

AN INVESTIGATION REPORT
PREPARED PURSUANT TO THE UNIVERSITY OF WINNIPEG STUDENTS'
ASSOCIATION'S
ELECTION ANTI-HARASSMENT POLICY

PRIVATE AND CONFIDENTIAL

December 19, 2022

Prepared by:
Sherri Walsh / Melanie Wire
HILL SOKALSKI WALSH LLP
Litigation Counsel

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Investigators: **Sherri Walsh and Melanie Wire**

Report Date: **December 19, 2022**

I. Executive Summary

Our office was retained to conduct an independent investigation into three matters:

1. Complaint dated March 3, 2022 by Kanwalpreet Kaur (the “Kaur Complaint”);
2. Complaint dated March 7, 2022 by Jonathan Henderson (the “Henderson Complaint”);
and
3. A letter dated March 16, 2022 on behalf of 14 student groups (the “Student Group Letter”).

All of these matters are in relation to the conduct of Kiratveer Singh Hayer, who is the President of the University of Winnipeg Students’ Association (the “UWSA”). Mr. Hayer was elected as President in the 2022 UWSA General Election (the “Election”).

As will be discussed in greater detail below, the only matter which we had jurisdiction to formally investigate was the Henderson Complaint.

Our investigation of the Henderson Complaint was conducted in accordance with the UWSA’s *Election Anti-Harassment Policy* (the “*Policy*”). For the reasons set out later in this report, we find that the Respondent did not breach the *Policy* and the Henderson Complaint is not sustained.

II. Background and Preliminary Assessment

On March 10, 2022, the UWSA Board of Directors (the “Board”) moved to appoint an external investigator to conduct an investigation into all allegations against the Respondent during the Election.

We were first contacted on April 7, 2022 by Karolya Vargscarr, Contract Management Support, in relation to allegations of misconduct by the Respondent, and were formally retained on May 3, 2022.

On May 17, 2022, Tom Sidebottom, Chief Operating Officer of the UWSA, confirmed that we were to investigate the Kaur Complaint, the Henderson Complaint, and the Student Group Letter.

Following our review of the Kaur Complaint, the Henderson Complaint, and the Student Group Letter, we conducted a preliminary assessment of each to determine whether the allegations contained therein were capable of being investigated.

The process of confirming the scope of this investigation, including the complaints to be investigated and the jurisdiction to do so, combined with ensuring that all relevant parties were heard, was a lengthier process than anticipated at the time of our original retainer.

The Kaur Complaint

Ms. Kaur was a candidate for Vice President External Affairs (“VPEA”) in the Election. She alleged that on February 25, 2022, a friend of the Respondent’s texted her to say that the Respondent wanted her to reach out to him. She alleged that she then texted the Respondent, who asked her to call him, and when she did, he asked her to step down from her candidacy because he did not want Mr. Henderson, who was the current VPEA, to be re-elected. Ms. Kaur alleged that the Respondent told her that only one Indian candidate should run in the Election so that the vote would not be divided amongst several Indian candidates. Ms. Kaur further alleged that the Respondent told her that Mr. Henderson had been a problem for him and that he was not able to get certain matters approved because of Mr. Henderson.

Ms. Kaur submitted a complaint pursuant to the UWSA By-Laws (the “By-Laws”) and the *Policy* to the Election Campaign Facilitators (the “ECFs”) on March 3, 2022. In support of her complaint, she provided a screenshot of a text message exchange between herself and the Respondent where the Respondent said “call me”. The ECFs escalated the complaint to the Election Accountability Board (the “EAB”), which considered the complaint at a meeting on March 5, 2022. The EAB ruled to suspend the Respondent from all campaign activities for the remainder of the campaign period.

The EAB is established under section 5.48 of the By-Laws and hears matters arising under the *Policy* and *Election Complaint Policy*. The *Policy* provides that once the EAB receives a complaint, it shall call a hearing and “deliberate on all gathered information and determine an appropriate resolution that will best maintain the integrity, safety, and fairness of the UWSA Elections”. Rulings of the EAB are final and cannot be appealed.

