

USSU Elections Board

A. D. 2006

Summary of Concerns regarding the USSU-CFS Membership Referendum 2005

A Commissioner for Oaths in and for
Saskatchewan

I. BACKGROUND

The Elections Board first compiled this timeline in order to clarify the happenings of the referendum.

Timeline:

- 1) November 2004 – University Student Council (USC) takes out perspective membership with Canadian Federation of Students (CFS)
 - Feb/March 2005 - CFS tuition campaign
- 2) February 8, 2004 Greg Whalen's opinion stated referendum should be done in partnership.
- 3) Postponement of referendum requested by USSU until the Fall.
- 4) March 2005 - New council and exec elections.
 - Council met over the summer but did not discuss the referendum at all.
- 5) August 2005 – Chief Returning Officer (CRO) and Assistant Chief Returning Officer (ACRO) hired through Appointments Board.
- 6) Early September 11 2005 - The Referendum Oversight Committee (OC) began to meet with two CFS reps. Date set for referendum.
- 8) Early September 15 - Exec and USC vote to support "Yes".
- 9) Sept 15 (plasma ad)
- 10) Sept 17 - buzz boards – notification given to students.
- 11) Sept 19 – campaigning begins. Clothesline banner, and USSU endorsement in buzz boards.
- 12) Sept 19 - First draft of protocol available **
- 13) Sept 22, ACRO presents to USC re: Whalen's opinion – need to empower OC for their work to continue – amendment postponed. Canadian Alliance of Student Associations (CASA) came to council.

- Sept 27 - Referendum question agreed upon: "Are you in favour of membership in the Canadian Federation of Students?"
- 15) Sept 29, Amendment passes at USC to empower OC and require EB to ratify. Ad in Sheaf regarding the fora and what the referendum is about.
 - 16) Oct 4-6 Voting days
 - 17) Oct 11 - Deadline for complaints 4:00pm.
 - 18) Oct 6 - Nov 28 complaints handled and legal opinions sought.
- ** date determined based on Mr. Whalen's opinion of November 15, 2005.

II. DISCUSSION

The USSU Elections Board (EB) spent much time and energy on assessing the CFS membership referendum held in the fall of 2005 on the University of Saskatchewan campus. Several issues stood out regarding the preparation for, the process of and the atmosphere of the referendum. The EB identified key concerns and deliberated over the implications of these concerns on the outcome of the referendum.

III. CONCERNS

A. KEY CONCERNS

The EB decided upon the following key concerns regarding the referendum.

1. **Although there was close to one year between taking out prospective membership and the referendum, the referendum Oversight Committee (OC) still had to deal with fundamental issues on a compressed timeline.**

The EB identifies several concerns that were a direct result of this fundamental issue.

- 1.1 There was no formal notice requesting campaign team registration
- 1.2 There was no formal declaration of the date that campaigning was to begin
- 1.3 No notice of the question was served to the student body.
- 1.4 **The OC protocol was an evolving document.**

The EB identified this last concern as being a source of question and confusion about the process, resulting the further issues.

- 1.4.1 There was no agreement on specific key issues: spending limits, classroom campaigning, and third party or CASA participation.
- 1.4.2 There was no clear resolution on the inconsistencies/cooperation of USSU and CFS bylaws.

Only those complaints that were issues within the protocol were considered.

2. CFS members of the OC were involved in campaigning.
3. No separate appeals board was struck in accordance with CFS Bylaw #1 - 4(g).

B. FRAMEWORK FOR CONSIDERATION

The EB, in its process of discussing the key concerns, took into consideration the principle of Natural Justice. Natural justice is concerned with the fairness of the process. Traditional issues surrounding an activity such as an election or referendum include ensuring clarity, transparency, equality and accessibility; the EB applied these four pillars to guide its analysis of the identified concerns.

NOTE: The EB is not calling to question the existing legal framework, but the manner by which the OC adhered to it.

- Clarity means that information was presented in a fashion to promote an understanding of the issues;
- Transparency requires that the process be open, and forthcoming in terms of allowing sufficient information to all interested parties;
- Equality of treatment is a broad concept, which requires that interested parties are subjected to equal treatment, equal conditions;
- Accessibility which generally means that if interested parties wanted to gain knowledge, or wish to participate, that they are not prevented from doing so.

In assessing the key concerns, the EB decided that one must look at whether the activity was undertaken in a "reasonable" fashion, from the objective "innocent bystander's" point of view.

