

Returning Officer Ruling Regarding 2022 LTSU Election Dispute

The Applicant (Jedd Dryden) has disputed the validity of the election and has sought to disqualify the governing members being elected.

Grounds of objection:

- Notice of Election not provided on LTSU Notice Boards
- Notice of Election not distributed to students via email
- Notice of provisional nominations not provided on the LTSU Facebook Page
- RO Communications with the National Union of Students
- The date in which the Electoral Tribunal was appointed
- The impact the above has had on parties to the election

Documents Provided

By Applicant

- Dispute text
- Amendment email to amend text of dispute
- A series of photographs of on-campus locations

By Respondents (LTSU Governing Members)

- Dispute Response
- Previous versions of LTSU Election Regulations

Ruling:

I note that the Applicant also submitted a complaint against the governing members regarding the provision of the Notice of Election and other matters raised in dispute prior to the commencement of the polling period. This complaint was dismissed, and no attempt was made to appeal my ruling to the election tribunal. This dispute was made after the results of the election were disseminated to election participants via email and published on the LTSU Election Webpage.

I also note that in the hearing conducted on 17 October, when questioned about why they did not feel that Notice issues at the time were sufficient to appeal the conduct of the election after my initial ruling was handed down the applicant stated that it was “factors making it a bad idea” (such as the ordering of campaign t-shirts) and that the applicant was bringing this current dispute as they had since lost the election.

Notice via Notice Boards

I accept the respondent’s submission that the LTSU is not able to publish Notice of Election on a Notice Board because the LTSU does not have control or access to La Trobe University Notice Boards, nor do they possess any official Notice Boards because of changes in their relationship with La Trobe University.

Notice via Email

Clause 52.8(e) of the Constitution is quite clear in its requirement that Notice of Election is to be distributed to all students to the extent feasible via email. I can confirm that the Office of the Vice-Chancellor (Students) explicitly rejected my request for Notice of LTSU elections

to be distributed via email and that email communication in an official capacity may only be distributed to Melbourne Campus (Bundoora) students for the purposes issuing of ballots. The Applicant submits that the intention of this clause would have been satisfied if an email was sent to LTSU members. The respondent is correct in their submission that this would not constitute sufficient email Notice, including when the state of the LTSU membership roll is considered. The issue of the feasibility of the distribution of a Notice of Election email was handled appropriately by LTSU staff, who were primarily responsible for the distribution of communications.

Notice of Provisional Nominations Received

The applicant submits that section 7.8 of the election regulations was violated because a list of provisional nominations received was not posted on the Academic day prior to the close of nominations.

There had been no nominations received at the conclusion of the academic day prior to the close of nominations.

RO Communications with the National Union of Students

The inclusion of a statement that email notice was distributed to the NUS General Secretary was done in error and has no impact on the election in any way. This dispute is not the forum to determine the applicability of governing documents of the National Union of Students.

Appointment of Electoral Tribunal

I do not accept the submission of the respondent regarding the deadline for the appointment of the tribunal. However, I accept the respondent's submission as it related to the argument that all reasonable steps were taken to appoint an election tribunal as soon as possible. I note that the Tribunal was appointed prior to any request of a matter to be appealed and was appointed by the LTSU Council on a Sunday, one day after the LTSU received a positive response their repeated requests for an electoral tribunal meeting the criteria as set down by the regulations. I also note that my response with the details of the Tribunal to the Applicant was made one Academic Day after his request for the details of the Tribunal. No material impact on the election can be observed.

Impact on the provision of the election

The Applicant failed to properly demonstrate that the above grounds for dispute had any material effect on the election outcome. The applicant cited that the incumbent ticket had an advantage in the election by undertaking the duties as set down for them as governing members. This dispute is not a forum to explore the role of governing members in the establishment and amendment of the election framework or to argue against the roles set down by the governing documents for elected members of the LTSU Student Council.