The Henderson Complaint

The Henderson Complaint reads, in relevant part:

I am writing this complaint in lieu of the recent public posting regarding Kirt Hayer's actions. Ever since he raised his concerns regarding the election policy, I knew I was being targeted, hearing informally from other students as well. This is why it was tough decision to run for re-election. But I did not let that stop me, I know I have done a great job for our students.

Kirt has a known history regarding elections, as per past complaints. This is a continuous act of harassment, racial targeting, and bullying. As a victim of his current actions I am requesting that he be dismissed from his position as President.

As per the complaints posted on the UWSA website, their has been obvious tampering, colluding, interference, and bullying tactics in this election. I do not feel safe as a result, I feel racially targeted as an Indigenous student. With voting starting, I cannot feel this is now a fair election. It is devastating to be targeted like this by our leader, the one who represents the UWSA. Is this the leadership you condone? I am still so numb, hurt, and personally violated. So many negative emotions.

Due to these negative emotions, I have felt the need to cancel my candidate speeches to classes today. Possibly the rest of the week, why campaign for an election that is obviously no longer fair, and more importantly safe. Who knows what other actions Kirt is taking to ensure that I am not re-elected. His way of conduct shows, he will not suddenly admit everything else he has done to sabotage my character and campaign to other students.

Mr. Henderson submitted this complaint to the EAB on March 7, 2022. The EAB ruled that “a full investigation of all allegations should be conducted”.

The *Policy* provides the EAB with broad authority to determine an appropriate resolution to a complaint. Although the *Policy* does not specifically list an “external investigation” as a potential resolution to a complaint, the list of resolutions contained therein is non-exhaustive.

The Student Group Letter

The Student Group Letter cited certain provisions of the By-Laws, and a statement from the

University of Winnipeg's Human Rights & Diversity Office. The letter also referenced several EAB reports, including those dealing with the complaints of Ms. Kaur and Mr. Henderson, and alleged that the Respondent is in breach of the By-Laws.

The Student Group Letter further stated that:

The names of the persons reporting these sentiments will remain anonymous to protect their identities, however it may be possible to share our records privately with the appropriate figures within the UWSA if required. Hayer has engaged in public discourse on numerous occasions to make statements such as "because BIPOC have to toughen up" then continuing "the world is not a safe space". In response to the statement "institutions of higher education should be safe spaces" he said that "it is from my perspective because I'm not so sensitive". This further supports his own words that he believes that "...racism is seated at the level of the individual instead of the group" and that "...systematic racism must be stopped but things like intersectionality and the BIPOC lounge are making it worse".

He has implied on several occasions that individuals brought racism upon themselves to further their own agendas by continuously criticizing BIPOC safe spaces on campus by saying "What I believe in is that we should be stressing responsibility over rights as there are ways that people can change their circumstances despite marginalization based on race".

We have characterized these concerns as the "Anonymous Complaints".

The Student Group Letter went on to express concerns about how the UWSA handled the complaints made against Mr. Hayer and called for his removal from the Election.

Initial Communications with the Parties

On May 17, 2022, David Simpson, counsel for the UWSA, wrote to Christian Pierce, counsel for the Respondent, and advised him of our retainer.

On June 16, 2022, Mr. Pierce wrote to us to confirm the scope of our investigation and to ask about the investigation process. We responded and confirmed that we were retained to investigate the Kaur Complaint, the Henderson Complaint, and the Student Group Letter.

On June 20, 2022, we wrote to the four authors of the Student Group Letter and requested to meet with them on July 14, 2022 to confirm the nature and particulars of their complaints as part of our preliminary assessment. The authors of the Student Group Letter were Madison Chisholm, Kiera Pond Augusto, Emilie Rae Hoepfner, and Mira Koop.

On June 28, 2022, Ms. Hoepfner responded and confirmed their availability to meet with us on July 14, 2022. Having not heard from the remaining authors of the Student Group Letter, we followed up with them on June 28, 2022. Ms. Chisholm responded that same day and confirmed she was available to meet with us on July 14, 2022. Ms. Pond Augusto responded on June 29, 2022 to advise that she was unavailable to meet with us on July 14, 2022, but gave Ms. Hoepfner authority to speak on her behalf.

