



Report of the Ombudsperson
on the
York Federation of Students Elections Process

“TOWARDS A MORE LEVEL PLAYING FIELD”

August 30, 2010

Towards a More Level Playing Field

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1. Introduction *

This examination of the election procedures of the York Federation of Students (“YFS”) was undertaken by the York University Ombudsperson at the request of York University President, Mamdouh Shoukri. The terms of reference set out by President Shoukri for this review are reproduced in full in the next section of this report.

In brief, those terms of reference indicate that the York Administration has received a significant number of complaints concerning alleged unfairness in the YFS elections procedures this past spring. The terms of reference note that although Presidential Regulation 4 (“Regulation 4”) delegates to student governments and organizations the primary responsibility for the organization and conduct of elections, the President retains residual responsibility to ensure the democratic, orderly and responsible conduct of elections. In the exercise of this responsibility, the President invited the Ombudsperson to report on whether there are changes in the YFS election procedures, processes or practices that should be implemented in future elections in order to ensure transparency, fairness and the avoidance of conflicts of interest.

YFS elections in recent years have been intensely contested. In the main, student candidates for office affiliate themselves with one of two parties contesting the election. The typical pattern is that an incumbent group, consisting in the main of members of the past year’s governing party will be seeking, in effect, re-election. Some members of the group will have replaced incumbent members who have graduated or who, for other reasons, are not seeking re-election. The party name for the incumbent group may have changed but, in substance, last year’s governing party seeks re-election. Those who oppose their re-election form an opposition party and campaign to win the election and replace the incumbent group as the new governing party.

In recent years, the incumbent group has enjoyed success. The opposition parties and their supporters allege unfairness in the conduct of the elections in various ways that advantage the incumbent group. Last spring’s election was particularly heated. Two slates, an incumbent group and an opposition party contested the election. The campus was awash with posters and pamphlets, along with the active use of classroom talks and online communications tools. One incident, in particular, stirred further controversy concerning the fairness of the YFS election processes.

* Acronyms:

“YFS” York Federation of Students

“CRO” Chief Returning Officer for the York Federation of Students

“EC” Election Committee that oversees the York Federation of Students Elections

“EPC” Election Procedure Code

On March 3rd, in the midst of the campaign, Excalibur, the student newspaper, published an article questioning the tactics of an incumbent politician who was running for re-election. Those running against the incumbent seized the opportunity thus provided and handed out copies of the free paper to potential voters in the rotunda of Vari Hall. Under the current YFS Election Procedure Code ("EPC") all "campaign materials" and "tactics" must be approved by the Chief Returning Officer ("CRO"). The CRO determined that copies of the newspaper constituted campaign materials that had not received her approval. Handing out copies of Excalibur therefore breached the EPC. Under the EPC, the CRO has the discretion to assign demerit points for misbehaviour by candidates up to and including an amount that would disqualify a candidate from winning the election and taking office. Those who handed out the paper were given warnings and demerit points by the CRO for handing out unauthorized campaign material. Allegedly, some of the group questioned how the paper could be construed as campaign material since the paper is available on newspaper stands and continued to hand it out. In response to this transgression, the CRO added additional demerit points amounting to a disqualification for repeating the offence and intentional violation of the Election code.

Further, however, this penalty was not only applied to those handing out the papers but, as well, to all of those candidates associated with the same slate who were also assigned enough demerits points to disqualify the majority of the team. In one fell swoop then, an entire election process had been turned into what was essentially an acclamation of the incumbent slate.

A vocal proportion of the student electorate that supported those opposing the incumbents erupted in anger and questioned the entire election process. They alleged a number of conflicts of interest, and questioned how exactly the CRO was appointed and by whom. The lack of documented clarity concerning that appointment spurred further speculation that the process was not fair, nor independent enough from those currently wielding power. It was also widely rumoured that paid full-time student leaders from other universities were campaigning on the Keele campus for the incumbents. It has also been suggested that the incumbent groups in the various campuses stagger their elections so as to facilitate campaigning for incumbents at other universities, a favour allegedly reciprocated by York incumbents canvassing in student elections at other universities.

Votes were cast and counted while those who had essentially been disqualified engaged in an appeal process. The appeals process is overseen by an Elections Committee allegedly dominated by the incumbent group. Those who ran in opposition claimed to have been demoralized by their mistreatment. They did not bother to send scrutineers to count the ballots. Further, allegations were made by them, fairly or not, with respect to the security and integrity of the balloting process. Calls for the University to intervene intensified.

After the votes were counted and it was apparent that the incumbent group had enjoyed success, the Elections Committee met and overturned a number of the CRO's decisions with the result that no opposition party member who enjoyed majority support in the ballot was disqualified. The end result was that the incumbent slate won a majority of the positions with four students from the other slate enjoying success. While nothing should be taken away from the victory of the incumbents or their elected mandate, the electoral process has been called into disrepute and not for the first time in YFS history.

To an outsider of the process, the fact that a student newspaper might be classified as unauthorized campaign material and that its distribution by candidates could enable the CRO to disqualify them for office seems quite remarkable. Nothing like this could occur in ordinary democratic processes outside the university environment. As always, however, the issue is more complicated than might at first appear. Moreover, the bitter complaints of opposition candidates who fail to enjoy success in attracting the support of a majority of their fellow students may appear to be mere "sour grapes". That, at least, is apparently the view of the incumbent group and its supporters. Again, however, the issue is more complicated than this would suggest.

This review has been undertaken in an attempt to determine whether there are, indeed, legitimate grounds for the complaints of the opposition candidates and their supporters that the current YFS election procedures are or, at least, create the impression that they are structurally biased in favour of re-election of the incumbent groups. Is there substance, in effect, to their claim that the playing field is not level?

After reproducing the terms of reference of this review in the next section of this report, Section 3 provides an account of the current YFS election process. A brief description of the submissions made to the Ombudsperson follows in Section 4. Section 5 outlines the scope of the review and the constraints on its fact-finding process. Section 6 provides an analysis of the issues raised and suggestions for reform of the election process. The recommendations are summarized in Section 7.

2. Terms of Reference for Review

Terms of Reference for YFS Election Review

The University administration has received a significant number of complaints from York students regarding the conduct of the recent York Federation of Students (YFS) elections. These complaints centre on the fact that a significant number of the 21 candidates from the "New York" slate of candidates were disqualified for various infractions, including distributing copies of the *Excalibur* newspaper without prior approval of the chief returning officer

(CRO). Complaints were also raised regarding allegations of conflict of interest, the appointment and independence of the chief returning officer, alleged breaches of security, deviations from defined election protocol, irregularities at polling stations, and the process for the assignment of demerit points by the CRO.

Presidential Regulation 4 (Regulation 4) delegates to student governments and organizations the primary responsibility for the organization and conduct of elections. However, Regulation 4 notes that the president retains residual responsibility to ensure the democratic, orderly and responsible conduct of elections. The president and the administration also stand in a fiduciary relationship to York students by virtue of the significant fees that are collected by the University from all York students for the purposes of funding student government.