The applicant cites their belief that the election was close and that if Notice had been distributed in the way the Applicant submits it should, they would have been successful in the election. This is an entirely subjective premise and no evidence was provided that the applicant's ticket would have garnered more candidate nominations or received more votes had Notice been distributed as the applicant has stated. I note that the LTSU elections

achieved saw a significant number of unique candidates nominate in the election, including for positions which have not been contested for some years such as LTSU committees.

Jurisdiction of the Election Tribunal

On the issue of the jurisdiction of the Election Tribunal, the applicant submits that previous versions of the regulations should be disregarded in favour of a strict interpretation of what the respondent correctly submits is an error of numbering in section 20.3 of the election regulations. Accepting the applicant's submission would result in their being no jurisdiction for the Election Tribunal to make rulings of any nature and be limited to section 20.6 of the election regulations.

Allowing previous appeals to be subject to the Election Tribunal regarding ticket registrations were made in error, with the Tribunal having no jurisdiction to hear, uphold or overturn my previous rulings. I agree with applicant's argument made in the hearing in relation to the jurisdiction of the Tribunal when they stated that "The rules are written as they are".

In either interpretation, the submissions by the applicant do not fall within the jurisdiction of the Election Tribunal to hear, uphold or overturn this ruling. Thus, this ruling is wholly final and once disseminated to the parties, constitutes the end of the election process, including the disputes process.

The powers and jurisdiction of the election tribunal have been previously tested and resulted in the ruling of the Tribunal being set aside in favour of the original ruling of the returning officer regarding the disputed election of the position of Education Vice-President in the 2018 Annual Elections. Please find that ruling at the end of this document as well as the Tribunal's nullified ruling and the 2018 Election dispute.

Submission of Election Tribunal

On Tuesday 18 October, the Tribunal made an uninvited submission that only included the email addresses of the applicant and a candidate who contested the election on the ticket of the applicant. It was inappropriate for the Tribunal to have made this submission without regard to due process and after indicating they preferred to not be involved in the dispute process as prescribed unless called upon.

Conclusion

For the dispute to be upheld and a sanction to be applied, I must be reasonably satisfied that any candidate has breached these regulations (as per section 19 – disputed elections). As it relates to this dispute, I am not reasonably satisfied that any of the respondents have breached the regulations and therefore the dispute is dismissed.

My ruling is final and the LTSU elections process has concluded.

Ruling of Returning Officer from 2018 Annual Elections

Notice regarding election of Education Vice President

Pursuant to legal advice received by the La Trobe Student Union, the returning officer issues the following notice:

1. The returning officer revokes the declaration of result made on 27 September 2018 of the election of Samih Alanazi to the position of Education Vice President (the revocation)
2. The returning officer declares Andrew Sanders elected unopposed to the position of Education Vice President (the new declaration). This effectively restores the ruling of the returning officer made on 9 September 2018.
3. In accordance with the La Trobe Student Union Constitution, the returning officer notes that the revocation and new declaration set out above are not matters that the Election Tribunal has power to consider on appeal.

A further explanatory statement on these matters has been sent today by email to all students.

