



University of Toronto TORONTO ONTARIO M5S 1A1

OFFICE OF THE GOVERNING COUNCIL

TO: University Affairs Board

SPONSOR: Murphy Browne, Part-time Undergraduate Student Governor and Member, UAB
(cover memo prepared by Andrew Drummond, Secretary)

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DATE: June 1, 2004 for June 1, 2004

AGENDA ITEM: 4

ITEM IDENTIFICATION:

Compulsory Non-Academic Incidental Fees: Requests from APUS for Increases Beginning Fall, 2005

JURISDICTIONAL INFORMATION:

The terms of reference of the University Affairs Board provide that the Board approves the establishment of and changes to compulsory non-academic incidental fees including those collected on behalf of student societies.

The administrative procedures are outlined in the *Policy on Compulsory Non-Academic Incidental Fees* and the *Handbook for Student Societies* (published by the Office of Student Affairs).

All requests for increases to fees must be supported by due constitutional and fair processes within student societies.

PREVIOUS ACTION TAKEN:

Requests for changes to existing fees and/or the establishment of new fees are brought forward to the Board on one or more occasions each year. By agreement of the Chair, this item was added to the UAB agenda at the request of the Association of Part-Time Undergraduate Students (APUS) and Ms. Murphy Browne.

A brief summary of the Board's previous consideration of the item follows:

November 19, 2002

The Interim Vice-Provost, Students reported verbally that the Office of Student Affairs had received a large number of complaints about the referendum. The Board was in closed session during this verbal report and it is not summarized in the Report of the Board (UAB Report #111)

January 21, 2003

The Vice-Provost, Students provided a verbal update on the administration's progress in the senior assessor's report, noting that many complaints had been received and that the administration was investigating them. (UAB Report #112, Item #8, p. 9)

March 25, 2003

The Vice-Provost, Students provided a written and verbal update in the senior assessor's report. Members received a letter (dated February 25, 2003) from Mr. Jim Delaney, Assistant Director, Student Affairs to the student societies summarizing his assessment of the situation and his decision not to recommend approval. (UAB Report #113, Item #7, pp. 7-8)

April 29, 2003

The Vice-Provost, Students provided a written and verbal update and gave notice that the administration intended to ask the UAB agenda planning group to include this item on the agenda of the next meeting. (UAB Report #114, Item #8, p. 6)

June 3, 2003

The issue was placed on the agenda for information. A cover sheet summarizing the administration's decision (not to recommend approval of the fee increases) and another copy of the February 25th letter was distributed to members. This discussion is recorded in the minutes. No one attempted to have the fee increases considered for approval. (UAB Report #115, Item #9, pp. 8-9)

HIGHLIGHTS:

The purpose of the increase requested by APUS is to support the costs of membership in the Canadian Federation of Students and the Canadian Federation of Students Ontario. A referendum was held in November 2002.

The position of APUS is summarized in the first attached document. The position of the University of Toronto administration is summarized in the attached letter from Mr. T Pinos, Cassels Brock, who represented the University in a recent court dispute on this topic. The court advised that a decision should be rendered in this matter before it could consider it further, and advised the parties to request that the matter be placed on an agenda of the University Affairs Board.

APUS notes that the overwhelming majority of APUS students who voted in the election supported membership in the Canadian Federation of Students and the accompanying fee increase. Pursuant to the terms of referendum and the Policy for Compulsory Non-Academic Incidental Fees, beginning with the fall 2005 session subsequent annual increases, no greater than the Ontario Consumer Price Index of the previous December,

to this portion of the fee may be requested upon approval of the APUS Board of Directors.

FINANCIAL AND/OR PLANNING IMPLICATIONS:

There are no significant implications for the University's operating budget.

RECOMMENDATION:

It is requested that the University Affairs Board approve:

THAT beginning in the fall 2005 session, the Association of Part-time Undergraduate Students fee be increased by \$3.14 per session, from \$34.30 to \$37.44, charged to all part-time undergraduate students.

**UNIVERSITY AFFAIRS BOARD
UNIVERSITY OF TORONTO**

June 1, 2004 Meeting

**SUBMISSIONS OF THE ASSOCIATION OF PART-TIME
UNDERGRADUATE STUDENTS**

**REQUEST UNDER THE
POLICY FOR COMPULSORY NON-ACADEMIC INCIDENTAL FEES**

**UNIVERSITY AFFAIRS BOARD
UNIVERSITY OF TORONTO**

June 1, 2004 Meeting

**SUBMISSIONS OF THE ASSOCIATION OF PART-TIME
UNDERGRADUATE STUDENTS**

PART I: THE FACTS

Overview

1. The Association of Part-time Undergraduate Students (“APUS”), filed an application pursuant to the University of Toronto’s *Policy for Compulsory Non-Academic Incidental Fees* (“the Policy”) for an increase in the fees collected on its behalf, to pay the fees for membership in the Canadian Federation of Students (“CFS”), a national student organization committed to promoting and defending the common interests of Canadian post-secondary students.

2. APUS asks this Board to approve its request notwithstanding the absence of a recommendation or a negative recommendation from the Office of the Vice-President and Provost. The decision to make no recommendation or to make a negative recommendation is based on factors not contemplated by the Policy itself. The Board must not consider factors extraneous to the Policy in deciding whether or not to approve APUS’ request.

Background Information

3. In late 2001, the APUS Board of Directors started to consider seeking membership in CFS. The process of applying for membership is set out in By-law no.1 of the CFS Constitution and By-laws. A local student association may apply for membership in CFS either by applying directly for full membership, or by initially applying for prospective membership. APUS decided to apply for prospective membership first.

4. A local student association may apply for prospective membership by passing a motion of its executive or representative body. The application must be ratified by a vote at a CFS general meeting. The prospective member must then hold a referendum on full membership in CFS within 5 months following its acceptance as a prospective member (or an extended time if granted by the CFS Executive). By applying for prospective members, the APUS Board accepted the CFS referendum procedures.

5. At its January 18, 2002 meeting, the APUS Board passed the following resolution: “Be it resolved that the APUS Board apply for prospective membership with the Canadian Federation of Students (CFS), with the understanding that the prospective membership fee would be waived.” Shortly after the meeting, Emily Sadowski, then APUS President, wrote to CFS advising that APUS had passed a resolution seeking prospective membership in CFS. APUS’ prospective membership in CFS was ratified in May 2002. The next step was for APUS to hold a referendum on full membership.

Referendum Process

6. A referendum of members of a student society is required under the University’s *Policy for Compulsory Non-Academic Incidental Fees*. The APUS Board intended to use the CFS membership referendum both for the purpose of CFS membership, and to support a request for a fee increase to cover CFS membership fees under the Policy. It was APUS’ understanding that as long as they complied with APUS’ constitutional process for referenda, the referendum could be used for both purposes.

