

IN THE QUEEN'S BENCH
JUDICIAL CENTRE OF SASKATOON

BETWEEN:

Robin Mowat

PLAINTIFF

AND:

University of Saskatchewan Student's Union

DEFENDANT

AFFIDAVIT OF VICTORIA COFFIN

I, VICTORIA COFFIN, of Saskatoon, in the Province of Saskatchewan, MAKE OATH
AND SAY as follows that:

1. I have personal knowledge of the matters and facts deposed to in this affidavit, except where stated to be on information learned from someone else and where that is stated, I believe the information to be true.
2. I am a law student at the University of Saskatchewan and a member of the University of Saskatchewan Students' Union ("USSU") for two years. I became chair of the USSU's Elections Board ("Elections Board") on December 12, 2005. The details of my position are set out below. I am also a volunteer with Pro Bono Student's Canada and have worked on establishing a poverty law clinic and course at the University of Saskatchewan.
3. Between December 19, 2005 and January 30, 2006 the Elections Board investigated and assessed the October 2005 USSU Referendum for Membership in the Canadian Federation of Students (the "CFS Referendum").

7. I was the Assistant Chief Returning Officer (ACRO). Through this process, the Elections Boards did not have a Chief Returning Officer, and so it fell on me to chair meetings and oversee the process. As I was selected as ACRO on December 12, 2005 I was therefore not involved in the actual CFS Referendum process. None of the voting members of the Elections Board who were involved in the process described below were part of the CFS Referendum process itself.
5. On December 19, 2005 the Elections Board first met in order to consider its responsibility to ratify the Referendum results. This was based on the September 29, 2005 University Student Council motion that amended the USSU Elections and Referenda Policy, which required the Elections Board to ratify the CFS Referendum. A copy of the minutes of this Council meeting is attached as Exhibit "A" to my affidavit.
 6. In its efforts to inform itself, the Elections Board contacted the CFS Referendum Oversight Committee (Oversight Committee) members to ask a series of questions.
 7. On January 12, 2006 the Elections Board met with the former ACRO, Martin Olsynski, one of the two USSU representatives on the Oversight Committee to discuss the CFS Referendum process. At that time, we were made aware of a memorandum written in early 2005 to the President of the USSU, Gavin Gardiner, by Counsel for the USSU, Schafstein Gibbings Whalen & Fisher LLP. This letter is attached to my Affidavit as Exhibit "B". The letter deals with need to meet the requirements of the CFS Bylaws, the USSU Constitution and the USSU Elections Referenda Policy.
 8. Mr. Olsynski indicated that he and the Chief Returning Officer were made aware of this letter one week into the referendum process. We were advised that the letter stated that the referendum would have to follow the USSU bylaws.
 9. At the meeting with Mr. Olsynski, the Elections Board was also advised that the Referendum Protocol that established the policies that the Oversight Committee would follow was made available prior to the beginning of the campaign period.

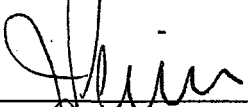
10. Mr. Olsynski also indicated that the Protocol continued to evolve throughout the process. We were unable to secure a copy of any prior drafts of the Protocol, and only had the copies dated December 5, 2005, which were included in the Oversight Committee's final report.
11. The Elections Board was also advised in response to its written questions that Mr. Olsynski and the Chief Returning Officer were under the impression that in order for the Referendum to be binding on the USSU, it must follow USSU by-laws. This was the reason that the USSU had on September 29, 2005 passed the amendment that conferred powers on the Oversight Committee and charged the Elections Board with ratifying the CFS Referendum.
12. On January 17, 2006 the Elections Board began to consider how it would evaluate whether or not to ratify the Referendum. It attempted to clarify key dates of the referendum process and created a list of factors that it felt might have influenced student decisions. A copy of the minutes of this meeting is attached to my Affidavit as Exhibit "C".
13. On January 24, 2006, the Elections Board discussed what options it had. A copy of the minutes of this meeting is attached to my Affidavit as Exhibit "D".
14. On January 27, 2006, the Elections Board met with one of the two CFS representatives, Angela Regnier in order to further discuss the process undertaken by the Oversight Committee. At this meeting the Elections Board was advised that at a CFS General Meeting in May 2005, the CFS approved an extension to the period of time required for the USSU to hold a referendum on membership. This was in order to allow the USSU to resolve the issues in the process that it felt needed to be addressed.
15. Ms. Regnier also advised the Elections Board that when the issues relating to whether the Oversight Committee had the authority under the USSU bylaws came up in the end of September 2005 it was a surprise to the CFS. The CFS had expected that, given that there had been almost one year since the USSU had taken

prospective membership, this issue should have been resolved prior. In fact, Ms.


Regnier indicated that the CFS had been requesting the names of the USSU representatives on the Oversight Committee for some time before they were finally chosen.

16. Ms. Regnier also advised the Elections Board that at the November 2005 CFS General Meeting, the results of the USSU referendum had been accepted and ratified, and that the other Universities were excited to have the USSU as a member university. This was surprising to me, because the Elections Board was under the impression that the CFS Referendum results were not final until the Elections Board had ratified, based on the amended USSU Elections and Referenda Policy.
17. A copy of the minutes of the January 27, 2006 Elections Board meeting with Ms. Regnier is attached to my Affidavit as Exhibit "E".
18. As a result of the Elections Board investigation into the CFS Referendum we chose not to ratify the results of the referendum on January 28, 2006. The minutes of this meeting is attached to my Affidavit as Exhibit "F". The Elections Board issued a report that was submitted to University Student's Counsel on February 9, 2006. A copy of this report is attached to my Affidavit as Exhibit "G".
19. I make this Affidavit in support of Robin Mowat's application pursuant to s. 135 (2)(b) of **The Non-Profit Corporations Act, 1995** declaring the Referendum invalid.

SWORN BEFORE ME at the City of
Saskatoon, in the Province of Saskatchewan,
this 9 day of May, 2006.



Jennifer D. Pereira,
A Notary Public in and for the Province of
Saskatchewan, being a Solicitor.

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) _____
) VICTORIA COFFIN
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This Affidavit was prepared by:
ROBERTSON STROMBERG PEDERSEN LLP
Barristers & Solicitors

600-105 21st Street East
Saskatoon, SK
S7K 0B3

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Elections Board

0554

Minutes for Monday, December 19, 2005

Present: Susan Yakimoski, Catherine Ulmer, Victoria Coffin, Tyler Lindgren,
and Amy Yeager

Regrets: Tracy Mitchell

Quorum was Present

1. Call to Order

The meeting was called to order at 2:08 p.m.

