



## **LICM Graduate Fee Levy Referendum Winter 2017** **Contestation 2017A : Procedure**

**Complaining Party:** Mr. Manmeet Rai

**Parties Concerned:** Legal Information Clinic at McGill, Elections LICM, the Yes Committee.

**Author:** Colby Briggs, LICM Chief Electoral Officer (Elections LICM)

**Subject:** Procedure, Application of Bylaws, Purview.

### **Introduction**

As an established Fee Levy Group [FLG], the Legal Information Clinic at McGill [LICM] took to run a Fee Levy Referendum in the Winter of 2017. Rather than use the services of an accredited Student Association, the LICM ultimately chose to contract the referendum process to an independent third party [the CEO/Elections LICM] using an internal procedure. The contestation at hand alleges that such a procedure is inherently not valid; moreover, that the adopted bylaws do not respect the principles of fairness/democracy/natural justice, that the Chief Electoral Officer [CEO] is not neutral, and that the adopted bylaws/procedures were not respected. The contestation also questioned the purview of the CEO.

### **Purview & Objectives**

The LICM is not a court. Elections LICM, the independent body hired to oversee the referendum, is not a court. Tradition; Ministry of Education, Leisure, and Sport directives; McGill procedures; and peer organization procedures suggest that the obligation of a FLG's Elections Office is to conduct an accessible referendum in which the question is clear and that all eligible voters are enfranchised, and given an accessible chance to cast their ballot. Beyond this, LICM has established that their referendum meet a high standard of fairness and democracy, as well as takes note of referendum procedures within the McGill community. This latter point, as well as article B(3), empowers the CEO to rule on matters pertaining to the application of the bylaws. Contractually, the CEO is also bound to provide an attestation that the election was held in a manner which respected fairness/democracy/the principles of

natural justice. As such, the definition of a contestation can be extended to include those matters pertaining to the bylaws/procedures themselves, as opposed to their simple application. The CEO is not in a position to address matters pertaining to personal attacks outside of the constructs of the referendum. Such matters may be referred to McGill's internal justice system.

A complaint is an informal concern regarding the referendum. If it cannot be resolved at this stage, an interested party may escalate it to a contestation request. If the CEO considers the contestation request to be founded, it is then accepted and processed.

As part of the investigation process, the CEO requested documents from the LICM/Yes Committee and the complaining party, Mr. Rai. The LICM provided all requested materials. Mr. Rai, who is both a LICM member and the Chief Returning Officer [CRO] of the Post Graduate Students' Society [PGSS] declined to respond to the CEO's request for clarifying his complaint; however, he did agree to provide his response to certain documents or statements. Further, Mr. Rai objected to the format of the contestation. He also objected to this officer, myself, as serving in the role of CEO both generally and as part of the complaints process.

Contrary to usual procedure, Mr. Rai provided the Yes Committee with a copy of his complaint at the time of submitting it. Nothing suggests this negatively affected the contestation. The CEO requested the Yes Committee delete the document without reading it.

This decision was rendered prior to the end of the polling period; however, it was not published until after the close of polls. An electronic paper trail establishes this fact.

## **Ruling**

There is no convincing evidence to suggest that the referendum procedures or their application violate the principles of democracy/fairness/natural justice. Indeed, the procedures of LICM demonstrate a high standard of procedural fairness, democratic accessibility, and independent recourse. The complaining party made a number of factual errors as well as disregarded commonly accepted practises in reaching the conclusions giving rise to his complaint; nevertheless, the complaint does highlight some items that may be worth reviewing as to ensure the process appears beyond reproach.

The purview of the CEO extends to all matters needed to conduct a fair referendum in following the bylaws and commonly accepted procedures.

# Complaint

The complaint raises, in short, the following allegations. Note the complaint is listed at appendix one.

- That « none of the referendum procedures even come close to the fairness, neutrality, and transparency stipulated in PGSS [Post Graduate Students' Society] referendum procedures »;
- The CEO in developing the bylaws rendered himself ineligible to oversee the referendum as a neutral arbiter. Furthermore, the officer demonstrated bias in responding to inquiries at a PGSS Council Meeting regarding the validity of the elections, held March 20th 2017;
- The engagement of a remunerated CEO renders this person ineligible to oversee the referendum as a neutral arbiter;
- The CEO is biased and-or not competent;
- The distribution of referendum committee materials with the call to vote did not respect article B(12);
- The inclusion of a preamble in the Referendum Ballot Question violates the principles of fairness/democracy/natural justice and is an attempt to include yes campaigning in the wording of the ballot<sup>1</sup>;
- LICM's management of its own referendum, because of the nature of its work as a nonprofit legal information clinic, must be subject to a standard of democracy greater than that other organizations;
- The disparity in a Yes and No Referendum Action Committee [Committee] nomination procedure is a violation of fairness/democracy/natural justice;
- The No Committee nomination process is ambiguous, onerous, and unreasonable. Furthermore, the role played by the CEO in deciding this process violates the principles of fairness/democracy/natural justice;
- The contestation process for a ballot statement, that being the CEO vetting statements for accuracy, and permitting each referendum committee with the opportunity to raise

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<sup>1</sup> Moot. A preamble was not included.

concerns, and have complaints adjudicated regarding the statement, does not respect the principles of fairness/democracy/natural justice;

- The lack of an appeals process does not respect the principles of fairness/democracy/natural justice;
- The hosting of the Yes Committee webpage on the LICM website and the inclusion of a link to the Yes Committee webpage link on the ballot does not respect the principles of fairness/democracy/natural justice;
- The inclusion of links to referendum bylaws on the Yes Committee website or the inclusion of referendum bylaws on the same domain as the Yes Committee does not respect the principles of fairness/democracy/natural justice;
- The Yes Committee has access to privileged resources because it, as the LICM, has access to its membership lists<sup>2</sup>;
- The timeline of the referendum does not respect the principles of fairness/democracy/natural justice as it was brief, and as it overlapped with that of the PGSS General Elections;
- The right to include undergraduate and community members in the formation of a referendum committee does not respect the principles of fairness/democracy/natural justice.

## Facts

*Note written to correspond to the order of the original complaint*

In the graduate community of McGill University, fee levies were, until 2014, generally conducted by the Post-Graduate Students Society on behalf of other organisations. For reasons which are not within the scope of this contestation, PGSS moved, at least in part, away from this model. As a result, FLGs began to conduct their own referendums. There is, to this officer's knowledge, little formal rules governing such procedures. As such FLGs apply, generally, a modified version of the PGSS Society Activities Manual or a modified version of the rules employed by the Student Society of McGill University. These rules are based on generally accepted notions of democracy with a progressive approach to accessibility.

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<sup>2</sup> Moot. The Yes Committee did not make use of any LICM lists as part of the referendum save that which was publicly available.

In the Spring of 2016 the LICM conducted an independent fee levy referendum using a modified version of the PGSS bylaws overseen by the current CEO, myself, who then was both the PGSS and LICM CRO/CEO. This uncontested referendum did not pass.

In the Autumn of 2016, the LICM approached PGSS to conduct a second referendum. PGSS proposed engaging the services of its Chief Returning Officer, Mr. Manmeet Rai - the complaining party. The legal relationship was, to what the evidence demonstrates, unclear but it was suggested that the LICM would pay a small fee to the PGSS for use of their referendum structures. PGSS would run the referendum using a modified version of its bylaws. Mr. Rai stated that the LICM was not subject to PGSS bylaws, but that the PGSS would propose bylaws nevertheless (appendix two). The LICM proposed an agreement based on its previous bylaws (see appendix three). Eventually a final agreement was determined and signed by Mr. Rai for the PGSS, and the LICM Director, Ms. Gauthier at appendix four. This agreement established the referendum bylaws as well as the role of Mr. Rai as having control of the LICM Referendum.