Final Decision of the Election Tribunal – 20 9 18

1. My name is Professor Patrick Keyzer and I am Head of La Trobe Law School and Chair of Law and Public Policy, and I serve as the Election Tribunal for the La Trobe University Student Union.
2. Clause 22.2 of the La Trobe Student Union Incorporated Election Regulations (the Regulations) requires that the Election Tribunal be appropriately qualified. I am a barrister and have chambers at the Fourth Floor of Selborne Chambers, 174 Phillip Street, Sydney. I was admitted as a legal practitioner in New South Wales in 1993, and was called to the bar in 1998. I am a member of the Victorian Bar and practice in Victoria via mutual recognition legislation.
3. As the duly constituted Election Tribunal, I exercise powers under clause 22 of the Regulations.
4. Nominations for elections are dealt with by the Returning Officer under clause 7 of the Regulations.
5. Clause 7.7 requires the Returning Officer to check University records to ensure that all candidates are eligible to nominate.
6. The Returning Office undertook this task, and found that one of the candidates for Vice-President was ineligible.
7. It has been submitted to me by the ticket registrant for "Unite", Mr Abood Shehada, and I have no reason to doubt, that the ineligible Vice-Presidential candidate and his family have been threatened (but I hasten to add, not by any other candidates for election), so I have exercised my discretion not to disclose his identity.
8. It was also submitted to me that the relevant candidate believed that, at the time of nominating, he was eligible.
9. The effect of this ineligibility was that there was only one candidate remaining for the position of Vice-President, and this candidate was declared elected unopposed.
10. The Returning Officer appears to have exercised his powers pursuant to cl 7.10 of the Regulations.
11. The ticket registrant for "Unite", Mr Abood Shehada, challenged the decision of the Returning Officer, and that challenge was overruled.
12. Mr Shehada wrote to me in my capacity as the Election Tribunal, pursuant to cl 22.3 of the Regulations.
13. I responded to the submissions on the ground that "audi alteram partem", s/he who is affected must be heard.
14. My preliminary opinion, which I published to Ms Elissa Khoury, the General Manager of the LTSU, was that nominations for the position of Vice-Presidency of the LTSU should be re-opened.
15. In my opinion, which I understand is final and binding (cl 22.5), a democratic solution is always preferable. Let the electorate decide.
16. After I broadcast this preliminary decision to Ms Elissa Khoury, the LTSU General Manager, there was some confusion (which I regret).
17. I received submissions from Ms Lani Sprague, the ticket registrant for "Stand Up!" (Ms Sprague is also the presidential candidate for that ticket), seeking clarification.
18. Ms Sprague sent me an email providing her submissions in relation to the matter, and drawing my attention back to cl 7.10.
19. In my opinion, cl 7.10 may be dispositive in relation to the decision of the Returning Officer.
20. The fact that it is cast in mandatory terms is compelling.

21. However the Election Tribunal is entitled to receive a properly instituted appeal from that decision, which is what happened in the present matter.
22. In my opinion, I am not bound by clause 7.10, though the Returning Officer might be.
23. The circumstances are remarkable, and require sensitivity. I am advised that the presently ineligible Vice-Presidential candidate is seeking to regularise his status as a “student” within the meaning of the Constitution and Regulations (although this is an “academic” matter, as my decision is that the Vice-Presidential nominations should be opened to every eligible student in the University).
24. Having been provided with submissions from both sides, I now affirm my preliminary decision as my final decision.
25. I repeat – a democratic solution is almost invariably the best one in disputes such as these. Let the candidates compete and the electorate decide. This is the surest way to promote the interests of students, consistently with the purposes of the Student Union, as recognised in cl 3(a) of the La Trobe Student Union Incorporated Constitution.
26. In my opinion, I am appointed to exercise discretionary power that is independent to the Returning Officer, and is, in the present case, in no material way affected by the regulations applying to the Returning Officer.
27. For the avoidance of doubt, I confirm my preliminary decision that the Vice-Presidential nominations should be re-opened forthwith.

Notice of Disputed Election – Reg. 21 – LTSU Election Regulations

Dear James,

We write to dispute the election for the position of Education Vice-President (**EVP**) in the 2018 La Trobe Student Union Inc. (**LTSU**) Election. Polling for the Election ran from 17 September to 21 September 2018. The parties disputing this election are Lani Sprague, Stand Up! Ticket Registrant and Andrew Sanders Stand Up! Education Vice-President Candidate.

This Notice is brought pursuant to Regulation 21 of the LTSU Election Regulations.

FACTS RELIED UPON

1. You, as Returning Officer (**RO**) opened nominations for the position of EVP along with all other positions to be elected in the 2018 LTSU Elections via a Notice of Election on 17 August 2018.
2. The opening of nominations was done in accordance with reg. 6 of the Election Regulations
3. Relevant to this matter, the Notice of Election set out:

Nominations close at 5.00pm on Friday 31 August 2018.

All deadlines are strict and cannot be extended. Candidates are strongly urged to lodge their forms well before deadline. All forms should be delivered personally to the Returning Officer or an election official or left with the Student Union office for the Returning Officer.

