



Appeals Board Decision G-V.G. November 2022

Decision of Appeal, UNB Student Union 2022-2023

Applicant

Gaurnash-Vipin Gupta
Vice President Finance and Operation's-Candidate

UNB Student Union

Respondents

Drashtant Varma
Deputy Chief Returning Officer
UNB Student Union

Manav Dhupar
Vice President Finance and
Operation's-Candidate
UNB Student Union

Hearing Date

November 8th, 2022, at 11:30 p.m. online via Google Meet¹

¹ Reading Week special circumstances for online hearing

Chief Appeals Officer, UNB Student Union

Joshua L. Lohnes , UNB Student Union Chairperson

Associate Appeals Officers, UNB Student Union

Destiny Grant

Abigail Companion

Headnote

- 1) This appeal involves matters related to the November 2022 University of New Brunswick's Student Union (UNBSU) by-elections. Mr. Gurnash-Vipin Gupta was a candidate for Vice-President of Finance and Operations. On Friday, November 4th, 2022, the UNBSU's Appeals Board (Board) received Mr. Gupta's request to appeal the formal decision of disqualification ruled by the Deputy-Chief Returning Officer (DCRO), Drashtant Varma.

Facts

- 2) Due to the CRO position currently being held by UNBSU President, Kordell Walsh; all responsibilities of the CRO surrounding the position Vice-President Finance and Operations have been delegated to DCRO, Drashtant Varma, to avoid conflict of interest.
- 2.1) An email complaint from Manav Dhupar was received by the DCRO as of November 2nd, 2022. The complaint referred to an incident of harassment and threats from Timotios Shibre, who was a potential campaign associate to Gurnash-Vipin Gupta.
 - 2.2) Before, and during the meeting between the DCRO and Gurnash-Vipin Gupta, the DCRO and Chairperson had been made aware of two detailed incidents, all concerned with maintaining and upholding the integrity of the election results. Concerns were based on common stories about Mr. Gupta walking up to individuals in the Student Union Building (SUB) and making race-based remarks to voters pressuring the voter to change their vote from another candidate to Mr. Gupta. It has been described that during these incidents, Mr. Gupta would stand behind the individuals and not leave them until their vote had been submitted.

- 2.3) The DCRO contacted Mr. Gupta, to which Mr. Gupta had denied the accusations with the explanation that Timotios Shibre was not a part of his campaign, distancing himself from the complaint from Mr. Dhupar. Mr. Gupta did, however, admit to going up to individuals in the Student Union Building (SUB), but claimed it was just for general campaigning.
- 2.4) Screenshots, photos, and witness testimony of conversations and incidents were provided to the DCRO and Chairperson to indicate Mr. Gupta had in fact violated the bylaws.
- 2.5) Per Bylaw 2, the DCRO investigated the complaints and recommended disqualification. The decision of disqualification was primarily based on evidence, testimony, and patterns establishing interference and harassment of voters. The complaint regarding Mr. Dhupar, while substantial, is a secondary argument which had only earned an apology by its own. Mr. Gupta requested on November 5th, 2022, to appeal the DCRO's decision.
- 2.6) Per the election results published Monday, November 7th, 2022, at 12:01am, there was a difference of 8 votes between Isabella Hallihan and Kierra Macalpine, along with a difference of 17 votes between Isabella Hallihan and Manav Dhupar. Upon the Appeals Board's decision of election interference, these results may bring into question the integrity of the electoral process.

Summary of Arguments

Respondent Argument:

3) *Bylaws*

- 3.1) The DCRO recommended Mr. Gupta be disqualified for the following Campaigning Regulations violations:
- 3.2) *Bylaw 2-14*: "No candidate, campaign organizer, or manager for any candidate shall infringe on the integrity of the electoral process in any manner."

3.3) *Bylaw 2-30*: “Candidates shall adhere to the following rules:
(n) No candidate shall participate in or encourage Slander, harassment, or violence towards any other candidate(s).

3.4) *Bylaw 2-53*: “Where **a candidate** or a **person acting on their behalf** fails to adhere to the regulations during an Election, the CRO may:”

4) *Non-Bylaw*

4.1) It had been inferred that the candidate, Mr. Gupta, had harassed and pressured voters to alter their vote to favour himself. This would impose the possibility of results being improperly submitted and found null/void.

5) *The Complaints and Descriptions*

5.1) The first complainant wrote that Mr. Gupta had an individual potentially associated with their campaign, approach Mr. Dhupar and his partner, making negative remarks about Mr. Dhupar and his campaign.