Minutes of a meeting between the LICM and Mr. Rai, written by the LICM, outlined some further procedures. It noted the relationship of Mr. Rai would be that of an independent LICM CEO, who also was the PGSS CRO. It further noted restrictions of PGSS's officials to be involved in the referendum, and the need for PGSA approval. Lastly, the minutes noted that Mr. Rai felt the amount asked in the referendum question to be too high. Mr. Rai, as part of this investigation, largely rejected the contents of these minutes, stating that they were (see appendix five).

January 27th, 2017 the LICM ended its relationship with Mr. Rai and engaged the services of this officer, myself. A contract was signed which established that the « CEO will be an independent contractor to the LICM. The latter will exercise no control over his means of execution, barring the contents of this agreement, and that which is required to comply with general policy. » The contract established the final referendum bylaws and referendum question. It set out the role of the CEO as both the administrator and the judiciary of the referendum. It also established the fee to be paid for the services of the CEO.

The Chief Electoral Officer prior to the finalizing of the contract, provided the LICM with feedback on the established bylaws prepared by the LICM with the assistance of PGSS/Mr. Rai and referendum question. He suggested the LICM contact the CKUT for feedback on their recent referendum, also managed by myself. The LICM contacted CKUT the 25th of January (appendix six). The finalised bylaws can be seen online at [licm.mcgill.ca/referendum2017-bylaws/](http://licm.mcgill.ca/referendum2017-bylaws/). One notes the following major similarities and difference between the bylaw proposed by Mr. Rai and those used in the Referendum:

- Dates are not the same (the length of various periods are generally the same);

- The final bylaws increase the campaign budget to \$ 500 but require the LICM to fund both committees;
- In both bylaws the CEO/CRO's decisions cannot be appealed;
- The final bylaws contain a clause allowing for residual powers to be granted to the CEO;
- Both bylaws grant the CEO/CRO the power to determine the nomination procedure;
- The final bylaws allow for a neutral preamble;
- The final bylaws allows the Yes Committee to be constituted directly by the LICM;
- The original bylaws establish the CRO as a PGSS contract worker undertaking LICM work. It does not limit the LICM's powers to determine the CRO's means of execution of his work. The final bylaws establish the CEO as an independent contractor with control over the means of carrying out his mandate.

The Chief Electoral Officer, myself, was engaged as PGSS Chief Returning Officer from 2013 to 2016. This person has also been contracted to run referendums at Concordia, CKUT, and MUANCA.

On Monday, March 20th, 2017, on the opening of polls, the Chief Electoral Officer distributed to all eligible voters an email containing information on how to vote, as well as the referendum committee campaign materials outlined in the Candidate Guide (see <http://licm.mcgill.ca/referendum2017-bylaws/>). The PGSS proposes a similar procedure in its Society Activities Manual.

The ballot contains a question (appendix seven). No preamble is included. This question was proposed to and approved by the office of the Deputy Provost of Student Life and Learning January 16th, 2017 (appendix eight). The referendum question respected the format proposed in PGSS's Referendum Submission Guide (no longer available), a document which was the association's gold standard for referendum drafting until 2016.

LICM is registered as a nonprofit enterprise with no actionable shares (a member driven nonprofit). It is engaged in the business of providing legal information and student advocacy services. Because of its legal status, members enjoy certain privileges under the law such as the right to be eligible to participate in the association's governance (Annual General Meetings) or the right to certain financial documents.

The Yes Committee was established by the bylaws as those appointed by the LICM. Additionally, individuals could join the Committee by way of a verbal, digital, written, etc request to the Committee or the CEO. The No Committee was eligible to be established by way of a nomination process. The nomination process was established in an email to all eligible voters the 25th of February (see appendix nine). This was the process:

Anyone interested in participating on a Committee should please email [Elections.licm@mail.mcgill.ca](mailto:Elections.licm@mail.mcgill.ca).  
Nominations are accepted until Sunday March 5th at 11:59 pm (EST).

No member chose to come forward to run a No Committee. The CEO was not approached with candidates wishing to join the Yes Committee. The bylaws do not establish the nomination procedure beyond that which is stated at B(6). Rather, the CEO was tasked with determining this aforementioned procedure.

Article B(9) provides for a procedure in which Ballot Statements are submitted, and then shared with the opposing referendum committee. Either committee may raise objections, which are then ruled on by the CEO according to the principles of fairness, respect, and validity. The Candidate Guide further states « note that the aforementioned materials [ballot statement] will be shared with the opposing referendum option committee at least 48 hours before the opening of polls ». These rules were proposed in a preliminary format by the PGSS/Mr. Rai. Please see appendix ten for the proposal of the PGSS/Mr. Rai.

The bylaws do not afford for an appeal process. All decisions rendered by the CEO for any matter pertaining to the referendum are final. LICM Members may enjoy certain recourse to civil courts under the law.

The Yes Committee made use of its website's infrastructure and hosting as part of the campaign period. The Yes Committee produced a yes campaign site (<http://licm.mcgill.ca/referendum2017/>). The LICM produced an elections site (<http://licm.mcgill.ca/referendum2017-bylaws/>). The creation of both websites were vetted by the CEO. Both websites can be reached from the other website, as well as from the LICM landing page.

The Yes Committee is formed of volunteers, including certain employees/staff/directors/contractors/etc of the LICM. By right of their employ, certain members of the Yes Committee may have knowledge of the graduate membership of the LICM or its community members. The Yes Committee may have made use of certain LICM office supplies and meeting spaces as part of its efforts in the referendum.

The referendum was established as having the following dates:

Nominations: February 25th - March 5th (23h59)

Campaigning: March 6th (9h00) – 19th (23h59)

Voting: March 20th (9h00) to 26th (21h00)

Results Dissemination: March 26th (21h15)

Receipt Submission Deadline (expenses): March 25th (9h00)

Contestation Period End Date: March 31st (23h59).

The Candidate Guide states:

Only committee members may campaign. Eligible persons may join a committee by having the Committee Chairperson email the CEO. Authorisation is not required – simply alerting the CEO of the person's name and status (graduate, undergraduate, community) is sufficient. Committee members may include any graduate or undergraduate LICM member or a LICM community volunteer.

The Yes Committee included only graduate and undergraduate students.

## Analysis

The contestation makes a series of factual, jurisdictional, and interpretive errors, as well as applies a standard of reasonableness not appropriate to both the Canadian and organizational context.

This document has chosen to use the original proposed bylaws, drafted in part by Mr. Rai/the PGSS, and the PGSS bylaws as a point of comparison.

Firstly, the standard of what can be considered fair/democratic/just must fall in line with a level expected for a small nonprofit with a limited budget and infrastructure. It is manifestly unreasonable to expect the LICM to adopt a process comparable to that of a government or a large student association. Rather, we can see an appropriate comparison being to that of a small labour union or, better, another FLG. Such a standard is based on two principles: the security of the ballot and accessibility. LICM voting is conducted using McGill's internal voting system (Omnivox) and is authenticated in the same manner as McGill's staff and student accounts. The ballot provided a clear, neutral, question, approved by McGill and the CEO, in both official languages. Nominations, campaigning, and polling were announced via email to all eligible voters, with at least seven days allocated to each process. Bylaws were available online and by request. Interested parties were able to contact the CEO and obtain a reply within less than 24 hours - they were also eligible to file a complaint/contestation request. Referendum committees were afforded an equal budget and equal access to CEO supported information distribution (webhosting of statements/advertising, ballot statements, campaign information distribution on the opening of polls). The nomination process was for the No Committee required a simple email stating the desire to participate - this is not onerous.