And

*RESTRICTIONS ON ELECTION

Any student member may nominate for the La Trobe University Student Union Inc. Student Council and Office bearing positions, and all students can vote in the elections.

4. During the period that nominations were open as per the Notice, you received 2 nominations for the position of EVP. One was from Andrew Sanders and the other was from Ahamed Saheel Mohamed Najeeb.
5. The nomination of Ahamed Saheel Mohamed Najeeb was invalid as the nominee was not a student member within the meaning of the Constitution.
6. You followed the process as set out in reg. 7.7 of the Regulations in checking that candidates were eligible to nominate. That Regulation sets out:

7.7 The RO must check the University records to ensure that all candidates are eligible to nominate.

7. You were satisfied that the nominee was not a student member and therefore rejected their nomination as you must do per reg. 7.6 of the Regulations. The Regulation sets out:

7.6 The RO must reject any nomination that does not comply with the Constitution and these regulations.

8. You notified the nominee who was ineligible and provided the reason.
9. You then re-checked the University Records to satisfy yourself that the nominee was ineligible. The re-check confirmed that the nominee was ineligible.
10. At the close of nominations there was 1 valid nomination for EVP.
11. As per reg. 7.10 of the Regulations, you must declare that candidate elected as EVP. That Regulation sets out:

7.10 If the number of candidates for a position does not exceed the number to be elected, the RO must declare those candidates elected.

12. It is not clear whether you officially declared Andrew Sanders elected as required following the close of nominations.
13. Your rejection of the nomination was correctly carried out in accordance with the Regulations and the Constitution.
14. Parties affected by the rejection of the nomination then contacted the Election Tribunal to “appeal” your decision. It is unclear which Regulation the “appeal” was made pursuant to. The Election Tribunal can only hear appeals against decisions of the RO made pursuant to Regulation 20 which pertains to Prohibited Conduct. This is clearly set out in Regulation 22.3:

22.3 Any affected party may appeal the decision of the RO under regulation 20 to the Election Tribunal by notice in writing lodged with the Election Tribunal within 5 academic days.

15. Reg. 20 relates to Prohibited Conduct. It does not relate to the decision you have made as set out above. The type of decision that can be appealed to the Election Tribunal is a decision of the RO to, for example, disqualify/suspend a candidate for **prohibited conduct**. The decision to reject a nomination because it did not comply with the Constitution is not a decision made pursuant to Regulation 20.
16. No other Regulation sets out a power to appeal a decision of the RO made under any Regulation other than Reg. 20 to the Election Tribunal.
17. Notwithstanding the above, the Election Tribunal wrote to you and the General Manager of the LTSU and advised that you should re-open nominations.
18. The Election Tribunal had no standing or power to do so. Even if an “appeal” was validly made, the Election Tribunal did not conduct a hearing as it is bound to do by Regulation 22.4, following the process set out in Regulations 21.2 – 21.5.
19. You re-opened Nominations for EVP on 11 September 2018. This was less than a week before polling opened. It was certainly fewer than 10 clear academic days before the first day of polling as is required by Regulation 7.11:

7.11 Nominations must close at 5.00 pm at least 10 clear academic days before the first day of voting.

20. The re-opening of Nominations was not valid. It was also unnecessary, as you had received a valid nomination from Andrew Sanders during the validly constituted nomination period.
21. Polling closed at 2:00pm on Friday 21 September.
22. You declared Samih Alanazi elected as EVP on 27 September 2018.

OTHER RELEVANT MATERIAL

23. Following the Election Tribunal's "ruling", we corresponded with the Election Tribunal in order to form a clear understanding of what was happening.
24. Upon reviewing correspondence from the Election Tribunal, it is clear that the Tribunal either was not in receipt of all of the facts, or had not read the Constitution and Regulations.
25. In an email to Lani Sprague on 17 September 2018, the Election Tribunal set out:

"Dear Lani

Thanks for your email and I sincerely apologise for my delay. I have just now sent an email to Elissa Khoury in the following terms:

I apologise for the delay producing this advice. On top of being a busy Head of School, I had some issues on the home front to contend with this morning, and was off-campus at a meeting until about half an hour ago.

