decision of the CRO may be resolved by the Board of Directors (Section 3.4.1 and Section 3.4.3). This is their responsibility. As such Ms. Aman retains the right to appeal any decision made on this first appeal to the Board of Directors within fourteen days of notification of the disciplinary action.

**B. The Board of Directors does not have the authority to disqualify candidates.**

Appeal Submission

According to the URSU Board of Directors Chair the decision to disqualify me as a candidate was made by the URSU Board of Directors however the authority to disqualify candidates is given only to the Chief Returning Officer.

The role of the Board of Directors is defined in the By-laws and does not include the authority to disqualify candidates. Instead, and importantly, the Board of Directors is delegated the authority to hear appeals and make decisions related to those appeals.

In overstepping its authority and disqualifying me the Board has negatively impacted my right to an appeal.

Sections 3.4.1 and 3.4.3 outline the roles and responsibilities of the Board of Directors and the Chief Returning Officer. The roles have been outlined below:

**3.4.1 - Board of Directors**

The Board of Directors (or the relevant committee) shall;

- Set the dates of the election in accordance with this Bylaw and Article XI of the Constitution
- hire the Chief Returning Officer a minimum of two weeks before the scheduled start of the Notice of Elections period
- assist the Chief Returning Officer in the completion of their duties
- follow the rules and regulations of the Election, By-election, Referenda that are laid out within this Bylaw
- promote participation in the Election, By-election, Referenda to the members of URSU
- set honoraria for the Chief Returning Officer in advance of final selection of the Chief Returning Officer
- resolve appeals of decisions of the Chief Returning Officer

**3.4.3 - Chief Returning Officer**

The Chief Returning Officer shall be nominated by the Board of Directors to be Chief Returning Officer of the URSU. During their contract the Chief Returning Officer, shall be responsible to the Board of Directors and shall have access to all of the resources of URSU as they complete their duties. The Chief Returning Officer shall be paid such honoraria, allowances, and expenses as the Board of Directors sees fit.

The Chief Returning Officer is responsible for the conduct of the election, by-election or referenda they are hired to supervise. The Chief Returning Officer must familiarize themselves with this Bylaw and must complete their duties as laid out within this



Bylaw in order to ensure the integrity of the election, by-election or referenda. Specifically, the Chief Returning Officer shall;

- take the votes of the members
- verify that members who are nominated are members of the relevant constituency (excluding interest groups)
- conduct the election of members to the University of Regina Senate (while respecting Section 27(1)(d) of the University of Regina Act) and representatives to the University of Regina Council (while respecting Part III of the University of Regina Council Rules and Regulations)
- ensure candidates and members comply with this Bylaw, and other relevant documents (see references)
- conduct any required training of Candidates and Election Officials • furnish each candidate with a current copy of this Bylaw
- hold a minimum of 2 Candidate Information Sessions
- disqualify candidates, materials, representatives or members who, in the opinion of the Chief Returning Officer, who have broken the rules laid out in this Bylaw and other relevant documents.
- refer to appropriate independent legal counsel, where they deem it necessary. The costs incurred will be the responsibility of the URSU.
- hear, in confidence, any appeal or request for review on the conduct of any candidate(s), officials or members.
- The individual(s) may request that the meeting be held in the presence of the General Manager of URSU
- If an offence has been committed, the offender will be subject to the 'consequences for non-compliance' section of this Bylaw.
- The decisions of the CRO regarding a disciplinary action may be appealed to the Board of Directors within fourteen days of notification of the disciplinary action
- investigate all offences, claims and questions brought before the office
- develop and enforce appropriate disciplinary actions (subject to recall by the Board of Directors)
- take immediate action to rectify any infraction identified during the course of an election.
- review all candidate expense claims with the General manager and the Vice President Operations and Finance and approve for payment only those claims that the CRO determines to be appropriate, and in accordance with the budgeted amounts approved.
- make or approve all communications regarding Elections, By-Elections and Referenda and their conduct.
- appoint and oversee any Election Officials • arrange publication of Candidate information in the student newspaper
- publish a Guide to Candidates (see "Guide to Candidates")
- arrange the publication in the student newspaper of an advertisement featuring the platforms or profiles of candidates who wish to have this information published
- provide each Election Official with training and reference material which outlines procedures to be followed, and responsibilities of an Election Official.