Secondly, the jurisdiction of a FLG's referendums should not be placed in question. It is clearly established under the Memorandum of Understanding between LICM and McGill, common practice, and the law/Ministry directives that a FLG has a direct relationship with its members. While the PGSS *may* enjoy a moral authority as the representative of graduate



students and their interest, it does not enjoy such a legal authority. PGSS does not, in this officer's opinion and the opinion of McGill University, have a legal right to intervene in a FLG's referendums without the consent of the latter. The role of the PGSS bylaws and Society Activities Manual in the LICM referendum is, at most, a point of comparison. Indeed, the application of PGSS rules to an LICM referendum present certain administrative or logistical issues that may result in a less democratic or excessively costly referendum. The LICM, like any FLG, may choose on its own accord to submit to a PGSS managed referendum. While such a decision may give the appearance of a more fair process, inherently, both processes offer the same level of independence of the electoral office from the LICM. We also note that the PGSS CRO played a major role in drafting the LICM bylaws and processes.

Third, the question of self-governance and neutrality are, as the contestation points out, an ongoing concern in any democratically governed institution. Given the LICM has based its bylaws largely on the recommendations of the PGSS Chief Returning Officer, it is perplexing why this officer would then take objection to the contents. A comparison of the LICM bylaws to those of the CKUT, SSMU, and the PGSS demonstrates common themes. To suggest the LICM bylaws do not meet a standard of democracy would by natural extension suggest the bylaws of these aforementioned groups are also unacceptable. What is more, is that the question of neutrality is, in a layperson's overview, not an accepted theme. Indeed, when a government campaigns for or against a referendum, one often expects the government to take a position. It is, rather, the elections office which remains neutral in its treatment of ballot options and that which stems from these options (committees, etc). Nothing suggests the elections office engaged in partisanship.

Fourthly, the role of the CEO must be questioned to have a fair referendum process. This said, given the small scale of such a referendum, the electoral office must remain within a reasonable means. It is manifestly unreasonable to expect the LICM's Elections services to include each of the following branches as independent entities: a constitutional court, an electoral administrator, an electoral judiciary, an appeal court, a Public Relations department, and a judicial oversight committee. Rather, the CEO is empowered to review the bylaws and provide non-binding opinions on their fairness; to conduct the referendum; and to provide final judgments on contestations, the application of rules, etc; and to defend the process. In Canada, it is accepted that the judicial system plays a role in not only applying law, but weighing in on the validity of the law, as well as serving to maintain faith in the legal system itself. This latter point has been long argued, for example, as a reason to deny requests to throw out delayed criminal cases. In the case of the LICM, we see such an action taken when the LICM and its CEO, myself, took to explaining the referendum process and any objections to it at the PGSS council. Finally, the notion that a paid individual cannot be impartial towards the entity providing the payment, while logical, requires a nuanced, case-by-case approach. It is without question that all individuals carry biases. It is also reasonable to assume that one may be more favourable to a source of income (a client). However, the

theoretical illusion of impartiality is not impartiality. The latter requires demonstrated proof. It is also worth noting that the LICM established a contract with the CEO, myself, that assured the CEO with independence in carrying out the referendum process. Contractually, the LICM is not able to impose a financial penalty on the CEO, nor end their relationship without mutual agreement. Put simply, the CEO has nothing to gain or lose in applying an unpopular decision. Nothing suggests the the CEO permitted for unfair practises.

## **Items in Question**

Is the LICM permitted to run its own referendum?

Does the CEO have jurisdiction over complaints pertaining to the bylaws themselves and matters pertaining to his office?

Are the LICM referendum bylaws fair/democratic/respect the principles of natural justice?

Were the bylaws appropriately applied?

## **Decisions**

**Is the LICM permitted to run its own referendum?**

Yes. The law, McGill Policy, various agreements and directives afford a FLG with the right to conduct its own referendum.

**Does the CEO have jurisdiction over complaints pertaining to the bylaws themselves and matters pertaining to his office?**

Yes. Article B(3) empowers the CEO to undertake any task needed to complete his mandate. Such a mandate includes attesting that the referendum was run fairly. As such, the CEO can address complaints raised about the application of the bylaws and the bylaws themselves. By extension, this would, given his role in conducting the referendum, also include making decisions regarding the elections office itself. This latter point, the CEO ruling on decision pertaining to himself and his office, is accepted practice in situations where no reasonable evidence is presented. The complaint provided no concrete evidence of a real conflict of interest or bias. Indeed, to permit any party to request that a CEO recuse himself because of baseless accusations would allow any judicial system to be held hostage to procedural absurdity.

## **Are the LICM referendum bylaws fair/democratic/respect the principles of natural justice?**

Yes. Noting the standard for FLG referendums can be established on the security of the ballot and accessibility, nothing would suggest that the ballot is insecure or that the referendum was inaccessible. The LICM took additional steps to provide for a more extensive referendum process to further its accessibility. Such included offering funding for a No Committee, requesting external vetting of its bylaws (including the assistance of the PGSS), engaging an independent CEO over whom the LICM exercises no procedural control, and establishing a sufficiently long nomination, campaign, and polling period. Much of the original complaint rests on the general notion that the referendum is poisoned because of bylaws themselves and the CEO's role in them. This is perplexing given that the complaining party, Mr. Rai, the PGSS CRO, played a major role in drafting these bylaws. The LICM bylaws do contain elements that could give room for exploitation leading to an unfair referendum; though, such was not the case. A preamble was not included (noting the bylaws afford a vetting process to ensure a fair preamble). The nomination process for the No Committee is more onerous than that of the Yes Committee for it requires the writing of an email, but, the degree of onerousness is so marginal one cannot reasonably conclude that this would impact the fairness of the referendum. The role of the CEO as final authority in a judicial matter could only render the referendum unfair if this officer was to demonstrate serious bias.

## **Were the bylaws appropriately applied?**

Yes. The complaint raised two complaints pertaining to the application of the bylaws. One pertained to B12, and one to Committee Guide Ballot Statement. The distribution of the Yes Committee materials during the polling period was done by the CEO. Such a procedure, the distribution of committee materials on the opening of polls, stems from a PGSS procedure, and is intended to give all committees the opportunity to have their materials equally distributed. A No Committee was not formed, thusly the CEO could not distribute materials which did not exist. Because the distribution was done by the CEO article B12 cannot apply for it is only pertinent to actions taken by a committee. The second allegation of a violation pertained to what was distributed to voters on the opening of polls. The complaint alleges that the guide permits only an entirely graphic image, a ballot statement, and a single link to be distributed. The respective paragraph reads:

The CEO will also, at a committee's request, distribute a committee statement of no more than 750 words (inclusive of any translation provided), one link, and a one page image via a listserv email upon the opening of polls. To arrange this, please provide the CEO with the committee statement no later than 72 hours before the opening of polls.

Nowhere does this paragraph indicate an image cannot contain words or links. In practise, both LICM and CKUT used their versions of this clause to indicate a brochure/poster

attachment, an embedded ballot statement, and an embedded link can be provided to the CEO.