We had not heard from Ms. Koop as of July 4, 2022, and wrote to her that day to confirm her attendance on July 14, 2022. Ms. Koop said that Ms. Hoepfner and Ms. Chisholm could speak on her behalf.

On July 14, 2022, we wrote to Mr. Henderson to confirm that we had been retained to conduct an investigation of his complaint. We explained that we were conducting a preliminary assessment of his complaint, and that we would be back in touch with him shortly.

Meeting with Ms. Hoepfner and Ms. Chisholm

We met with Ms. Hoepfner and Ms. Chisholm by Zoom on July 14, 2022. When we contacted them to schedule our meeting, we told them that it was important for the integrity of the process that all participants maintain confidentiality, including over our preliminary assessment. Further, at the outset of our meeting with Ms. Hoepfner and Ms. Chisholm, we confirmed that they understood their confidentiality obligations.

We recorded the meeting with the consent of the participants, and advised them that the purpose for recording was simply to assist us in preparing our notes from their interview. At their request, Ms. Hoepfner and Ms. Chisholm were provided with a copy of the recording to share with Ms. Koop and Ms. Pond Augusto. They were asked not to share the recording with anyone else.

Following our meeting, Ms. Hoepfner and Ms. Chisholm were provided with a typed version of their notes. They were asked to review the notes and make any corrections or additions, in order to confirm that we had understood the information they were providing during their interview. We asked them to initial each page of the notes before returning them to us.

During the meeting, we asked Ms. Hoepfner and Ms. Chisholm what outcome they were seeking with respect to the matters dealt with in the EAB reports in light of the fact that the EAB had ruled on the complaints that it received. After meeting with Ms. Hoepfner and Ms. Chisholm, our understanding was that they were raising the EAB rulings in their letter in order to show a pattern of behaviour on the part of the Respondent, and were not suggesting that the complaints on which the EAB had ruled be the subject of an investigation. We understood that the purpose of the letter was to bring forward the Anonymous Complaints and to raise concerns about the UWSA Election process generally.

With respect to the Anonymous Complaints, Ms. Chisholm advised that she had screenshots of a conversation between a student and the Respondent where he made those comments (the “Screenshots”). We asked Ms. Chisholm to provide us with the Screenshots.

Outcome of the Preliminary Assessment

Following our preliminary assessment, it was determined that:

1. The UWSA did not have jurisdiction to conduct an investigation into the Kaur Complaint. As the EAB had previously ruled on the Kaur Complaint, and the EAB’s rulings are final, it could not be the subject of an investigation;
2. The UWSA had jurisdiction to conduct an investigation into the Henderson Complaint in light of the non-exhaustive list of resolutions available to the EAB contained in the *Policy*; and
3. The Anonymous Complaints were most likely to engage the UWSA’s *Positive Space Policy*. The *Positive Space Policy* sets out a procedure which provides that the Chief Operating Officer of the UWSA will conduct an internal investigation and meet with all relevant parties. On July 29, 2022, Mr. Sidebottom delegated his authority to conduct an investigation of the Anonymous Complaints to us.

Further Communications with the Parties

On August 8, 2022, we wrote to Mr. Pierce and confirmed that our instructions were to investigate the Henderson Complaint and the Anonymous Complaints. We asked that the Respondent provide a written response to the Henderson complaint by August 15, 2022. We did not ask the Respondent to provide a response to the Anonymous Complaints at that time, as we were waiting to receive further particulars of those complaints as well as the Screenshots.

That same day, we wrote to Ms. Chisholm and Ms. Hoepfner, confirmed that we had been instructed to investigate the portion of the Student Group Letter that contained the Anonymous Complaints, and asked that they provide the Screenshots to us. We also asked them to confirm whether the anonymous individual was prepared to be identified to us and speak with us.

Having not heard from Ms. Chisholm and Ms. Hoepfner, we followed up with them on August 25, 2022. Ms. Chisholm responded on August 29, 2022, and provided us with the Screenshots. She told us that she had sent a message to the anonymous individual to ask if they would be willing to speak with us directly.

Not having heard anything further from Ms. Chisholm, we wrote to her on September 12, 2022 to confirm whether the anonymous individual was prepared to speak to us regarding the Screenshots. Ms. Chisholm responded that same day to advise that the anonymous individual had deleted all of their social media accounts and she no longer had a means of contacting them.