7. Section 11.04 of APUS By-law no.1 (Tab A) establishes the procedure for referenda to increase membership fees in APUS. Section 11.04 provides as follows:

Referendum Procedure

A referendum of the members of the Corporation for the purposes of amending Section 3.04 hereof shall be conducted in accordance with the following provisions:

(a) The procedures for holding the referendum shall be determined by the Board of Directors, subject to the specific provisions hereinafter set out;

(b) Notice of the date, time, manner and place of the referendum shall be given to members by publication in the issue next preceding the referendum of the designated newspaper and in the two consecutive issues of *The Varsity*, or *the newspaper*, or in such other comparable newspaper (distributed on the University campuses and having comparable distribution) as the Board may by resolution designate next preceding the referendum, provided that in either case, notice of the referendum shall be first given twenty-one days prior to the date of the vote. If the designated newspapers are not then being published, notice shall be given by posting of notices at least two weeks prior to the scheduled date of the referendum in public places in each of the University campuses, at locations designated by the Board;

(c) The notice shall include the text of the question or questions to be voted upon in the referendum;

(d) The referendum shall be conducted by secret ballot and each member shall be entitled to cast one vote;

(e) A majority of the votes cast in the referendum (excluding invalidated ballots) shall determine the question, subject to the requirements of the Act.

8. The CFS procedures for membership referenda are set out in section 5 of its By-laws. Section 5(d) requires the vote to be overseen by a committee comprised of two members appointed by CFS and two members appointed by the Student Association applying for membership. Section 5(c) requires that there be no less than 16 hours of polling over no less than 2 days.

9. Russell LeBlanc, a member of the APUS Board of Directors, and Nadia Baldwin, a member of the APUS assembly, volunteered to be the APUS representatives on the Joint Referendum Committee (“JRC”). The two CFS members of the JRC were Ashkon Hashemi and Lucy Watson. The JRC was responsible for the following:

- i. deciding the manner of voting, be that by referendum, general meeting or mail out ballot;
- ii. deciding the number and location of polling stations;
- iii. approving all materials to be distributed during the campaign;
- iv. deciding on the ballot question;
- v. overseeing the voting;
- vi. counting the ballots;

- vii. adjudicating all appeals;
- viii. establishing all other rules and regulations for the vote.

10. The Students Administrative Council (“SAC”) and the Scarborough Campus Students’ Union (“SCSU”) also became prospective members of CFS in May 2002. As a result, they were also required to hold referenda on CFS membership in the fall of 2002. The three referenda were separate in that each student society had a separate JRC and separate referendum rules (Tab B), the votes for each referenda were tabulated separately, and each student society had separate constituencies of eligible voters. But for reasons of efficiency a common question and common polling locations were used. It is important to note that, when negotiating with the other Referendum Committees, APUS insisted on extended voting hours (from 8:30 a.m. to 8:30 p.m.) to maximize the opportunity for its members to vote. APUS also insisted that there be a polling station at Woodsworth where many part-time students have classes.

11. An initial referendum question was set by the Joint Referendum Committee on October 3, 2002. That question was as follows: “Are you in favour of membership in the Canadian Federation of Students and the Canadian Federation of Students Ontario?”

12. On October 9, 2002, Jim Delaney, Assistant Director, Student Affairs, sent an e-mail to Ms Sadowski and to leaders of SAC and SCSU. In his e-mail, Mr. Delaney raised some concerns about the proposed referendum question. He suggested that the proposed referendum question was not suitable for use to support a request for an increase in a student society fee under the Policy.

13. On October 16, 2002, Mr. Delaney met with representatives of CFS to discuss the wording of the question for the referendum. A mutually agreed upon question was drafted at the meeting:

Preamble:

The Canadian Federation of Students is a national and provincial students’ organization with over 450,000 members. The Federation was formed in 1981 to

advocate for an affordable, high quality system of post-secondary education, and to provide cost-saving services to students.

The current membership fee for the Canadian Federation of Students is \$3.42 per session for full-time students or \$1.71 per session for part-time students. The current membership fee for the Canadian Federation of Students -- Ontario is \$2.85 per session for full-time students or \$1.42 per session for part-time students. The fees are adjusted up or down each year by the rate of increase or decrease in the Canadian Consumer Price Index (CPI) during the previous calendar year.

By voting 'yes' below, you are indicating that you support an additional portion (\$6.27 for full-time students or \$3.14 for part-time students per session) to be collected with your student society fee as described above. Each student would pay the fee through the appropriate student society, either the Students' Administrative Council (SAC), the Association of Part-Time Undergraduate Students (APUS), or the Scarborough Campus Students' Union (SCSU).

Question:

Are you in favour of membership in the Canadian Federation of Students and the Canadian Federation of Students -- Ontario, as described in the preamble?

Later that day, Mr. Delaney wrote a letter to one of the CFS representatives, which he copied to Emily Sadowski, setting out the agreed upon question. In addition, Mr. Delaney reiterated the requirement in the Policy that requests to change fees must be authorized by due constitutional process in the organization. On the evening of October 16, 2002, the Joint Referendum Committee met and approved the revised referendum question.

14. The referendum was held on November 5, 6, and 7, 2002. The results of the referendum were that 79.9% of APUS members who voted in the referendum voted in favour of membership in CFS and 20.1% voted against membership. This is an overwhelming vote of approval. The total number of votes was 812 -- 639 votes in favour of CFS membership and 161 votes against membership with 12 spoiled ballots.¹ The voter turnout for the CFS membership referendum was consistent with referenda and elections held by APUS in the past few years. The University itself says

¹ The results were originally reported as 809 votes, 637 in favour and 160 opposed. The change in the final tally is due to 3 votes which had been sealed to verify membership of the voters in APUS. Once the membership was verified, those ballots were unsealed and counted.

that “voter turnout for this referendum is higher than any turnout for elections in recent memory.”

15. The JRC received only one complaint about possibly misleading information about International Student Identity Cards on some campaign posters. The complaint was withdrawn after Committee members discussed the issue with the complainant. No other complaints were received by the JRC or the APUS Board.

16. On Tuesday, November 19, 2002, Emily Sadowski, wrote to CFS outlining the referendum results and requesting full membership in the CFS. APUS was accepted for full membership in November 2002.

17. Russel LeBlanc presented the report of the JRC at the November 27, 2002 meeting of the APUS Board. A motion was passed receiving the report. This vote was the Board’s approval of the referendum results. Had there been any complaints about the referendum process, the Board would have considered them prior to voting on this motion.

18. The APUS Assembly approved the referendum results by unanimous consent on December 3, 2002. Again, had there been any complaints about the referendum process, the Assembly would have considered them prior to voting on this motion.

19. All requirements of APUS By-laws were complied with, subject to the discussion below regarding the notice requirement.

Notice Requirement for Referendum

20. As outlined above in paragraph 7, the APUS by-laws require that notice of the referendum, including the text of the question to be voted upon, shall first be given to APUS members by publication in *The Varsity* or *the newspaper* twenty-one days prior to the date of the vote. If the designated newspapers are not then

being published, notice shall be given by posting of notices at least two weeks prior to the scheduled date of the referendum in public places in each of the University campuses.

21. APUS members were first advised of the referendum in the June 2002 issue of *The Voice*, the newspaper for part-time students. In that issue, a note written by Emily Sadowski was published, which described APUS' participation in CFS as a prospective member and explained that full membership in CFS would be considered in a referendum vote later that year. *The Voice* is the "designated newspaper" referred to in APUS By-law No.1. The June 2002 issue of *The Voice* was distributed as an insert in *The Varsity* on June 27, 2002.