We also note this contestation included discussion of the LICM participating in a PGSS council meeting taking place during polling. This was not contested in the original complaint; however, this officer wishes to note that, given the exceptional circumstances caused as a result of a PGSS action to protest the referendum based on incomplete facts, the CRO permitted the LICM to present factual data to council under his supervision. The LICM officers also sit on the Yes Committee.

## **Conclusion**

With respect to dissenting opinions, this office considers that the LICM Referendum procedures and their application in this referendum to be fair/democratic/respect the principles of natural justice. This office also considers its purview to extend to all concerns raised in this complaint and that this interpretation does not negatively impact the fairness of the referendum.

**This contestation is rejected in its entirety noting that the complaining party may have recourse to civil courts as afforded under the law.**

Thank You

**Colby Briggs,**  
Legal Information Clinic at McGill - Chief Electoral Officer

**Appendices:**

One: Original Complaint

Two: Email Correspondence - PGSS-LICM Referendum Agreement

Three: LICM original bylaws proposal

Four: LICM-PGSS finalised bylaws/contract

Five: Mr. Rai - LICM meeting minutes with Mr. Rai's objections noted.

Six: CKUT Bylaws included

Seven: Ballot Image

Eight: Email Correspondence - Deputy Provost Student Life & Learning question approval

Nine: Email Correspondence - Call for Referendum Action Committee Nominations

Ten: Email Correspondence - Mr. Rai/PGSS ballot statement procedure proposal

**\*\*Personal Information has be redacted to protect individuals safety and privacy\*\***

### **Appendix One:**

Re: Challenge to the jurisdiction and competency of the Chief Electoral Officer, referendum procedural irregularities, and violation of campaign rules.

Dear Mr. Briggs, I am a graduate student at the Faculty of Law, McGill University, and pursuant to Article 6.1 of the LICM bylaws, a member of LICM, eligible to vote and thus fall under the definition of “[a]ny interested party” under the contestation clause of the referendum procedures. I hereby raise the following issues: I. Preliminary objections A Chief Returning Officer (Chief Electoral Officer in this case) has to be a neutral person who oversees the election process, enforces the rules, and provides for an administrative hearing in case of any disputes. A person who frames the rules, then enforces them, and then decides any disputes arising under these rules is unheard of. I sent a letter dated March 14, 2017, which you were copied on, wherein I raised concerns with regard to procedural irregularities in LICM fee referendum. In response to my letter, I received a letter dated March 17, 2017, from the LICM Executive Director, which states, “[w]e have worked closely with our Chief Electoral Officer, Colby Briggs, to ensure that this referendum is fair, transparent and in compliance with the rules of the PGSS and McGill University.” However, none of the referendum procedures even come close to the fairness, neutrality, and transparency stipulated in PGSS referendum procedures, which is discussed at length below. The involvement of the CEO in the drafting the procedures, exclusive rights to enforce the procedures, and then being the ultimate authority in deciding any disputes, without any right to appeal or review, gives rise to biasness and questions the eligibility of the CEO to adjudicate any 2 dispute or complaints in an unbiased manner. A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But an endeavor must be made to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where

he has an interest in the outcome. Every procedure, which would offer a possible temptation to the average man as a judge not to hold the balance nice, clear, and true between the complainant and the organization in question, denies the due process fairness to the complainant. As a CEO, being paid by LICM to enforce rules drafted by the CEO cannot be said to be without bias when asked to decide on the fairness of the procedures itself. At the PGSS Council meeting dated March 20, 2017, the CEO was present and vehemently argued about the fairness of the referendum procedures, which is not the job of the CEO. However, it can be construed that given the fact that the CEO participated in the procedure drafting, he has an inherent interest in arguing that they are fair and transparent. This further questions the ability of the CEO to adjudicate the present complaint. The CEO in his email dated March 14, 2017, sent to me in response to my letter dated March 14, 2017, addressed to the LICM Executive Director, states, "I am not employed by the LICM, but rather am a McGill employee contracted to run the election." It is puzzling to see that an employee of McGill, which would take a share (Article 1.4 of the Memorandum of Understanding between McGill and LICM) if the fee levy referendum is passed, was contracted as the CEO without raising any issues of conflict of interest or seeking prior approval from McGill. It is also not clear whether McGill contracted to have the CEO run the LICM fee referendum, or it was an arrangement between LICM and the CEO. The CEO in his email dated March 20, 2017, sent to all LICM members providing them with the link to the voting website, also circulated "some campaign materials" from the "yes" committee. This email was sent after the campaign period (March 6th (9h00) – 19th (23h59)), as prescribed in the procedures was over. Knowing that there was no 'no' committee constituted, the CEO sending out campaign material along with the web link to vote raises doubts about the CEO's ability to be neutral and fair in enforcing and deciding disputes under the referendum procedures. The referendum rules (rule 8) and the contestation clause make the decisions of the CEO final and binding, which further exuberates the element of biasness in the CEO working. 3 Even though, rule B(3), which states, "[w]here these bylaws are silent, the CEO shall make decisions so as to make this referendum possible," does not however grant the authority to the CEO to create new rules that are used to garner 'yes' vote in favor of LICM. Based on the above issues raised and arguments advanced, I request that the LICM CEO should recuse himself from deciding this complaint. Also, based on the doubts about the fairness and neutrality of the CEO, the entire referendum process should be declared null and void. II. Procedural Irregularities & violations Although I have raised these issues in my letter to the LICM Executive Director dated March 14, 2017, I am reiterating them again. a. Rule 5 of the referendum procedure gives absolute control to LICM over the outcome of the procedure even before it has started. LICM is running its own referendum, which imposes a higher standard of fairness and transparency in the conduct of LICM and the procedures adopted to run the referendum. LICM procedure mandates that the referendum question would be submitted to the LICM CEO by 9:00 AM on Monday, February 13, 2017 (Procedure rule 4). Rule 5 further stipulates that the question would have a preamble, which can be submitted prior to when the voting starts. This gives LICM a complete control over the entire process until the referendum goes to vote. There is a likelihood that in an eventuality that the 'yes'

campaign does not go according to plan, or the ‘no’ committee (if formed) is able to influence the graduate students to vote against the referendum, the preamble would be a last ditch effort to neutralize such effects. Self-dealing in the design of election laws is a central challenge for any democratic governance. Once the question is submitted, any addition or amendment to the questions raises doubts about the motive behind having such a clause, which can only be explained to give LICM an advantage in getting the ‘yes’ vote. Electoral rules that govern voting, campaigning, and the administration of elections are often designed to achieve partisan objectives. However, when a non-profit organization running with the objective of providing free legal representation and information indulges in 4 such unfair practices, it stifles transparency and fairness to an extent that the entire process appears to be a sham, thereby reducing democratic accountability. In addition to undermining the fairness of elections, partisan self-dealing impairs the legitimacy of the democratic process as a whole. This rule in itself is unjust and untenable as it provides LICM, the organization that has the option to add the preamble and thus sway the electors, complete control over the entire referendum process and thus makes a mockery of the entire process. b. Rule B(7) by expressly exempting ‘yes’ committee from the nomination process creates barriers in the formation of ‘no’ committee, and provide undue advantage to LICM. LICM has created artificial barriers for the formation of a ‘no’ committee and thereby skewed the entire process in its favor. While the rules grant express exemption in formation of the ‘yes’ committee, it mandates a nomination process for the formation of a ‘no’ committee. This provides an inequality in the formation of the committees by making the formation of the ‘no’ committee more cumbersome. The nomination process which the ‘No’ committee would have to follow, further creates an ambiguity and grants absolute control over the entire referendum process to the CEO, whose ability to make decision with bias has been discussed above. It is the cardinal principle of election jurisprudence that there should be a level playing field for the parties campaigning, for and against a referendum. In this case however, LICM has indulged in a practice called ‘political markets.’ According to political markets theorists Samuel Issacharoff and Richard Pildes, the major political parties use legal rules to ‘lockup’ political institutions, thereby giving permanent political advantage to one political party<sup>1</sup>. Here LICM has replicated the political market approach by allowing the ‘yes’ committee to be formed without any nomination process, while imposing restraints on the ‘no’ committee to go through the nomination process, which is not defined. Even though this may not seem to be a big issue, it deters the formation of the ‘no’ committee by creating artificial barriers and additional bureaucratic hurdles. Suspicion as to the biased vetting of the members to ‘no’ committee cannot be disputed by these rules.