This is Exhibit A referred to in the
affidavit of Victoria Coffin
sworn before me this 9 day of
May, A. D. 2006.
A Commissioner for Oaths in and for
Saskatchewan

2. Call for Quorum

Quorum was present.

3. Adoption of an Agenda

EB116 Move to adopt the agenda as read.
Ulmer/
Yakimoski Carried.

4. Review of Minutes/Amendments to Minutes from February 2, 2005

EB117 Move to adopt the minutes of April 7, 2005, as read.
Yakimoski/
Ulmer Carried.

5. Welcome and Introductions

Because this was the first Elections Board meeting for the 2005/2006 year, introductions were made. Yeager explains to the EB that a CRO has not yet been found.

6. Time Line

Yeager stated that the decision to ratify the results of the CFS Referendum needed to be completed by the 2nd week of January 2006. Student Enrolment Services Division needs to know whether to add the CFS fee to student's tuition and the USSU has to notify CASA regarding future membership in their organization.

7. Review of Constitution and Bylaw's

EB reviewed the Constitution and Bylaw's as they relate to the Referendum process.

8. Review of Referendum documents

Yeager explained the roles of the Referendum Oversight Committee (ROC) and the Elections Board. It was passed at USC that the ROC could oversee the Referendum, under the conditions that the Elections Board ratified the results.

Coffin reviewed the ROC minutes and the Final Report and had some questions. The first was in terms of the protocol. Since the referendum protocol was not approved until the 29th of September, and campaigning started on the September 19th, what was the document governing the referendum up until that point. Coffin is concerned that both sides of the campaign were not adequately notified that they could register a campaign. Coffin's main concern is that the referendum was fair and both sides of the campaign were ready to go when the campaign started.

0555

Yeager explained that the CRO (Dorinda Stahl) and the ACRO (Martin Olsynski) that were on the ROC resigned because if they were to sit on the EB it would be a conflict of interest.

Yeager stated that the ROC operated on consensus.

Coffin stated that the process in all the documentation at hand is not completely clear. The EB wants to ensure that it was fair for both sides and will do that by clarifying by asking some questions to the past CRO an ACRO.

Coffin noted that campaigning began on September 19, but it was also that day that notification was given to students that campaigning began. Coffin stated that the process should not put anyone at a disadvantage

Coffin wanted to be sure that both sides of the campaign were informed about the process. Coffin noted that anything that was dealt with by the ROC that wasn't included in the Referendum Protocol was set aside as "other" in the ROC final report.

EB wanted to make sure that they get all of their questions answered about the process so if anyone asks them why and how they came to a conclusion, they will be informed enough to answer the questions.

Coffin stated that it may be helpful for Dorinda Stahl and Martin Olsynski to come and speak to the EB about the process of the referendum, and how it can be improved in the future for any referendums.

Coffin will contact Dorinda and Martin about any questions raised.

Lindgren wondered about the complaints and how they were handled. Lindgren wonders if the complainants were given a date that they would be notified about a decision of their complaint. Coffin will also contact Dorinda and Martin about this question.

9. Questions and Comments

None.

10. Any Other Business

Next meeting will be Thursday December 22, 2005 in the USSU Board Room. Yeager will not be able to attend, so the Acting General Manager, Freda Salikin will attend on her behalf.

0556

11. Adjournment

EB118 Move to adjourn.

Coffin/

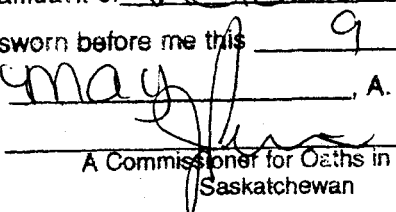
Yakimoski

Carried.

Adjourned.

Our File No:
Your File No:
e-mail: gwalen@scharfstcinlaw.com

February 8, 2005

This is Exhibit B, referred to in the
affidavit of Victoria Coffin
sworn before me this 9 day of
May, A. D. 2006

A Commissioner for Oaths in and for
Saskatchewan

University of Saskatchewan Students' Union
Room 65, Lower Place Riel Student Centre
University of Saskatchewan
Saskatoon, SK S7N 5A3

Attention: Gavin Gardiner

Dear Sir:

Re: Legal Opinion re Referendum Oversight Committee

It is my understanding that the University of Saskatchewan Students' Union wishes to receive a legal opinion from me with respect to the interplay between the Referendum Oversight Committee set out in paragraph 4 of the Constitution and Bylaws of the Canadian Federation of Students and the Elections and Referenda Policy of the University of Saskatchewan Students' Union.

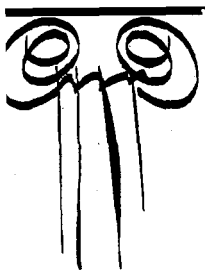
The salient features of my opinion are as follows:

- (a) On or about November 4, 2004, counsel of the University of Saskatchewan Students' Union passed the following motion:

Be it resolved that the USSU seek prospective membership in the Canadian Federation of Students, the Canadian Federation of Student-Services, and the Canadian Federation of Students-Saskatchewan.

- (b) As a consequence of this motion, a formal application for prospective membership was forwarded to the Canadian Federation of Students on or about November 8, 2004.
- (c) In accordance with the Constitution and Bylaws of the Canadian Federation of Students, a prospective member (in this case the USSU), must hold a referendum of full membership in the Federation in accordance with s. 5 of the CFS Bylaws within five months following its acceptance as a prospective member.

nes M. Scharfstein, Q.C.
art J. Scharfstein, Q.C.
regory G. Walen, Q.C.
obert J. Gibbings, Q.C.
Dennis J. Fisher
Kelly L. Kalp
Tammi D. Hackl
Joanne D. Khan
Sarah M. Buhler
(On Maternity Leave)



- (d) The actual section of the Constitution and Bylaws of the Canadian Federation of Students dealing with the referendum above referred to is actually s. 4 and not s. 5. In accordance with s. 4, the referendum is to be overseen by a committee entitled a "Referendum Oversight Committee" composed of two members appointed by the prospective local association and two members appointed by the Federation. It is that Oversight Committee (herein referred to as R.O.C.) that was to be responsible for deciding all aspects of the Referendum including the notice requirement for the Referendum, campaign material, the number and location of polling stations, the hours for voting, and all other rules and regulations for the vote as well as counting the ballots following the vote.
- (e) The Constitution of the University of Saskatchewan Students' Union provides for a referendum to be held for the purposes of establishing or eliminating a dedicated student's fee. The Constitution further provides that all "referenda" shall be held in the following circumstances:
 - (a) if proposed by the executive upon approval of two-thirds of counsellors of the USC present at a meeting when the proposal is presented.
 - (b) if proposed by a member of the University of Saskatchewan Students' Union, upon presentation of a petition containing the signatures of not less than 5 percent of the members of the University of Saskatchewan Students' Union and upon approval of two-thirds of the counsellors of the University Students' Council present at a meeting when the Petition is presented.
- (f) The Elections and Referenda Policy of the University of Saskatchewan Students' Union states that the Elections Board shall have authority over the activities of the USSU membership as they relate to referenda. The policy further provides that referenda may be initiated according to Article 11 of the USSU Constitution. As well, it provides that the USSU solicitor must examine the wording of each referendum question and that the solicitor has the right to alter the wording of the referendum questions to ensure clarity and legal status but must not alter their spirit and intent.