[Photo A]

5.2) The DCRO had met with Mr. Dhupar in-person, where Mr. Dhupar further explained the situation. Mr. Dhupar stated that while he and his partner were in line at Tim Hortons at the Student Union Building (SUB), Mr. Gupta’s friend, Timotios Shibre, approached them and said the following – according to Mr. Dhupar and various witness testimony: ■■■■■
■■■■■ Mr. Dhupar then explained how the two of them engaged in conversation and mentioned that he saw Mr. Gupta standing at the corner of the room, watching the incident take place. **[Photo B]**

5.3) Mr. Dhupar then mentioned that later his campaign organizer, ■■■■■, spoke through messages with Mr. Gupta. Mr. Gupta is seen saying that he had no idea why Timotios Shibre approached Mr. Dhupar.

[Photo C]

5.4) The second complainant expressed concern about the validity and integrity of the election results because of witness testimony claiming interference, harassment, and threats that pressured eligible voters to

alter their votes in favour of Mr. Gupta. They claim it is a possibility Mr. Gupta's Interference could have occurred various times and had negatively affected other candidates.

- 5.5) The DCRO was informed of the complaint against Mr. Gupta's campaign by Vice-President Communications, Annie Sheehan, who was delivering the complaint on behalf of a third-party voter. The third-party voter claims that Mr. Gupta had been going around the Student Union Building (SUB) telling people to vote for him. The complainant claims that whilst she was sitting in the Student Union Building (SUB) one day – about to vote, Mr. Gupta approached her and introduced himself and the position he was running for. She said that she was going to vote for another candidate for the position of VP Finance & Operations and had checked off Isabella Hallihan's name in the box. According to testimony, when Mr. Gupta had approached her, Mr. Gupta said upon seeing her selection, "You're really gonna vote for another white person?" **(Mr. Gupta himself is a person of colour (brown; Indian))**
- 5.6) The complainant said that he was pressuring her and harassing her to vote for him and would not leave until she had voted for him and submitted her vote. The complainant said that she was "guilted" into voting for him. **[Photo D]**
- 5.7) This story is corroborated by a campaign organizer for Manav Dhupar who has stated he had seen Mr. Gupta later going around the Student Union Building (SUB) and doing the same with other voters. **[Photo E]**
- 5.8) The first detailed description was not a formal complaint. This person contacted the CRO with concerns about the interaction between Timotios Shibre and Mr. Dhupar. The second detailed description was also not a formal complaint. This person had contacted the Vice President of Communications who then forwarded the complaint to the Chairperson of the council.

CRO and DCRO Recommendation and Reasoning

- 6) The DCRO recommended disqualifying Mr. Gupta for violation of the above bylaws and implications of the above, non-bylaw reasoning.
 - 6.1) The DCRO reasoned that Mr. Gupta had access to the bylaws and knew of the regulations; furthermore, Mr. Gupta should have been able to interpret interference of an election to be unacceptable. These reasons are evidence that Mr. Gupta may have gained votes from these actions. Therefore, Due to an abundance of evidence against Mr. Gupta including evidence of interference in votes and the possibility of a pattern of interference the DCRO requested Mr. Gupta be disqualified in order to uphold an “ethical, fair, and democratic election”.

7) **Applicant’s Argument**

- 7.1) Mr. Gupta in response to the issue of Timotios Shibre approaching Mr. Dhupar, stated that he “did not tell or instruct his friend to do that, and once he found out about it, he spoke with him.”
- 7.2) Mr. Gupta also mentioned that he and Mr. Dhupar’s campaign organizer [REDACTED], had spoken through messages. **[Photo C]** Mr. Gupta additionally mentioned that the day after the spoke through messages, a meeting was arranged between Mr. Gupta and [REDACTED], where a comment was made referring to Mr. Gupta speaking with Timotios Shibre where a correction and remedy had been made. (Mr. Dhupar also confirmed that [REDACTED] had met with Mr. Gupta.)

- 7.3) Regarding the complaint brought forward by the third-party complainant and supported by [REDACTED], Mr. Gupta responded that he had in fact been going around the Student Union Building (SUB) speaking with people regarding the Election, showing them how to vote, and speaking to them as they were voting of his campaign; however, stating that no comments were made telling them or forcing them to vote for him.

8) **Decision**

8.1) Did Mr. Gupta make their prima facie case?