NOTE: The Chief Returning Officer retains all residual and discretionary powers, not otherwise contained in this Bylaw, in regard to Elections, By-Elections and Referenda (emphasis added)

## Response

The Board of Directors has an overall fiduciary responsibility for the conduct of the election. Operationally much of this responsibility is awarded to various groups or individuals directly or indirectly including but not limited to the Executive Committee, the Elections Committee, the Chief Returning Officer, the Registrar's Office and various Elections Officials. Despite the delegation of tasks and responsibilities, the Board of Directors is the ultimate decision making body of URSU. This is confirmed in the URSU Constitution under Article VI(10).

In this matter, given that the CRO had recused herself for reasons previously outlined, the CRO's responsibilities and authorities were tasked to the Elections Committee as the acting CRO. Given the severity of the allegations against Ms. Aman, and taking into account that any investigation into this matter and its potential outcomes could have serious implications and ramifications on the electoral proceedings, the Elections Committee deemed it prudent to act as the investigator in this case and advisor to the Board of Directors. Hence the Elections Committee authored a report of its findings along with recommended sanctions for the Board's consideration. The Board of the Directors then made the final determination of whether or not there were in fact offences and what the appropriate sanction should be.

## Summary

The Elections Committee is in agreement with Ms. Aman in the fact that it nor the CRO have jurisdiction with respect to enforcement of rules and regulations of any URSU policies, any U of R policies, and/or The Non-profit Corporations Act, 1995. The authority of the Elections Committee and/or CRO is limited to the enforcement of the Election and Referendum Bylaw and bringing forth potential violations of the URSU Constitution to the Board. As such the Elections Committee repeals its previous finding of failure of fiduciary duties. Infractions pertaining to any any other URSU Governance documents if warranted should be addressed by the Board of Directors.

In reviewing Ms. Aman's appeal submission, the Elections Committee's previous findings and additional information garnered solely in the context of the Election and Referendum Bylaw and the URSU Constitution, the Elections Committee still finds;

1. That Ms. Aman disrespected the decision and the office of the CRO and as such is a violation of Section 3.4.5 of the Bylaw.
2. That Ms. Aman did not respect the decision and actions of the General Manager and as such is a violation of Article VI(10) of the URSU Constitution.
3. That Ms. Aman directly and inappropriately contacted independent third party election officials (Registrar) and as such is a violation of Sections 3.4.5 and 3.1.18 of the Bylaw.

4. That Ms. Aman deliberately attempted to interfere with the election process by trying to solicit support from other candidates to change polling times and as such is a violation of Sections 3.4.5 and 3.1.18 of the Bylaw.
5. That the Board of Directors ultimately has the authority to determine if offences of the Bylaw occurred and to determine and impose appropriate sanctions or penalties including disqualification.

The Elections Committee also undertook a scan of the election and sanction policies of student unions in other comparable post secondary institutions similar to the U of R. This scan is attached as Appendix 1 to this report. The Elections Committee concluded that the disqualification of Ms. Aman for behavioural misconduct is well within the scope of many other student body election governance documents.

## RECOMMENDATION

1. That the Board of Directors ratifies this report of the Elections Committee and uphold it's original decision to disqualify Ms. Aman as a candidate in the 2017 URSU Election or;
2. Should the Board determine that;
  - a. the Elections Committee acted in a manner that would give rise to an apprehension of bias or breach of natural justice which would support overturning the or;
  - b. if the interpretation of the Non-Profit Corporation Act, Constitution of URSU, and the Election and Referendum Bylaw by the Elections Committee and/or its legal counsel constituted a sufficient grounds upon which to overturn the decision of the Election Committee, then;  
  
defer this appeal to a new independent committee or replacement CRO as determined by the Board.

This review of the appeal filed by Ms. Aman by the Elections Committee and its resulting recommendations are hereby respectfully submitted to the URSU Board of Directors for ratification. Dated this 11<sup>th</sup> day of April, 2017.