Transparency, fairness and integrity in the election process, as well as the possibility of orderly and democratic change, must be ensured for the benefit of all of our students. The election process must not only be fair, but must be seen to be fair. Otherwise the confidence of the community in the legitimacy of the process and the outcome may be undermined.

There is an internal appeal mechanism within YFS for the consideration of appeals which has apparently resulted in overturning the suspensions imposed by the CRO. Nevertheless the complaints that we have received raise broader issues regarding the manner in which elections are organized and managed. I believe that it is in the best interest of all students as well as the community generally that these matters be reviewed by an independent and impartial individual. I have therefore asked the University ombuds, former Osgoode dean John McCamus, to review the experience with the 2010 YFS elections and, in light of that experience, report on whether there are changes in the election procedures, processes or practices that should be implemented in future elections in order to ensure transparency, fairness and the avoidance of conflicts.

Members of the community wishing to make written submissions to Professor McCamus regarding the matters identified above may do so via e-mail at ombuds@yorku.ca.

I am asking Professor McCamus to submit his report, which will be made public, by no later than July 30, 2010.

Mamdouh Shoukri
President & Vice-Chancellor
March 19, 2010

3. Current Electoral System

The purpose of this section is to outline the current electoral system in operation by the YFS as defined primarily through a number of documents including the YFS Constitution, By-Laws and the Election Procedure Code (“EPC”).

Constitution

At its foundation, YFS sets out in the Preamble of its constitution a basic aim to *“organize students on a democratic, cooperative basis for advancing students’ interests and advancing the interests of the students’ community”*¹. The constitution further states in Article 6.2.a that *“the governing body and legislative authority of the Federation is the Council which shall be responsible for all matters of policy and for government and regulation of the Federation”*².

To that effect, YFS has established a series of By-Laws that relate to elections.

By-Laws

Like many student governments, YFS is governed by a Board of Directors. The Board is composed of “23 persons, 22 of whom are elected to The Board according to the Federation’s Elections Procedures Document”³. The 23rd member is the Board’s Speaker, an unelected position appointed by resolution of the Board. The day to day management of the affairs of the Federation is taken care of by the executive members, who together comprise the Executive Committee

The Executive Committee is comprised of the five elected Executive members and the Executive Director of YFS, a member of the YFS staff, who serves as an ex-officio and non-voting member of the Board and the Executive Committee.

The duties of the Executive include serving as “an ex-officio and non-voting member of all other Federation committees except the Elections Procedures Committee and committees where there exists a conflict of interest”⁴. The only member of the Executive who is not excluded from the Elections Committee is the Executive Director, who instead is “the Chair of the Elections Committee”⁵.

By-Law 10 outlines the general framework for elections of the Federation and articulates that there will be an Elections Procedures Code with the By-Laws superceding the Code if there is a contradiction. The By-Laws also note that

¹ YFS Constitution, Pg 1.

² YFS Constitution, Pg 4.

³ The other member is the Speaker of the Council

⁴ This is included in the Responsibilities Section 5.6 a through e and I assume that this is the same as the Federation’s Elections Committee cited later

⁵ Section 5.6f iv.

there shall be an Elections Committee which is comprised of four persons as follows:

- Executive Director (Chair)
- Two Members of the Board
- Chief Returning Officer for the Elections

Finally, By-Law 12 notes that “all employment positions of the Federation must be approved by the Board”⁶ which includes the CRO. The By-Law does not stipulate a process for selection of the CRO.

Election Procedure Code and Practice

The EPC is the core document which outlines in detail how the YFS elections are to be conducted and the authority of the election officials. I gather that the EPC was substantially revised in 2007, but I am not aware of the nature of the 2007 amendments. The present account is based on the 2010 version of the EPC.

Under the EPC, the aforementioned Elections Committee is to “oversee the conduct and supervision of the Elections of the Union”⁷. Members of the committee are precluded in the By-Laws from “seeking elected office” with the YFS⁸. They are also required to “act impartially during the Election period. Failure to act impartially may result in removal and/or censure from the committee”⁹.

The EPC also stipulates the nomination process for candidates. There is a standard nomination form that must be completed. The form requires at least 30 nominating member signatures for Director candidates and 100 for Executive candidates.

Once nominated, all members, or their authorized representative must attend the All-Candidates Meeting or arrange to meet with the CRO in person. It is at this meeting where the relevant rules, guidelines and policy are outlined¹⁰.

The campaign period is given a set start and end time which currently includes the voting period and the EPC has a number of campaign rules primarily geared towards the goal of having a fair, equal and transparent field for candidates and their volunteers. These guidelines include poster and material guidelines and campaign restrictions. All “campaign tactics, material and/or advertisement” require the approval of the CRO before they can be utilized by the candidates

⁶ YFS By-Laws 12.a, Pg 26

⁷ Election Procedure Code, Pg 8

⁸ YFS By-Laws 10.2

⁹ EPC, Pg 8

¹⁰ According to the EPC, this includes the Code, York University policy, Election Schedule and duties and functions of the relevant Election officials

and their supporters. The EPC also stipulates limitations on campaign finances and requires the disclosure of donations to the CRO and to the Chair of the Elections Committee.

With respect to violations of campaign rules, the CRO has “the sole authority to enforce the provisions” of the code. The Elections Committee, has the power to also enforce the code and “reserves the right to modify any ruling of the CRO”. If there is disagreement with a ruling made by the CRO, the appeal must be made to the Elections Committee within 48 hours. There is no additional appeal process.

In practical terms, the sanctioning of breaches of the code by individual candidates is effected by a demerit point system. Candidates are assigned a number of demerit points based on the type of violation. The EPC sets out a chart of violations and points allotted but also permits the EC and CRO to assign points at their discretion.

One of the grounds for disqualification is to accrue greater than 100% of the allowable demerit points which is 35 for Executive candidates and 20 for Director candidates.

Balloting in YFS elections is based on a paper ballot process with the accompanying arrangements concerning polling stations, daytime and overnight ballot box security, scrutineering of the counting process, and so on. The EPC itself however, permits voting to take place via either an online or paper process. YFS has, however, used the paper ballot system exclusively. While the balloting process itself is a paper ballot, the voters list is based on an electronic database. After signing a privacy agreement with the University, the YFS receives a membership list from the University that includes relevant data including first and last name, Faculty, college, and three digits of the student number. This information is then loaded into a database which is used to verify eligibility and the various ballots that a student receives at the polls.

The winner is determined via a “first past the post” system where the candidate with the greatest plurality of votes is elected.

Within 72 hours of the close of voting, candidates are required to submit to the CRO receipts outlining campaign expenditures along with disclosure of campaign sources and amounts.

Subject to all appeals that have yet to be addressed, the YFS Board ratifies the results of the election and the new members take their position effective May 1st.

