

CHIEF RETURNING OFFICER / ELECTIONS & REFERENDUM COMMITTEE RULING

Toronto Metropolitan Students' Union By-Elections 2023

The following is a ruling of the Election & Referenda Committee relating to the 2023 TMSU By-Election.

The rules and procedures of the election are determined by the TMSU By-Laws and the Election Procedure Code, which can be found here: yourtmsu.ca/election

Ruling Code #	ERC#0011
Date Received:	November 20, 2023
Date of Ruling:	November 23, 2023
Related Rulings	N/A
Type of Decision	Initial ruling
Nature of Decision	Alleged contravention of the Election Procedures Code Fair Play provisions
Complainant/CRO:	Nathan Sugunalan
Nominee/ Candidate:	None identified
Alleged Violation in By-laws or the Code	<p>8.1.10: Defamation, including libel and slander, defined as a communication to another person which harms the reputation of another Candidate or Non-Arm's Length Party, and which is not truthful, protected by absolute or qualified privilege, or fair comment.</p> <p>8.1.11: Harassment, defined as engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.</p>



	<p>8.1.13: General sabotage of the Campaign of other Candidates</p> <p>8.1.14: Malicious or intentional breach of the Code</p>
Relevant Penalties provided in the Code	<p>S. 8.3.5 provides various penalties where the ERC finds there has been a violation of the Code by a Candidate or Non-Arm's Length Party of the Candidate.</p> <p>S. 8.3.6 provides a framework for determining the appropriate penalty in any given case.</p> <p>S. 8.3.7.3 establishes that a maximum of 25 demerit points can be given for malicious or intentional violation of the Code.</p>

Evidence presented by the Complainant:

The complainant presented evidence that a video had been posted online making various allegations about the prior actions of the complainant. The video contained the following caption: "In July 2023 I reported witnessing several incidents that I believe constituted [*sic*] sexual violence by the current VP Operations and current Presidential candidate of the TMSU. I do not believe the TMSU did its due diligence to investigate or protect survivors and I believe students deserve to know." The individual in the video stated that in the summer they had filed a report against Nathan Sugunalan alleging inappropriate workplace behaviour. They noted that they have a broad definition of sexual violence that includes comments like women belong in the kitchen and are not speaking from a legal perspective. They noted they are "not saying it was criminal sexual assault or anything of the sort".

The video received a number of comments, including one from another Candidate that stated "There is no place for SV, on campus or anywhere else. Period."

The complainant also forwarded various social media posts, a poster that had been vandalized, and another poster that had the complainant's picture and text such as "sexual predator". One series of social media posts were from a single individual, who repeatedly posted comments online targeting the complainant. These included content such as:



- A statement that the complainant had sexually harassed five women, and there are possibly more who have not yet complained
- The complainant is a sexual pervert and predator
- Calling the person dumb, an idiot, incompetent, not credible
- "F#ck men in power who take advantage and make others lives miserable. You traumatize them for life piece of s#it"

ERC Decision:

Note: Due to the absence of a CRO this complaint was dealt with directly by the ERC. ERC members Marina Gerges, Makeen Syed, and Reanna Maharaj (non-voting member) declared a perceived or actual conflict of interest and recused themselves from the consideration of this complaint.

Many of the online comments at issue in this case are anonymous.

Those individuals who could be identified are Arm's Length Parties. They are not Candidates, and no evidence was presented that they were Non-Arm's Length Parties as defined by the Elections Procedures Code. Although one Candidate did leave a comment under the video, the comment did not amount to sharing the content or substantive endorsement of the contents of the video.

There was no evidence presented addressing who had created the "sexual predator" poster or defaced the physical poster of the complainant.

Section 8.1.10 of the EPC prohibits defamation which is defined as "a communication to another person which harms the reputation of another Candidate or Non-Arm's Length Party, and which is not truthful, protected by absolute or qualified privilege, or fair comment." The use of the word "another" within the phrase, "another Candidate or Non-Arm's Length Party" shows that the provision is intended to regulate the communications of Candidates and Non-Arm's Length Parties. It does not extend to Arm's Length Parties, and therefore does not apply to this complaint.

Section 8.1.13 prohibits "general sabotage of the Campaign of other Candidates." Again, the phrase "other Candidates" shows that this provision is not intended to address the actions of Arm's Length Parties.

Section 8.1.11 of the EPC prohibits harassment, which is defined as "engaging in a course of vexatious comment or conduct that is known or ought reasonably to be



known to be unwelcome.” Several of the online posts presented to the ERC were posted by the same individual. There were multiple posts over a short period of time that clearly personally targeted the complainant, used profane language, and made allegations that went significantly further than the video that was initially posted. The ERC finds that repeated posts of this nature does constitute harassment.

Section 8.1.14 prohibits malicious or intentional breach of the Code. Although the ERC has determined that there was a breach of the Code by one individual, there is no evidence of malice or intentional breach.

Finally, the ERC wants to underscore that this decision should not be understood as condonation of all the posts and materials at issue in this complaint.

The Election Procedure Code’s fair play provisions are primarily designed to set conduct boundaries for Candidates and those involved in campaigning. If some of the materials brought forward in this complaint had been tied to Candidates or Non-Arm’s Length Parties, the ERC may have found further Code violations.

Freedom of speech is vital during an election, and individuals who step forward to run for leadership positions should be prepared to answer questions regarding their integrity, their record, and their goals for TMSU. Nonetheless, the ERC urges all individuals involved in and commenting on TMSU elections to remember that all people deserve to be treated with respect and dignity. Serious allegations posted online in the context of an election will often have long-lasting personal and professional repercussions for students who are often just embarking on their professional lives. In reviewing this complaint we noted materials and comments that, in the view of the ERC, were inflammatory and misleading. While promoting or repeating misleading information will not always violate the Code, it does pose significant challenges to democratic governance and ultimately disrupts the TMSU community. We urge everyone to exercise their freedom of expression in a responsible manner that lends itself to vigorous, fair, respectful debate on the issues that matter to TMSU Members.



CRO/ERC Decision	
Penalties Issued	None
Deadline to Appeal	<p>This is a first instance ruling by the ERC and no Appellate Committee has been formed.</p> <p>Per s. 10.6.1 of the EPC the University Ombudsperson can be asked to undertake a Fairness Review of an ERC ruling.</p> <p>Although no deadline is set out in the Code, the ERC has determined that any such review should be requested in writing within 48 hours of the Candidate being informed of the ERC ruling.</p>

