

RE INTERNATIONAL STUDENTS REPRESENTATIVE RECOUNT IN REGARDS TO CERTIFICATE TO VOTE CV-122

Before the Chief Returning Officer

CORAM: Wilson, CRO; Pasiaka, DRO

Candidates: Erick Almeida Japor, and Aman Kapshyap

Reason for judgement: Wilson, CRO

Cited cases:

Opitz v. Wrzesnewskyj, 2012 SCC 55, [2012] 3 SCR 76

Statutes Cited:

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. The Chief Returning Officer re-examined the certificate to vote at recount. The Certificate to Vote system replaced the double envelope system in 2017, for electors who did not appear on the voters list. The name and the student number for a student who did not appear on the list would be provided to the registrar's office who would conduct a secondary review. Each certificate contains a unique serial number, that serial number is placed on a privacy envelope. The elector is issued a ballot which is placed inside the envelope before being placed in the ballot box. The Chief Returning Officer upon getting the results of the secondary testing compiles a list of certificate to votes serial numbers to be accepted and to be rejected. The tabulation officer never receives the names but just the unique serial numbers to ensure that vote remains private.
2. Poll Officials are instructed to ensure that the four relevant boxes on the certificate to vote forms are completed. Incomplete certificate to vote forms cause problems for the registrar's office when processing.
3. Certificate to Vote form CV-122 contained only a signature, and could not be processed by the Electoral Officials. Upon recount an objection was made regarding the vote not counting, claiming that the certificate to vote form which did not count was in effect depriving a potential elector from the right to vote without due process.
4. The Chief Returning Officer took under advice process contained in the Canada Elections Act, wherein an elector who is not on the voters list can cast a ballot under a certificate to vote form sworn before a Deputy Returning Officer at the Polls. (It should be noted that under the Canada Elections Act, a

Deputy Returning Officer is the lowest supervisory position and only has jurisdiction over the specific poll. The office is not the equivalent to the office of Deputy Returning Officer under the By-laws of the Student Association of George Brown College).

5. The Supreme Court actually examined the issue of incomplete and missing paperwork in elections in the contested election case of *Opitz v. Wrzesnewskyj*. In this case, at one poll 4 Certificate to Vote forms were missing and at another one 3 were incomplete. The case was heard under the contested election provision of the act, wherein an elector can challenge the results of the election based on irregularities which affected the results of the election. The Supreme Court used a "magic number test" to determine if an election should stand or not based on the number of votes which were irregular. When making the determinations, the Supreme Court specifically addressed the issue of if incomplete or missing forms should be counted towards the magic number test; while it is not the same case, this is an analogous case, since the end result is if an elector's vote should be counted or not.
6. Rothstein and Moldaver, JJ speaking for the majority found that due process requires a vote to be counted as valid unless it is beyond dispute that it is not valid.
7. While it could be argued that the action of the front line poll official should have prevented the certificate to vote form from being submitted in an incomplete fashion, the Court found that this alone was not grounds for invalidation of the vote. The Court found that "Given the complexity of administering a federal election, the tens of thousands of election workers involved, many of whom have no on-the-job experience, and the short time frame for hiring and training them, it is inevitable that administrative mistakes will be made. If elections can be easily annulled on the basis of administrative errors, public confidence in the finality and legitimacy of election results will be eroded." (*Opitz v. Wrzesnewskyj*, paragraph 2).
8. The Chief Returning Officer finds that based on the ruling of Rothstein and Moldaver, JJ, the fact that the form was not sufficiently enough filled out to be reviewed by the registrar's office does have the ability to deprive an elector of a right to vote without due process. The general jurisprudence in Canadian Elections is that it is better than an elector who is not eligible to vote votes, than it is to deny an elector the right to vote. In short, the burden of proof when determining the franchise is borne by the elections official denying the franchise and not the elector to establish eligibility to exercise the franchise.
9. Certificate to Vote number C-122 therefore must be counted at recount. Since the ballot is not a St. James ballot, this ruling only effects the recount for International Students Representative.

IT IS SO ORDERED.

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



WILSON, CRO