22. The September/October 2002 issue of *The Voice*, which was mailed to all APUS members on September 23, 2002, also contained notice of the upcoming CFS referendum. In that issue, Emily Sadowski wrote:

You will be asked to vote in a referendum on joining CFS as full members this fall. There is a small fee, though I believe students will realize the benefits of joining such a significant student federation. The APUS Board has decided to support a "YES" vote in the referendum. You will be hearing more about this soon.

In addition, the calendar of upcoming events made reference to the CFS referendum:

CFS Referendum

Early November-exact date TBA. All U of T part-time undergraduates from the downtown, Scarborough and Erindale campuses are eligible to vote on APUS membership in the Canadian Federation of Students (CFS).

23. As described above, the specific text of the referendum question was changed on October 16, 2002, to accommodate concerns raised by Mr. Delaney. By the time the revised question was approved, the advertising deadline for the October 17 edition of *The Varsity* had passed. Notice of the full text of the referendum question appeared in the next edition of *The Varsity* on October 21, 2002 and was reproduced in the October 24, 2002 edition of *The Independent*.

24. The November 2002 issue of *The Voice* contained the full text of the referendum question, the dates of voting, the times that polling stations would be open, and a list of the addresses of polling stations. The November 2002 issue of *The Voice* was published on October 24, 2002, and mailed to all members of APUS on that date.

25. On the weekend immediately preceding the start of campaigning (October 18-20, 2002) notices containing the referendum question and dates of polling were distributed on all three campuses. On the weekend immediately preceding the referendum voting (November 2 and 3, 2002) another set of notices containing the dates, times and locations of polling for the referendum were put up on the three campuses. In total, 10,000 posters were distributed over the two weekends.

26. While the original referendum question was prepared sufficiently in advance that 21 days notice of that question could have been given to APUS members, because of the revisions required to address the issues raised by Mr. Delaney, the final question could not be published 21 days in advance of the referendum. Neither the APUS Board nor the JRC received any complaints regarding sufficiency of notice of the referendum, the question, or time, manner and place of voting.

Request for a Fee Increase and Concerns Raised by the Office of Student Affairs

27. On November 26, 2002, Mr. Delaney wrote a letter to Emily Sadowski (as well as leaders of SAC and SCSU) outlining what documentation had to submit in support of a request for collection of fees for CFS under the Policy.

28. On January 20, 2003 Mr. Delaney sent an e-mail to Emily Sadowski, and the leaders of SAC and SCSU (Tab C). In his e-mail Mr. Delaney stated that the assessment of the requests for Student Society fee increases, “will pay particular attention to fairness and democracy, as well as compliance with all applicable rules, procedures and policies.” Mr. Delaney then outlined a number of issues about which he had questions or required additional information.

29. On February 6, 2003, APUS formally submitted its request for a fee increase to pay for CFS membership fees (and supporting documentation) to the University (Tab D).

30. On February 11, 2003, Joel Duff, Ontario Chairperson of CFS wrote to Mr. Delaney (Tab E). The purpose of the letter was to reply to the concerns raised in Mr. Delaney's e-mail of January 20, 2003. The APUS Board was consulted in the drafting of this letter.

31. On February 25, 2003, Mr. Delaney wrote to Emily Sadowski, and the leaders of SAC and SCSU (Tab F). That letter stated, in part, as follows:

1. I continue to have concerns about the fairness of the referendum process. In particular, I have a number of concerns about the oversight and management of the referenda. As a result, I cannot certify that the processes have been fair.

2. There appear to have been a significant number of violations of by-law requirements, as well as rules and procedures within the societies. Therefore, there is insufficient evidence to verify that the request for fee increases has been authorized by due constitutional process of the organization.

3. There may have been an unbalanced playing field in favour of a "yes" vote in the referenda....

On the basis of these conclusions there are insufficient grounds to recommend approval of the fee increases to the University Affairs Board of the Governing Council. This should not be interpreted to mean that there has been a formal finding that the process was unfair and undemocratic. It does mean, however, that I do not have sufficient comfort with the process for the fee increase requests in order to stand behind a recommendation for a fee increase.

Mr. Delaney enclosed with his letter a document outlining his specific concerns with the referendum. Mr. Delaney invited the student societies to either hold new referenda on the question of the fee increase to pay CFS membership fees, or attempt to have the matter brought before the University Affairs Board without a recommendation from the University Administration.

PART II: SUBMISSIONS

The Test to be Applied Under the *Policy on Compulsory Non-academic Incidental Fees*

32. The Preamble and paragraph 2 of the Policy (Tab G) outline the process for applying for a new fee to be collected, or requesting a fee increase:

In recognition of their differing kinds and levels of service, activity, and need, divisions and organizations on whose behalf such incidental fees are collected shall have initiating authority to establish such fees, subject to approval by the University Affairs Board and the Governing Council. Requests to cancel or to change an existing fee, or to introduce a new levy, will be reviewed by the Office of the Vice-President and Provost which will, according to the guidelines, bring the requests with recommendations to the University Affairs Board.

Requests to change the fee collected on behalf of a student society and requests for new fees shall be approved only when evidence has been presented that the request has been authorized by due constitutional process in the organization.

Where the amount of an increase in fee charged is greater than the year-over-year change in consumer prices, the request must be supported by the majority of a society's members voting in a recent referendum.

33. Thus, the test that the University Affairs Board ("the Board") has to apply in determining whether to approve APUS' request for a new non-academic incidental fee is limited to whether the fee increase request "has been authorized by due constitutional process in the organization." It is submitted that "due constitutional process of the organization" refers to compliance with the by-laws and/or constitution of the organization. In the case of APUS, the by-laws are the constitutional document. The University Affairs Board must simply consider whether APUS complied with its own by-law provisions regarding referenda.

34. None of the factors outlined in Mr. Delaney's letter and report are issues of "due constitutional process in the organization," with one exception.² Rather, they reflect the fact that Mr. Delaney, and perhaps others in the Office of the

Vice-President and Provost, do not like or do not have “sufficient comfort” with the process chosen by APUS, within the scope of its powers under its by-laws. This is not the test articulated in the Policy. The University Affairs Board should ignore those concerns raised by Mr. Delaney that do not address whether evidence has been presented that the request for the fee increase had been “authorized by due constitutional process in the organization.” The Board must not consider issues of general “fairness.” In fact, it would be an error for the Board to consider factors which do not form part of the test for approval of a fee increase outlined in the Policy.

35. Although the University’s *Handbook for Student Societies*, which is written and circulated by the Office of Student Affairs, refers to a general assessment of whether referenda “were conducted in a fair and democratic manner” as part of the test for approval of fee requests, the Policy itself does not include such an assessment as part of the test. The *Handbook* is not a part of the Policy, and is not passed by the Governing Council. The Office of Student Affairs cannot simply amend the Policy, or add requirements to it by publishing them in the *Handbook*. Only Governing Council or the University Affairs Board have the power to amend the Policy.