We therefore concluded that it would be inappropriate to proceed with our investigation of the Anonymous Complaints without having the consent of the anonymous individual, to respect their privacy. Further, fairness to the Respondent would require that we be able to speak with the anonymous individual to understand the context of the Screenshots.

Accordingly, we did not proceed with an investigation of the Anonymous Complaints. The Henderson Complaint was therefore the only complaint left to be investigated.

We wrote to Mr. Henderson on August 8, 2022, to confirm that following our preliminary assessment, we were instructed to investigate his complaint. We explained our investigative process to him, and asked to meet with him for an interview on August 18, 2022.

On August 9, 2022, Mr. Pierce confirmed that the Respondent would provide a substantive response to the Henderson Complaint the following week.

Mr. Henderson did not respond to us until August 21, 2022. On August 22, 2022, we scheduled an interview with him for September 15, 2022.

Mr. Pierce provided us with the Respondent's response to the Henderson Complaint on August 22, 2022. On September 9, 2022, we provided Mr. Henderson with a copy of the Respondent's response to his complaint.

III. Investigation of the Henderson Complaint

i. The Interview Process

Interviews of all participants were conducted by Zoom. When we contacted participants to schedule interviews, we provided them with a copy of the *Policy* and highlighted their obligations with respect to confidentiality, pursuant thereto. Further, at the outset of each interview, we confirmed that the participant understood their confidentiality obligations.

Following each interview, the participant was provided with a typed version of their notes. They were asked to review the notes and make any corrections or additions, in order to confirm that we had understood the information they were providing during their interview. We asked the participant to initial each page of the notes before returning them to us.

Interview with Mr. Henderson

Mr. Henderson was interviewed via Zoom on September 15, 2022. On October 4, 2022, we gave him a copy of his interview notes and asked that he review them, make any necessary corrections or additions, and then place his initials on each page to signify his acceptance of their accuracy. We asked Mr. Henderson to provide us with the notes by October 12, 2022.

Not having heard from Mr. Henderson, we followed up with him on October 19, 2022 and asked him for some additional information.

We did not hear from Mr. Henderson, and followed up with him a further time on October 31, 2022 to advise him that we had concluded the evidence gathering portion of our investigation and would be drafting our report. We said that if we did not hear from him by November 2, 2022, we would assume he had no issues with the accuracy of his interview notes. To date, we have not received a response from Mr. Henderson and therefore have proceeded on the basis that our notes are an accurate reflection of his evidence.

Interview with the Respondent

We interviewed the Respondent via Zoom on September 21, 2022. On October 4, 2022, we gave him a copy of his interview notes and asked that he review them, make any necessary corrections or additions, and then place his initials on each page to signify his acceptance of their accuracy. During our interview with the Respondent, he indicated that he had some additional information that he wanted us to review. We therefore highlighted those areas of his interview notes where he told us he would provide us with additional information, to assist him in assembling the follow-up information. We asked the Respondent to provide us with the notes and any additional material by October 12, 2022.

On October 12, 2022, Mr. Pierce advised that he and the Respondent were still reviewing the notes and anticipated being able to provide us with comments and additional documents by the end of the week.

Following their review, on October 14, 2022, Mr. Pierce provided us with the Respondent's interview notes as well as copies of text messages which he wanted us to review.

Interviews with Witnesses

Mr. Henderson did not identify any potential witnesses. The Respondent identified one witness, G.M. Following our interviews with the parties, we determined that it was also necessary for us to meet with Ms. Kaur.

On October 13, 2022, we wrote to G.M. to schedule an interview with him. He responded that same day and advised us that he was working 16 hours per day and therefore did not have much time. He asked if we could conduct the interview over e-mail.

On October 14, 2022, we responded to G.M. and told him that we could not conduct our interview with him over e-mail, but only anticipated needing about 20 minutes of his time. We said that we would do our best to accommodate a time that worked for him, and asked him to advise us of some potential dates and times. Having not heard from G.M., we followed up with him on October 25, 2022. We did not receive a response from G.M.