It is against this factual backdrop that I am asked to provide an opinion with respect to the status of the Referendum Oversight Committee and its relationship with the Elections Board, all relating, of course, to a proposed referendum for membership in the Canadian Federation of Students.

Needless to say, there is no question that there is a conflict between the Constitution and Bylaws of the Canadian Federation of Students and the Constitution of the University of Saskatchewan Students' Union. As the proposed referendum is undoubtedly a referendum establishing a dedicated student fee, that referendum must be in compliance with Article 11 of the USSU Constitution. If, in my respectful view, the referendum is not held in accordance with Article 11, its validity is in doubt. In accordance with the policy of the University of Saskatchewan Students' Union, the Elections Board has authority over this referendum. This clashes with the Constitution and Bylaws of the Canadian Federation of Students which require the prospective member association (the USSU) to hold a referendum on full membership in the Federation within five months following its acceptance as a prospective member. A Referendum Oversight Committee as established in s. 4(b) of the Constitution and Bylaw of the CFS oversees the referendum and essentially, despite the fact that two members are appointed by the USSU, usurps the function of the Elections Board.

As I see it, the clash between the two Constitutions is not restricted to an issue of control between the Elections Board and the Referendum Oversight Committee. The clash extends to the nature of the referendum itself. [If, for instance, the proposed referendum is not approved by two-thirds of the counsellors of the USC or does not comply with Article 11, it is an invalid referendum.] It matters not whether the referendum complies with the Constitution and Bylaws of the Canadian Federation of Students.

At a recent meeting of the Elections Board wherein I appeared by telephone, I offered a solution. It is possible to have the referendum comply with both the Constitution of the USSU and the Constitution and Bylaws of the CFS. I see no difficulty with having the Referendum Oversight Committee and the Elections Board co-operate in a partnership to conduct an identical referendum provided that it complies with both of the Constitutions. While not an ideal solution, it may provide a way out of the conundrum.

I would be most happy to assist you with respect to working out the details of a potential partnership between the two bodies. Please do not hesitate to contact me in that regard.

Yours truly,

SCHARFSTEIN GIBBINGS WALEN & FISHER LLP

PER: 

GREGORY G. WALEN, Q.C.

GGW/jas

Elections Board

Minutes for Thursday, January 17, 2006

0561

Present: Susan Yakimoski, Catherine Ulmer, Victoria Coffin, Tyler Lindgren, Tracey Mitchell, and Amy Yeager

Quorum was Present

1. Call to Order

The meeting was called to order at 2:55 p.m.

2. Call for Quorum

Quorum was present.

3. Adoption of an Agenda

EB122 Move to adopt the agenda as read.
Coffin/
Yakimoski Carried.

4. Review of Minutes/Amendments to Minutes from January 12, 2006

EB123 Move to adopt the minutes of January 12, 2006, as read.
Mitchell/
Ulmer Carried.

5. Referendum Discussion

Yakimoski opens by saying that the opportunity was there at the council meeting on Thursday January 12 to ask USC about what they meant by the word "ratify". The EB will provide an interpretation of their own definition on what it means to ratify. Coffin says the decision in the end, is whether or not to ratify the results.

Coffin states that a letter written by the EB with a formal response to President Gardiner's letter regarding the speed in which the EB should make a decision regarding the referendum will be ready to be signed at the end of this meeting.

Coffin suggests that the EB should discuss the process that they should go through, and the possible criteria to aid in the decision making process to approve or not approve the referendum. The EB will take the time that they need to make the right decision and shouldn't be influenced by external pressure.

This is Exhibit C referred to in the
affidavit of Victoria Coffin
sworn before me this 9 day of
May, A. D. 2006.

A Commissioner for Oaths in and for
Saskatchewan

Coffin asks if the EB has any other concerns after taking the time to read and ponder what was discussed in the last meeting. Lindgren wants to learn more about who had the decision to approve whether the referendum would go ahead. It was ultimately a decision that was made by the USSU. 0562

USC was in favour of going ahead with the referendum with the timeline that was given. USC and the students were not going to get more informed; it would just be a waiting game if the timeline was extended. There was a desire not to postpone again because of the postponement in the Spring of 2005. Mitchell and Yakimoski both voted as USC members in the Fall of 2005 to empower the OC. Mitchell states that she was aware that the majority of council felt that the USSU was not prepared, but they should still go ahead with it.

USC delayed their decision by one week (Sept 22 – Sept 29) on whether or not to give power of the referendum to the OC so that they could make a more informed decision. Mitchell stated that USC made its decision to ensure the referendum process was a fair and legal one with the USSU's best interests at hand, and was not focused on the date the referendum was to be held.

Yakimoski wonders how clear details of the referendum and the decision of the OC were made to everyone on the USC. Ulmer says that they were never really sure which policies and bylaws the OC were working under. Are they working under CFS' bylaws or the USSU's? An example of this is the campaign costs. Is it fair market value that was supposed to be implemented for both parties? Should the CFS have been held to the \$1000 limit? Campaign overspending is a huge issue that could have potential swayed the results.

Yakimoski says that there is a lot of information here that she is unsure of. Yakimoski can't say that it was clean referendum or that it followed policy directly. However, in the end there was quite a large difference in the percentages of the votes. She wonders if the students ultimately voted for who they wanted.

USC thought that the process was just because the OC process was by consensus. Every member of the OC signed the referendum report, so the EB could also assume that everyone on the OC agreed that the process was fair. It is hard to make a decision and come to a conclusion with what is here because there is so much hearsay. How does the EB deal with this without following a structure or guidelines? Coffin states that if the EB could define some standards on how to make a decision it might be helpful. The OC didn't have an option of making standards for decision making process, they had bylaws and policies that they had to follow on a very tight timeline.