C. DISCUSSION OF KEY CONCERNS

1. Although there was close to one year between taking out prospective membership and the referendum, the OC still had to deal with fundamental issues on a compressed timeline;

Clarity, Transparency, and Accessibility are issues.

Clarity and Transparency - The USC had decided in the winter term of 2005 to push the referendum to the next academic year to allow for preparation. In the fall however, the USSU was in the same position - no preparation had occurred. Finally, given the complexities of knitting together the requirements of the USSU and CFS bylaws, there was not sufficient information flowing between USC and OC to allow for effective decision-making. The USC was left, late in the process, to change the USSU Election and Referenda Policy without adequate time and information in an effort to provide the needed authority to the ROC.

On September 27, 2005 the University Student Council amended the USSU Elections and Referenda Policy to allow the Referendum Oversight Committee to have the authority to organize and oversee a referendum which would determine whether the USSU would become a full member of the Canadian Federation of Students. The USC further indicated that the Elections Board would need to ratify the referendum in order for it to be accepted.

1.1 No formal notice requesting campaign team registration;

Clarity and Equality of Treatment are issues.

Clarity - USSU elections normally include a call for nominations. It is possible that, in the absence of clear guidance in the protocol, students would expect that this standard to be followed. There was no information to highlight that the referendum would proceed in a different manner.

Equality of treatment - CFS representatives were privy to this information before anyone else. Other campaign teams would not have the same access.

1.2 No formal declaration of the date that campaigning was to begin.

Transparency and Equality of treatment are issues.

Transparency - Interested parties were not made overtly aware of campaign start date.

Equality of treatment - CFS representatives were privy to this information before anyone else.

1.3 No notice of questions was served to the student body;

Clarity is an issue.

Clarity - Specifically, Section 4(c) of the CFS bylaws requires that the notice of referendum include the referendum question and voting dates. As the minutes of the Referendum Oversight Committee (ROC) reflect, the final language for the referendum question didn't seem to have been accepted until September 27, 2005, it seems clear that it was not included in the notice that was published on September 18th. Furthermore does not meet USSU Referenda policy, Section 4 (Article 3).

1.4 OC Protocol was an evolving document;

Clarity and transparency are issues.

Clarity - The evolving nature of the process restricted the availability of information to interested parties:

Transparency - In referencing the minutes of the OC it seems that issues that were reflected in the final versions of the protocol were continuing to be discussed throughout the process. The protocol was an evolving document.

Accessibility - There was no indication that campaign teams were advised when there were changes, which meant that the amount of information to interested parties was compromised.

1.4.1 There was no agreement on specific key issues: spending limits, classroom campaigning, and CASA participation.

Clarity and transparency are issues.

Clarity - It was not clear from the outset what campaigning practices would be acceptable or not. There was disagreement between registered teams. Campaign teams wouldn't know what actions were acceptable and there were no benchmarks to resolve complaints.

Transparency - Issues where there was no agreement within the OC were left out of the protocol. The lack of time and the consensus process resulted in the protocol being silent of fundamental issues.

1.4.2 There was no clear resolution on the inconsistencies of USSU and CFS bylaw's prior to the campaign period.

Clarity and transparency are issues.

Clarity - There was debate and doubt among members on the ROC as to whether the ROC had the authority to be organizing the Referendum. This debate seemed to reflect concerns that the USSU counsel had voiced in February to 2005. The USC seemed to have attempted to resolve it on September 29th by amending the Election and Referenda Policy

Transparency - The dispute over the marriage of USSU and CFS legal requirements was never established. For an effective process to have been possible, the issue of the ROC's standing should have been negotiated prior to the beginning of the campaign period. Voter opinions are informed and thereby affected by the efforts of campaign teams. For campaign teams to be effective in their informational role, there must be previously determined ground rules and a clear indication of when they are allowed to begin their campaign efforts.

1.4.3 Only those complaints that were issues within Protocol were considered.

Transparency and Clarity are issues.

Clarity - The OC dealt with the issue of grievances on September 30, 2005. No clear grievance procedure was present prior to campaigning beginning. The OC did consider the bylaw's requirement of an appeals committee. It is not clear to the EB that a expressed decision was made on whether to establish an appeals committee. In the end the OC dealt with the complaints. It was never clarified that complaints would only relate to the requirements of the protocol. Individuals wanting to file complaints never had clear knowledge of procedure.

Transparency - The OC was restricted to the referendum protocol when dealing with complaints. The protocol was incomplete because there was no agreement on specific key issues.