We also wrote to Ms. Kaur on October 14, 2022. She responded on October 15, 2022, and was interviewed via Zoom on October 24, 2022. Following our interview, she sent us some documents and screenshots of text messages to review.

On October 25, 2022, we provided Ms. Kaur with a copy of her interview notes. She returned her initialled interview notes to us on October 29, 2022.

ii. *The Evidence*

Mr. Henderson's Evidence

Through his complaint and interview, Mr. Henderson told the investigators the following information:

Background

- He is an Indigenous student at the University of Winnipeg and is currently in his third term as the VPEA of the UWSA, having been re-elected in the Election.
- The Respondent is the President of the UWSA, and has been in office for Mr. Henderson's second and third terms as the VPEA.
- Despite the allegations made in his complaint, he and the Respondent have a great relationship.
- He explained that his complaint is based on the Kaur Complaint, which he saw on the UWSA's website. He was notified in advance by Karolya Vargscarr and the Vice-President of Student Affairs that the Kaur Complaint was going to be posted so that he could prepare himself.
- As a candidate in the Election, felt that he had to make a complaint in order to make a statement that the allegations in the Kaur Complaint were not right. He said that he was under time constraints when writing his complaint and acknowledged that there are "lots of emotions running high during election time". He said that if he had time to think about his complaint, "it would have come out a lot more fair", meaning that he would have worded his complaint to say if the statements attributed to the Respondent in the Kaur Complaint were true, he felt targeted.

The Kaur Complaint

- Mr. Henderson was concerned by the allegations which were made by Ms. Kaur. He understood that the Respondent was trying to tell her to step down from her candidacy so

that votes did not get divided and Mr. Henderson would lose. Mr. Henderson was hurt by this allegation.

- Mr. Henderson felt that if this allegation was true, he was being targeted as an Indigenous person, as the other candidates running for VPEA were all the same ethnicity and not Indigenous. He explained that:

If you have someone trying to rig elections and are trying not to divide the vote, you feel you are being targeted when you are running against 3 students of the same ethnicity. You feel they don't want you in there because you are an Indigenous person. Not many Indigenous people have been afforded to be in a leadership position. There is a spotlight on you, you always have to prove yourself in society as an Indigenous person. There is racism in our society and discrimination in how people view Indigenous people. That is also changing. I felt like I was being targeted to be moved out as an Indigenous person to be replaced with a non-Indigenous person. I might not have felt targeted if there were other Indigenous candidates.

- He did not speak about Ms. Kaur's complaint with her in detail and does not know her personally.
- Mr. Henderson was caught off guard by the allegations contained in Ms. Kaur's complaint, as he has a good relationship with the Respondent. Mr. Henderson said "Kirt never gave me any realization or prior feelings to think he had anything against me until this stuff came out. It blew me out of the water. I had no idea he had these feelings towards me."
- About six weeks after filing his complaint, he and the Respondent had a virtual meeting with other members of the UWSA executive and discussed how to move forward. The Respondent said that he had proof that Ms. Kaur's allegations were false. Mr. Henderson and the Respondent still have a great relationship, notwithstanding this complaint.
- Mr. Henderson felt that social media creates a lot of toxicity around the election process and "a lot could have been avoided if we could have had communication to afford ourselves professionalism".

The Respondent's Evidence

Through his written response to the Henderson Complaint, his interview, and the copies of text messages between G.M. and Ms. Kaur that he provided, the Respondent gave the following evidence:

Background

- He ran for President of the UWSA in the 2021 UWSA General Election and was successful. Mr. Henderson was elected as VPEA in that same election.
- The parties had a good working relationship during the 2021-2022 academic year.
- Both Mr. Henderson and the Respondent ran for re-election in the Election. The Respondent ran unopposed, while Mr. Henderson ran against three other candidates, all of whom were Indian. Mr. Henderson was ultimately the successful candidate.