In summary, the YFS has established an electoral process that is governed and outlined in a number of written documents including by-laws, the Election Procedure Code and a frequently asked questions (FAQ) section on their

website. These documents, along with rulings of the Chief Returning Officer and Election Committee articulate the rules, processes and practices that govern their elections. For the most part, this documentation is clear and serves its purpose: to provide transparency and fairness in an electoral process.

4. Submissions

It is clear to me that those involved in the electoral process at York are passionate and dedicated students who wish to make a positive contribution to the student population whom they serve.

In total, 66 written submissions were submitted to this review which varied both in length and content. The submissions can generally be summarized as falling into four main categories:

1. Election staff, primarily poll clerks, who attested that they conducted their role with integrity and fairness.
2. Candidates and volunteers who either found the electoral process fair or unfair depending on whether or not they supported the incumbent *Students First* or opposition *New York* slates.
3. Individuals who self-identified as not being with either side but offered insights into the election process.
4. Non York University students who either found the electoral process fair or unfair.

A number of submissions also stated the belief that the university, and by extension, myself as the Ombudsperson, should not be undertaking this review. There is a strong sense regarding the autonomy of the York Federation of Students and the importance of that autonomy so that the YFS can serve as an effective body in its dealings with the university administration. There was a strong correlation between those who believed the process was fair and those who thought that the university should not be involved in a review.

Further to the submissions, I also met with several parties who had expressed an interest in meeting with me to discuss the matter further. In particular, upon his request, I met with and had a very useful discussion with the Elections Committee Chair and YFS Executive Director, Jeremy Salter. I am grateful to Mr. Salter for his cooperation. I should note, however, that subsequent requests were made to Mr. Salter for copies of the previous version of the EPC, i.e., (pre the 2007 amendments) and for a copy of YFS' EPC internal review by its law firm. At the time of completion of this report, neither document has been provided by YFS in response to those requests.

I would like to take the opportunity to thank those who took the time to express their thoughts in relation to my review. The insights they provided greatly assisted me in this review.

5. Scope of the Review

Some readers of this report will hope or expect to find out exactly what happened in the YFS elections in the spring of 2010. Many allegations of wrongdoing were made both by the opposition group and the incumbents. Allegations by one side are denied by the other. What actually happened?

Readers who expect detailed fact-finding will be disappointed. A review by the Ombudsperson is not a Royal Commission or Commission of Inquiry established by law. The Ombudsperson has no power to subpoena witnesses, compel parties to appear and testify under oath or subject themselves to cross-examination. The Ombudsperson cannot compel people to submit relevant documents to assist in an investigation. In short, the Ombudsperson does not have the power to carry out the type of formal legal inquiry that would be necessary to create a detailed factual record, assess the credibility of witnesses, and make findings of fact. This is not to suggest that the Ombudsperson should have such powers. As Canadian experience well illustrates, such formal inquiries are complex, burdensome and expensive affairs.

This is not to say, however, that it is impossible for the Ombudsperson to get a sense, in a review of this kind, of the factual context of the matter under review. People do come forward and tell their side of the story. Some, of course, do not. In the present case, some students who were invited to make submissions or meet with the Ombudsperson declined to do so. On some issues, of course, there may be no dispute. Thus, for example, it is accepted by both the incumbents and the opposition groups, that members of the latter group handed out copies of Excalibur, that they were assigned demerit points by the CRO that would amount to disqualification, and that appeals were taken from the CRO's decision with some success. It is accepted by both groups that paid executives of student councils from other universities attended on the York campus during the campaign and campaigned for the incumbents. There is no doubt that aggressive campaign tactics near the polling stations occurred during the voting process. There seems little doubt that the appointment process of the CRO last year was not a model of transparency.

Further, to the extent that the concerns have been raised with respect to the structural independence of the Elections Committee, the CRO and the Executive Director from the incumbent group, the factual context resides in the provisions of the Election Procedures Code and the practical reality that the incumbent group controls the decision-making process at YFS. To determine whether lack of

structural independence is a legitimate source of concern, it is unnecessary to find fault with, or an absence of good faith in the actual performance and decision-making of any of the relevant office holders in the spring of 2010. No such findings are made herein.

On the other hand, this review does indicate that YFS election practices at York have been a source of great bitterness and, indeed, disillusionment among significant numbers of York students. This review indicates that York University and the YFS can better serve our students by re-examining and refreshing the instruments of democratic student politics.

In the next section of this report, a number of issues that emerged during the course of this review are examined and recommendations for reform of YFS election practices are made with a view to ensuring a more broadly based consensus that YFS elections are conducted in a manner that is fair, transparent and consonant with basic democratic principles.

Throughout the submission process and through a subsequent review of related written materials, it became clear that a number of issues were worthy of further consideration and deliberation. In general terms the issues can be grouped into two categories:

- a) the electoral process, and;
- b) lack of structural independence of the CRO and the EC.

With respect to the first category, issues raised related to the characterization of the student newspaper as “campaign material”, the use of duct tape rather than the more secure metallic tape to secure the ballot boxes, the frequency with which campaign material was left in polling stations, the phenomenon of aggressive campaigning in the vicinity of polling stations, the use of paper ballots rather than the more secure Evote system, and the participation on the York campus of paid student council executives from other universities on behalf of the incumbent group. The fact that YFS executives became, in effect, paid part-time students was also mentioned as providing a systematic advantage to the incumbent group.

With respect to the second category – structural independence – the issues relate essentially to the control of the election process, real or perceived, exercised by the incumbent group through its control of the appointment of the CRO, its dominant role in the functioning of the Elections Committee and a perceived conflict of interest in the role of the Executive Director, who is, in effect, an employee of the incumbent group and who therefore, is perceived by some at least as having an interest in the outcome of the election. For members of the opposition group and their supporters, an election process effectively controlled by the incumbent group has the appearance of unfairness.

For the purpose of this review, I will follow a format which will include:

1. An examination of the issue and context surrounding it
2. Examples of how other student associations/unions from other Canadian universities handle the issue
3. A recommendation for the President to consider.

6. Analysis and Recommendations

A. Electoral Process

As noted above in Section 3, the YFS sets out in the preamble of its constitution a basic aim to *“organize students on a democratic, cooperative basis for advancing students interests and advancing the interests of the students’ community”*(YFS Constitution ,Pg 1). To fulfill that aim among others, the YFS has established an electoral process that is governed and outlined in a number of written documents including by-laws, the election procedure code and a frequently asked questions (FAQ) section on their website. Despite the extensive documentation provided, during the course of an election there are instances where interpretations of the guidelines are needed. Thus, the CRO and EC are empowered to make such rulings and decisions under the EPC.

To a casual observer, the controversies surrounding the YFS elections are remarkable in their intensity. It may be obvious that in a system established to determine ‘winners’ and ‘losers’ that there will be conflict and people will seek out opportunities within the electoral process to obtain an advantage. In this environment, I have no doubt that the position of CRO is a challenging one. Be that as it may, there is no reason to assume that the current arrangements concerning the YFS elections procedures cannot be improved in ways that could lesson perceptions of unfairness in the manner of their administration. This section of the report examines a number of aspects of current procedures where such improvements could usefully be made.