Dealing with complaints - some of the complaints were not dealt with by the OC because the OC felt that if the complaint that was being dealt with was not an issue addressed the referendum protocol, then the complaint could not be dealt with. In turn, how could the OC deal with any complaints within the terms addressed in the protocol, when the protocol was something that was being developed during the entire referendum process?

The ACRO and CRO, in the end, generally did what the USSU wanted them to do, based on their duties to the USSU. Maybe it would have been better if they were students at large so that they wouldn't have been so limited in the decision that they made. The consensus process only works if both parties involved are not biased and they are not on a strict timeline i.e. The two CFS representatives sat on the OC but were also campaigning for the 'Yes' side. The Election Board generally agreed that this should not have been acceptable.

Mitchell states that the discussion at USC on September 29 was whether the USSU representatives on the OC had the best interest of the USSU at hand. The ACRO and CRO were great representatives for the USSU on the OC, and did the best job that they could given the circumstances and the timeline.

0563

Coffin states that the EB should measure the actions of the ACRO and CRO, in terms of what would be reasonable given what they had to work with.

We could have more discussion on what was said, but the EB could list some factors so that they have something to refer to when making a decision. The EB should write a report on why and how they came to their decision. It is good not to forget that the students voted yes.

Coffin says that they should look at the irregularities of the complaints and go from there, but that the EB should also talk about the process.

Yakimoski suggests that the EB starts with a backward analysis.

- If the EB decides NOT to ratify and reasons why not.
- If the EB decided TO ratify and the reasons why.

All the information that is not needed may be weeded out by doing it this way. This would be a way to sift through the information they were given, establish what complaints had a significant effect, and look at the OC protocol. The EB may be able to cover all issues if an analysis is done this way.

Mitchell says it might be a good idea to work backwards, but we have to define the criteria the EB is going to use to analyze. The EB can start by looking at the motion to move to ratify and analyze it from there.

The question was raised again about when Olsynski found out about the opinion letter written by Mr. Whalen. Yeager states that it was one week after Olsynski began his employment with the USSU after he had already had a couple of meetings with the OC.

Coffin states that the EB needs to identify the issues of the referendum, that way the EB will have something concrete to go on, and then an analysis can be done at that point.

We don't have a place to base our decision whether or not to ratify based on the policy. The EB can't make decisions on policy retroactively. What's done is done. It is within the EB policy to look at the process. Were the USSU representatives fulfilling their role? What were the external factors influencing decision made by the USSU reps on the OC?

EB has a lot of freedom. It is a good thing that we were given the power to ratify. EB wants to ensure that they make the right decision.

The EB could attempt again to brainstorm backward like Yakimoski suggested, and then have focused criteria to follow. The EB should possibly try and find the apparent conflicts that affected the referendum process. EB has to put together a report as to why we made certain decisions.

Coffin asks if we are going to limit our decisions to evaluate on whether the ACRO and CRO fulfilled their roles based on what they had to deal with, or is the EB here to evaluate the entire process?

0564

Coffin suggests that the EB distinguishes between process and content and separate them out. Mitchell is concerned about what criteria the EB is actually looking for. The EB needs to brainstorm.

Each of the EB members make a statement on what criteria are important to them when making this decision.

Ulmer wonders if it was a fair process, and asks the questions of whether there was bias in the process.

Yakimoski states that the student body has shown that they support the CFS, and Yakimoski does not want to influence the student body's decision that they have already made.

Does the EB have the option of actually saying not ratifying?

Coffin states that the EB needs to make their decision independently of what will happen after the fact. The EB has the freedom to make a decision one way or another.

The EB must look at whether the USSU representatives (ACRO and CRO) had the authority to make the best possible decisions and changes.

Coffin is concerned about whether the process was fair. Coffin prefers the broader approach to making a decision – looking at the entire process.

Mitchell would like to loosely consider both CFS and USSU policies, and then determine markers or criteria to determine whether or not it was fair.

Ulmer wants to look at the entire process and whether or not it was fair. She wants to figure out what influences there were in the process (i.e. an event, financials) that affected the results. Olsynski and Stahl wanted to be impartial and represent the USSU as best they could. Ulmer suggested that the EB should look at the process.

Lindgren says the bottom line and what happened in the end was a reflection of what the students wanted. He states that the process is significant, but there is not a real concrete process to even follow to gauge how it might have affected the results. There is paper document (protocol) that this process is reflected, but it was not followed. He wants to look at the end results.

Coffin says that their question becomes specific – is there anything that comes out of this process that may have influenced the results?

Yakimoski states that she would like to look at the process, but the process is based on interpretation, and feels that a solid decision can't be made on the process. However, she agrees that the process was flawed, but can the process be properly analyzed when there is nothing concrete to base their decisions on?

Ulmer states that process is everything for the EB when running General Elections. Procedure must be followed during General Elections. A concrete process needs to be followed in order to make the election process fair for everyone involved. That wasn't the case with the referendum.

0565

Mitchell senses that any decision that the EB comes to will be a decision that will be supported by all members of the EB.

Coffin states the process was a disaster. The EB could take the approach that if the results and the final numbers are "good enough" could we ratify?

Coffin says it might good to map out the process. Could possibly help out the decision making process. To help the EB identify whether or not the process was reasonable.

Yakimoski looks at the representatives on the OC and she sees the two CFS members as being biased (campaigning as well as sitting on the OC) and two USSU reps who maintained impartiality during the entire process. They were empowered by the USSU and USC to make decisions on their behalf. Whoever is in those positions are empowered, so she feels that the EB is asking the two USSU reps why they made the decisions that they did, which isn't necessarily right because we are the ones that empowered them to be there, and to make decisions on the USSU's behalf. The EB is not supposed to make decisions on the process and the timeline, it was the job of the OC. Yes the EB is supposed to ratify the results, so how far back can the EB push the power? Whether the ACRO and the CRO were being influenced by the other members of the OC may be an issue, but the EB has to keep in mind that process was consensus. We empowered them and they had the power to act democratically. Do we have the power to say the decisions by the OC were not just or that the people that we chose were not the right people for the position?

Coffin says that we want to be able to come to a decision and feel good about it.

Mitchell says on one hand we have a council that gave the OC committee authority over the referendum and in the same breath gave the EB authority.

Coffin thinks that the EB needs to at least understand the process, and take the approach that if Joe Average was in those positions, were the decisions made by the OC "good enough".

Mitchell asks if we should map out the process.

1) USC takes out perspective membership - CFS November 2004

(other) - Feb/March CFS tuition campaign

2) Greg Whalen's opinion Feb 8 stated referendum should be done in partnership.

3) Postponement of referendum requested by USSU until the fall.