36. Mr. Delaney’s decision to make no recommendation or to make a negative recommendation on APUS’ request for a new fee, which is based on his assessment of the “fairness” of the process, is not only contrary to the wording of the Policy, but also contrary to its intent. In general terms, the Policy sets out specific governance standards for student societies (to promote “orderly and democratic governance of the society”), creates a means for the University to intervene if a student society does not operate in an open, accessible and democratic fashion and establishes the test for approval for fee requests. The Policy requires student societies to have particular democratic governance structures, and then allows them the independence to govern themselves within those structures. If this Board rejects APUS’ request for a new fee on the basis of Mr. Delaney’s concerns, it will be taking away the autonomy of the student

² Mr. Delaney incorrectly asserted in his reasons of February 25, 2003 that: “There appear to have been a significant number of violations of by-law requirements. . .” As discussed below, there was only

societies to govern themselves (in this case, by setting referendum procedures themselves, within the scope of their by-laws). It is important to note that the University has not invoked the procedures for intervening in APUS' operations. Nor has the University alleged any general problems in how APUS is operating. The University Affairs Board must not interfere with the referendum results, which were arrived at through due constitutional means approved by the APUS Board.

Mr. Delaney's Concerns

37. It is clear that Mr. Delaney's letter and report address issues beyond "due constitutional process in the organization." He wrote:

As in the case of all requests for student society fee requests, when the results are ratified by the societies and Student Affairs receives the formal requests for increases to the respective fees, I complete an assessment of the process. With respect to this referendum, the assessment has paid particular attention to fairness and democracy, as well as compliance with all applicable rules, procedures and policies.

Mr. Delaney then provides a detailed list of his concerns about the referendum process based on his own particular subjective view of what constitutes a "fair" election procedure, based on research he apparently found on the internet.

38. APUS is particularly concerned about Mr. Delaney's comments regarding the fairness of the referendum oversight structure. Mr. Delaney had been aware of the Referendum Committee structure since his meeting with CFS representatives in early October 2002 and did not advise APUS or CFS that it was unfair. In fact, he told the CFS representatives that the structure was acceptable, as long as it complied with the by-laws (due constitutional process) of the student societies.

39. In his letter of February 25, 2003, Mr. Delaney details 11 other purported procedural violations. With one exception, none of them relate to issues of due constitutional process. The specific factual allegations contained in Mr. Delaney's letter of February 25, 2003 (which will shown to be unfounded in any event) that do not

one by-law violation regarding the notice requirement, but it was minor and caused no prejudice.

relate to due constitutional process in the organization are not relevant to the University Affairs Board's vote on whether to approve APUS' request for a new non-academic fee and should not be considered.

Notice Requirements

40. The only issue raised by Mr. Delaney which relates to an assessment of whether the "due constitutional process in the organization" was followed by APUS is the issue of notice. On this issue, Mr. Delaney wrote:

APUS failed to provide the minimum amount of notice to its members by failing to publish the full text of the referendum question at least 21 days prior to the referendum (APUS by-laws, section 11.04).

41. "Due constitutional process" does not require a standard of perfection in compliance with an organization's by-laws. Substantial compliance with by-laws, in the absence of any prejudice, is sufficient.³ In a democracy, elections are not invalidated where there is substantial compliance with governing legislation/rules, where the results of the election do not appear to have been affected. Indeed, very few election or referendum processes would ever be upheld if perfect compliance with applicable regulations was required.

42. There was substantial compliance with the notice requirement in the APUS by-laws. General notice of the referendum was first given at the end of June, 2002, four months prior to the referendum in *The Voice*. Notice of the Referendum in *The Voice* was repeated in the September/October 2002 issue of *The Voice* which was mailed to all APUS members on September 23, 2002, over one month prior to the referendum. Specific notice of the referendum question and dates of voting, was published in *The Varsity*, a widely circulated paper on campus, on October 21, 2002, 15 days prior to the referendum. The detailed notice was repeated in *The Independent*, also widely circulated in campus, on October 24, 2002, 12 days prior to the referendum. In

³ In the realm of corporate law, it has been held that 14 days is sufficient notice to shareholders of a sale of shares, where the articles of incorporation require 21 days, but where there is no evidence that the late notice had any adverse effect. Shareholders are analogous in a business corporation to the members of APUS, a non-share capital corporation.

addition, the referendum question, dates of voting, times polling stations would be open, and a list of the addresses of polling stations was published in the November 2002 edition of *The Voice* which was mailed to all APUS members on October 24, 2002, 12 days prior to the referendum. Finally, posters with the referendum question and dates of polling were distributed on all three University campuses on the weekend of October 18-20, 2002 (16-18 days prior to the referendum, and immediately proceeding the start of campaigning). Posters with the dates, times and locations of polling were distributed on the three University campuses on the weekend of November 2-3, a few days prior to the vote. A total of 10,000 posters were distributed.

43. The original referendum question had been prepared sufficiently in advance to comply with the 21 day notice requirement in the APUS by-laws. However, because of the revisions to the question required to accommodate issues raised by Mr. Delaney (discussed above at paragraphs 12-13), the final referendum question could not be published 21 days in advance of the referendum.

44. In considering whether there was substantial compliance with s. 11.04(b) and (c) of APUS By-law No. 1, it is important to note that the By-law itself permits alternative notice of only 14 days, by way of posting notices in public places on each university campus, when the designated newspapers are not publishing. Obviously, alternative means of communicating the requisite information that effectively reach the electorate are contemplated. In this case, APUS not only put an advertisement in *The Varsity* and *The Independent*, but arranged for posters to be put up and mailed the information to each of its members.

45. It is also important to note that there was no prejudice caused by the lack of perfect compliance with the notice requirement. The voter turnout was higher than in any campus election in “recent memory”, according to Mr. Delaney. The result was overwhelming. To make APUS hold another referendum when the result could not possibly have been different with earlier notice, would be unfair. No democratic society permits technical violations to negate an election result when the

margin of victory is so huge. Further, neither APUS, nor the JRC received any complaints about the sufficiency of notice of the referendum, the question, or the time, manner and place of voting.

Concerns unrelated to Due Constitutional Process

46. Although the University Affairs Board cannot consider issues unrelated to “due constitutional process” in deciding whether or not to approve APUS’ request for a new fee, the Board can take comfort in the fact that there is no evidentiary basis for Mr. Delaney’s lack of “sufficient comfort” with the process.

47. It is important to note that Mr. Delaney has not found that the process was, in fact, unfair:

This should not be interpreted to mean that there has been a formal finding that the process was unfair and undemocratic. It does mean, that I do not have sufficient comfort with the process or the fee increase requests in order to stand behind a recommendation for a fee increase.

Mr. Delaney’s letter and report simply make reference to speculative allegations that he has not found actually occurred. For example, he wrote that there “may have been an unbalanced playing field in favour of a ‘yes’ vote in the referenda” (our emphasis). In respect of some of the alleged procedural irregularities, Mr. Delaney wrote:

Mixed Voter Eligibility Lists and Systems: I continue to be concerned about using different voter verification systems (voter lists in some locations and double envelope balloting in other locations) and voter lists originating from different University offices. Integrity in the voting system is preserved by employing one eligibility system with one voter eligibility list. While I acknowledge that the system employed apparently caught a number of people attempting to vote more than once, some doubt might remain about other multiple voters under the mixed system which was employed. In particular, the lists provided by this office were explicitly generated by searching for charges of the APUS and SAC fees while other lists were generated by searching for registration in a particular division. It is conceivable that a student with a SAC fee charge might show up on another list as being registered part-time in a particular division.