- i. Handing out of Excalibur and Consequences. Excalibur is York**
University’s community newspaper which is organized and edited by students and published weekly during the fall/winter term. Excalibur normally covers the YFS election. It provides information about the candidates and their platforms along with news about the campaign itself. In the March 3rd edition, a front page story was printed which was critical of the incumbent President of YFS who was running for re-election. Candidates for the New York slate began to hand out the paper to passers-by. There was a significant amount of consternation surrounding the distribution of the paper as it was classified as campaign material by the

According to the YFS EPC, campaign material is defined as *“any item, design, sound, symbol or mark that is created or copied in any form in order to influence voters to cast a ballot in favour or in opposition of a candidate.”*¹¹ Interpreting this provision rather broadly, YFS and the CRO have taken the position in the past that copies of Excalibur constitute “campaign material” in the requisite sense. Indeed, this precise issue arose in a previous year and was mentioned in the FAQ posted on the YFS website and from what I understand, addressed at the All Candidates Meeting. Thus, complaints by the opposition New York Slate that this view was either unexpected or unfair are not entirely convincing. At the least, candidates should have sought either clarity or the CRO’s approval before distribution as they did with other materials.

It is quite another matter, however, whether student newspapers should properly be considered to be “campaign material”. Even under the current EPC definition of “campaign material”, it is not obvious that newspapers constitute material that is “copied or created in any form” if that phrase is interpreted in light of the evident purpose of the provision. Apparently those who designed the YFS process were of the view that it was necessary to control the content of campaign materials. Although this form of “prior restraint” has no parallel in the real world of democracy, let us assume, for the sake of argument, that some control over the content of campaign materials is desirable in the context of university student politics. A principal concern, I was advised, is to avoid the circulation of defamatory material. Surely the point of such a regulation, however, is to ensure that candidates themselves do not “create or copy” material of this kind. A student newspaper (or, indeed, an off-campus newspaper containing a story about a YFS election) is not “created” or “copied” by a candidate. The view of YFS that handing out copies of Excalibur involves the distribution of campaign material constitutes, in my view at least, a very dubious interpretation of the current EPC definition of the concept.

It is alleged, however, that New York candidates scribbled “vote New York” or words to that effect on the copies of the Excalibur distributed by them. If so, this would render more plausible the argument that they were campaign materials in the requisite sense. As a matter of principle, however, the current YFS policy that Excalibur constitutes campaign material which, through freely available across the campus, cannot be handed out by candidates without running the risk of disqualification, is not only inconsistent with practices in the real world of democracy, it is an unnecessary and inappropriate restriction on the abilities of candidates to

¹¹ EPC, Pg 3

inform their fellow students with respect to the issues at stake in a YFS election.

Recommendation

1. The definition of “campaign material” in the EPC should be revised in such fashion to clearly indicate that copies of student newspapers not created by candidates in the YFS election do not constitute campaign material in the requisite sense.

ii. Duct Tape vs. Metallic Tape

A complaint made by opposition candidates concerning the 2010 process relates to the tape used to secure ballot boxes at the end of a day of balloting. The practice is to securely close the boxes with tape and remove them to a secure location within the University where they await the ballot count. As noted above, the election code permits YFS to utilize either an online or paper ballot system. For recent elections, including the 2010 spring election, YFS used a paper ballot system modelled after Election Canada guidelines. The New York slate was of the impression that special metallic tape, provided by Elections Canada was going to be used to seal the ballot boxes. Metallic tape shreds upon any attempt to tamper with it providing an additional level of security for the ballot boxes. In the event, metallic tape was not used and the ballot boxes were sealed with duct tape. The opposition candidates cried “foul”, alleging that this undermined the security of the balloting process. The EC provided an innocent explanation for the change from metallic to duct tape. The EC contends that Elections Canada unexpectedly did not send the tape. The tape is not available from another source. Therefore duct tape was used instead. In any event, duct tape, they argue, does not tear easily but does form a proper bond to seal boxes.

Although the type of tape being used was changed unexpectedly, I am not aware of any compounding evidence of ballot box tampering. The allegation that the use of duct tape was a devious exercise in undermining the security of the balloting process appears to lack any factual foundation. The opposition’s apparent over-reaction to the change of ballot box tape may have been fuelled by their perception of an election gone awry.

Recommendation

2. For future elections, if any, employing a paper ballot process, YFS should, if possible, employ metallic tape to seal ballot boxes and in the event that metallic tape is unavailable, disclose in advance which types of tape are permissible to be used.

iii. Campaign Activity in the Vicinity of Polling Stations

As I noted earlier, the campaign period for YFS is a lively affair with candidates who are passionate about their platform, working tirelessly to advocate their position to their fellow students. YFS permits campaigning to occur during the voting period with limited restrictions. This enables candidates and their campaigners to *'pull the vote'*. They are often found circulating near polling stations asking students if they have voted and if not, proceed to campaign and advocate their position. A notable part of this aspect of the campaign is that students are given postcards or other pieces of paper containing the full list of slate names and in turn, often take these items with them into the voting booth area.

To attempt to ensure a voting atmosphere free of undue pressure, the EPC states

11 Campaign Restrictions on Polling stations

Restrictions concerning Union polling stations include:

- i. Campaigning shall not take place within six (6) metres of a designated polling stations during the election voting days*
- ii. Any and all campaign materials found within six (6) metres of a designated polling station shall be removed during the election voting days.*

Upon request from the University, YFS extends the 6 metre rule near the Scott Library to ensure traffic flow is not hindered.

Two different complaints have been made with respect to current YFS practices relating to campaigning within the vicinity of polling stations.

First, it is alleged that students who enter polling stations with lists of slate names sometimes leave them in the polling station. This creates, if accidentally, a breach of the "no campaign material rule", and, it is alleged, creates an unfair advantage to the candidates on the lists left in the polling stations. With respect to this concern, YFS has responded that its current practise is that polling clerks are instructed to remove any materials left behind in polling stations by voters. Sometimes, they fail to do so.

Second, concerns have been expressed concerning campaign activities at the edge of the six metre “no campaigning” area. It is alleged that some candidates and campaigners prevail upon students to vote for their party and in the process induce the student elector to step over the six metre line, thus precluding opposing candidates and campaigners from speaking to them. Students complain that they are harassed by candidates and campaigners during the voting period and, for example, that it is an unpleasant experience to walk through Vari Hall on your way to a lecture during the voting period.

Upon a review of other student elections documents, the EPC errs on the side of encouraging aggressive campaigning in the vicinity of polling stations. For example, a number of central student governments/unions from other campuses do not permit campaigning during the voting period¹² while others have a more restrictive environment to ensure that students can vote free of unwelcome influence. This usually involves a larger restriction zone than 6 metres¹³.