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Matthew Mutschler



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Abby Rutko



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Carl Flis

# APPENDIX 1

## Scan of Election Policies of other PSE Student Associations

### University of British Columbia Students Union - Okanagan Campus

[https://www.ubcsuo.ca/sites/default/files/final\\_regulations\\_on\\_webpage\\_23\\_feb\\_16\\_-\\_11th\\_january\\_2016.pdf](https://www.ubcsuo.ca/sites/default/files/final_regulations_on_webpage_23_feb_16_-_11th_january_2016.pdf)

#### Candidate Misconduct

55. A Candidate shall be disqualified from an Election if he or she is found to have committed either:

- (a) Three (3) separate Minor Offences; or
- (b) One (1) Major Offence. Minor Offences

56. A Candidate is guilty of a Minor Offence if he or she willingly violates any provision of this Regulation that does not result in the materially compromising the integrity of the Election or result in serious harm or undue disadvantage to another Candidate.

#### Major Offences

57. A Candidate is guilty of a Major Offence if he or she willingly commits, or attempts to commit, any act which he or she ought to have reasonably known was likely to:

- (a) Materially compromise the integrity of the Election; or
- (b) Result in serious harm or undue disadvantage to another Candidate.

#### Campaigning

19. Candidates may campaign by any means except may not:

- (a) Campaign:
  - (i) In Student Union businesses and other premises except as permitted by the CRO;
  - (ii) In any University classroom during or immediately before a class without obtaining the prior permission of the professor; and
  - (iii) Within the proximity of polling location as designated by the CRO;
  - (iv) Pool campaign finances. Further, candidates must individually report campaign spending. This report shall be submitted no later than 72 hours before voting begins.
  - (v) Have another candidate's name or picture in the same graphic, poster, or video.
  - (vi) Slate with students outside of executive candidates.
  - (vii) Receive or encourage sponsorship from an outside body, including corporations or organizations.
  - (viii) Put up posters or advertisements anywhere that is outside of the campus boundaries.
  - (ix) Manipulate their preferred name in anyway that suggests that candidates are affiliated on the ballot.
  - (x) Have campaign managers or volunteers that are not members of the UBCSUO.
  - (xi) Solicit off-campus businesses or organizations to provide services that might be deemed to exceed the campaign-spending limit.
  - (xii) Solicit endorsements from professors or administrators from either UBC or the UBCSUO.

(xiii) Use profanity on any election material. This includes any statement or imagery that suggests hatred or intolerance towards any group.

(xiv) Make discriminatory or defamatory statements against another candidate.

(b) Harass or display aggressive, violent, or threatening behaviour;

(c) Interfere, or attempt to interfere, with the administration of the Election;

(d) Jeopardize, or take any action which could reasonably be expected to jeopardize, the integrity of the Election;

(e) Impede or interfere with the ability of another Candidate to campaign;

(f) Remove, replace, modify, or damage the materials of, or cause similar harm to, another Candidate;

(g) Provide money or items of monetary value as an incentive or any form of consideration to a Member in exchange for his or her support; and

(h) Otherwise act in a manner inconsistent with the University policies related to student conduct.

## **University of Saskatchewan Students Union**

[https://ussu.ca/wp-content/uploads/2017/03/Election\\_Policy.pdf](https://ussu.ca/wp-content/uploads/2017/03/Election_Policy.pdf)

The Elections Committee has the jurisdiction to impose any sanction it deems just for any conduct that amounts to a significant and substantive breach of election protocol. Where an unfair advantage has been obtained, a penalty shall be assigned that endeavours to fully counter-balance any advantage gained.

For example, the Elections Committee may:

- Withhold reimbursement of any amount of election expenses up to 100%
- Issue a letter of reprimand
- Require a letter of apology
- Publish a notice of the violation in The Sheaf
- Require a new election to be held for any or all positions
- Disqualify candidates

Disqualification of a candidate may occur when the violation resulted in an unfair advantage which cannot be counter-balanced by a lesser penalty, is malicious or prejudicial to another candidate or their campaign. For further clarification, the following types of violations will likely result in the disqualification of a candidate:

- a. Interference or attempted interference with the voting process;
- b. Interference, including defamatory or slanderous comments, written or oral, towards another candidate;
- c. Malicious or intentional breach of the Bylaw or elections policy;
- d. An attempt to undermine the electoral process