4) New council and exec elections in March 2005.

(other) - council met over the summer, but did not discuss the referendum at all.

5) CRO and ACRO hired in August through Appointments Board.

- 6) The OC began to meet with two CFS reps.
- 7) Date set in August for voting days.
- 8) Exec and USC vote to support "Yes".
- 9) Sept 15 – notification given to students.
- 10) Sept 19 – campaigning begins.
- 11) Sept 22, ACRO presents to USC re: Whalen's opinion – need to empower OC for their work to continue – amendment postponed. CASA came to council.
- 13) Sept 29, Amendment passes at USC to empower OC and require EB to ratify.
- during this time, the protocol is being changed.
- 14) Oct 4-6 Voting days
- 15) Oct 6 – Nov 28 complaints handled and legal opinions sought.

Coffin says that money is one of the big issues.

Coffin states a list of what were some of the factors that could have influenced student decisions:

- Advertising
- Two fora – Lower Place Riel and Place Riel Theatre
- Classroom campaigning
- Tunnel campaigning
- Sheaf stories
- Tuition freeze within the advertising
- Polling stations
- Off campus voting (on-line voting)

Mitchell states that Olsynski made effort to keep the No side informed, not because he had to do it, but because he felt it was fair. Mowat was a representative (scrutineer) when counting ballots and was able to voice his concerns if he had any. President Gardiner's notebook was stolen (mentioned because it was a big story in the Sheaf).

Do we feel that the ACRO and CRO were prepared?

What questions is the EB to answer when they vote yes or no? EB minutes are a good example of what we are talking about and the key issues that have been raised. Lindgren says that if they say yes, they have to justify to the no side, and vice versa.

Coffin says they have to justify the reason for their decision. There are a few different ideas of what ratification should be. Coffin wondered if we should get everyone's opinion on what ratification means to them. Lindgren questioned whether if everything ran smoothly and the

process followed, it would have changed the end result? Yakimoski wondered if their decisions could be justified to either side.

056

Everything that encompassed the referendum is being considered. Mitchell says that the other question is was the process fair? EB says that there was not even a process, so it would be hard to gauge whether or not it was being followed? Lindgren says there may be something to go on.

Coffin says that we can take the list (above), weight it and break it down. The policy may help the EB distinguish the significance of the influential factors.

Coffin says that ACRO and CRO were given power and were representing the USSU, and made sure that the USSU best interest at hand.

There were a lot of factors that would have influenced the decisions that the CRO and ACRO made. This may take the EB back to the policy. Yakimoski can't say whether or not the decisions they made were right considering all the outside factors.

Was the process fair is the question. Mitchell says that all the points are relevant, but they should look at whether the process was fair. Was the process fair "enough". Was their fairness in the process that took place – **Is what happened fair enough???**

There is no new information on the table. The EB has been going around in circles.

If there would have been more time, would the information to the students have been affected? Would there have been classroom campaigning?

In the end, did the process affect the results? If everything was organized behind the scenes and completed before campaigning began would the results have been affected? If things were complete before hand, there may have been a protocol that addressed campaign cost, and classrooms campaigning, and any other issues that arose, that could have changed the results.

If the USSU was to have another referendum that went flawlessly and followed policy to a tee, would the results be different?

7. Questions and Comments

None.

8. Any Other Business

Next meeting Tuesday, January 24, 2006 at 2:30 in the USSU Board Room.

9. Adjourned

EB124 Move to adjourn at 6:13 p.m.

Coffin/

Yakimoski

Carried.

Adjourned.

Elections Board

Minutes for Tuesday, January 24, 2006

Present: Susan Yakimoski, Catherine Ulmer, Victoria Coffin, Tyler Lindgren, Tracey Mitchell, and Amy Yeager

Quorum was Present

1. Call to order

The meeting was called to order at 3:01

2. Call for Quorum

Quorum was present.

3. Adoption of an Agenda

EB125	Move to adopt the agenda with moving any other business to the 4 th item on
Mitchell/	the agenda.
Ulmer	

Carried.

4. Any other business

Yeager informed the EB about the for a times and locations and let her know that the advertising already has begun.

Next meeting Saturday, January 28, 2006 at 9:00 a.m. in the USSU Board Room.

Next meeting to discuss Elections January 31, 2006 at 2:30 p.m. in the Sask Hall Board Room.

5. Review of Minutes/Amendments to Minutes from January 17, 2006

Some changes were requested by EB. Changes will be made by Yeager and then will be approved at the next meeting.

Discussion about the Elections. Yeager will send more bring more information to the EB meeting when they discuss the elections process.

This is Exhibit D referred to in the
affidavit of Victoria Coffin
sworn before me this 9 day of
May, A. D. 2006.

A Commissioner for Oaths in and for
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Coffin states that she met with Mr. Greg Whalen this morning. It was an informative discussion.

Timing is an issue in this case. The power was given to the OC on Sept 29, which really only gives anyone (OC, campaigners) 5 days to prepare anything.

We could finish up our perspective and then put it on the CFS and ask how the process meets their bylaws? Coffin states that according to what was done during the referendum, and CFS bylaws, CFS bylaws were not met.

Lindgren asks if we would put something together and then send it to the CFS and ask for their opinion? Coffin states that it is an option. Is it worth to take the extra step and ask the CFS about their bylaws? The link has to be taken back to the voters.

Lindgren asks how much time it would take. If we sent it to CFS, how long would it take to get information back? The CFS may want to get a legal opinion as to how there bylaws were met.

A big consideration is the timing and that the process should have been dealt with before the referendum began.

Some issues that were raised were the empowering of the OC, the timing and how everything was not set up before hand, the complaint process and how it was dealt with, campaigning in the classrooms, spending. The key issue is the timing and the lack of transparency.

With regard to Mr. Walen's recent comments, Mitchell states that it is hard to know how to use the information. There is the informal information, and the formal information. She is not sure how to go about using this information.

Mitchell has thoughts on meeting with the CFS, and on one hand she says that they might get value out of correspondence with CFS, and on the other hand, and it can almost be predictable what they are going to say and it might just be a headache.

The USSU will not have a legal or financial cost whether or not they ratify, unless the USSU decides to go through the process again.

The CFS and the USSU constitution and bylaws contradicted each other.

With regard to Mr. Walen's recent comment, Yakimoski says that she feels that she is concerned about what information the EB was now considering after the fact. She is concerned about it.

Coffin can follow up with CFS OC members if that is the decision of the EB.

Mitchell's other concern about the CFS is that they are going to tell the EB how it will work.

Lindgren says that maybe we should find out more information from the CFS.