For example, the language that the Memorial Students’ Union utilizes in particular is clear in its desire to provide a sphere free of influence including the following three steps:

- “any campaign material remaining within sight of the polling station will be removed”
- “verbal campaigning in an area where a polling station is located shall not be within a 20-metre radius of that polling station, and the polling captains must not be able to hear such campaign from that distance.”
- “Except to cast his/her vote, no candidate or campaign worker shall be permitted to loiter in the vicinity of a polling station.”¹⁴

Further, to the extent that YFS election processes are meant to replicate the real world of democratic practice outside the university, it is of interest to note the restrictions placed on campaigning in federal and provincial elections. To ensure that a voter can exercise their vote in a Federal election free of influence, the *Canada Elections Act*, for example, states as follows:

¹² This includes the University of Western Ontario University Students’ Council, Dalhousie Student Union, and University of Alberta Students’ Union

¹³ This includes Memorial Students’ Union, Ryerson Students’ Union, Guelph’s Central Students’ Association, and the Alma Mater Society of the University of British Columbia

¹⁴ Memorial Students’ Union Election Policy Rules & Regulations Section E and I.

166. (1) No person shall

- *(a) post or display in, or on the exterior surface of, a polling place any campaign literature or other material that could be taken as an indication of support for or opposition to a political party that is listed on the ballot under the name of a candidate, or the election of a candidate;*
- *(b) while in a polling station, wear any emblem, flag, banner or other thing that indicates that the person supports or opposes any candidate or political party that is listed on the ballot under the name of a candidate, or the political or other opinions entertained, or supposed to be entertained, by the candidate or party; and*
- *(c) in a polling station or in any place where voting at an election is taking place, influence electors to vote or refrain from voting or vote or refrain from voting for a particular candidate.*

It is clear to me that a better job can and should be done to ensure that students may vote in an atmosphere free of aggressive campaigning in the vicinity of polling stations.

Recommendations

3. The EPC should be revised to preclude campaigning during the voting period.
4. If it is determined, however, that campaigning is to be permitted during the voting period, more stringent restrictions should be applied to ensure voters are free from campaigning activities near polling stations, which should include at least a 20 metre zone and the removal of campaign materials within sight of the polling station.
5. It should be a violation of the EPC for campaign materials to be brought into the no campaign zone, candidates should be instructed to not distribute such materials for that purpose and training for the removal of these materials be should enhanced for poll clerks.
6. Renewed efforts should be made to enforce the current YFS practise that polling stations should be checked after each voter leaves the station so as to ensure that any campaign material left behind by a voter is removed.

iv. **Balloting System – paper or online**

Student elections typically employ either a paper balloting system or an online system. At York, the majority of elections for student governments utilize the University’s electronic Evote system. Evote is also used for University referenda which are the mechanism for determining changes to student levied fees. This, for example, was the process used by YFS to increase its fee. The EPC allows for either paper or online voting to be used. YFS has determined, however, to use paper balloting for the past several years.

As mentioned earlier, although the YFS balloting process itself is a paper ballot, the voters list is based on an electronic database. After signing a privacy agreement, the YFS receives a membership list from the university that includes relevant data including name, Faculty, college, and three digits of the student number. This information is then loaded into a database which is used to verify eligibility at the polls.

A number of concerns were raised that students received either the incorrect number or incorrect type of ballot. The CRO’s report addresses a number of the cases that were brought to her attention¹⁵. However, based on the other complaints raised, it is reasonable to assume that there is an amount, however minimal, of human error that may take place using a paper system.

There are a number of advantages with both paper and online balloting systems. They may be conveniently summarized in table form.

Paper Ballot	Online Balloting
Similar process is used in provincial and federal elections	Similar process is used by students in other York elections and referenda
Compared to current E vote platform, paper voting system allows individual to vote in shorter time at ballot stations	Depending on the system employed, students would be able to vote anywhere on campus or off campus which would especially benefit members who are part-time students and those who are taking distance education or on various sites (ie. education and nursing students)
Employs a number of students over the course of the voting days as poll clerks	May employ a number of students over the course of the voting days as electronic poll clerks
Allows for YFS to have complete control over physical ballot system	Without the need to count individual ballots vote totals can be made available after conclusion of voting
	No need to worry about security of ballot boxes, use of tape or what type of tape is being used
	Environmentally friendly as there is no need to print paper for ballots

¹⁵ Report of the Chief Returning Officer, March 2010, Pgs 17-18

YFS appears to have opted for paper ballots for essentially four reasons. First, the paper ballot more closely parallels the voting system used in federal, provincial and municipal elections. It is therefore alleged to be a better “democratic experience” and preparation for future participation in Canadian democratic practices. Second, YFS alleges that the security of the Evote system is exaggerated. Similar systems have been hacked elsewhere, they claim. Third, the existence of polling stations induces, they claim, a better voter turnout. Fourth, the paper system creates jobs for students as poll clerks.

There are, however, persuasive considerations in favour of electronic voting. Its use should curtail the current level of student cynicism, whether warranted or not, concerning the integrity of the YFS ballot. As far as the role of polling stations as inducements to vote and as providers of employment is concerned, there is no reason why polling stations could not be employed in an Evote system. They have been used in other Evote exercises at York. If Evote polling stations are utilized, the “democratic experience” will be sufficiently similar to Canadian voting practices. The Evote system allows those who are off-campus for various reasons, to participate in the voting. The Evote system at York has functioned in a secure fashion at York for many years.

To address concerns about so-called “laptop voting” where candidates or volunteers pass around a laptop encouraging students to vote or other forms of abuse, other student governments/unions such as the Alma Mater Society¹⁶ or Memorial Students’ Union¹⁷ have drafted regulations concerning this practice. Further, the experience at York in its referendum process has been to require those involved to either refer students to vote at established electronic polling stations as was done during the successful YFS referendum to increase its levy or to make it an offence to be campaigning in the vicinity of a voting station (including any computer being used for voting).

On balance, it is my view that the arguments weigh in favour of experimentation with the use of the York Evote system by YFS. In light of difficulties experienced in 2007 with the paper balloting process, a proposal was made and accepted by YFS¹⁸ to hold a referendum on whether students would prefer on line voting to the paper ballot system. At the very least, this proposal should be acted upon.

¹⁶ AMS Code of Procedure, Article 13

¹⁷ MSU Election Policy, Section R

¹⁸ Excalibur, February 7, 2007, P 3

Recommendations

7. YFS should utilize the Evote system or another third party online voting system
8. At the very least, YFS should follow through on its 2007 commitment and put forth a referendum question to York students on whether to utilize a paper ballot or an online voting system.
9. YFS should include in polling stations information for those who may have a concern regarding the voting process (e.g. incorrect number of a type of ballots and the process to rectify, information on voting process and a description of what would invalidate a ballot).

v. Reimbursement of Campaign Expenses

Elections can be expensive affairs, especially when you are trying to reach a population the size of the YFS membership. With the dominance of party slates and their ability to pool resources, it is possible for campaigns to cost hundreds to thousands of dollars. Even with the development of online campaign tools, there is still a substantial reliance on printed publications and design work that costs money. These expenses are legitimate but may provide a potential financial barrier to candidates resulting in a less inclusive electoral process.