Activities of Poll Clerks: There is a sufficient number of reports of improper conduct of poll clerks to suggest that much more additional information is necessary. The reports which warrant further inquiry all relate to comments allegedly made by poll clerks which might be considered campaign activities. Some complaints suggest that the improper conduct is associated only with the

poll clerks selected by the CFS. However, I have not received conclusive evidence on this issue. Without a definitive outcome on this area of complaint, I continue to be concerned about whether or not poll clerks did indeed act properly and in compliance with the instructions provided by the Federation.

Campaigning on Voting Days: The normal practice among most University of Toronto student societies is to prohibit active campaigning on election days. I continue to have concerns about allowing campaigning on election days and the emergence of “gauntlets” of campaign workers coercing students to vote. Some argue that the high voter turnout resulted from intense support for the membership in the CFS. I worry that the high turnout was a result of high pressure tactics by both sides on students entering some spaces. The Federation contends that a “no-campaigning rule during any referendum unduly benefits the side promoting the status quo.” Without specific references, it is hard to verify the validity of this claim. However, if this is true, one might also conclude that the opposite may be true – that allowing campaigning on voting days favours change (in this case a vote to join the CFS). [our emphasis]

48. The University Affairs Board must not act on speculative concerns and allegations when no finding has been made as to whether they actually occurred. If such speculative concerns are considered, that would open the door for parties opposed to the referendum result to wage a campaign of spurious complaints in an attempt to derail the process. If all that is required are allegations and complaints, every referendum is vulnerable to this type of attack. Mr. Delaney himself admitted that this was a tactic used by the ‘NO’ side in the referendum:

The Federation contends that this perception of a lack of fairness arises only because there was a systemic effort to undermine the validity of the process. I agree that there are some indications that a specific tactic of the ‘NO’ side was to generate doubt in the validity of the process. In fact, I would note that I find this tactic to be dishonourable and disrespectful to the other students wishing to engage in a fair and democratic process. [emphasis added]

The University Affairs Board must not allow this tactic to succeed in interfering with the overwhelming results of a democratic referendum.

Response to Mr. Delaney’s Specific Concerns

49. Mr. Delaney’s first concern is that there were three Referendum Committees (one for each student society involved in the referendum), although one referendum was held in which members of all three student societies could

vote. There is nothing in APUS by-laws which prevents this approach. In any event, this assertion is not true. Each student society had its own referendum JRC. Each JRC created its own rules of procedure. Each JRC met separately. In fact, the three JRCs never met together. The votes for each referendum were counted separately. It was important to have a single question, if possible, because there was some overlap in the membership of the three societies. For example, SCSU represents all Scarborough College Students, whether part-time or full-time. Therefore, each SCSU member is also a member of either SAC or APUS. To avoid having SCSU vote on two different questions on the same issue, efforts were made to have a single question.

50. Mr. Delaney's second concern is the "absence of an appropriate appeals mechanism." In fact, the APUS Referendum Rules provided that the JRC would adjudicate all appeals. There is nothing in APUS by-laws which requires a separate appellate body in the referendum oversight (indeed, nothing requiring an appellate body at all). It should be noted that as a general matter of due process, an appellate process is not a necessary element of procedural fairness.

51. Mr. Delaney's third concern is "inconsistency" in notice of JRC meetings and in the manner in which JRC decisions were communicated. There is nothing in APUS by-laws which mandates any particular type of notice of JRC meetings. Nonetheless, notice of meetings was communicated to the APUS Board. As noted above, the APUS Joint Referendum Committee did not receive any complaints.⁴ Therefore, the concern over the communication of JRC decisions does not apply to APUS.

⁴ According to Mr. Delaney, he received over 100 "complaints, comments and interventions" about the three CFS referenda. Mr. Delaney may take the position that all of the "complaints, comments and interventions" received must be considered in reference to each referendum regardless of who made the complaint and regardless of which student society was the subject matter of complaint. This approach is seriously flawed for a number of reasons. First, it must be noted that not all 100 communications can be considered complaints. Second, Mr. Delaney only received one complaint that specifically referenced the APUS referendum. All the other complaints related to the SAC or SCSU referenda. Third, Mr. Delaney directed each complainant to the relevant joint referendum committee. Therefore, if the complaint was made by a SAC member, Mr. Delaney directed the student to the SAC committee. If the complaint was not made by an APUS member, there is no reason to expect that the APUS Joint Referendum Committee would know about or have reason to consider the complaint. It would be truly unfair to count complaints against APUS it never received or had an opportunity to investigate and address.

52. Mr. Delaney's fourth concern relates to the issue of notice which is addressed above in paragraphs 20 to 26 and 40 to 45.

53. Mr. Delaney's fifth concern is whether Professional Experience Year ("PEY") students were provided with an "opportunity" to vote. APUS By-law No. 1, s. 11.04(d) addresses "entitlement" to vote, but not opportunity. In any event, all students were given ample opportunity to vote. They were told about the referendum as early as June 2002. A copy of the November edition of *The Voice*, which listed the poll locates and times, was mailed to each APUS member. The polls for the referendum were open for extended hours, from 8:30 am to 8:30 pm. Voting on the referendum took place over three days, November 5, 6, and 7, 2002. Neither APUS nor the JRC received any complaints from PEY students about their alleged inability to vote during the scheduled polling times. Had any complaint been received, arrangements would have been made for the PEY student to vote in some other fashion.

54. Mr. Delaney's sixth concern is inconsistency over the definition of campaign materials between the three Referendum Committees. The APUS by-laws do not define campaign materials. The APUS Referendum Rules were clear that all campaign materials had to be approved by the JRC to ensure that they were not "defamatory, libellous or containing false information." The Referendum Committee consistently applied this test and made suggestions for changes to some of the materials submitted. The Referendum Committee did not refuse any submitted materials.

55. Mr. Delaney's seventh concern is the use of different voter eligibility lists and systems. The choice of administrative method to ensure that all eligible voters can vote (and that only eligible voters can vote) must be left up to the student society to decide. The APUS Referendum Rules provided as follows:

Section 6: Voting Procedure

- a. The voter must present a student T-card or another form of identification.
- b. In the event that a voter's name does not appear on the list provided by the University, the completed ballot shall be placed in an envelop. The

envelop will be sealed and the name and the student number will be written on the outside of the envelop. The student status will be verified by the Registrar's office.

There is nothing in APUS by-laws which prevents this "double-envelop" approach. In fact, this system ensured maximum participation in the vote. The sealed ballot process was used to verify some voters' eligibility so that their votes could be counted in the end. As Mr. Delaney himself notes, this system was effective: it caught some people who attempted to vote more than once.

56. Mr. Delaney's eighth concern is alleged improprieties by polling clerks. Mr. Delaney did not make any findings as to whether the alleged improprieties in fact occurred. The APUS Referendum Rules specifically prohibited poll clerks from instructing voters how to vote, and from providing information to voters about the referendum, other than the referendum question. Neither the APUS Board nor the referendum committee received any complaints about polling clerks. To the extent that other student societies received complaints about impropriety on the part of polling clerks, they were investigated fully and determined to be unfounded.

57. Mr. Delaney's ninth concern is that campaigning was permitted on voting days. Nothing in the APUS by-laws or the Referendum Rules prevented voting on campaign days. Rather, the Referendum Rules prevented campaigning on polling days within 20 metres of polls. There were a few violations of this rule by the "no" side supporters. Any complaints about these violations were received and addressed by the other Referenda Committees in a timely manner. The APUS Referendum Committee did not receive any complaints about campaigning within the "no campaigning" zone.