## **Laurentian University Students' General Association**

**FINES**

<b>\$10.00</b>	<b>\$25.00</b>	<b>\$50.00</b>	<b>\$100.00</b>	<b>*DISQUALIFIED</b>
POSTERS NOT APPROVED (1)	POSTERS NOT APPROVED (2)	POSTERS NOT APPROVED (3)		POSTERS NOT APPROVED (4)
CAMPAIGNING IN ILLEGAL AREAS (1)	CAMPAIGNING IN ILLEGAL AREAS (2)	CAMPAIGNING IN ILLEGAL AREAS (3)		CAMPAIGNING IN ILLEGAL AREAS (4)
	MISSED CANDIDATES' MEETING (1)			MISSED CANDIDATES' MEETING (2)
			DEFAMATION OF CHARACTER* (1)	DEFAMATION OF CHARACTER* (2)
				PRE-CAMPAIGNING*
				<b>ELECTION OBSTRUCTION*</b>
ELECTRONIC CAMPAIGNING	ELECTRONIC CAMPAIGNING	ELECTRONIC CAMPAIGNING		ELECTRONIC CAMPAIGNING NOT

NOT CONFORMING WITH GUIDELINES (1)	NOT CONFORMING WITH GUIDELINES (2)	NOT CONFORMING WITH GUIDELINES (3)		CONFORMING WITH GUIDELINES (4 <sup>th</sup> offence or severe action)
				FAILURE TO SUBMIT FINANCIAL STATEMENTS
				UNPAID FINES BY DEADLINE
				SPENDING MORE THAN \$500
				RECEIVING 5 FINES

\* All decisions for disqualification will be subject to review by the CRO and Elections Committee. Candidates may present their case, and decisions will be based on 2/3 majority vote of the Elections Committee. The CRO will abstain from voting, and voting will be *in camera*.

## EXPLANATION AND DEFINITIONS FOR FINES

Defamation of Character: “The publication of anything that is injurious to the good name or reputation of another”.

Pre-Campaigning:

*Active campaigning prior to January 25<sup>th</sup> at 9:00 AM.*

Election Obstruction: Any attempt whatsoever to obstruct the election officials, or the voter’s right to vote will be treated as election obstruction and will result in disqualification. This includes spreading false information regarding the election, interfering with the balloting process, or refusing to leave a polling station when instructed by an elections staff person or CRO or CRO Agent.

## University of Alberta Students Union

[http://su.ualberta.ca/legislation/wiki/Bylaw:2200#Penalties\\_Available](http://su.ualberta.ca/legislation/wiki/Bylaw:2200#Penalties_Available)

### 47 Penalties Available

1. Where a candidate, side manager or volunteer has contravened a bylaw, rule, or regulation, regardless of the cause or the intent of the parties involved, and that contravention has provided an unfair advantage to a candidate, the C.R.O. shall assign a penalty that
  - a. fully counter-balances any advantage gained; and
  - b. where the contravention was intentional, penalizes the candidate or campaign manager who was or whose volunteer was guilty of the contravention.
2. Penalties available to the C.R.O. shall include
  - a. a fine, to be counted against the candidate's campaign expenses;
  - b. the confiscation or destruction of campaign materials; and
  - c. limits, restrictions, and prohibitions on any type of campaign activities for any period of time up to the commencement of voting.
3. The C.R.O. shall draft a schedule of fines and penalties as an appendix to the rules and regulations concerning this bylaw.
4. A candidate shall be disqualified where they are guilty of a contravention that
  - a. cannot be counter-balanced by a lesser penalty;
  - b. is malicious or substantially prejudicial to another candidate or slate; or
  - c. involves tampering with ballots, voting procedures, or counting procedures.
5. Where the advantage gained by the "yes" side of a referendum or plebiscite due to a contravention cannot be fully counterbalanced by the penalties available to the C.R.O. as set out in Section 47, the C.R.O. shall cancel the referendum or plebiscite.
6. Where the advantage gained by the "no" side of a referendum or plebiscite due to a contravention cannot be fully counterbalanced by the penalties available to the C.R.O. as set out in Section 47, the C.R.O. shall counterbalance the advantage to the maximum extent possible, and may recommend to the D.I.E. Board that further disciplinary action be taken against the members guilty of the contravention under the Judiciary of the Students' Union Bylaw, Bylaw 1500.
7. Where a side's side manager is disqualified, that side shall select a new side manager.
8. The C.R.O. shall be empowered to investigate and rule upon every contravention of this bylaw or any other bylaw, rule, or regulation related to the election, plebiscite or referenda.