In my review of other campus election codes, it became apparent that the overwhelming majority have some form of system to reimburse candidates of their verified election expenses up to a maximum amount or cap on such expenses.¹⁹

The EPC requires that expense reports, including donations, be filed by candidates with the CRO and the Chair of the EC. Unlike other Canadian election processes, there is no requirement that these reports be available for public disclosure. Such a requirement would enhance the transparency of the YFS election process.

¹⁹ This includes the University of Western Ontario University Students' Council, Dalhousie Student Union, and University of Alberta Students' Union, Memorial Students' Union, Ryerson Students' Union, University of Toronto Mississauga Students' Union, and the Alma Mater Society of the University of British Columbia

Recommendations

10. YFS should establish a process to reimburse, in part or in full the maximum verified expenses related to an election campaign.²⁰
11. Upon acceptance by the Elections Committee, expense reports should be made public including the name and amount of any donations.

vi. Demerit Points, Disqualification and Appeals Process

The use of demerit points to address campaign violations is a common feature of university election codes. The mechanisms for imposing demerit points and appealing such decisions do, however, vary from one campus to another.

This year, a number of candidates were, in effect, disqualified based on the decision of the CRO to assign demerit points. Although the EPC makes reference to an Election Appeals Committee, in reality, it is the same as the EC in its membership.

The CRO is a member of the EC and thus sits in judgment on an appeal from his or her initial decision. For this reason, among others, I find the appeals process to be lacking in due process.

Other student union codes that were reviewed go to considerable length to differentiate the appeals process from the administration of the election. In several other schools, this is handled by pre-established independent Student Courts or other like bodies. In other universities, the appeals process is outlined and the membership of the appeal panel is independent of the administration of the election.

On the topic of demerit points and disqualifications, a further problem with the current system is that a candidate may be disqualified and that this is known before or during the voting process, therefore having a tangible impact on the campaign and perhaps, the outcome of the election.

²⁰ I note that in her report, the YFS CRO has also made a recommendation to develop a process of reimbursement

To disqualify a candidate during the campaign is a significant decision and given the experience in this recent election, it would be appropriate for there to be a mechanism to address this impact virtually immediately rather than leaving candidates in a limbo of being “disqualified subject to an eventual appeal.”

Ideally, the appeal panel should have a broad discretion to impose an appropriate form of relief rather than, as is currently the case, simply allowing, disallowing or reducing the demerit points awarded by the CRO. For example, it was alleged last spring that one candidate, at an all-candidates meeting at Glendon, falsely claimed that his opponent was unilingual. Assume for the sake of illustration, that the CRO, believing the misinformation to have been intentional, assigned demerit points that would disqualify the candidate. The appeal panel should convene within a very short time frame, a day or two at most, and should be empowered not only to allow or disallow the demerit points (or substitute a lesser amount) but could decide to impose conditions on the candidate’s further participation in the election as a qualified candidate. For example, the candidate might be required to make, and suitably publish, a retraction. In this way, the appeal panel might be better able to balance the need for effective sanctioning of misconduct while, at the same time, preserving the democratic contest than can be accomplished under the current approach.

As last year’s experience also indicates, it is possible for the CRO to assign demerit points during the voting process. Presumably, this is considered necessary to deal with infractions that occur during this period. Public announcement of such demerit awards could, however, also influence the outcome of the election. If as recommended above, active campaigning during the voting period is precluded, this would no longer be necessary and there could be a moratorium on assigning points until the voting period is concluded. If the practice of permitting campaigning during the voting period is continued, the CRO should be permitted to advise candidates that demerit points will be assigned after the voting period concludes, but not publically announce such awards until the voting period is concluded.

Recommendations

12. The EPC should establish a separate appeals body that is distinct from and independent of the membership of the EC and composed of non YFS board or staff members.
13. Elsewhere in this report, it is recommended that the EC itself be reconstituted as an independent body dissociated from the current YFS Directors and staff. If this change is effected, it may be satisfactory to establish the appeals panel as a sub-committee of the EC. The CRO would not sit on that sub-committee.
14. The EPC should be amended to include an automatic provision that if a candidate reaches over 100% of the demerit points during the campaign period, an automatic review of the demerit points is immediately conducted by the appeals body. The appeals body should have a broad discretion to fashion appropriate sanctions and conditions upon a candidate's continued participation in the election as a qualified candidate.
15. If campaigning is, contrary to the recommendations made elsewhere in this report, to be permitted during the voting period, the CRO may privately advise candidates that demerit points will be assessed after voting is concluded for infractions committed during that period but not make public announcements to this effect.

vii. Campaigning on the York Campus by Persons other than York Students

The YFS EPC states that:

Candidates are not entitled to use in their campaign, any service or monies, conferred onto them by virtue of holding any position in any campus organization, unless such services would still be available to them otherwise. This includes, but is not limited to, office supplies, equipment, advertising space and staff.

There were concerns raised about the influence and impact of external campaign staff/volunteers who serve as a “non-arm’s length party” which is defined as *:an individual or group who a candidate knew, or reasonably ought to have known, would assist that candidate with his/her campaign”*

In particular, there are concerns that paid student executives from other campuses volunteer for the incumbent electoral slate and actively campaign on the York campus. This network has been developed primarily by the YFS incumbents and may not exist without the benefit of serving in office. To that end, it can be viewed as a tangible benefit of office. The end result is a structural and systemic imbalance as non-York “volunteers” exclusively support the incumbent slate which then allegedly reciprocates the effort in the local elections on other university campuses.

As a matter of principle, it is not at all clear that members of YFS benefit from having campaigners from off-campus interloping in the YFS elections. If the point of the exercise is to provide a wholesome and effective exercise in self-governance for York students, what is the advantage to York YFS members of having non-York students meddle in the York student elections process? Unlike other undergraduate students, these individuals are not paying any fees to YFS and cannot vote in the election yet come to campus specifically to impact the outcome of the election. This is, in my opinion, inappropriate. In my view, campaigning on campus by persons other than York students ought to be precluded by the EPC. The EPC currently governs the activities of campaigners. It is a small, but important step to ensure that all campaigners are members of the York community.

Recommendations

16. YFS should require all campaigners for candidates (referred to in the EPC as non-arm’s length parties) to be registered by the candidate with the CRO; and
17. Only members of YFS should be eligible to serve as a non-arm’s length party.

B. Lack of Structural Independence of the CRO and the EC.

A number of submissions indicated serious concerns regarding bias or, more accurately, perceptions of bias in relation to officials involved in the electoral process. More particularly, members of the opposition group and their supporters allege that the dominant role played by the incumbent group in appointing the CRO and in the composition of the Elections Committee gives the incumbent group a dominant role in managing the YFS election process. Given the current role of the CRO and the Elections Committee in determining the location of polling stations, approving all “campaign materials” and campaigning “tactics”, assigning demerit points and potentially disqualifying candidates from office, it is not surprising that opposition groups feel that a system that places responsibility for such decisions in a process dominated by the incumbent group, is or has the appearance of being unfair. The concern is a pertinent one as it undermines the integrity of the electoral process and has the potential to question the legitimacy of the election results.