2. CFS members of OC were involved in referendum campaigning;

CFS bylaws and USSU policies are silent about the ability of members to campaign. However, the EB considered this issue in the interest of meeting the requirements of fairness of process.

Accessibility and equality of treatment are issues.

Equality of treatment - CFS members of the OC were also involved in campaigning and represented the "yes" side. The "No" side did not have representation on the OC therefore, it could be argued that the yes side were provided preferential treatment.

Accessibility - CFS members had gained first knowledge prior to its communication. CFS members also had the opportunity to be part of the decision making process. Other teams did not have this same access.

3. No separate appeals board was struck in accordance with CFS Bylaw #4(g);

Transparency and Equality of treatment are issues.

Transparency - Section 4(g) requires that any appeals of the referendum results or rulings by the ROC shall be adjudicated by an Appeals Committee composed of individuals who were not members of the Referendum Oversight Committee. At least one "complaint" was filed as an Appeal and should have been given sufficient access to due process. Arguably, any "complaints" should have been considered by an independent body, as required in section 4(g).

Equality of treatment - Some of the complaints came from the "no" campaign teams and were resolved by members of the OC, who were "yes" campaigners.

Referendum on Membership in the CFS

Elections Board Report

Summary

As a body created under the USSU Bylaw No 1: Governance Procedures, the Elections Board (EB) normally is empowered to ensure that the USSU bylaws and policies are met in conducting a referendum or an election. In this case, the EB was given the task of ratifying the CFS membership referendum results. The USSU had indicated its support for students' approving of becoming full members of the CFS. Nevertheless, the EB has found that it could not ratify the result, given what it sees as a seriously flawed referendum process. Many of the EB's concerns would likely not have arisen had the issues identified in Spring 2005 been addressed. Members of the Referendum Oversight Committee would have been prepared and able to run an effective and valid referendum process.

The EB's decision was not an easy one – it was very conscious of the fact that there was a strong student participation in the referendum, and the results were not equivocal. There were pressures placed on the EB from all sides, such that it felt no side should claim a victory. In particular, threats were not welcome and were disregarded in the EB's decision. The EB made its determination based on its concerns for preserving the legitimacy and integrity of the USSU.

In its assessment, the EB's underlying concern has been whether any issues in relation to the process would have *significantly affected* the will of voters. It restricted its considerations to the process, even though there were issues relating to campaign conduct. This report is also complemented by the documents "Elections Board's Ratification Discussion Paper" and "EB Analysis of key concerns in the Referendum Process". These reflect respectively (a) the Process Document crafted by the EB that guided its analysis of the Referendum process and (b) the EB's deliberations based on the Discussion Paper. After the EB's deliberations, it further considered whether each key concern would have significantly affected the will of voters.

In terms of the process, this report only highlights the key issues which the EB believed would have significantly affected the will of voters: (1) the lack of preparation or groundwork prior to establishing the ROC, (2) the fact that there was no specific call for campaign teams to register, (3) the evolving nature of the ROC Protocol, the fundamental document which was to determine the "ground rules" for campaigning and for the complaints process.

The EB feels it is significant that there was a high level of participation by U of S students. As a result of this interest, the EB recommends that another referendum be held. In keeping with this recommendation, the EB has provided recommendations should the USSU decide to organize another referendum.

Key Issues in the Referendum

Lack of preparation or groundwork for the Referendum

The USC had decided in the spring of 2005 to push the referendum to the fall to allow for preparation. In the fall however, the USSU was in the same position – no preparation had occurred. Finally, given the complexities of knitting together the requirements of the USSU and CFS bylaws, there didn't seem to have been sufficient information flowing between USC and the ROC to allow for timely effective decision-making. The USC was left, late in the process, to change the USSU Election and Referenda Policy without adequate time and information in an effort to provide the needed authority to the ROC.

On September 29, 2005 the University Student Council amended the USSU Elections and Referenda Policy to allow the Referendum Oversight Committee to have the authority to organize and oversee a referendum which would determine whether the USSU would become a full member of the Canadian Federation of Students. The USC further indicated that the Elections Board would need to ratify the referendum in order for it to be accepted.

This seems to have left the ROC on unstable ground when it came to its mandate and its own guidelines. The minutes reflect that the ROC, while attempting to organize a referendum on a fairly short timeline was also required to determine some of the fundamental issues which had originally led the USC to postpone the referendum until the Fall. There was debate and doubt among members on the ROC as to whether the ROC had the authority to be organizing the Referendum. This debate seemed to reflect concerns that the USSU counsel had voiced in February 2005.