## **University of Toronto Students' Union**

<https://www.utsu.ca/bylaws-and-policies/>

### Demerit Points

The values listed below are the maximum that may be issued for a given

Violation.

<b>Violation - Campaign Materials</b>	<b>Maximum Demerit Points</b>
Misrepresentation of Facts	3
Multiple violations in the same location / building	4
Unapproved material	15
Displayed in an unauthorized area	5
Pre-Campaign Materials	15
Post-Campaign Materials	5
Multiple Violations within ten (10) metres	8
Intentional Misrepresentation of Facts	10
<b>Violation - Campaigning</b>	<b>Maximum Demerit Points</b>
<b>Misrepresentation of Facts</b>	<b>3</b>
Failure to submit campaign receipts and / or signed statement of having no expenses	4
Unsolicited Campaigning (including e-mail and phone calls)	8
Improper distribution of Campaign Materials	8
Multiple Violations within ten (10) metres	8
<b>Intentional Misrepresentation of Facts</b>	<b>10</b>
Campaigning in an unauthorized area	10
Pre-Campaigning	20
<b>Post-Campaigning</b>	<b>5</b>

Breaking University, municipal, provincial, and / or federal law / regulation while campaigning	35
Personally Campaigning to a student while they are voting online	15
Unauthorized campaigners	15
Cross campaigning with a candidate running in a non-UTSU-run election per Article VI - 1.r	8
Physical/in-person campaigning during voting period	25
<b>Violation - Fair Play</b>	<b>Maximum Demerit Points</b>
Candidates enforcing the Elections Procedure Code	5
Unsanctioned use of Union resources	15
Gross Misrepresentation of facts	20
Malicious or intentional violation of Elections Procedure Code or Policy	20
Use of Benefits Acquired by Virtue of Office	15
Failure to comply with the spirit and purpose of the elections	20
Repeated frivolous complaints and/or appeals	3
Failure to follow grievance procedures outlined in the Elections Procedure Code or Policy	5
Spending over the prescribed limit, as per Article VI - 2.c, to a maximum of twenty dollars (\$20)	1 per \$2

Candidate	Points
Executive Candidates	35
Director/Division Candidates	20

## University of Manitoba Students Union

<https://umsu.ca/sites/default/files/Governing Documents Election and Referenda Manual - updated January 2017.pdf>

### Section XII: Penalties

1. Where a breach has occurred, regardless of cause or the intent of the parties involved, and that breach has provided an unfair advantage to a campaign, the CRO shall assign a penalty that:

- a) fully counterbalances any unfair advantage gained.
- b) penalizes the campaign for committing a violation; and is of the same type or character as the advantage which was gained.

Penalties available to the CRO include, but are not limited to:

- a) a reduction in permitted campaign expenses.
- b) a reduction in reimbursements.
- c) the confiscation or destruction of campaign materials.
- d) limits, restrictions, and prohibitions on any type of campaigning, for any period of time.
- e) disqualification.

2. A penalty may be assessed for an individual breach, or for a series of repeated violations that in aggregate constitute a greater breach.

3. A candidate shall only be disqualified where they commit a serious breach that:

- a. cannot be counterbalanced by a lesser penalty.
- b. involves tampering with ballots, balloting, voting or counting procedures.
- c. involves repeated violations for which lesser penalties have already been imposed.

## Carleton University Students Association

<http://www.cusaonline.ca/wp-content/uploads/CUSA-Policies-as-of-Dec-2016-1.pdf>

### 16 Electoral Offences

16.1 Candidates and those members working under their direction must, at all times, comply with the requirements of this Code. Failure to do so constitutes an electoral offence.