Dealings with Ms. Kaur

- He pointed out that Ms. Kaur only provided the EAB with a copy of text messages between him and Ms. Kaur, and a portion of the text messages between herself and G.M.
- He said that Ms. Kaur contacted G.M., a friend of the Respondent's, to ask for the Respondent's help during the election. He said that the messages between Ms. Kaur and G.M. showed that she wanted an all Punjabi executive.
- G.M. approached the Respondent and said he should help Ms. Kaur. The Respondent said he did not want to help her, but G.M. said that he should at least talk to her. G.M. told Ms. Kaur that the Respondent wanted to talk to her.
- The Respondent did not initiate the call with Ms. Kaur. Ms. Kaur sent him a message saying that she understood that he wanted to speak with her, and he told her to call him as a result.
- He and Ms. Kaur spoke on the phone about restrictions on campaigning, including that candidates could not use graphic design during their campaign and could not reach out to large numbers of students. The Respondent said that he told Ms. Kaur to follow election rules, and that if she disagreed with the election rules, she should campaign and inform students about the rules. He told her that she should not ask for anyone's help or ask for a vote.
- The Respondent did not tell Ms. Kaur to step down from her candidacy or that he wanted all Indian candidates to be elected, and they did not talk about Mr. Henderson. He said that they only spoke about the election rules and her request to G.M.

- The Respondent believed that Ms. Kaur filed a false complaint about him because she was concerned that he was going to complain about her breaching election rules. He said that the messages between Ms. Kaur and G.M. showed that she was breaking the election rules regarding collusion and asking students for votes, and that she was racially targeting people.

Ms. Kaur's Evidence

Through her interview and the text messages between her and G.M. that she provided, Ms. Kaur gave the following evidence:

Background

- She ran for VPEA in the Election against three other candidates, including Mr. Henderson, who won. Mr. Henderson is Indigenous, while Ms. Kaur and the other two candidates are Indian.
- She did not provide the EAB with copies of all of the text messages between her and G.M.

The Kaur Complaint

- She knew that G.M. had run in the 2021 UWSA General Election, and texted him on February 24, 2022, when she was preparing for her campaign to ask about his experience. She asked him specifically about his experience running against Mr. Henderson. She explained that she wanted to know how much support Jonathan got from the Indian community, the Indigenous community, and international students.
- G.M. said that she could reach out to the Respondent, who was a friend of his. She did not think that it would be helpful to speak with the Respondent given that he was running unopposed for a different position. She also believed that the Respondent was supporting another candidate for the VPEA position.
- However, she told G.M. that she would talk to the Respondent, and G.M. asked for her number. She said that she would contact the Respondent herself.
- On February 25, 2022, she received a message from G.M. who said that he got a text from the Respondent who was wondering if she could reach out to him today because he wanted to talk to her about something. G.M. gave her the Respondent's phone number.
- G.M. has since deleted all of the messages he exchanged with her.
- She texted the Respondent and said that she had heard from G.M. that the Respondent wanted to talk to her about something. The Respondent replied and said "call me".

- She called the Respondent and says he told her that he did not want Mr. Henderson to win the election because throughout their time in office together, Mr. Henderson disagreed with him on a lot of issues. The Respondent said that only one of the three Indian candidates for VPEA should participate in the Election, because he did not want the “Indian vote” to get divided. The Respondent asked her if she would drop out of the Election.
- She denied that she and the Respondent spoke about election rules generally but acknowledged that they did talk about the election rules relating to the use of graphics in campaigning.
- She asked the Respondent why he was asking her specifically to step down from her candidacy, and he said he had been training another candidate for the VPEA position for the last year and he wanted them to win.
- The phone conversation lasted approximately four minutes. The call ended with her telling the Respondent that she would think about dropping out of the Election, but she decided that she did not want to do so.
- She did not take any notes of her conversation with the Respondent.
- Ms. Kaur did not believe that the Respondent would file a complaint about her and said that she never feared the Respondent.
- On March 3, 2022, after consulting with her parents and friends, Ms. Kaur decided to make a complaint about the Respondent, as she felt that his behaviour was unethical.

iii. Assessing the Evidence

Standard of Proof

In making the findings in this report, we have applied the standard of proof known as the "balance of probabilities", taking into account the information obtained and deciding whether it was more likely than not that certain events took place. This standard is markedly different than the criminal standard of "beyond reasonable doubt".

To satisfy the balance of probabilities test, evidence must be sufficiently clear, convincing and cogent.¹

A decision maker must be satisfied that the evidence is consistent with the probabilities affecting the case as a whole and shown to be in existence at the time.² It is also well accepted that the validity of evidence does not depend in the final analysis on whether it remains uncontradicted.