. Mr. Delaney's tenth concern is his view that if the Referendum Committees are independent entities, it is questionable whether the referendum can be considered processes of the student societies. This concern seems completely inconsistent with his earlier concerns that JRC was not sufficiently independent. Nonetheless, s. 11.04 of the APUS by-laws clearly provides that, subject to specific exceptions, the APUS

Board shall determine the procedures for holding the referendum. The APUS Board determined that they would follow the procedures required under the CFS by-laws. Once the Board appoints the Committee to oversee the referendum, the fact that the Committee is independent from the Board is irrelevant to whether the referendum itself can be considered a process of the student society. The student society (the APUS Board) determined the procedure. More importantly, both the APUS Board and the APUS Assembly approved the final referendum results.

Mr. Delaney's eleventh concern is that there were different referendum codes used by each student society (although he concedes that there was a considerable amount of agreement between them). It is not surprising that there were different referendum codes. Each student society has its own by-laws and its own peculiar concerns. The Rules adopted by each society had to reflect and comply with the by-laws of that society. Differences were more or less inevitable. For each society to comply with its own "due constitutional process," they must create and adopt their own rules. In this case, efforts were made to keep the rules as similar as possible to avoid confusion. Anything common to the three referenda was done as a matter of efficiency. There is nothing wrong or unfair about having different referendum codes.

Conclusion

APUS' fee request is authorized by "due constitutional process" of the society and must, therefore, be approved by the University Affairs Board. There is simply no basis under the Policy to reject APUS's request. The Board must not consider issues or concerns extraneous to the Policy. Ten of the eleven concerns raised by Mr. Delaney have nothing to do with "due constitutional process." Rather, they reflect his own subjective views of how a referendum ought to be run. Those views are irrelevant to this Board's decision. While APUS technically breached the notice requirements in its by-law, there was nonetheless substantial compliance with the by-law. A technical breach must not be used to prevent APUS from acting on the overwhelming mandate it received from its membership to pursue full membership in CFS. No member of APUS has ever complained about any aspect of the vote itself. On this basis, APUS asks that the

University Affairs Board to approve its request for a new non-academic incidental fee to be collected from its members to cover the membership fee for CFS.

Dated this 14th day of May, 2004.



DATE | May 17, 2004 | MEMORANDUM
TO | David H. Farrar, Vice-Provost, Students
FROM | Timothy Pinos
OUR FILE # | 1-2419
RE | Submissions of the Association of Part-Time Undergraduate Students to the University Affairs Board

1. As requested, I am providing this memorandum to you to provide comments on the Submission of the Association of Part-Time Undergraduate Students (“APUS”) to the University Affairs Board, respecting a resolution to approve an increase in the compulsory non-academic incidental fee collected by the University and remitted to APUS.

PART I – BACKGROUND

2. This matter arises out of a referendum held in November 2002 where APUS sought to increase the compulsory fees for its constituency to cover the cost of membership in the Canadian Federation of Students (“CFS”).

3. In February 2003, the Office of the Vice-President and Provost, acting on the advice and recommendation of Jim Delaney of the Office of Student Affairs, decided not to recommend the approval of the fee increase due the fact that it was not satisfied that

the preconditions for approval had been met. The Office of the Vice-President and Provost does not bring forward a negative recommendation for a fee increase to the University Affairs Board (the “Board”). Accordingly, it recommended that APUS either hold a new referendum or take steps to bring the matter to the Board for a vote without a recommendation from the Office of the Vice-President and Provost.

4. Instead, APUS brought an application for judicial review to the Divisional Court to challenge the decision not to recommend the APUS request for the fee increase. This application was heard on May 3, 2004, and our firm represented the University. One of the University’s responses to the court application was that APUS should have taken steps to have the matter brought before the Board for a vote, and it was not appropriate for the Court to consider the APUS application until that occurred.

5. At the commencement of the hearing, the Court raised this very point, and strongly suggested that APUS should have brought the matter to the Board before taking the matter to Court. After some discussion, APUS agreed to have the court application adjourned indefinitely to permit it to take the necessary steps to have the matter brought before the Board for a vote. Without admitting the appropriateness of the Court application or APUS’ position, the University agreed to facilitate this process.

6. In its submissions, APUS asserts that the Board’s consideration of the fee increase proposal is limited to the phrase “due constitutional process” in the relevant Policy, which it states should be limited to a narrow reading of whether the written rules

for the referendum were substantially complied with, and specifically excluding general considerations of the fairness and appropriateness of the process. This is clearly wrong for the following reasons:

- a. The wording of the applicable Policy and Guidelines is not limited in that way, but extends explicitly to a consideration of whether a proper referendum was held and whether the process overall was fair and democratic;
- b. The word “due” in the phrase “due constitutional process” has a meaning of “appropriate, proper, right”, clearly requiring an examination of whether the processes themselves were proper; and,
- c. The overall purpose of the Policy and Guidelines is to ensure that fees are not imposed by student societies on their members without the consent of the members acting in a fair and democratic process, and the Board’s consideration of the proposal must be guided by that overall purpose.

PART II – FACTS

The Policies, Procedures and Guidelines Relating to Fee Increases

7. The collection and remitting of Compulsory Non-Academic Incidental Fees (“CNAI Fees”) to Student Societies is governed by the University’s “Policy for Compulsory Non-Academic Incidental Fees”. The Policy establishes the requirements that a student society must continue to satisfy in order for the University to collect fees on its behalf. The Policy also establishes some general rules relating to the types of student society fees, the manner in which they may be approved, and references the applicability of further guidelines.

8. Under the Policy, while a student society has the ability to initiate a request for a fee or a fee increase, the Policy makes it clear that any such increase is first reviewed by the Office of the Vice-President and Provost, and is then subject to approval by the University Affairs Board.

9. APUS’ request for a fee increase can only be approved if supported by evidence that the request has been authorized by “due constitutional process in the organization”. In addition, where, as here, the amount of the increase requested is greater than the cost of living, “the request must be supported by the majority of the society’s members voting in a recent referendum.”

10. In addition to the Policy, Student Affairs has separately approved “Procedures for Handling Requests for Fee Changes”. These procedures require that any campus organization or student society requesting a change in fees is required to submit specified documentation to the Office of the Vice-President and Provost within specified time frames. Reflecting the provisions of the Policy quoted above, the procedures require the submission of documentation relating to due constitutional process and the conduct of the referendum.

11. The Handbook for Student Societies also sets out guidelines with respect to the application of those policies and procedures, and the criteria used to evaluate requests for fee increases. In particular, the Board must consider whether the referendum was conducted in a fair and democratic manner:

“...In collecting fees at their request, the University believes further that it is responding to the will of the majority of students expressed through their elected bodies. However, the University is also acutely aware – particularly in view of the sums involved – that it then has a moral obligation to the students who support the societies through their fees to ensure that the funds are properly accounted for and that societies concerned function in an orderly and democratic fashion.”

“The Office of the Vice-President & Provost reviews submissions from student societies concerning fee changes in light of the requirements spelled out in these procedures, and then, if appropriate, forwards the requests with its recommendations to the University Affairs Board. The Board looks particularly for assurance that the decision to change the fee was arrived at by proper constitutional process and with adequate discussion and publicity within the constituency concerned, that applicable referenda were conducted in a fair and democratic manner, and that accurate financial records are maintained.”