<sup>1</sup> Samuel Issacharoff & Richard H Pildes, ‘Politics as Markets: Partisan Lockups of the Democratic Process’ (1998) 50 Stan L Rev 643 [Issacharoff & Pildes]; Richard H Pildes, ‘The Theory of Political Competition’ (1999) 85:8 Va L Rev 1605 [Pildes, ‘Political



Competition’]; Richard H Pildes, ‘Foreword: The Constitutionalization of Democratic Politics’ (2004) 118 Harv L Rev 29 [Pildes, ‘Foreword’]; Samuel Issacharoff, ‘Gerrymandering and Political Cartels’ (2002) 116 Harv L Rev 593 [Issacharoff, ‘Political Cartels’]. 5 c. The parity in working of the ‘yes’ committee and ‘no’ committee is destroyed by giving absolute control to the CEO in deciding objections to the committee statements, which would most likely impact the ‘no’ campaign. Rule B(9) of the LICM referendum procedure states, “[t]he CEO shall ensure that the statements uphold the democratic value of the process. In case of an objection raised to the wording of the statement, the CEO will expeditiously hold an open hearing and give an opportunity to chairs of both of the committees to put forth their arguments. Upon the conclusion of the hearing the CEO’s decision shall be final and binding on the LICM as well as the ‘No’ Committee, with no right to appeal to the Judicial Board.” This is another instance of ‘political markets’ at its best. While the LICM is comfortable with having only the ‘yes’ committee statement, if no ‘no’ committee is formed, however, it does want to curb the right to a committee to place before the electorate a statement, by calling it into question on the pretext of it being against democratic values. This procedure will only hurt the ‘no’ committee, which will be affected by it. The inability to appeal to the judicial board further exuberates the lack of fairness in the entire process. The way the procedures have been framed, and the inability of the CEO to raise any concerns with the procedures so far, calls into questions his neutrality and demonstrates his complacency in conspiring along with LICM in this theatrical display of farce democratic process. d. The CEO himself has facilitated violation of the referendum rules by circulating the ‘yes’ committee material. The CEO in his email dated March 20, 2017, sent to all LICM members providing them with the link to the voting website, also circulated “some campaign materials” from the “yes” committee. This email was sent after the campaign period (March 6th (9h00) – 19th (23h59)), as prescribed in the procedures was over. Knowing that there was no ‘no’ committee constituted, the CEO sending out campaign material along with the web link to vote raises doubts about the CEO’s ability to be neutral and fair in enforcing and deciding disputes under the referendum procedures. The referendum rules (rule 8) and the contestation clause make the decisions of the CEO final and binding, which further exuberates the element of biasness in the CEO’s working. By sending out the ‘yes’ committee materials the CEO self-indulged in campaigning for the ‘yes’ committee, knowing very well that all campaigning, including, dissemination of any campaign material should have stopped on March 19, 2017, at 2359 hrs. While there is a provision in the referendum rules for circulating campaign material by the CEO, knowing very well that if no ‘no’ committee constituted, this clause would not be fair and just, the CEO acting arbitrarily and knowing very well that there was no ‘no’ committee constituted, decided to circulate the ‘campaign’ material nevertheless, thereby violating the same very rules he was supposed to enforce in a neutral manner. Even though, rule B(3), which states, “[w]here these bylaws are silent, the CEO shall make decisions so as to make this referendum possible,” does not however grant the authority to the CEO to create new rules that are used to garner ‘yes’ vote in favor of LICM. Further, while the rules provide for circulating one image, the CEO has allowed that rule to be misused by allowing an image of a written text and further including a

statement from the 'no' committee. Had circulation of text through an image been intent of the referendum rules, there would have been no need for a written text, or vice versa. e. By providing a link to the LICM website in the guise of 'yes' committee campaign page in the ballot, the fairness and transparency of the entire referendum process is in question. The referendum rule with regard to ballot provides, "[s]hould a committee wish to link their option to a campaign page, please provide the CEO with the link no later than 72 hours preceding the opening of polls." While an express mention has been made to "campaign page," that should be different from LICM website, which attracting more audience from the web and provides much more information than what a campaign page would do. This clause also puts the 'no' committee at a disadvantage as 'no' committee would have to build a website from the scratch exclusively for the purpose of campaigning. Rules regarding Quorum and Results, which also describes the process to accessing the online voting system, provides for a link to the "external website" run by a committee. The ambiguity in defining a "campaign page," "external website run by a committee," and then construing these rules in favor of LICM give undue advantage to LICM and makes a mockery of the whole process. f. The campaign committee make up for the referendum in unfair, as only LICM, and 'yes' committee have knowledge of community members and their contact information. The referendum rules provide for only committee members to campaign. Further, the rules states, "[c]ommittee members may include any graduate or undergraduate LICM member or a LICM community volunteer." While the results of the referendum only affects the graduate students, it allows undergraduate and LICM community volunteers to participate in campaigning and serve on campaign committees. Further, who is a LICM community members, how one can be contacted is not disclosed in the procedures. The ability to gather more people on the 'yes' by using information only accessible to LICM provides undue advantage to the 'yes' committee and thereby makes the entire process unfair. Further, the limited time frame within which the campaign and formation of the committees was held, knowing that the graduate student association on campus was running its annual elections, limits the chances of graduate students to actively participate in the process, the outcome of which only affects them. In light of these points raised and discussed above, I request that the LICM fee referendum be declared null and void and reinitiated after the referendum procedures are framed in a neutral and transparent manner. If there is any additional information that would aid you in considering this request, please do not hesitate to let me know. Thank you for your time and consideration of this request. Thank you Manmeet S. Rai

## Appendix Two

Wed 2016-11-30, 11:46 AM

To: LICM Communications

Hi Sunny,

The Bylaws are the Constitution for the PGSS, whereas the SAM laws down the procedure and the rules. However, neither of these documents govern external referendums and we are in the process of formulating a guidelines for the external referendums, which will closely resemble the rules that are currently there in the SAM.

If you may have any more questions or concerns, please feel free to ask.

Thanks,

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**Manmeet S. Rai**

B.B.A., LL.B. (Hons.), J.D., LL.M.

Chief Returning Officer (CRO)

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## **Appendix Three:**

**\*Note the CEO/LICM contract has been removed as it contains confidential information. The following was sent as an email attachment the 10th of December (2016). Comments have been removed to improve the ease of reading.**

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### Annex B

The LICM Bylaws are based on the PGSS Society Activities Manual and Bylaws (SAM), barring the following modifications, and those made by the mutual agreement of the PGSS CRO and the LICM (Chapter 9: SAM). For the purposes of this document, the CRO will refer to Mr. Manmeet S. Rai in his role as joint PGSS, LICM Chief Returning Officer (CRO).