As noted above, under the EPC, the individual and body charged with responsibility for the electoral process, the CRO and members of the EC respectively are required to act impartially. Nonetheless, concerns have been raised that the lack of transparency in the selection of the CRO, the composition of the EC and the role of the incumbent group in appointing both the CRO and the EC create the impression of a lack of independence in these officer-holders. Moreover, though it is true that decisions of the CRO can be appealed to the EC, it is noted that the CRO himself or herself, is a member of that small committee, the other members of which are closely associated with the incumbent group.

Unlike arrangements on some other campuses, the YFS election system does not have an independent judicial or appeals board with defined processes. For example, the University of Alberta Student’s Union has a Discipline, Interpretation and Enforcement Board while the Alma Mater Society at UBC has a Student Court. At York there is no similar neutral body to which appeals concerning election matters may be made. Again, without impugning the integrity of any individuals who have acted as CRO or as members of the EC in the past, it is my view that York students deserve an elections process that is managed by decision-makers that are self-evidently and structurally independent from the incumbent party governing the YFS in a particular year.

- i. **Selection and Composition of the Election Committee.** The Elections Committee and its role has already been outlined and it is evident the importance the committee has on the elections. As noted above, the EC membership consists of:

Executive Director (Chair)
Two Members of the Board
Chief Returning Officer

I will address each position in turn.

Role of the Executive Director. The Executive Director has a pivotal role in YFS. As I understand it, the Executive Director is the primary staff member who reports to the Board through the YFS Executive. In other words, the Executive Director is a staff member whose ongoing employment is contingent on the will of the Board. It is unclear why the Executive Director also retains the designated role of Chair of the Election Committee. Based on my review of other electoral codes, assigning this role to the Executive Director is unique to the YFS system.

It appears as though there is a direct conflict of interest in having the Executive Director serving as Chair of the electoral process that is responsible for selecting, in effect, his or her employer.

Two Members of the Board. The members of the Board are typically members of the incumbent group that are not running for re-election. No attempt is made to ensure that at least one member of the EC has no connection to the incumbent group, nor is any attempt made, or at least, required to ensure that one of the members of the EC will be considered by the opposition group to be a satisfactory appointment.

Chief Returning Officer. As the main administrator of the electoral process, it is obviously arguable that the CRO sit as a member of the EC. However, as noted above, given that there is no independent appeals process, it is unacceptable that the CRO can, based on the documentation, sit in judgement on appeals from decisions of the CRO himself or herself regarding, for example, the awarding of demerit points. The CRO should not be involved in this way in the appeals from CRO orders.

Based on the current membership, it is not surprising that there is a perceived lack of independence of the electoral process from the current YFS power structure.

A number of other student unions have expanded the elections committee to involve students-at-large. Of note is the University Students' Council at the University of Western Ontario. Its Elections Committee includes a faculty member (preferably from the Faculty of Law) and 6 students from the University. The Alma Mater Society at the University of British Columbia has a Committee of 6 with 3 members along with a number of restrictions on what other positions they can have or hold to ensure the perception of impartiality.

Another example of interest is York's Board of Referendum Commissioners which is the board that oversees student referenda. Its broad membership includes:

- A member appointed by the York Federation of Students;
- A member appointed by the Graduate Students Association;
- A member appointed by the Glendon College Student Union;
- A member appointed collectively by the recognized student governments of non-Faculty Colleges at a meeting of the YFS Constituency Committee;
- A member appointed collectively by the recognized student governments of the faculties, less the Graduate Students Association and the Glendon College Student Union at a meeting of the YFS Constituency Committee;
- A member appointed by the Provost;
- A member appointed at large by the Board of Referendum commissioners, once established.

One solution to the perceived lack of independence of those responsible for administering the YFS election process would be to simply assign this task to the York University administration. The University has been centrally involved in administering YFS elections in the past without serious incident. Indeed, a number of submissions made in the current review urge a return to this elections model. I am not persuaded, however, that at this point, such a radical change is either necessary or desirable. Ideally, the members of the YFS should be responsible for administering their own elections. Changes in the composition of the EC are necessary, however, to ensure, to the extent possible, that it will be perceived by all participants in the YFS election process to be a non-partisan and even-handed body.

As noted above, the President of York University has a residual responsibility under Regulation 4, to ensure that York student elections are conducted in a democratic, orderly and responsible fashion. It is, however, very difficult under current YFS election procedures, for the President to exercise this responsibility. The York administration has no role in or window upon the YFS election processes. Allegations and

counter-allegations of contending parties are made to the York Administration. It is very difficult for the University to determine the merits of these allegations.

Accordingly, in order to ensure transparency in the process, it would be very useful to have the Provost, on behalf of the President, appoint a non-voting member of the Committee. That member could be a member of the faculty, perhaps from Osgoode Hall Law School, or a member of the Administration or a York student. The role of this non-voting member would be to attempt to ensure that the interests of the general membership of the YFS in a fair and democratic process are the exclusive preoccupation of the EC. The presence of such a member on the EC should inspire greater confidence in the neutrality and fairness of its decision-making than apparently exists today. The Provost would be the appropriate York official to make this appointment. Under Regulation 4, the President's residual responsibility for the proper conduct of campus student elections is delegated to the Provost.

Recommendations

18. The structure and composition of the EC should be amended in order to create an EC that will be fairly perceived to be independent from the incumbent group governing YFS. Membership should include a majority of non-board student members. These members should be selected through a documented process with the goal to ensure that the Committee is composed in such a fashion that it will be perceived to be independent and neutral in its decision-making. It should not include members of the YFS staff.
19. The EC should include a non-voting member appointed by the Provost, on behalf of the President. That member could be a member of the faculty, a member of the Administration or a student of York University.

ii. Appointment Process for the Chief Returning Officer

The Election FAQ cites that the CRO is appointed by the Board but is silent on the process that should be followed. The YFS Board that appoints the CRO is primarily comprised of the incumbent group, many of whom may seek re-election. Further, the process itself lacks additional documentation and consistency which leads some to perceive a conflict of interest.

Other student unions clearly outline the appointment process for the CRO. For example, the University of Guelph notes that the Chief

Electoral Officer and Assistant Electoral Officer will be hired in accordance with the Human Resource Policy which includes detailed notification and advertising requirements.²¹

As recommended above with respect to the composition of the EC, it would be desirable to have the Provost, on behalf of the President, appoint a non-voting member of the Search Committee for the CRO. That member could be a faculty member, a York staff member or a York student selected by the Provost. Ideally, the appointee should have some experience at search processes. The presence of such a member would enhance the transparency of the process and should enhance the confidence of YFS members and candidates in the neutrality of the CRO and the fairness of the appointment process.