The Board accepted Mr. Gupta's appeal request. Mr. Gupta's complaint against the CRO's report was founded, along with policy stating all appeals must be heard. Due to this, Mr. Gupta was granted a hearing.

8.2) Did the CRO and DCRO have sufficient reasons to disqualify Mr. Gupta?

The Board decided that the DCRO had an abundance of evidence including probable cause and an established pattern of influence in order to disqualify Mr. Gupta from running for the Vice President Finance and Operation position.

8.2.1) *Bylaw 2-14*

Bylaw 2-14 states that "No candidate, campaign organiser, or manager for any candidate shall infringe on the integrity of the electoral process in any manner."

Based on evidence provided, the Appeals Board has determined that Mr. Gupta and his associate Timotios Shibre had infringed on the integrity of the electoral process by means of harassment of voters and causing a public conflict in the Student Union Building (SUB).

8.2.2) *Bylaw 2-30(n)*

Bylaw 2-30(n) states "Candidates shall adhere to the following rules:

(n) No candidate shall participate in or encourage Slander, harassment, or violence towards any other candidate(s).

Based on evidence provided, the Appeals Board has determined the incident between Mr. Shibre and Mr. Dhupar had satisfied requirements of harassment of another candidate through the support of Mr. Shibre acting on Mr. Gupta's behalf.

8.2.3) *Bylaw 2-53*

Bylaw 2-53 states "Where a **candidate** or a **person acting on their behalf** fails to adhere to the regulations during an Election, the CRO may:"

Based on evidence provided, the Appeals Board has determined Mr. Gupta himself had violated Bylaw 2-14 with the further understanding of Mr. Shibre acting on Mr. Gupta's behalf in relation to the violation of Bylaw 2-14 and Bylaw 2-30(n).

8.3) *Non-Bylaw*

Based on evidence provided, the Appeals Board has determined that Mr. Gupta had pressured voters to alter that vote to favour himself, using harassment and race-based remarks. This would impose the possibility of results being improperly submitted and found null/void.

9) *Biases*

The Board agrees that disqualification is a severe decision with financial, professional, and residential implications on Mr. Gupta. The DCRO recommended disqualification based on their determination of interference in the election, following an investigation, featuring two complainants and two similar, if not identical recounts of complaint #2.

10) **Recommendation?**

While this is the Appeals Board's decision, the UNBSU Council ultimately decides whether to ratify these results. It is within the ethical recommendation to the University of New Brunswick Student Union, that the results for Vice President of Finance and Operations position in the November 2022 election **not be ratified**. This is due to the fact that Mr. Gupta could have coerced multiple people into voting for him – against their will. In the case of G-V. G., it is recommended by the Board that a new election be held for the sole position of Vice-President Finance and Operations. This election would be held with the disqualification of Mr. Gupta to ensure a fair, transparent, and democratic election is held with certainty of no voter interference; only including Isabella Hallihan, Kierra Macalpine, and Manav Dhupar.

It is the Board's recommendation that this election would allow for a campaign period to begin on November 15th, 2022, at 12:00am and to last until November 23rd, 2022, at 11:59:59pm. As with voting, it is recommended that council approve an additional budgetary constraint of \$100 for campaign materials, aside from the \$300 allowance candidates had used with their original campaign. As to restrict campaign materials; while results of the original election have been made publicly available, it is the recommendation of the board to restrict the use of the original election results for campaigning purposes. Furthermore, a voting period would be held beginning November 16th, 2022, at 12:00am and last until November 23rd, 2022, at 11:59:59pm.

Lastly, upon notification that Mr. Gupta has plans to nominate himself in future elections, it is the recommendation of the Board that while Mr. Gupta is technically obligated to draft and release a public statement of apology, the Appeals Board has determined that limitations should be put in place to determine Mr. Gupta's eligibility in future elections; only allowing him to run if a public statement of apology is sent to the Chief Appeals Officer and Chief Returning Officer by Saturday, November 12th, 2022, at 11:59:59pm apologizing for his violation against Mr. Dhupar and to for infringing on the integrity of the electoral process. This response if passed by the council will then be sent to Manav Dhupar, Isabella Hallihan, and Kierra Macalpine, individually; along with being made publicly available by the Chief Returning Officer.

11) *Election integrity*

The Board notes the second complainant specifically called for disqualification because of election integrity concerns.