#### Chapter 9: Elections, Referenda and Petitions

##### Section 1: Preamble

1. There shall be a Chief Returning Officer (CRO) who is responsible for the implementation and oversight of all PGSS petitions, elections and referenda. The CRO will have discretion over enforcing rules and regulations pertaining to elections, referenda and petitions contained within this Manual. The CRO shall be responsible for all aspects of the administration of PGSS elections and referenda.

1.1 The CRO's authority must remain in line with what is expected in a reasonable and fair election, and be accountable to the LICM and PGSS administration.

2. The CRO shall not be a candidate for any elected Society position, nor be the incumbent for any elected PGSS position, notwithstanding the Secretary-General acting as Interim CRO as prescribed herein.

3. The CRO shall be a contract worker of the PGSS. The Appointments Board shall recommend the hiring of the CRO, with this recommendation ratified by Council.

##### Section 2: Timetable for the Nominations and Referenda Questions

###### 1. Definitions:

1.1 Candidate shall refer to anyone running for the position of a titled Officer.

1.2 Chair or Chairperson shall refer to anyone officially directing a referendum committee.

1.3 Election and elections shall refer to the election of a candidate. Each election may have multiple candidates.

1.4 Several elections may be held concurrently. Candidates may only run in a single election at a time.

1.5 Referendum, referenda and referendums shall refer to questions posed to voters to determine their will. Each question posed shall be treated independently of the other.

1.6 Withdrawal shall refer to the removal of a candidate or Chair from this person's position. It may be voluntary or on the mandate of a PGSS body, including the CRO or Governance Committee.

1.7 Regulations include all rules applied to the elections and referendums, including those imposed by the CRO within this Officer's mandate, and those of the bylaws and Society Activities Manual.

2. The CRO should endeavour to adhere to the following timetable, subject to any timeline modifications that best serve the democratic needs of the PGSS, in an extenuating circumstance:

2.1 December 1: open nomination period for candidates for all Officer positions and call for referendum questions. The CRO shall ensure communication of the call for nominations and referenda

questions is widely publicized to both Council and the PGSS membership at large via, at minimum, an e-mail distributed on the respective listservs;

2.2 Two weeks prior to the February Council meeting: Send a reminder e-mail to all members notifying them about the PGSS Elections schedule and calling for nomination and referenda questions;

2.3 One month prior to the February Council meeting: The CRO will send to the PGSS membership an email outlining the process to submit referendum questions (petitions and Council motions), including the relevant deadlines.

2.4 Noon (12:00) on the date of the February Council meeting: end of nomination period. Communicate with PGSS members an extension of the nomination period for one (1) week for any position attracting one (1) candidate or less no candidates;

2.5 No later than two (2) days following the February Council meeting: call for the creation

of referendum committees for each of the referendum questions by way of an email to the membership explaining the process, deadlines and questions. The nomination period for referendum committees and Chairpersons will be one calendar week.

2.6 One week prior to the distribution of the Council package for the February Council meeting; The CRO will collect the referendum question proposals and analyze the wording of the proposed questions. The CRO will inform the LICM of his intention to modify the question or the translation thereof as he deems required by McGill Administration. The CRO will also inform the LICM as to how he intends to modify the question or the translation thereof. The LICM has the right to object to any modification and to withdraw the question from the Referendum if the LICM and the CRO cannot come to an agreement.

2.7 The CRO must also submit the approved referendum question to the Board of Directors within 24 hours of the February Council meeting for review pursuant with the PGSS Constitution (bylaws). The Board may send a question back to Council if it considers the question to violate PGSS's existing regulations or the results of its implementation to cause grave consequences to the Society.

### Section 3: Referenda

#### 1. Preamble

1.1 There shall be an annual referendum conducted concurrently with PGSS general elections.

1.2 Notwithstanding the above, if there are no questions to be asked in a given year, then no referendum need be conducted.

#### 2. Submission of Referenda Questions

2.1 Questions may be placed on the annual referendum by:

2.1.1 Resolution at the February Council meeting if the referendum period coincides with the general elections or at any Council meeting in the case of a stand- alone referenda.

2.2 A defeated referendum question shall not be reintroduced for a period of at least three (3) months, provided that the referendum was valid pursuant to this manual and the PGSS Constitution (bylaws).

2.3 Formulation of referenda questions:

2.3.1 The LICM Referendum Question will be determined prior to its submission to Council

by the LICM administration and the CRO. It may be subject to modification as to adhere to McGill policy at any time up to the time it is presented at Council.

#### Section 4: Nominations of Candidates and Referendum Option Committee Chairs

1. The CRO shall publicize the list of candidates and referendum questions in a timely fashion following the end of the Council meeting.
  2. The CRO will invite PGSS members to nominate themselves to run the No referendum option committee. This committee will be charged with encouraging members to vote to reject the fee levy increase. LICM administration and its volunteers will, collectively, be charged with the Yes referendum option committee. They may designate no more than two persons to liaise with the CRO on behalf of their committee.
  3. The Nomination form for the LICM No referendum option committee will be subject to the CRO's choices and resemble that of the PGSS Referendum's nomination form.
  4. Any PGSS member expressing to the CRO their wish to work for the Yes committee will be directed by the CRO to the persons designated by the LICM to liaise with the CRO. The LICM Yes referendum option committee will endeavor to include them in their campaigning.
  5. If a person or persons do not come forward to run the No referendum option, no No ballot statement shall be submitted.
- 5.1 The committees reserve the right to read the opposing committee's statement and raise objections before they are put on the ballot. If any objections are raised, the CRO will act as a neutral third party to ensure that there is no misrepresentation and the language used is to further the campaign, and not to malign the organization.

#### Section 5: Referendum Option Committees (ROC)

1. The ROC Chair shall form the Referendum Option Committee.
  2. The CRO shall appoint the referendum Chairs based on the nomination procedures contained within this Manual.
  3. For the election of referendum Chairpersons, these persons must submit copies of their nomination forms to the CRO or PGSS Administrative Coordinator before the end of the nomination period. Such nomination forms must be signed by at least fifteen regular members of the PGSS.
- 3.1 The LICM Yes referendum option committee will be exempt from nomination

procedures.

4. In the event that more than one (1) candidate presents himself or herself for Chair for any one ROC, then the candidate with the most supporting signatures shall be appointed by the CRO.

5. The PGSS shall not fund any ROC.

5. The ROC must abide by the rules outlined in the Manual regarding campaigning, and campaign material. For clarity, these rules include the stipulation that each ROC may only purchase campaign materials used in support of the election campaign of a candidate or referendum committee, including all gifts and contributions, totaling a retail market value of no more than three hundred (300) dollars.

#### Section 6: Withdrawal and Disqualification of Candidates or Chairpersons

1. The CRO will attempt to recruit or re-designate a No referendum option committee chair should this position become vacant or the person holding this position fail to complete her or his duties. The CRO may use any means to re-designate or recruit someone for this posting, subject to obligations of fairness and reasonableness.

2. The CRO may bar LICM administration from campaigning should they violate campaign or general procedure rules in bad faith or in a significant manner. Should such a case arise, the CRO will designate a neutral third party of his choosing to provide a yes statement. All other yes campaigning will cease.