¹ *F.H. v McDougall*, 2008 SCC 53 at para 46.

² *Faryna v Chorney*, 1951 CanLII 252 (BCCA), para 8.

Credibility and Reliability

In assessing the evidence of the witnesses in this investigation to make the findings in this report, we have considered the credibility and reliability of each witness' evidence. In *R v Taylor*, the court explained the distinction between these concepts as follows:

[58] “Credibility” is omnibus shorthand for a broad range of factors bearing on an assessment of the testimonial trustworthiness of witnesses. It has two generally distinct aspects or dimensions: honesty (sometimes, if confusingly, itself called “credibility”) and reliability. The first, honesty, speaks to a witness' sincerity, candour and truthfulness in the witness box. The second, reliability, refers to a complex admixture of cognitive, psychological, developmental, cultural, temporal and environmental factors that impact on the accuracy of a witness' perception, memory and, ultimately, testimonial recitation. The evidence of even an honest witness may still be of dubious reliability.

[59] All of this has been said many times before, including by Doherty J.A. for the Court of Appeal in *R. v. Morrissey* 1995 CanLII 3498 (ON CA), 1995 CanLII 3498 (ON C.A.), (1995), 97 C.C.C. (3d) 193, at 205:

Testimonial evidence can raise veracity and accuracy concerns. The former relate to the witness's sincerity, that is his or her willingness to speak the truth as the witness believes it to be. The latter concerns relate to the actual accuracy of the witness's testimony. The accuracy of a witness's testimony involves considerations of the witness's ability to accurately observe, recall and recount the events in issue. When one is concerned with a witness's veracity, one speaks of the witness's credibility. When one is concerned with the accuracy of a witness's testimony, one speaks of the reliability of that testimony. Obviously a witness whose evidence on a point is not credible cannot give reliable evidence on that point. The evidence of a credible, that is honest witness, may, however, still be unreliable.

[60] Depending on the circumstances, some portions of a witness' testimony may be more credible or worthy of belief than other portions. Accordingly, I can, with good reason, accept all, some or none of any witness' evidence: see *R. v. R.E.M.*, 2008 SCC 51 (CanLII), [2008] 3 S.C.R. 3, at para. 65.³

A decision maker should not consider the evidence of one witness in isolation, but must look at the totality of the evidence to assess the impact of the inconsistencies in a witness' evidence on

³ *R v Taylor*, 2010 ONCJ 396 at paras 58-60.

questions of credibility and reliability pertaining to the core issue in the case.⁴ As the court said in *Persaud v. Manitoba*:

[66]...In evaluating this matter, there must be an assessment of credibility that involves a determination of the trustworthiness of a witness's testimony and the accuracy and reliability of that evidence. Included in that consideration must be whether the witness's evidence "harmonizes" with any independent evidence that has been accepted by the court.⁵

Accordingly, we have not considered the evidence of each witness individually, but rather in the context of the totality of the evidence we obtained in this investigation.

We assessed the evidence to determine whether the allegations made by Mr. Henderson were factually true, and whether the established facts constituted a breach of the *Policy*.

General Comments About Mr. Henderson's Evidence

Mr. Henderson provided his evidence in a careful, self-reflective, and balanced manner. He spoke about how he and the Respondent have a great relationship, and it is clear that he has no animus towards the Respondent.

General Comments About the Respondent's Evidence

The Respondent was cooperative throughout the investigation, and gave his evidence in a confident manner. His evidence that he had a good relationship with Mr. Henderson was consistent with Mr. Henderson's evidence in that regard. Further, his denial that he initiated the phone conversation with Ms. Kaur is consistent with the messages between himself and Ms. Kaur as well as the messages between G.M. and Ms. Kaur, which show that Ms. Kaur initiated a conversation with G.M.

General Comments About Ms. Kaur's Evidence

We find that Ms. Kaur was a credible witness, who provided her evidence in a sincere and thoughtful manner. She was asked open-ended, general questions.

However, as will be discussed in greater detail below, we do not find that Ms. Kaur is a reliable witness with respect to her allegation that the Respondent asked her to step down from her candidacy because he did not want Mr. Henderson to be re-elected.