16.2 It is an electoral offence to undermine the integrity, fairness and freedom of any electoral process governed by this Code. Without limiting the generality of the foregoing, actions that do so include:

- i. Voting Day Policy violations (See section 16.4)
- ii. Interfering with the operation of seminars, laboratories, offices, other normal functions of the University or addressing a class without prior permission of the instructor.
- iii. Campaigning within the CUSA Main Office, the Associations' Service Centres or CUSA Businesses.
- iv. Campaigning within the Graduate Student's Association's Main Office or Business.
- v. Campaigning in the CUSA hallways on the fourth floor University Centre.
- vi. Damaging or defacing the property of another candidate, another campaigner, or of CUSA.
- vii. Disrupting the operation of any part of the Residence complex.
- viii. Use of physical violence against any person on campus.
- ix. Disrupting any Rideau River Residents' Association operation, service, or activity.
- x. Campaigning within Residence Buildings.

- xi. Campaigning, or deliberately leaving campaign materials, in any commercial area on campus.
- xii. **Disrupting the operations of the Electoral Office.**
- xiii. Campaigning within fifteen (15) meters of a polling station. THE POLICIES OF THE CARLETON UNIVERSITY STUDENTS' ASSOCIATION Page 36 of 57
- xiv. Postering outside of the designated postering area without the permission of the CEO.
- xv. Distributing campaign material during the polling period.
- xvi. Breaching the Carleton University Human Rights Code.
- xvii. Using campaign materials that violate this Code.
- xviii. Allowing individuals who are not members of the Association to campaign, on campus, on their behalf.
- xix. Campaigning, either as a candidate or on their behalf, while wearing CUSA branded apparel.

## 19 Immediate Disqualification

19.1 Notwithstanding the provisions of section 17.5, immediate disqualification shall result if a Candidate or Referendum Committee:

- a. Fails to present a final report of expenditures to the CEO.
- b. Exceeds the maximum allowable expenditures.
- c. Presents a fraudulent or inaccurate final report of expenditures to the CEO.
- d. **Attempts to, or tampers with the ballots or electronic polling system.**
- e. **Attempts to, or solicits the aid of any member of the Electoral Office to tamper with the ballots or electronic polling system.**
- f. **Commits an offence which is deemed to be egregious by the CEO.**

## York Federation of Students

i. Demerit points as outlined in the above section is assessed on, but not limited to, the following basis. The values listed below are a guide for issuing demerit points. Values may be increased or decreased at the discretion of the CRO.

a. Campaign Material Violation .....	Demerit Point
Unintentional Misrepresentation of Facts .....	3
Multiple violation in the same location/building .....	4
Unapproved material .....	5
Displayed in an unauthorized area.....	5
Pre campaign materials .....	6
Intentional misrepresentation of facts.....	10
b. Campaigning Violation .....	Demerit Point Unintentional
Misrepresentation of Facts .....	3
Distribution of campaign material within 10 metres of a polling station.	10
Improper distribution of campaign materials .....	8
Multiple violations within ten (10) metres .....	8
Intentional misrepresentation of facts.....	10
Campaigning in an unauthorized area.....	12
Pre-campaigning.....	10
c. Fair Play Violation .....	Demerit Point
Candidates enforcing these By-laws.....	5
Unsanctioned use of Union resources .....	15
Gross misrepresentation of facts .....	20
Malicious or intentional violation of these By-laws.....	25
Abuse of position or status.....	15

- d. Violations of the following nature will result in an automatic disqualification of a candidate:
  - I. Anyone improperly declared an eligible candidate.
  - II. Failure to attend the All-Candidates meeting.
  - III. Any candidate spending over the maximum spending limit as set by these By-laws or failing to submit a campaign expense report.
  - IV. Intentional misrepresentation of campaign expenditures.
  - V. A candidate accruing greater than one-hundred (100%) per cent of their allowable demerit point limit, as follows is disqualified:
    - a. Executive Candidates .....35
    - b. Director Candidates .....20
  - VI. Solicitation of York University Administration to interfere in the Election Process. Solicitation of Interference includes, but is not limited to, actions that encourage the York Administration to apply pressure on the CRO or Elections Officials to make or change specific decisions, interference in the voting or ballot counting process, withholding vital election document such as voters' list and ballot boxes, and withholding YFS funds. In the event a winning candidate in any election is disqualified, the runner-up will take the place of the disqualified winner.