3. The LICM and/or the referendum option committees reserve the right to request a judicial review of the CRO's decisions by making a request to this officer in writing. The CRO will provide a formal response in writing within a reasonable delay. Should the complaining party, the PGSS or its members, or the LICM wish to contest this decision, they may do so before the PGSS Judicial Board. The decision of this board will be final.

#### Section 7: Post-Nomination Period

1. The Chief Returning Officer (CRO) shall be required to hold "an information session" within one week of the end of the nomination period for candidates and Referendum Committee Chairs where they present the appropriate parts of this Manual.

1.1 The LICM, the CRO, and any other Referendum Committee Chairs, if applicable, will determine a mutual convenient time to review campaign procedures. 2. No campaigning may take place during the post-nomination period.



## Section 8: Scheduled Debates

1. The CRO shall arrange and publicize one (1) debate at the downtown campus campus. The format of these debates will be determined by the CRO in consultation with the candidates and Chairpersons, with the CRO retaining ultimate authority over the format.
2. The CRO shall ensure that the debate is widely publicized and candidates and Referendum Committee Chairs are given a minimum of one (1) week's notice of the date, time, and location of the debate.
3. Candidates must attend all scheduled debates, barring any legitimate academic, personal or professional conflict that is documented. In the case of an excused absence, the candidate may not send a proxy, though the candidate may submit a 350 word statement to be read out in lieu of the individual's presence. The CRO reserves the right to verify and approve documentation, as well as the reason for the absence.

## Section 9: Campaign and Campaign Period

1. The campaign period for all candidates and referenda committees will start after the Council meeting where the statements are approved, on a date prescribed by the CRO and following a post-nomination period during which all candidates will be informed of the electoral rules and regulations.
2. The campaign period will last for a minimum of two (2) weeks and end at 11:59pm of the day prior to the voting period.

## Section 10: Election and Referenda Campaigning

1. Campaign material includes any material intended to affect the ballot choice of a PGSS member. It does not include materials existing prior to the campaign that was not created with the intent to campaign; it also does not include external materials that were not created with the intent to campaign, such as professional pages (LinkedIn, McGill, etc.).
2. All candidates' campaign materials must include references to their own campaign or personal attributes. It may also include references to another candidate's campaign or personal attributes.
3. All referendum campaign material must reference the present situation or the potential situation as pertaining to the referendum's outcome, or the outcome of the opposite side's campaign's victory.
4. Campaign material must be based in fact, or an opinion which is stated as such. It cannot

be prejudicially misleading, defamatory (based on ascribed [race, language] or acquired [religion, physical ability] statuses), false, or malicious.

5. Campaign material that is directly communicative in nature (such as conversations, Facebook postings, tweets, emails, etc.) does not need to be approved by the CRO; however all other material, including the forums for the aforementioned direct communication, except when not applicable by nature (a conversation), must be approved by the CRO. The candidate or Chair must obtain approval from the CRO of what is being distributed, how many, and the details of the material.

6. All printed and online materials must include the following statement: “If any of the information contained on this document is untrue, misleading or offensive, or in any other way violates the election and referendum rules, please notify the Chief Returning Officer at [elections.pgss@mail.mcgill.ca](mailto:elections.pgss@mail.mcgill.ca)”.

7. If a candidate or Chair is found to be in violation of the election rules in good faith, this person has twelve (12) hours to rectify the situation. In case of a discrepancy with the CRO’s decision, the candidate or Chair should remove the material and await a decision of the Judicial Board or CRO.

8. Candidates and Chairpersons are expected to comply with McGill’s regulations regarding the distribution of posters and printed materials.

9. Candidates and Chairpersons are expected to first obtain permission from a professor or instructor prior to making a speech in a class.

12. Active campaigning must cease the evening (11:59pm) before the opening of the polls. Candidates and Chairpersons (including the committees of either person) may remind PGSS members to vote as long as they refrain from attempting to influence the outcome of the vote and as long as they refrain from referring voters to campaign materials. It is forbidden to post, create, or distribute new campaign materials during the polling period.

13. The CRO will ensure the distribution of an optional 750-word candidate or Chairperson statement to voters (who have not opted out of it) in a special edition listserv within twenty-four (24) hours of the opening of the elections. These statements may include anything which the candidate or Chairperson deems relevant. It may also contain a link to external resources (which counts as one word) and writing in a language other than English.

14. The CRO will solicit 350-word statements in English and/or French from candidates and Chairpersons to be attached to the ballot along with, for candidates, an optional personal photograph. If submitted by candidates and Chairpersons before the CRO’s deadlines, the statements will be translated by PGSS, in which case the word limit shall not apply to the

translated material. This statement may contain whatever the candidate or Chairperson deems relevant, as well as one link to an external website (which counts as one word).

15. Besides the 350-word message distributed in the electronic ballot voting email, all candidates are permitted to submit one (1) 750-word email that will be sent to PGSS members through an opt-out mechanism such as the PGSS Newswire. All email materials shall be sent to the CRO who will then arrange with the PGSS staff to send the candidates messages. The 750- word e-mail must include a statement on the candidates past involvement in the PGSS and in any other student organization at the post-secondary level, and in the case of the External Affairs Officer a statement on the candidate's proficiency in French. The 750-word statement shall be distributed during the campaign period.

Section 11: Cost of Campaigning 1. Campaign materials used in support of the election campaign of a candidate or referendum committee, including all gifts and contributions, shall not exceed a retail market value of three hundred (300) dollars.

2. The CRO shall be fully empowered to decide upon the said retail market value of such campaign materials that are not accompanied by receipts.

3. An itemized account of all expenditures must be submitted to the CRO at the latest twenty-four (24) hours after polls open. No further expenditures shall be incurred after the submission of said account. These accounts shall include:

3.1 A means of identifying how a given receipt corresponds to a previously approved campaign material. In the case of expenses that were not incurred for the purchase of advertising materials, an explanation of the use of the good or service must be included with the receipt.

3.2 A written receipt for each separate campaign material.

4. Where the candidate or a referendum committee has not been billed for materials and service rendered on his/her behalf, a written estimate, signed by the supplier or responsible agent of the supplier of such materials or services, shall also be included.

5. The requirements for submission of receipts and estimates may be waived for any candidate or referendum committee that signs a declaration stating that any money spent by them or on their behalf for the purpose of their campaign will not exceed five (5) dollars.

6. If no submission of expenditures or declaration that spending did not exceed five (5) dollars is received by the PGSS within twenty-four (24) hours of the polls opening the candidate or referendum committee shall be required to withdraw from the election by the CRO. The referendum option committee electronic statement will be withdrawn.

7. Any candidate or Chairperson, or any person acting on their behalf or suasion, who willfully violates the provisions of this section shall be withdrawn from the election or referendums. Any candidate or Chairperson who exceeds the expense limit shall be withdrawn regardless of intent.

#### Section 12: Voting and Voting Period

1. Elections for the Executive and coincident referenda shall use an electronic ballot voting procedure unless Council passes a motion specifying another procedure at February Council or earlier.

2. When electronic balloting is used, the CRO must send an email to PGSS membership containing instructions on how to vote with a link to the online voting system. The Officer must do this within 24 hours of the opening of the polls. The Officer must also send at least two emails to eligible members who have not yet voted during the voting period. These emails must be sent between 5:00am and 10:00am.

3. The voting period will last a minimum of both five (5) business days and a seven (7) calendar days to a maximum of ten (10) business days. Council must approve the dates chosen by the CRO.

#### Section 13: Rules Governing Electronic Balloting

1. The electronic ballot voting procedure must be implemented in such a way that voter confidentiality is maintained throughout the tabulating process; personal information and other affiliations must be removed once the ballot is cast electronically.