Coffin says that we are here to safeguard the USSU. The solicitor is an unbiased as well as the ACRO and the CRO.

Mitchell says if we could put all of our options on the table as it stands, and make a decision.

- 1) Go back to CFS with legal demand.
- 2) We don't ratify
- 3) We don't ratify and suggest another referendum or to clarify the process.
- 4) We ratify
- 5) Send it back to council with recommendations
- 6) Send it back to council without recommendations

Council will be adopting the EB minutes. If this was on the council agenda, then it would be in a Sheaf and there would be a lot of people at the meeting. The EB wants to do the right thing in the end, and make sure that the information gets to the students in the proper way.

Coffin begins to list the items that they are going to include in the EB report.

Recommendations:

- Discredits
- Reps of USSU given little background
- OC members to be impartial prepared members
- A formal appeals process
- Referendum double ballot as recommended by the USSU solicitor
- Establish campaign spending limits
- Have clear guidelines for campaigning in classrooms
- The referendum protocol must be finalized a week before campaigning begins
- Transparency call for team registration
- Have a referendum schedule to be approved
- OC minutes to be communicated to USC
- During referendum, have updates of USC meetings
- Decide whether costs at market value OR in house
- 3rd party involvement
- Separate body to deal with complaints – formal process. All to follow including in the OC.

the perspective of the EB, on specific issues like the (i.e. campaign spending, campaigns in classrooms) that the protocol should be clear in providing guidance to campaign teams.

Issues of the referendum:

- Delaying empowerment of the OC, leaving much uncertainty until Sept 29, 2005
- Repeated disregard for request for postponement
- Pushed the referendum to the fall to allow for preparation but in fall, was left in the same position. There wasn't sufficient information flowing between USC and OC. Trying to change policy without adequate time and information.

7. Questions and Comments

None.

9. Adjourned

EB127 Move to adjourn at 6:02 p.m.
Coffin/
Yakimoski Carried.

Adjourned.

Elections Board

Minutes for Friday, January 27, 2006

Present: Susan Yakimoski, Catherine Ulmer, Victoria Coffin, Angela Regnier (CFS),
and Amy Yeager

Quorum was not Present

This is Exhibit E referred to in the
affidavit of Victoria Coffin
sworn before me this 9 day of
May, A. D. 2006.

A Commissioner for Oaths in and for
Saskatchewan.

1. Call to Order

The meeting was called to order at 8:24 a.m.

2. Adoption of an Agenda

No Agenda for this meeting.

3. Review of Minutes/Amendments to Minutes from December 19, 2005

No minutes to approve for this meeting.

4. Referendum Discussion

Coffin thanks Regnier for joining the EB. The EB thought it was an opportunity to speak to Regnier since she was in town. Coffin asks if there is anything else that Regnier can add to Lucy's response that was written for the EB back at the beginning of January.

Coffin asks if she has any comments before we get into the questions. Regnier comments that she helped Lucy write the answers to the questions that we had asked them, so she is familiar with the document.

Coffin asks if Regnier could speak to the timeline of the referendum. Regnier states that the USSU took out prospective membership in CFS in November 2004. Two and a half weeks later there was an acceptance of the USSU at the CFS General Meeting. As part of the prospective membership, the USSU had to hold a binding referendum within a certain amount of time (6 months).

Regnier states there were concerns of the process of the referendum, and it was brought to council. The USSU, because of the issues that were raised, did not feel they could hold a referendum within those first 6 months. At the May 2005 General Meeting an extension was given to the USSU because they could not hold a referendum during the first 6 months of prospective membership.

in August CFS was given the two names of the USSU OC members in August/September and the OC started talking about the expectations of the referendum. They were meeting by Tele conference.

Regnier felt that all the bylaws were upheld to the best of their ability by both parties. CFS has to be very clear on how membership is determined. CFS has been running referendums for 25 years. CFS is quite knowledgeable of this process because they have been doing it for so long.

The OC had agreed to the dates of the referendum over the phone. When the CFS reps came to Saskatoon the OC started talking about CFS and USSU bylaws. There wasn't anything that the OC didn't agree on.

There were something's that the USSU reps and the CFS members of the OC did not agree about. CFS said that they did not agree on CASA being campaigners. The OC was not able to come an agreement on this issue. CFS felt very strongly about CASA not campaigning as this was an issue about membership in CFS not CASA.

Regnier feels confident that the rules of the campaign were made comfortable enough for both organizations that they were able to run a good campaign on both sides. Not saying that there weren't issues that they had to deal with, but they were able to get through them.

Coffin asks if there are any other pillars in the CFS bylaws that Regnier could see by reviewing them.

The composite of the OC is a pillar to the referendum. Regnier states that there has to be a member of the CFS on the OC, to make sure that the referendum is done correctly. Coffin asks if it is normal procedure to sit on the OC and campaign. To CFS, it is a non-issue to campaign and sit on the OC. It is about the integrity of the bylaws, not the fact that they are campaigning. This hasn't been an issue in the past. Regnier states that there are referendums at the other campuses that go great.

Coffin asks if the referendum question should be given to students when they were notified about the referendum?

Regnier replies that the referendum question was approved when the USSU took out prospective membership. The question had been quite clear for almost 10 months.

CFS was surprised that this issue was being raised so late.

Regnier states that the Sheaf had been reporting about CFS for at least 8 months as well. There was awareness made of the issue.

Coffin asks about complaints and appeals. It says in CFS bylaws that an Appeals Board that is made up of members that were not involved in the OC were to deal with complaints.

Regnier states that CFS had someone designated to sit on the appeals committee if need be. The USSU reps of the OC were prepared to deal with the complaints themselves. CFS also felt that they were in a position to deal with it themselves. They hashed them out. If there were appeals on the complaints they would have taken it to the appeals board. Coffin asks if CFS raised the possibility of taking the complaint process out of the OC and taking to an appeals board. Coffin says that they followed CFS bylaws through the whole thing so wonders why CFS never brought up this idea.

Regnier says that she says that USSU bylaws weren't neglected this process.

The EB is not taking appeals, but is here to ratify the results.

Coffin wonders about the legitimacy of the OC and that fact that it was a question raised at a USC meeting. Coffin asks Regnier what her thoughts are on the fact that this process was done so late.

From CFS prospective it was somewhat surprising. They were requesting names for the OC for quite some time before the process started. Generally referendums run more smoothly. Extensive bylaw discussion on who's bylaws trumps who's. They thought that they would not be dealing with these questions at that time because there was a year since they first bought prospective membership. There are things that CFS needs to be very clear about. It is a legal issue for them in terms of their bylaws. It is about being accountable to the members of their organization, and having clear bylaws in terms of their membership. Being clear of their bylaws is something that they tested in court. There was some sort of distrust at USC in terms of their bylaws.