Recommendations

20. The YFS should stipulate and document a consistent selection process, including a search committee for the Chief Returning Officer.
21. This process should involve students other than those who are currently involved in the existing YFS Board or have an affiliation with those running.
22. The search committee should include a non-voting member appointed by the Provost, on behalf of the President, to ensure transparency in the process. The Provost's nominee could be a faculty member, a member of the York administration, or a student of York University.

7. Summary of Recommendations

This report makes a number of recommendations designed to enhance the election practices and processes of YFS with a view to increasing the transparency and perceived fairness of these processes. It is hoped that their implementation would inspire greater confidence on the part of all members of YFS, including candidates for election and their supporters, that the processes are fairly designed and administered. Although the report covers a broad range of topics relating to the current election process, the structure of the Elections Committee and the appointment of the CRO, the general theme running through the report is that the current arrangements create an understandable apprehension on the part of many students that the system is not fairly administered at the present time. Without impugning the conduct,

²¹ Central Students' Association Policy Manual, Pg 22

intentions or good faith of any of the participants, it is suggested herein that the governance of the process has the appearance of being dominated by the interests of the incumbent slate. In short, opposition candidates and their supporters feel that the playing field is tilted heavily in favour of the incumbent slate.

Some advantages that accrue to the incumbent slate are inherent in the democratic process. Incumbents who have discharged their responsibilities effectively and have impressed the electorate are likely to be re-elected. Incumbents have often honed the political skills that brought them success in the first place. Nothing can or should be done to remove these sorts of advantages. In contemporary university student politics, the elected executive members of student councils, including YFS, typically draw salaries and become part-time students who can therefore devote a greater proportion of their time to campaigns for re-election than can their opponents. Nothing in this report suggests that this advantage should be removed. There are, however, a number of practices that have developed that create an impression of unfair advantage. Effective control by the incumbent slate and those it appoints to control election conduct, for example, creates such an impression.

The recommendations made on this report attempt to remove those advantages, real or perceived, that appear to have generated a substantial sentiment of bitterness and cynicism among York students with respect to the election process. It is in the interest of all members of the YFS, surely, including members of incumbent and opposition slates, that such sentiments be reduced, if not eliminated. Adopting measures that create a more level playing field in the YFS elections should assist in achieving this worthy objective.

Adopting these measures in order to refresh the instruments of student democracy at York will not expel controversy, conflict and, indeed, heat, from York's student body politic. Controversy is the stuff of democratic politics both inside and outside the university environment. But at the completion of a heated federal election in Canada, no serious body of opinion maintains that the result of the election was distorted by biased management of the election by Elections Canada. It is widely accepted that Elections Canada manages elections in a non-partisan and even-handed fashion, in the public interest. Hopefully, a reconstituted Elections Committee could play a similar role in YFS elections and reduce, if not eliminate, the sorts of tensions concerning the YFS electoral process that erupted last spring.

The recommendations set forth in Section 6 of this report are reproduced below:

A Electoral Process

i) Handing out of Excalibur and Consequence

1. The definition of “campaign material” in the EPC should be revised in such fashion to clearly indicate that copies of student newspapers not created by candidates in the YFS election do not constitute campaign material in the requisite sense.

ii) Duct Tape vs. Metallic Tape

2. For future elections, if any, employing a paper ballot process, YFS should, if possible, employ metallic tape to seal ballot boxes and in the event that metallic tape is unavailable, disclose in advance which types of tape are permissible to be used.

iii) Campaign Activity in the Vicinity of the Polling Stations

3. The EPC should be revised to preclude campaigning during the voting period.
4. If it is determined, however, that campaigning is to be permitted during the voting period, more stringent restrictions should be applied to ensure voters are free from campaigning activities near polling stations, which should include at least a 20 metre zone and the removal of campaign materials within sight of the polling station.
5. It should be a violation of the EPC for campaign materials to be brought into the no campaign zone, candidates should be instructed to not distribute such materials for that purpose and training for the removal of these materials be should enhanced for poll clerks.
6. Renewed efforts should be made to enforce the current YFS practise that polling stations should be checked after each voter leaves the station so as to ensure that any campaign material left behind by a voter is removed.

iv) Balloting System – paper or online

7. YFS should utilize the Evote system or another third party online voting system
8. At the very least, YFS should follow through on its 2007 commitment and put forth a referendum question to York students on whether to utilize a paper ballot or an online voting system.
9. YFS should include in polling stations information for those who may have a concern regarding the voting process (e.g. incorrect number of a type of ballots and the process to rectify, information on voting process and a description of what would invalidate a ballot).

v) Reimbursement of Campaign Expenses

10. YFS should establish a process to reimburse, in part or in full the maximum verified expenses related to an election campaign.
11. Upon acceptance by the Elections Committee, expense reports should be made public

vi) Demerit Points, Disqualification and Appeals Process

12. The EPC should establish a separate appeals body that is distinct from and independent of the membership of the EC and composed of non YFS board or staff members.
13. Elsewhere in this report, it is recommended that the EC itself be reconstituted as an independent body dissociated from the current YFS Directors and staff. If this change is effected, it may be satisfactory to establish the appeals panel as a sub-committee of the EC. The CRO would not sit on that sub-committee.
14. The EPC should be amended to include an automatic provision that if a candidate reaches over 100% of the demerit points during the campaign period, an automatic review of the demerit points is immediately conducted by the appeals body. The appeals body should have a broad discretion to fashion appropriate sanctions and conditions upon a candidate's continued participation in the election as a qualified candidate.

15. If campaigning is, contrary to the recommendations made elsewhere in this report, to be permitted during the voting period, the CRO may privately advise candidates that demerit points will be assessed after voting is concluded for infractions committed during that period but not make public announcements to this effect.

vii) Campaigning on the York Campus by Persons Other Than York Students

16. YFS should require all campaigners for candidates (referred to in the EPC as non-arm's length parties) to be registered by the candidate with the CRO; and

17. Only members of YFS should be eligible to serve as a non-arm's length party.

B Lack of Structural Independence at the CRO and the EC

i) Selection and Composition of the Election Committee

18. The structure and composition of the EC should be amended in order to create an EC that will be fairly perceived to be independent from the incumbent group governing YFS. Membership should include a majority of non-board student members. These members should be selected through a documented process with the goal to ensure that the Committee is composed in such a fashion that it will be perceived to be independent and neutral in its decision-making. It should not include members of the YFS staff.

19. The EC should include a non-voting member appointed by the Provost, on behalf of the President. That member could be a member of the faculty, a member of the Administration or a student of York University.

ii) Appointment Process for the Chief Returning Officer

20. The YFS should stipulate and document a consistent selection process, including a search committee for the Chief Returning Officer.

21. This process should involve students other than those who are currently involved in the existing YFS Board or have an affiliation with those running.

22. The search committee should include a non-voting member appointed by the Provost, on behalf of the President, to ensure transparency in the process. The Provost's nominee could be a faculty member, a member of the York administration, or a student of York University.

All of which is respectfully submitted
August 30, 2010

John D. McCamus
Ombudsperson
York University