12) **Confidentiality**

The Board has maintained best efforts to protect the identities of the complainants as well as Mr. Guptas' online identity as mentioned above. It is for these reasons the Board, in collaboration with the CRO, will not provide UNBSU Council with the full complaint report, rather Council will receive the redacted report. Mr. Gupta also received only the redacted report.

13) **Confidentiality and conflict of interests**

It is important to not create a soiled relationship among members of the Council. It is important to maintain a professional, respectful, and confidential attitude among issues such as this appeal. It is equally important to protect the integrity of the work environment in which our councillors and executive operate; revealing complainants' identities will significantly impede on this.

Evidence

Photo A

From: **Manav Dhupar** <manav.dhupar1@unb.ca>
Date: Wed, Nov 2, 2022 at 4:42 PM
Subject: Unethical conduct during campaigning
To: UNBSU CRO <cro@unbsu.ca>

Hello UNBSU

This is Manav Dhupar sending an email regarding unethical practice during the campaigning. I was at SU for some work. And the guy who is running against me Gauransh. One of his friend/ supporter walked straight up to me and told me that you are "Not Gonna Win at any cost" and was making negative remarks about me.

So I would like to please talk with the other candidate about it. It is unfair to let someone down just to get votes. They can also use other ways to get votes

Thanks,
Manav Dhupar

Photo B

To UNB STUDENT UNION
Date- November 6, 2022
From- [REDACTED]

On November 2nd me and my partner went to the Student Union Building to get a coffee from Tim Hortons around 4:30 pm. As soon as we entered the building there was a guy who approached us and told my partner "You are not gonna f* win these elections". I was very shocked and felt uncomfortable that a stranger came up to us and used inappropriate language for no reason but to belittle my partner. I felt uncomfortable the way he was talking to my partner Manav Dhupar who was running for Student Union elections at the time.

He even questioned me if I have voted for the elections, when I never had made a comment or spoken a word to this individual. There was another person who came and was present in the situation and stated that it is rude to talk to someone that way. I felt unsafe and threatened the way he was talking to us in a public place, especially since we did not initiate the conversation nor did we know who he was.

If there is anything else, you would like information about feel free to send an email to [REDACTED]

Thank You
[REDACTED]

Photo C

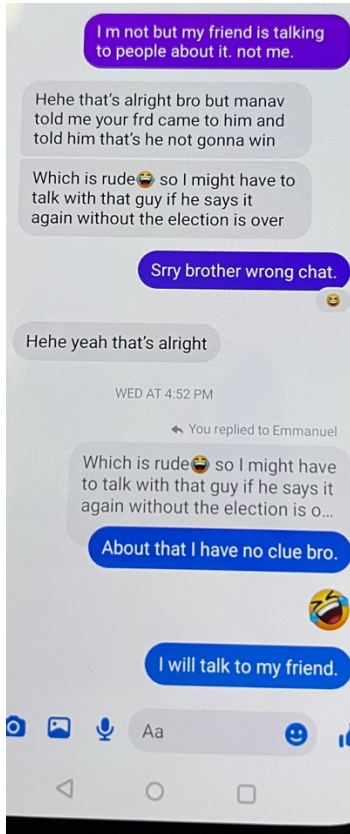


Photo D [Name Redacted]



Photo E

To- UNB CHAIR/ CRO/ DCRO

From- [REDACTED]

Date- November 7, 2022

I am writing this letter regarding the elections. I was sitting in the student union building on November 3, 2022 around 6:45 [REDACTED] running for the VP Finance elections that time and he was also there with his poster trying to tell people hi campaign goals and I went with him as his supporter and we walked to a table and Manav was talking to them regarding Student Union elections and they said that “ Someone forced us to vote in the morning, We are sorry”. He went to another table the guy sitting there said “ You are late, someone bought me out to vote in the morning, he only remembered the last name that was Gupta. So we thought that was very strange that the students were forced to vote willingly or unwillingly and I thought that was an unfair way of campaigning.

Also, a request I would like my name to be anonymous to everyone

Thanks, and Regards

[REDACTED]

Signatures

A handwritten signature in black ink that reads "Joshua L. Lohnes". The signature is written in a cursive style with a large initial 'J' and 'L'.

Joshua L. Lohnes ,
**UNB Student Union Chairperson, Chief Appeals Officer, UNB Student
Union**

Destiny Grant,
Associate Appeals Officer, UNB Student Union

Abigail Companion,
Associate Appeals Officer, UNB Student Union