In terms of the vote that happened at council. The USSU needed confidence to go on, and they were concerned about the process and needed some back up, and that is why council empowered the OC. It was confirmation that this referendum needed to happen, and that council felt confident that the OC had to keep on. The USSU talked to the solicitor and he gave his opinion in which he was able to reconsider.

Ulmer has a question about the referendum protocol. Was it a work in progress? Angela says yes. Regnier was not in contact with registered teams. She says that the OC was in contact with all interested parties and they were given updates as the campaign was continuing.

Yakimoski asks about other referendums on other campus's and the integration of both bylaws. Regnier gives an example of the referendum at the U of M. They voted at council to suspend the U of M bylaws to run the referendum. This allowed the OC to negotiate a little better. It didn't deviate from the process that the U of M was comfortable with.

in other cases the OC is able to move on certain things or their bylaws that the other's need to make sure that they will hold. They negotiate.

Yakimoski talks about the USSU OC members. Regnier told us that they asked before hand for the USSU members names on the OC. Yakimoski asks if the USSU OC members should be informed of all issues before they begin their decisions. Regnier says that both parties have a responsibility.

CFS had discussions with President and other council members about the referendum and that they were well informed. Perhaps if there was more time.

Coffin asks about the Exec turnover. Regnier said that she was in contact mostly with President Gardiner.

As soon as USSU became prospective members, they had a voting right at the General meeting in May. The USSU participated in campaigns.

Regnier says that should would not refer to the referendum as messy, but she said that the OC respected each other and their positions. They wanted to take the time that they needed so that people were able to make the right decisions. She is confident that the process did not invalidate the referendum.

The OC took measures that needed to be taken when there were questions raised. i.e. going to the USSU solicitor and to meet as often as they could. She thinks it was a good process. The other Universities were very excited to have the USSU involved.

9. Adjourned

EB128	Move to adjourn at 9:06 a.m.
Coffin/	
Yakimoski	Carried.

Adjourned.

Minutes for Saturday, January 28, 2006

Quorum was Present

- Coffin states that she got a call from Dorinda Stahl yesterday.

This is Exhibit F referred to in the
affidavit of Victoria Coffin
sworn before me this 9 day of
May, A. D. 2006
[Signature]
A Commissioner for Oaths in and for
Saskatchewan

Mitchell is concerned about the process that the EB has followed. Although the EB had ample discussion on the issues at hand, there is not formal process of decision making in the minutes. Coffin suggests that she has an outline that she has prepared on the issues of the referendum as well as a rough draft of the final report that the EB could use.

Yakimoski has feelings and concerns about the process thus far.

Yakimoski feels that the EB may have been biased in the process, suggesting that the meeting that they had with the involved people (i.e. Martin) may have influenced the EB decision. Yakimoski doesn't know how others on the EB feel about the process. Coffin states that the process that they have gone through is fair because they have a written document from Lucy Watson, and Angela Regnier of CFS, as well as a meeting with Angela Regnier.

Yakimoski wonders if the criteria used by the EB "after the fact" was bias. She feels that USC asked the EB to ratify the results, not to ratify the process. The EB looked at the complaints that were already raised as well as raised their own complaints by gaining more information after the fact. i.e. getting information from Martin after the fact.

Yakimoski states that not ratifying the referendum is going against the will of the students. Yakimoski feels that Angela Regnier and Martin Olsynski expressed the same sentiment in the end that everyone on the OC at the end of the day agreed on the process, and signed off on the process. Both the CFS and USSU representatives signed on this.

Yakimoski says that she still has some concerns and that students did have a choice in the end.

Ulmer developed more sympathy for the CFS after meeting with Angela Regnier yesterday and learning that the delay in forming the OC, which was not struck until September, was more of a fault of the USSU. The report should not blame anyone in particular, but to reflect that there were issues all around. [I'm not sure we should include this line about it all coming back to one person but I suppose that is up to Victoria]

Coffin has concerns about Angela's comment yesterday about the CFS having ratified the referendum already. She states that there might not be a point in putting the EB stamp on it. Can we put it back on the USC?

Lindgren says that if we do that we might be jeopardizing the credibility of the EB.

The EB final report must use information in it that has documentation to back it up. Ulmer asks if we can get some information in writing from Mr. Greg Whalen?

Lindgren states that everyone that was spoken to after the fact (Regnier, Olszynski, Whalen) has an opinion and an interest but we should not attach too much weight or significance to their statements and should rely more heavily on the documented process.

Mitchell shares the concern about the EB not defining their process from the beginning. What are the criteria for the EB for developing the process? She thinks that maybe the EB is taking an investigative role, and getting information that maybe they shouldn't have. The EB was not given clear direction from council. She is not sure that the EB should be making a decision including the opinions of all the other people. If the EB had just looked at the OC final report, without follow up with any major players, would the outcome be different? One issue that would be an example, would be the campaign spending, and the fact that it was not an issue that was brought up by students, but the EB took it into consideration in the decision making process.

Coffin says that if we want to look at the OC process, then we can go through the report, and break things up. If you break things out individually, it makes it harder to bias the situation. If we want to just look at whether the student's vote is a clear reflection of the referendum, we can look at the transparency of the vote, and disregard the OC process.

Yakimoski says that it is not that cut and dry. The OC process and lack of process can lead us to look at transparency. We can proceed with what the EB has been doing thus far. Based on the information that the EB has received after that fact, the EB is creating a more transparent process. The EB (with the information they received after the fact) gives them information to fill in the holes, and if they were questioned about it, they would be able to answer it.

Lindgren says that if the OC didn't follow the bylaw, it would be a breach of the law right? The EB says yes. The bylaw is low, but the policy is not law.

CFS had established the question when the USSU took out prospective membership, but the USSU constitution says that that the question has to include the fee. The two solicitors (USSU and CFS) had a meeting and agreed that the fee did not need to be included.

Mitchell says the other question that Yakimoski does have is also one to think about. What good will it be not to ratify? Mitchell has serious thoughts about it.

Ulmer wonders not only what CFS did in the process, but also the USSU Exec.

Yakimoski wonders about the high standard of the process that the EB is making. Yakimoski states the EB members are ethical and that the EB is doing a good job scrutinizing because they are not under the pressure of time. She says that the EB is making the decision based on "natural justice" (a sense of good or bad), and this is a more political decision.

Coffin states that Natural Justice in terms of law is that the law can't be arbitrary, not in terms of feelings. People have to depend on the law. Natural justice is the law that keeps everyone together in terms of fairness. Is Natural justice the way that the EB wants to evaluate the process?