12. Jim Delaney has been the Student Affairs official primarily responsible for conducting the administrative evaluation of any request for a fee for a CNAI Fee increase for 8 years. During this time, he has received and evaluated, on average, eight to twelve requests for CNAI Fee increases per year to determine whether they are to be recommended. He has developed substantial expertise and experience in this area.

The 2002 Fee Increase Referendum

13. The University became aware around January, 2002 that each of APUS, the Students Administrative Council (“SAC”) and the Scarborough College Students Union (“SCSU”) intended to seek membership in the CFS and that each of APUS, SAC and SCSU intended to hold a referendum amongst their respective student members to approve the affiliation.

14. It was clear at all times that this was a single referendum campaign on behalf of SAC, APUS and SCSU consisting of:

- a. a common question;
- b. a common notice of the referendum;
- c. a common campaign period;
- d. common campaign materials;
- e. common polling stations; and
- f. a common voting period.

15. The campaign period for the referendum was from October 21st to November 5th, with voting from November 5th to November 7th.

16. While there were three referendum committees, one for each of the three student societies, they each had the same two CFS representatives as members.

17. During the campaign and voting periods, and after the conclusion of voting, the Office of Student Affairs received a large number of complaints, comments and other interventions in relation to the campaign period and the voting period for the referendum. In total, over 100 complaints, comments and interventions were received totalling over 250 pages worth of material submitted, all of which was considered by Jim Delaney.

18. Since the referendum was run as a single process on behalf of all three student societies, to get an appropriate picture of the fairness of the referendum, one would have to review all of the complaints, comments and interventions as the majority of them related to the overall process and not the specific conduct of one of the student societies. In this context APUS's efforts to restrict consideration of the facts to APUS-specific matters is artificial and inappropriate.

19. This referendum generated by far the largest number of complaints of any student society referendum conducted at the University over at least the last 16 years.

20. Following the referendum, on November 26, 2002, Jim Delaney wrote to each of the three student societies to advise them on the next steps in the process relating to a possible fee increase request, and specifically noted the process to be applied to any fee request received:

“As is the case for all requests for student society fee requests, when the results are ratified by the societies and Student Affairs receives the formal requests for increases to the respective fees, I will complete an assessment of the process. With respect to this referendum, the assessment will pay particular attention to fairness and democracy, as well as compliance with all applicable rules, procedures and policies. The assessment will not be affected by the results. A recommendation from the administration to the University Affairs Board concerning the requested fee increases will be based upon this assessment.”

21. In the memorandum he also addressed the question of complaints respecting the referendum process in the following manner:

“It is generally expected that each student society will adjudicate all complaints received as part of the referendum process. We also expect all complaints and allegations to be submitted to each society for consideration. However, it is conceivable that other complaints about the process itself may surface after each society has formally concluded its internal procedures. Therefore, any new complaints or concerns (which arise after each society has ratified the results) should also be submitted to me as soon as possible in order to allow for investigation of the allegations.

With respect to the general assessment of the referendum processes and the consideration of any new complaints, the relevant individuals will be consulted for additional information and/or responses as appropriate.”

22. Following the memorandum of November 26, 2002, Jim Delaney reviewed information which had been provided by the student societies, together with the various

complaints and interventions. As a consequence of this review, he formulated a number of questions and issues which were sent via e-mail on January 20, 2003 to the SAC, SCSU and APUS for their reactions and comments.

23. Student Affairs did not receive individual responses from the three student societies; rather, a response was received from an officer of CFS under cover of a letter dated February 11, 2003.

24. Each of SAC, SCSU and APUS submitted formal fee change requests. APUS' request was submitted on February 6, 2003.

25. Jim Delaney completed his review, and in a letter dated February 25, 2003, addressed to all three student societies, he reviewed all of the information available to him respecting the referendum, and presented his findings and conclusions that there were insufficient grounds to recommend approval of the fee increases.

26. That assessment was based on three conclusions reached as a consequence of his review and evaluation:

- a. He was not satisfied that the referendum processes were fair;
- b. There were a significant number of violations of rules and procedures within the societies including one by-law violation; and
- c. There may have been an unbalanced playing field in favour of a "yes" vote in the referendum.

27. In the attachment to the letter, Jim Delaney details his concerns about the referendum process. First, he expresses serious concerns about the oversight and management of the process. Second, he raises specific procedural concerns. Third, he reviews the existence of an unbalanced playing field.

28. In arriving at these conclusions, he considered:

- a. The fee requests submitted by the student societies together with the documentation provided by the student societies to support the fee requests;
- b. The complaints, comments and interventions received during the course of the referendum campaign, voting period and afterwards;
- c. Investigations of some of the complaints to determine whether those concerns had been addressed by the student societies;
- d. A review of reference materials on the conduct of electoral processes; and
- e. The issues and questions which we raised in the e-mail of January 20th, and the response of the CFS dated February 11, 2003.

29. In the February 25, 2003 letter, the three student societies were advised of the courses of action available to them given the conclusion that the fee increase could not be positively recommended. In particular, it was suggested that the student societies hold new referenda with improved rules and procedures or, if the student societies believed that the results should be accepted and if they wished to have the fee increase considered by the University Affairs Board in the absence of the recommendation, the societies' representatives should contact the Governing Council to determine the manner by which the matter could be brought to the University Affairs Board for

consideration. It was further indicated that Student Affairs would not object to the matter being placed directly before the University Affairs Board without a recommendation.

PART III – ARGUMENTS

43. The conclusions set out in the February 25th letter should be accepted by the Board for two reasons. First, both the Office of the Vice-President and Provost and the Board are entitled, and indeed required, to consider whether the referendum was conducted fairly and in a democratic manner. Second, the assessment should be given considerable weight as it properly found that, on the available evidence, APUS had not satisfied the requirements under the Policy.

The Policy, Procedures and Guidelines Require Consideration of Fairness and Democracy

44. The APUS assertion that considerations of fairness and democracy are not relevant to the Board decision is not correct.

45. The Policy for Compulsory Non-Academic Incidental Fees was approved by the Governing Council and sets out the basis by which the University collects CNAI fees from students. In the preamble to that policy, it states:

“In recognition of their differing kinds and levels of service, activity, and need, divisions and organizations on whose behalf such incidental fees are collected shall have the initiating authority to establish such fees, subject to approval by the University Affairs Board of the Governing

Council. Requests to cancel or to change an existing fee, or to introduce a new levy, will be reviewed by the Office of the Vice-President and Provost which will, according to the guidelines, bring the requests with recommendations to the University Affairs Board.” [Emphasis added.]

According to the Policy, the Office of the Vice-President must therefore act “according to the guidelines.”

46. The "guidelines" mentioned in the above paragraph, are the Fee Guidelines contained within the Handbook at pages 19-22. At page 21, and in reference to fee changes, the Handbook states:

“The Office of the Vice President and Provost reviews submissions from student societies concerning fee changes in light of the requirements spelled out in these procedures, and then, if appropriate, forward the requests with its recommendations to the University Affairs Board. The Board looks particularly for assurance that the decision to change the fee was arrived at by proper constitutional process and with adequate discussion and publicity within the constituency concerned, that applicable referenda were conducted in a fair and democratic manner, and that accurate financial records are maintained.” [Emphasis added.]

