



Judgment of the USC Appeals Board in the matter of:

Hasan Ahmed v Elections Governance Committee, 2019:3

Election Hearing Date: February 28, 2019

Judgment Date: March 1, 2019

Panel: Alyssa Zhe Sha Yan (Chair), Maxwell Joseph Gill, Neha Gulati

Reasons for Judgment: Yan (Gill, and Gulati concurring)

PART I: OVERVIEW

1. This is an appeal by Hasan Ahmed (“Ahmed”) in response to the decision of the USC Elections Governance Committee (“EGC”) to not find Victoria Barroso (“Barroso”) in violation of By-Law #2 of the USC, through “flagrant undermining of the bylaw”.
2. The EGC determined that Barroso’s actions were not in violation of this bylaw, while Ahmed presented that the flagrant undermining consisted of the specific violations of sections 11.1, 11.4, and 11.7. For the reasons that are set out below, the appealed violations of section 11.4 and 11.7 are dismissed. However, dismissal of the violation of section 11.1 is seen as unreasonable. Consequently, the Appeals Board accepts this appeal.

PART II: FACTS

3. On January 21, 2019, Victoria Barroso renamed her 2018 campaign page “Victoria Barroso for Science President.” On this day, she made a post on this page announcing her decision to campaign for Science President.
4. On February 12, 2019, Ahmed submitted a violation allegation to the EGC alleging Barroso had committed a “flagrant undermining of By-Law #2”. The submission alleged Barroso had reused a Facebook page which she had used in two previous USC elections.

5. In the emailed response to Ahmed's allegation, the EGC indicated they were not moving forward with a violation. In the reasoning, the EGC explained that the purpose of the bylaw is to ensure fairness for all candidates, and there is no component of the bylaw which restricts USC candidates from reusing old facebook pages for campaigning. No part of this action violates the bylaw, thus there is no flagrant undermining of the bylaw.

PART III: ISSUES

6. There are 4 issues in this appeal:
 1. What is the appropriate standard of review?
 2. Was the EGC's finding, that Barroso did not violate section 11.1 of By-Law #2, reasonable?
 3. Was the EGC's finding, that Barroso did not violate section 11.4 of By-Law #2, reasonable?
 4. Was the EGC's finding, that Barroso did not violate section 11.7 of By-Law #2, reasonable?

PART IV: ANALYSIS

What is the appropriate standard of review?

7. Under Canadian administrative law, there are two standards of review upon which administrative decisions are reviewed: reasonableness and correctness. To determine whether the EGC's decision should be upheld, the appropriate standard of review must first be determined.
8. In the present case, the EGC is interpreting its home statute. The EGC is considered an expert body on the interpretation of By-Law #2, as it is the EGC's statutory duty under s. 3.1 of the By-Law to administer it and uphold its visions and principles. The EGC also has the sole authority to enforce the provisions of the By-Law. As the expert on By-Law #2, a considerable level of deference should be granted to the EGC's interpretation and enforcement of By-Law #2. The standard of reasonableness achieves the necessary level of deference and the decisions of the EGC will therefore be evaluated under this standard.
9. The standard of reasonableness requires the Appeals Board to determine whether the EGC reached a decision that falls within a range of acceptable and defensible outcomes (*Dunsmuir v New Brunswick*, [2008] SCR 190). The standard of reasonableness requires deference to the decision-maker.

Was the EGC's finding, that Barroso did not violate section 11.1 of By-Law #2, reasonable?

10. Section 11.1 of By-Law #2, concerning Fair Play during elections, states:

Candidates shall campaign in accordance with the rules of fair play. Breaking the rules of fair play include, but are not limited to, libel, slander, general sabotage of the campaigns of other candidates, intentional misrepresentation of fact, and malicious or intentional breach of this By-law or applicable regulations.

11. During the hearing, Ahmed presented the fact that members of his campaign team had previously liked the page when Barroso was a candidate for councillor, but were unaware that the previous page had changed to her Presidential page. While Barroso had posted that she was running for Science President on the page, she had not informed the individuals who liked her page of the change in the title of the page. This illustrates that there were individuals who had supported the previous campaign attempts, but did not intend to convey this support to this campaign. These individuals could be seen as providing unconsented support.
12. The EGC suggested in their decision that the ability for individuals to unlike the page resulted in it not accounting for a misrepresentation of fact. However, there were individuals who were unaware that they had liked the campaign page, and thus the ability to unlike the page should not be the only consideration.
13. The EGC argued during the hearing that liking a campaign page is equivalent to being friends on facebook and thus indicates the same level of support, so it is not misrepresenting fact. The Appeals Board determined this to be an unreasonable statement, believing that a facebook friendship should not be perceived as equivalent to liking a campaign page.
14. Although Barroso had announced her candidacy via this page when the campaigning period began, she did not inform anyone that a previous page was being used with a change in name, as the previous page had been archived and inactive in the interim period. Thus, it is possible, and evidence given that it occurred, where individuals who had liked her previous campaign pages were unaware they were supporting her presidential campaign page.
15. The Appeals Board deems that the EGC's interpretation of statute 11.1 in this context is an unreasonable interpretation of the By-Law, and declares that the EGC should reconsider this particular section of the violation.

Was the EGC's finding, that Barroso did not violate section 11.4 of By-Law #2, reasonable?

16. Section 11.4.1 of By-Law #2, regarding Benefits Acquired by Virtue of Office states:

Candidates and campaign volunteers are not entitled to use in their campaign any service or tangible benefits conferred on them by virtue of holding any position in any organization. This includes, but is not limited to, mailing lists, office space, office supplies, equipment, advertising space, and secretarial services.

17. Since Barroso was using a facebook page that she had used during previous campaign periods, and it was unrelated to the success of the campaign itself, the the EGC presented that this is not a benefit acquired by virtue of office. It should also be noted that Barroso would have been able to undertake the same actions had she not won a previous USC election and not taken office.
18. The EGC are experts on this bylaw and have interpreted it as benefits that come directly from the USC. Interpreting the By-Law narrowly and finding no violation of s. 11.4 is a decision that falls within a range of acceptable and defensible outcomes (Dunsmuir).

Was the EGC's finding, that Barroso did not violate section 11.7 of By-Law #2, reasonable?

19. Section 11.7 of By-Law #2, concerning Pre-Campaigning, states:

Candidates and prospective candidates are not permitted to influence or attempt to influence voters prior to the campaign period, including, for example, through the posting of material designed and/or likely to influence voters. Candidates and prospective candidates may engage in activities related to planning a campaign or assembling a campaign team and may answer questions from the media with regard to election plans.
20. During the Appeals hearing, Ahmed presented that the page was live over several periods prior to the 2019 election season. The EGC's decision stated that this is irrelevant, as although the page may have been live, she was campaigning for other positions, and at no point indicated her bid for presidential candidate.
21. Barroso did not activate the page nor change the page title until the campaign season formally began. Furthermore, no materials related to the presidential campaign were posted outside the designated campaign period.
22. The Appeals Board finds this falls under the 'activities related to planning a campaign' that is outlined in this same Bylaw. For the reasons outlined above the decision of the EGC to not find this a 'flagrant undermining of the bylaw' is deemed reasonable.

PART V: DISPOSITION

23. The appeal is allowed in part. Ahmed's allegation of 'flagrant undermining of the bylaw' is seen as valid in section 11.1 of By-Law #2 and is remitted to the EGC for reconsideration in accordance with these reasons. The appeals related to sections 11.4 and 11.7 of By-Law #2 are dismissed.