⁴ *McDougall*, *supra* note 1 at para 58.

⁵ *Persaud v. Manitoba*, 2022 MBKB 209 at para 66.

iv. *Findings of Fact and Conclusion*

Findings of Fact

We do not find that the Respondent told Ms. Kaur that he wanted her to step down from her candidacy in the Election so that Mr. Henderson would not be re-elected. We did not find Ms. Kaur's evidence to be reliable on this discrete point, which forms the basis for Mr. Henderson's complaint. In so finding, we are not being critical of Ms. Kaur's conduct in any way.

We noted that the focus of Ms. Kaur's complaint to the EAB was the fact that the Respondent asked her to step down from her candidacy. She was concerned about the fact that the Respondent was asking her to do this, and filed a complaint based upon how that request impacted her. Her allegation that the Respondent asked her to step down so that Mr. Henderson would not be re-elected was secondary to her primary concern – that the Respondent wanted her, specifically, to withdraw from the Election.

As previously mentioned, Ms. Kaur did not provide all of her messages with G.M. to the EAB when she filed her complaint. She only provided a message which G.M. sent her which said that the Respondent wanted to talk to her, and her message to the Respondent where she told him that she understood he wanted to speak with her and he responded "call me". When viewed in that context, it may appear that the Respondent was setting out to speak to her about stepping down from her candidacy, and it is understandable that Mr. Henderson would have been concerned upon reviewing the allegations in her complaint and felt that he needed to make his own complaint, particularly given the charged political environment at the time.

However, Ms. Kaur did not provide the EAB with copies of all of her messages with G.M., including those where she asked him specifically about his experience running against Mr. Henderson and where she expressed interest in speaking with the Respondent. The messages also show that she told G.M. that she "really wanted an all punjabi executive team".

This additional context demonstrates that the allegations in Ms. Kaur's complaint are not an entirely accurate reflection of her dealings with the Respondent. The messages between Ms. Kaur and G.M. show that it was, in fact, Ms. Kaur who initiated a conversation with G.M. and who brought up Mr. Henderson, and that she wanted an all Punjabi executive team.

Ms. Kaur did not have any notes of her phone conversation with the Respondent, and her evidence was that the call lasted for approximately four minutes in total. She acknowledged that her discussion with the Respondent included other matters, such as the election rules relating to the use of graphics in campaigning.

Further, Ms. Kaur's allegation that the Respondent wanted her to step down from her candidacy so that Mr. Henderson would not be re-elected does not harmonize with the evidence of both Mr. Henderson and the Respondent that they had a good relationship. As set out above, Mr. Henderson was caught off guard by the allegations made in Ms. Kaur's complaint given the nature of his relationship with the Respondent.

Based on the totality of the evidence, on a balance of probabilities, we do not find that the Respondent told Ms. Kaur that he wanted her to step down from her candidacy in the Election so that Mr. Henderson would not be re-elected.

Conclusion

The Henderson Complaint alleges that Mr. Henderson was racially targeted by the Respondent.

The *Policy* states, in relevant part, that “every UWSA election participant has a right to freedom from harassment or discrimination by another election participant, student, or other member of the campus community”.

Discrimination is defined in the *Policy* as:

Discrimination is differential treatment on the basis of any of the following protected characteristics under The Manitoba Human Rights Code: ancestry, including colour and perceived race; nationality or national origin; ethnic background or origin; religion, creed, or religious belief; religious association or religious activity; age; sex, including sex-determined characteristics or circumstances, such as pregnancy, the possibility of pregnancy, or circumstances related to pregnancy; gender identity; sexual orientation; marital or family status; source of income; political belief; political association or political activity; physical or mental disability or related characteristics or circumstances, including reliance on a service animal, a wheelchair, or any other remedial appliance or device; social disadvantage.

We do not find that this complaint is substantiated. Having considered the evidence as a whole, we do not find any reliable evidence to support a finding that the Respondent engaged in discrimination towards Mr. Henderson in breach of the *Policy*.

December 19, 2022

Sherri Walsh / Melanie Wire
Hill Sokalski Walsh LLP