

Formal Complaint No. 10

Date Filed: March 7, 2019

Nature of Complaint: Campaign Material Limit and Campaign Infraction (Defamation)

On March 7, 2019, the Elections Office received a complaint alleging that the respondent violated several sections of the University of Victoria Students' Society Electoral Policy ("Policy"). The following sections of the Policy were alleged to have been violated by the respondent: section 5.4 (g) - posters not being stamped by an Electoral Officer before being posted; section 5.4 (k) - posters placed in student residences including on smoking benches; and section 5.9.4 (b) - the poster content constituted defamation. The complainant attached an example of the posters referred to in their complaint. The poster is unstamped and is not directly attributed to a particular candidate or the respondent.

On March 8, 2019, the respondent provided a response. They denied the posters in question were printed by them or their campaign. They also stated that neither they nor anyone from their campaign instructed anyone else to post the posters in question. The respondent stated that as a result of the threat of legal action implicating them, they ceased all campaigning, with the exception of the All Candidate's Forum. The respondent provided a copy of one of their posters. The poster is stamped and does not contain any of the allegations contained in the copy of the complainant's poster. The content in the respondent's poster is more or less benign.

Relevant Policy Sections

Section 5.4 (g) of the Policy provides that all posters and banners must be stamped by an Electoral Officer before being posted.

Section 5.4 (k) provides that posters and banners may only be posted on the UVic campus, and are not permitted to be posted at or in the Halpern Grad Centre, the Petersen Heath Centre, or any area associated with student residences.

Section 5.4 (m) provides that candidates are responsible for all of their campaign materials complying with posting regulations, including materials prepared or posted by their slate, campaign supporters, or third-party endorsers.

Section 5.4 (n) provides that all posted material must be attributed to a particular candidate.

Section 5.9.4 provides that major infractions of the Policy shall result in immediate disqualification of the candidate. Section 5.9.4 (b) provides that defamation constitutes a major infraction and is defined as "any intentional false communication that is written (libel), spoken (slander), or otherwise transmitted, including via social media, that harms a person's reputation; decreases the respect, regards or confidence in which a person is held; or induces disparaging, hostile, or disagreeable opinions or feelings against a person".

Section 5.9.5 (f) provides that it is a minor infraction to intentionally misrepresent the facts in an election or referendum. Intentional misrepresentation of facts is defined as "the purposeful spread of

objectively incorrect facts that the candidate knows to be untrue which attempts to unfairly influence voters”.

Issues to Determine

1. Is the poster complained of by the complainant one of the respondent's?
2. If yes, did the respondent distribute and post the unsanctioned posters in areas associated with student residences contrary to sections 5.4 (g) and 5.4 (k)?
3. If the answer to 1 is yes, does the content of the poster constitute an intentional misrepresentation of the facts and defamation contrary to sections 5.9.4 (b) and 5.9.5 (f)?

Analysis

The Chief Electoral Officer (“CEO”) finds that the poster attached to the complaint is in violation of section 5.4 (g) for failing to be stamped by the Electoral Officer before being posted. It is not clear to the CEO whether the poster in question was posted in a student residence, therefore it cannot be determined whether or not 5.4 (k) was infringed. And the CEO finds that the poster in question is in violation of section 5.4 (n) for failing to be attributed to a particular candidate (proponent or opponent).

The respondent's evidence was that they only posted materials that were sanctioned and stamped by the Elections Office. The respondent provided proof of their poster. Their poster was attributed to them, it was stamped by the Election Office and it was materially different than the one provided by the complainant in its colour, content, font and style. The CEO also confirms that following the close of voting, the respondent returned all posters that were stamped by the Election Office, corroborating their evidence that they ceased all campaigning as a result of the threat of legal action implicating them.

The CEO finds that the respondent's poster was materially different from the one alleged to have been theirs by the complainant. On the information provided by the complainant, it cannot be said that the respondent was responsible for distributing or posting the unsanctioned posters, nor that he was responsible for placing them in student residences. We do not have enough information to attribute the infringing poster to the respondent.

Since the CEO finds that the complainant has failed to provide sufficient evidence to prove that the infringing poster was posted and distributed by the respondent it is not necessary to decide whether or not the content of the poster constitutes an intentional misrepresentation of the facts and defamation contrary to sections 5.9.4 (b) and 5.9.5 (f).

Decision

The complaint is therefore dismissed.