

RE INTERNATIONAL STUDENTS REPRESENTATIVE RECOUNT IN REGARDS TO A BALLOT IN POLL 44.

Before the Chief Returning Officer

CORAM: Wilson, CRO; Pasioka, DRO

Candidates: Erick Almeida Japor, and Aman Kapshyap

Secondary order: Re. St. James Campus Director Recount

Candidates: Calvin Bartholomew-Soto; Asif Farabi; and Shelly Garcia

Reason for judgement: Wilson, CRO

Cited cases:

Re Dingley and McLean (1973) CanLII 486 (ON SC)

O'Donohue v. Silva (1995), 27 O.R. (3d) 162 (C.A.)

Lukaszuk v. Kibermanis, [2005] A.J. No. 167

Statutes Cited:

The Canada Elections Act, SC 2009

Municipal Elections Act, 1996, SO 1996, c 32, Sch

The By-laws of the Student Association of George Brown College.

THE FOLLOWING IS THE RULING OF THE CHIEF RETURNING OFFICER:

Oral decision given during recount Re: International Students Representative, written decision as follows delivered by THE CHIEF RETURNING OFFICER:

1. Upon recount, a ballot was examined where the elector for the contested races marked the name of one candidate with a check mark and the other two with an "x". The ballot was rejected by the tabulation officer. During recount, an objection to the rejection of the ballot was made, on the grounds that the marking were consistent and that intent of the voter was clear. The ballot is enclosed as appendix A.
2. In *Re. Dingley and McLean*, the Ontario Divisional Court found incorrectly marked ballots but with clear voter intention should be counted at recount unless there is an explicated provision which would require those ballots to be dismissed in statutory framework. The divisional court found the basis for this determination that a reasonable person would believe that their intent was clear using the balance of probabilities. Since the right to vote supersedes the directional convention of how to vote. In short, if the intent of the voter is clear, the right to vote cannot be frustrated by the way in which it is expected that ballots be marked.

3. The statutory framework for the electoral event is found in section 13.12 of the *By-Laws of the Student Association of George Brown College*. The section does not contain any explicated instructions in this regard, and therefore would fall under the balance of probabilities and the reasonable person test as described in *Re. Dingley and McLean*. Further, in the voting and polling station directive as approved by the Chief Returning Officer with the consent of the Elections Committee there is no provision regarding the way in which ballots must be marked, but in the counting provision of the directive, the tabulation officer is compelled to use the guidance of Elections Canada when making determinations.
4. The provision of the directive does not operate regarding the prescription of marking the ballots, but simply counting the ballots. The Chief Returning Officer upon recount is bound by the jurisprudence of the Canadian Elections framework. The Chief Returning Officer must take special note of the *Re. Dingley and McLean* decision. While contrasting it to *O'Donohue and Sailva, and Lukaszuk v. Kibermanis*, where the Ontario Court of Appeals found the in regards to the Canada Elections Act, a ballot marked in such a way that the voter intention is unclear must be directed at recount. The rulings made specific reference to the provisions of the Canada Elections Act where the explicated statutory provisions for the marking of the ballot gives a clear intention of the will of parliament the procedures be followed in this way. There is not clear directions contained in the statutory framework, therefore the ruling of Hughes, J in *Re. Dingley and McLean* must be followed.
5. Based on the *Re. Dingley and McLean* ruling, the Chief Returning Officer is satisfied based on the balance of probabilities, that the intent of the voter is clear. I therefore order that ballot in poll 44 be counted.
6. In regard to the recount *Re. St James Campus Director*, I order that the statement of votes at recount for poll 44 be amended as follows:

Bartholomew-Soto, Calvin	6
Farabi, Asif	1
Garcia, Shelly	5
Rejected by the Chief Returning Officer	0
Blank	3
Total	15

IT IS SO ORDERED.

Dated at Toronto, Ontario this 5th day April, 2018.



WILSON, CRO

**THE STUDENT ASSOCIATION OF GEORGE BROWN COLLEGE
OFFICIAL BALLOT PAPER - SAINT JAMES CAMPUS - GENERAL**

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CALVIN BARTHOLOMEW-SOTO
S.W.A.D. | STUDENTS WITH A DREAM

ASIF FARABI

SHELLY GARCIA

CONSTITUENCY REPRESENTATIVE
IF YOU SELF IDENTIFY WITH ANY OF THESE CONSTITUENCY, YOU MAY VOTE FOR THESE POSITIONS.

**INTERNATIONAL STUDENTS
REPRESENTATIVE**

ERICK ALMEIDA JAPOR
S.W.A.D. | STUDENTS WITH A DREAM

AMAN KASHYAP
STUDENTS FIRST

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**2018 GENERAL ELECTION OF THE
STUDENT ASSOCIATION OF
GEORGE BROWN COLLEGE**

**OFFICIAL BALLOT PAPER
SAINT JAMES -GENERAL**

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