As you know I was contacted in my capacity as the Student Election Tribunal.

I was asked to consider the eligibility of the Vice-President for election.

I was advised that the (sole and successful) Vice-Presidential candidate was an international student, who signed a declaration that he was eligible to run for election at the time of nomination.

There was no need for the returning officer to doubt that the Vice-Presidential candidate was eligible.

It transpired that the candidate was experiencing visa issues, and may not have been eligible.

My opinion was sought, and I decided that the LTSU should call for nominations for the Vice-President's position.

Best wishes,

Patrick

Professor Patrick Keyzer PhD FAAL

Head of School and Chair of Law and Public Policy

La Trobe Law School"

26. The Election Tribunal does not have standing to "consider the eligibility of the Vice-President". That is solely the job of the RO.
27. The Election Tribunal was clearly provided, unwittingly or otherwise, information to the effect that the ineligible candidate was the "sole and successful" candidate for EVP. That is clearly not the case.
28. The Election Tribunal is wrong to suggest that "there was no need for the returning officer to doubt that the Vice-Presidential candidate was eligible." The RO *must* check the eligibility of all nominations as per Regulation 7.7 set out above.
29. The Election Tribunal then sought to clarify the position by publishing a "Final Decision of the Election Tribunal" dated 20 September 2018. This dispute is not the forum to dissect that decision, however the following should be noted.
30. Paragraph 8 has no bearing on that nominee's eligibility. It is of no consequence if a nominee "believes" they are eligible to be a candidate in the election.

31. Paragraph 13 is of no relevance in this matter. The Election Tribunal can *only* hear appeals against the decisions of the RO pursuant to Regulation 20. Common law and Latinate principles do not apply in this matter.
32. Paragraph 15 is of no relevance in this matter as this was not a decision the Election Tribunal was able to make.
33. What is stated in paragraph 21 is incorrect. The Election Tribunal is not entitled to receive an appeal pursuant to decision of the RO other than a decision under Reg 20. Even if it were able to, no “properly constituted appeal” took place as per the procedure set out in Regs. 21.2 – 21.5.
34. For the Election Tribunal to suggest that it is not bound by the Regulations and the Constitution as is set out in paragraph 22 is incorrect.

GROUNDS OF OBJECTION

Ground 1 – Valid Election had already occurred

- A. The election for EVP that the RO has just declared was not conducted in accordance with the Regulations, particularly Reg. 7 relating to Nominations.
- B. Andrew Sanders had already been validly elected at the close of Nominations on Friday 31 August 2018.
- C. There having been a validly elected EVP, there was no need for polling and voting to take place for that position during the voting period 17 – 21 September 2018.

Ground 2 – Improper intervention of Election Tribunal

- A. Nominations were “re-opened” for EVP because of a ruling of the Election Tribunal.
- B. The Election Tribunal had no standing or power to make that ruling. It was not made after a properly constituted appeal, nor was it made following an appeal of a decision of the RO pursuant to Reg. 20.
- C. The Election Tribunal is bound by the Constitution and Regulations. It cannot go off on a frolic of its own
- D. The ruling of the Election Tribunal should not have been followed and the validly elected EVP on 31 August 2018 should have been declared elected.

REMEDY SOUGHT

- A. The Declaration of the election of EVP made on 27 September 2018 is revoked.
- B. The “re-opening” of nominations for EVP on 11 September 2018 is considered invalid and of no effect.
- C. The nomination period for EVP is taken to have closed at 5:00pm on 31 August 2018.
- D. Andrew Sanders is declared elected as EVP.

CONCLUSION

35. It should be noted that the decision of the RO in this dispute is final and cannot be appealed to the Election Tribunal.
36. The Constitution and the Regulations of the LTSU, an incorporated association, are serious legal documents akin to subordinate legislation. It is imperative that the RO, the General Manager, the Election Tribunal and all participants in the LTSU Elections have read the Regulations and Constitution and are aware of their meaning.

Regards,
Lani Sprague and Andrew Sanders