The Office of the Vice-President therefore has the discretion on whether or not to forward requests for fee changes to the University Affairs Board based on whether or not doing so would be "appropriate".

47. Read together, the Policy combined with the Guidelines in the Handbook show that the Office of the Vice-President and Provost is to only bring appropriate recommendations to the University Affairs Board and must, in reviewing the conduct of the referendum, determine whether or not it was conducted in a fair and democratic

manner in order to provide the proper recommendation to the Board. In turn, the Board must also consider whether the referendum was conducted in a fair and democratic manner.

48. It is noted that throughout the process, APUS was advised by Student Affairs that the question of whether the process was fair and democratic was a fundamental consideration for the fee increase proposal. APUS never objected to this.

“Due Constitutional Process” Requires Basic Considerations of Fairness

49. The Policy also states at paragraph 4:

“Requests to change the fee collected on behalf of a student society and requests for new fees shall be approved only when evidence has been presented and the request has been authorized by due constitutional process in the organization. The procedures to request approval of a new fee or an increase to an existing fee shall be published in the handbook for student societies.” [Emphasis added.]

50. The Oxford English Dictionary (2nd ed.) defines "due" as that which is "appropriate; proper; right; such as ought to be, to be observed, or to be done; such as is necessary or requisite for the purpose; adequate; sufficient."

51. The Policy does not merely say that the request was authorized by “constitutional process” but states that the request must be authorized by “due constitutional process”. The addition of the word "due" establishes that there is more required than technical compliance with the wording in APUS’ constitutional documents but that there is the requirement of some element of fairness, propriety, and adequacy. Due constitutional

process always requires consideration of fairness as a basic underlying principle in a democratic society.

52. Finally, a referendum is the process of submitting a question to a body of voters. As such, it is implicit that a referendum will be conducted fairly and in accordance with democratic principles. To suggest that in a democratic society, the number of votes cast indicate the “fairness” of the referendum process is a preposterous position.

Factors Supporting the Student Affairs Decision not to Recommend

53. The factors cited in the February 25th letter in support of the decision not to recommend are well supported by the over 250 pages of material that was reviewed and evaluated. Specific responses to the APUS criticisms of these factors are set out following.

Three Student Societies; One Referendum

54. Although APUS contends that its referendum was separate from the referenda conducted by the SAC and SCSU, it was obvious that there was one referendum campaign on behalf of all three student societies. As such, contrary to APUS’ contentions, any concerns or complaints addressed to the other two student societies but relating to the referendum process generally are equally applicable to the APUS portion of the referendum.

Absence of Appeals Mechanism

55. There are two principal problems with the fact that there was no appeals mechanism. First, stemming from the large number of complaints received by the Office of Student Affairs, it is likely the case that students were unwilling to approach the JRC to complain about the JRC's own conduct. While the existence of an appellate body is not a specific requirement, APUS was required to ensure that any concerns or complaints were dealt with effectively. This was not done. Second, the JRC was not a neutral body as half of its members were representatives from the CFS, which was clearly in an advocacy position with respect to the referendum. It was particularly necessary, under those circumstances, to have a neutral party responsible for dealing with complaints or concerns to ensure that both sides on the issue were conducting themselves appropriately.

JRC Communications

56. Integrity in the process is determined, in part, by ensuring that all members are kept abreast of the developments surrounding the referendum process and any issues arising therein. The failure of each association to consistently provide notice of JRC meetings and communicate the decisions made, meant that the process was not transparent and was flawed. APUS attempts to hide from this contention by stating that nothing in its by-laws requires notice of JRC meetings and that it received no complaints on this point. This position does not respond to the substance of the complaint .

Proper Notice to Members

57. This by-law violation regarding notice was of serious concern. However, APUS argues that even this clear violation is not serious and that it was still in “substantial compliance” with its by-laws. This contradicts APUS’ position that the Board is not entitled to look at the overall fairness of the referendum process.

58. There is no requirement that the Board must consider whether APUS is in “substantial compliance” with its by-laws. In fact, the Policy and Guidelines are quite clear that all by-laws and rules must be complied with.

APUS Professional Experience Year Students

59. An “entitlement” to vote without an “opportunity” to do so renders the entitlement completely devoid of meaning. APUS was fully aware of the problems facing PEY students, and in particular, those students who lived outside of Toronto and yet, it did not inform those students that “alternate arrangements” were possible for voting. It was APUS’ responsibility to direct its constituents to all manners in which members could vote and students should not have had to complain in order to be informed that alternate arrangements were possible for students located outside the Toronto area. This failure had the effect of disenfranchising a distinct group of students.

Approval of Campaign Materials

60. APUS suggests that campaign materials, which are vital to any campaign, are not reviewable because they are not defined in the APUS by-laws. This submission completely misses the important point that referenda must be fair and must therefore be advertised in a fair manner. The fact that the three JRCs had different tests for approving referenda materials, and that there were issues respecting inconsistencies in the approval of “yes” and “no” materials shows that the process was flawed and was not properly handled.

Mixed Voter Eligibility Lists

61. APUS completely misstates the concern under this heading. The concern was not about the voter verification system used to vote but because of the different criteria used to establish the voting lists. This resulted in lists which had the potential to be inconsistent; i.e., there may have been students appearing on one list as members of particular student societies yet on the other list as students apparently ineligible to be members of the same societies. This concern has not been answered.

Activities of Poll Clerks

62. The conduct of poll clerks at polling stations is of vital importance in ensuring that each student had an opportunity to vote without being bullied or badgered. This was a significant issue as numerous complaints of improper conduct were reported to the

Office of Student Affairs. APUS argues that it did not receive any complaints on this issue. Given the joint polling stations, that is not an effective response. Concerns as to the impartiality of the polling clerks and their conduct during the voting, however reported, are relevant to the question of the referendum's fairness.

Campaigning on Voting Days

63. Alleged high pressure tactics used on voting days to coerce voters to participate in the vote are not in compliance with fair and democratic practices governing referenda.

Status of JRCs with Student Societies

64. This concern stems from the manner in which the SCSU and SAC approved their JRC decisions. The SAC Board did not ultimately ratify all decisions of their JRC despite a resolution stating that was required. The SCSU's JRC stated that it was not bound by the resolutions approved by the SCSU Board. These errors show that the by-laws of those two associations were not complied with and the results of the one referendum held on behalf of all three student societies were therefore tainted.

Three Different Referendum Codes

65. The fact that this was one referendum means that one set of rules should have been used to conduct the referendum. While the by-laws of each association had to be

complied with, the fact that these associations decided to unify their referendum process in most respects meant that they should have unified the process in all respects to ensure fairness and consistency across the board.

Conclusion

66. The Board is required to determine whether, in light of all the evidence and the factors identified in the February 25th letter, it is satisfied that the 2002 fee increase referendum was conducted in a fair and democratic manner and in compliance with due constitutional process according to the Policy, Procedures and Guidelines. In making its determination, the Board is entitled to consider and give weight to the assessment and findings of the Office of Student Affairs, which were based on a proper set of considerations. I suggest that the Submission of APUS does not provide substantial grounds for the Board to arrive at a different conclusion from the that prior assessment.