With the authority of the ROC in question, other issues, such as determining the ground rules were inevitably to be placed as a lower priority. Nevertheless, these ground rules are important for teams to establish their strategy and to decide on how to communicate the information that they wish to communicate. In the end, the ability to communicate is essential to educating the voters.

The fact that there was no clear call for campaign teams to register

The USSU Policy, although not considered to have the force of law, would still have been the "baseline" for U of S Students' electoral or referendum experience. This is not only because they have always guided any U of S election or referendum, but because there is no evidence that there was any prior signal that this referendum would be run differently. The USSU policy requires that an information meeting be held, after which time, the campaign could begin. It is not clear from the promotional literature, nor the ROC's minutes that it was communicated that this was not going to be followed.

The CFS By-laws are silent on this issue. All that is required is, under section 4(d) of the CFS By-laws that there be no less than 10 days of campaigning, include both preceding days and the voting days. It is unclear, from the perspective of the EB, whether these 10 days would have begun when the ads were published for students to know that the

referendum would occur October 4-6, given there were concerns raised by the ROC regarding whose bylaws would govern. It seems there was no explicit call for campaign teams to register. Overall, it is unclear for the EB, after the fact, as to when campaign teams were authorized to begin their campaign efforts.

Voter opinions are informed and thereby affected by the efforts of campaign teams. For campaign teams to be effective in their informational role, there must be previously determined ground rules and a clear indication of when they are allowed to begin their campaign efforts.

The evolving nature of the ROC Protocol

The EB was unable to locate a copy of the original ROC Protocol, however issues which are outlined in the final Protocol continued to be negotiated through the process. It must therefore be concluded then that the Protocol was also an evolving document.

Although there was a referendum protocol seemingly available in the USSU reception area beginning September 19th that Campaign Teams could reference, many of the fundamental issues of the referendum were continually debated through the process – the Protocol then could not have been an authoritative document for Campaign Teams to follow from the beginning in determining their strategy. The EB also questioned how campaigners were to determine the guidelines in the vacuum on these fundamental issues – in particular spending limits and classroom campaigning.

In relation to complaints and appeals, Section 4(g) of the CFS By-law requires that any appeals of the referendum results or rulings by the ROC shall be adjudicated by an Appeals Committee composed of individuals who were not members of the Referendum Oversight Committee. This section was considered by the ROC, but in the end it seemed that by default the ROC ended up considering the complaints. Arguably, any “complaints” should have been considered by an independent body, as required in section 4(g) – the ROC decided that only complaints that related to specific sections of the Protocol would be considered.

Finally, given the fluidity of the overall referendum process, the fact that the members from the CFS were also involved in campaigning seemed to allow them an advantage in terms of having up-to-date and accurate information on the “ground rules.” In the case that the authority of the ROC and the referendum guidelines had been already established, the involvement of CFS ROC members in campaigning may not have had a sufficient effect on the outcome. In this particular referendum, this advantage of information and input into the guidelines, as the campaign progressed, would likely have placed them in a position of significant advantage.

Recommendations

In ideal circumstances, the referendum relating to membership in the CFS should be run so as to meet the requirements of both the USSU and the CFS regulations. This could be met through a combined ballot as had been recommended by the USSU solicitor. If the USC should decide that another referendum were to be held in keeping with the changed Election and Referenda Policy, then the following recommendations should be followed. In its efforts, the next ROC should then ensure that the spirit of the USSU Code of Ethics be observed, and specifically that all Campaign Teams act in good faith:

- Prior to launching the referendum, fundamental issues must be determined:
 - Campaign spending limits should be established, and these should include direction on whether costs are determined at market value OR in house;
 - Have clear guidelines for campaigning in classrooms;
- ROC Representatives of the USSU should be given a briefing as to the history of the USSU efforts to hold the referendum on membership in the CFS, including any prior advice from USSU Counsel;
- The referendum protocol should be finalized at least one week before campaigning is to begin;
- The referendum schedule should be approved after the protocol has been finalized;
- There should be a separate call for team registration in addition to the notice of the referendum;
- Campaign teams should be provided with a document of guidelines for campaign team behaviour similar to what election candidates receive;
- The ROC minutes should be consistently communicated to USC;
- During the referendum, the ROC should provide updates to USC meetings;
- The ROC should determine prior to the beginning of the campaign period what would be the formal appeals process, both throughout the campaign period and for dealing with challenges to the referendum results;
- As per the CFS By-law, a separate body might be created to deal with complaints, or at minimum there must be a formal process, which all complainants must follow, including any members of the ROC.