Coffin says sometimes that the law can give you a bad decision, but the decision has to be fair in terms of the process.

Yakimoski feels that the EB is bringing in higher standards than they need to do. The EB went above and beyond the call of duty. Coffin feels that we are doing the best we can in preparation of getting questions from both sides. Coffin says in terms of making a decision, the EB can look at the process, analyze the process, and then come to a decision either way.

Lindgren is wondering about the question that Mitchell raised; "What good would it do not to ratify?" Lindgren wonders what Mitchell meant by that. Mitchell states that the process of the EB has to look out for the best interests of the students.

Lindgren states that there are two sides to the student population. Mitchell wonders if it is in the best interest of students to have another referendum? Mitchell says that we have to consider the outcome of the EB to some extent when making a decision.

Yakimoski feels that most students have moved on and don't even realize we're still deliberating. This is going to open it all up again.

Mitchell notes that the EB will have to have a bullet proof argument to take to council because it is such a hot issue. Mitchell wants an argument that she will be able to stand behind.

Coffin says that if we go through the report it might help. The report will be a package of public documents.

The EB discusses the ratification discussion paper that Coffin put together. See EB Ratification Discussion Paper. Coffin asks if the EB is comfortable with the timeline, and everyone agrees.

The EB goes through the standards of the EB when dealing with the process. See EB Ratification and Discussion paper.

The EB is going through the points from the Ratification and Discussion paper and deciding whether they affected the results. See EB Analysis of key concerns in the referendum process.

The EB begins to discuss the process and the results that they have just come up with. Does the EB just look at the process? The process could be separate of the results. Asking if the key concerns affected the process and if it affected the results. The EB needs to decide if the key concerns could have affected the results. Are the concerns significant to the results and then rate the impact of the results..

Coffin suggests that they look at it from an outsiders point of view. The question could be "from an outsiders point of view would the voters opinion be affected by a particular issue?" The EB has to focus on the voters. If the voters would have known all the issues,

would it have made a difference in their vote? The EB could vote on whether it did or did not affect the results. Did the information that would have been in the protocol affect the results? The question could be when going through the key factors could be **“Was this an issue of significant bias as to change the results?”**

Key factors taken from the document “EB analysis of key concerns in the Referendum Process

1) CFS members of the OC campaigning

- EB finds this issue is very significant
- EB does not believe it could have affected the results

2) OC protocol evolving

- EB finds this issue is very significant
- EB believes it could have affected the results

3) 1 year past and still being dealt with

- EB does not find this issue to be very significant
- EB does not believe it could have affected the results

Nevertheless, it was a global concern of which other significant issues arose.

4) No agreement on specific issues

- EB finds this issue is very significant
- EB believes it could have affected the results

5) No clear resolution on USSU/ CFS bylaw inconsistencies

- EB finds this issue is very significant
- EB does not believe it could have affected the results

Complaints

1) No appeals board

- EB does not find this issue to be very significant
- EB does not believe it could have affected the results

2) Only protocol-related complaints considered

- EB does not find this issue to be very significant
- EB believes it could have affected the results

Voting

1) No notice of questions

- EB does not find this issue to be very significant
- EB does not believe it could have affected the results

Registration

1) No date for campaign start

- EB finds this issue is very significant

- EB does not believe it could have affected the results

2) No date for campaign registration

- EB finds this issue is very significant
- EB believes it could have affected the results
- There are 3 issues that the EB find very significant and believe affected the results
- There are 3 issues that the EB find very significant believe they did not affect the results
- There are 3 issues that the EB did not find very significant believe they did not affect the results
- There are 3 issues that the EB did not find very significant and believe affected the results

The fact that there are some things that would have affected the results is a reason not to ratify in itself. Coffin states that it is an issue that the EB found anything that affected the results.

The EB has gone through a process. We don't have to try and interpret the process now that everything is complete.

Lindgren says that we look at the things that we said affected the results and then vote on it.

All the EB wanted was a process to be followed, so that they something to back up their decision.

Does the EB still want make a consensus decision? If we don't want consensus then we can vote right now. Mitchell states that one of her concerns is USC, and as well having one member of the EB not agree.

Yakimoski says that the EB has to do what is best for the USSU.

Coffin states that now that we have gone through this process we can't go back. We could say that we could not come to a consensus.

Yakimoski feels like the process that the EB went through does not bind her to a decision.

Yakimoski was having second thoughts about going behind the scenes to Mr. Whalen and the other major parties involved. Of course the lawyer is going to take the directive of his client. He can only use the information that is given.

Coffin states that Mr. Whalen's conclusion in his report, states the word "unequivocally", which doesn't necessarily mean that he agrees with everything that happened.

If the EB does not achieve consensus, the EB can argue both sides of the issue.

Yakimoski says that she would choose to ratify based on the fact that the vote was significant enough, but she does not necessarily agree with the process of the referendum.

Mitchell states that referring the results to USC cannot be an option. If they sent it to USC, they may not come to a different decision that the EB would, and it would mean that all the time that the EB spent on this would be wasted.

The EB is not saying that the students aren't right. The EB is saying that the students didn't have all the information and it was reflected on one side of the vote.

Mitchell states that the EB is recommending another referendum. We think that process was done badly and we think that students deserve another shot. It could very well be that the results come out the same, but at least the process would be fair for everyone.

Mitchell states that the EB could put forward two different motions. A motion that states that the process is flawed, and a motion whether to ratify or not. This would be a recognition of the consensus reached on the former and the lack of consensus on the latter.

EB132	Move that the EB recognizes inherent flaws in the referendum process.
Ulmer/ Lindgren	Carried Unanimously.

EB133	Move not to ratify the CFS referendum results.
Ulmer/ Mitchell	The EB chooses not to ratify due to the lack of confidence in the process and the EB has concerns that neither of the organizations bylaws were met. Specifically, the EB has concerns about the compressed time line of the referendum. The EB also acknowledges the high level of participation of U of S students. The EB will be recommending another referendum be held with further information to be followed in an EB report.

Carried.

7. Questions and Comments

None.

8. Any Other Business

Next meeting Monday, January 30, 2006 at 3:30 to give President Gardiner the final report.

9. Adjourned

EB34 Move to adjourn at 4:10 p.m.

Coffin/

Yakimoski

Carried.

May 11, A. D. 2006
John
A Commissioner for Oaths in and for
Saskatchewan

USSU Elections Board

Summary of Concerns regarding the USSU-CFS Membership Referendum 2005

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.

- 14) 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.