2. The electronic ballot voting system must be hosted on a secure computer system. All information passing back and forth from the secure computer system must be encrypted and certified as such by a third party commercial security certificate provider. The computer systems hosting the voting system must receive regular security updates and security and stability must remain current at all times. No member of the PGSS other than the CRO shall at any time have physical or electronic access to the computer system that will host the software. Maintenance of the system will be contracted out to a neutral third party employed by PGSS. Any changes or updates to the computer system will be made through the neutral third party.

#### Section 15: Invalidation

1. The CRO, in consultation with the Elections Committee, shall invalidate the election, or one or more referendum questions if, upon investigation, it is evident that there has been a

gross violation of significant consequence of the governing documents such as to:

- 1.1 Disenfranchise eligible voters;
- 1.2 Permit ineligible persons to vote;
- 1.3 Coerce voters to vote in a particular way;
- 1.4 Mislead voters in their choice.

## 2. Protests and Withdrawals

2.1 All complaints, protests, or requests to review the result in frame must be made to the CRO not later than five (5) calendar days after the closing of the polls. They must either be in written form and signed by a regular member of the PGSS or be sent digitally with a typed name acting in lieu of a signature.

2.2 The CRO shall retain the record of the online voting system for a period of one year, unless the provider of the system deletes it. The CRO shall keep any signed documents from candidates and Chairs, as well as any campaign material records and expense forms, for a period of two (2) months following the end of the election.

## Section 16: Election and Referendum Voting Systems

2. Referendum Polling 2.1 For yes / no questions or for questions with two (2) options, voters must be presented with a First Past the Post style ballot that gives the voter an option to abstain (this “no opinion” response does not count as an option when discussing two option referendum questions). Voters may also state their disapproval of an option.

2.2 For questions with more than two (2) options (not including a no opinion), voters will make use of the Full Preferential system discussed in 9:10:1:2.

2.3 The question with the greatest support (in the case of STV, this applies after the redistribution of votes) will be declared the winning option. 2.4 If the number of disapproval votes exceeds the number of votes cast in favour of a candidate, the referendum question will be considered undetermined. It may be presented at a subsequent referendum for reconsideration by PGSS members.

**Appendix Four:**

**Provided at the end of this document.**

**Appendix Five:**

**Provided at the end of this document.**

## **Appendix Six:**

*Note: provided by the CKUT to the LICM via email the 25th of January*

### Radio CKUT Referenda By Laws FINAL

A. Radio CKUT shall call and conduct a referenda, in accordance with these Bylaws and Radio CKUT policy.

1. CKUT may call and conduct a referendum of its members. The referendum may be conducted directly by CKUT, or through services provided by the SSMU and/or the PGSS. [CKUT may also choose to participate in a referendum conducted with the SSMU and/or the PGSS of its members, where CKUT has determined it to be beneficial and agreeable in participating in such a referendum.]

2. A CKUT referenda conducted through the services of SSMU or the PGSS shall be expressly called by CKUT and shall be conducted in accordance with the applicable Bylaws and policies set out by the SSMU or the PGSS, as the case may be.

3. All graduate and undergraduate students registered at McGill University at the time of the referendum (except for students in the School of Continuing Studies, Exchange Students, students enrolled in the summer sessions, Macdonald Campus students, residents registered in Postgraduate Medical Education and post-doctoral fellows) and have paid their CKUT membership fee to CKUT (i.e. not opted-out of the payment of the fee) and are student members of CKUT with voting rights in the referenda (“Student Members”).

### B. Procedure

1. A referendum shall be called forthwith by the Board of Directors:

- a. upon a two-thirds resolution of the Board; or
- b. upon receipt of a petition conducted in accordance with these Bylaws stating the purpose of the referendum and duly signed by at least ten (10) percent of the Student Members of CKUT.

2. The referendum question may contain a preamble consisting of a set of factual statements, followed by a clear and concise statement, to be voted on as either “YES” or “No”.

3. Any referendum question must be approved by the Office of Student Life and Learning and Student Accounts.

b) Office of Student Life and Learning must also approve whereas clauses on Existence Referendum.

4. The Official Campaign Period shall be set by the CKUT Board of Directors. It shall be in length no less than 5 consecutive calendar days. It shall begin no earlier than fourteen (14) calendar days and not more than forty (40) days, after confirmation by the Board of Directors’ passing a resolution or receipt of a petition in accordance with these Bylaws and CKUT policy.

5.

Rules of conduct during the Official Campaign Period shall be determined, and made available on the CKUT website no later than 48 hours before the start.

6. Voting shall be conducted for a minimum of twenty-four (24) hours over a minimum of three (3) consecutive calendar days [excluding week-ends and statutory holidays?].

7. Voting for a referenda cannot be called or conducted over the summer months (i.e. the period June 1st to August 31) or the winter holidays (i.e. December 15 to January 15).

8. The referendum shall be overseen by an Electoral Officer, to be named by the CKUT Board.

Where a referendum is conducted through services provided by the SSMU and/or the PGSS, the Electoral Officer may be appointment by the SSMU or PGSS and confirmed by the CKUT Board.

#### C. Notice

1. Notice shall be given by the Board at least fourteen (14) days prior to a referendum via:

- a. the CKUT website, where such a website exists, and
- b. notices posted at CKUT and in at least three (3) places on campus.

2. Notices of referendum shall clearly state the dates, times, places, and purposes of the referendum, including the text of the referendum question.

#### D. Quorum

Quorum for a referendum shall be reached if the number of student votes cast by the last day of the referendum is equal to or greater than ten (10) percent of the Student Membership of CKUT.

#### E. Results of the referendum

1. The referendum shall be overseen by an Electoral Officer.

2. The Electoral Officer shall confirm in writing the results of the referendum, specifying:

- i. Number of student votes cast
- ii. Number for quorum, and whether quorum was reached.
- iii. Number of votes cast for “Yes”, for “No”, and the number of votes invalidated.

A referendum passes if it meets two criteria:

(a) It must achieve quorum.

(b) It must secure the appropriate sort of majority of 50% plus 1.

3. The Board of Directors shall confirm the electoral results, and make the results public on the CKUT website, not later than 5 calendar days from the end of the voting.



## Appendix Seven:



# McGill

Consultation in  
anonymous mode

## LICM Fee Levy Referendum

SIMULATION

### LICM Fee Levy Referendum

Do you agree to increase the non-opt-outable Legal Information Clinic at McGill association fee paid by all graduate students on the downtown campus, excluding post-docs, from \$2.00 per student per semester (excluding summer) to \$4.50 per student per semester (excluding summer), starting in Fall 2017?

Acceptez-vous une augmentation des frais obligatoires de la Clinique d'information juridique à McGill payés par tous les étudiants des cycles supérieurs du campus du centre-ville, excluant les post-doctorants, de 2,00\$ par étudiant par trimestre (excluant l'été) à 4,50\$ par étudiant par trimestre (excluant l'été), et ce débutant à l'automne 2017?

Yes - Oui

[Consult the candidate's statement](#)

No - Non

Abstain - Abstention



## Appendix Eight:

Tue 01-31, 1:27 PM

To: LICM Executive Director

I'm sorry to get back to you so late, but I've spoken with Student Accounts and we will allow you to move forward with your question without an end date.

Best,

Jon

Jon Nordland

Academic Planning Officer / Agent de planification (enseignement)  
Office of Student Life and Learning / Bureau des études et vie étudiante  
James Administration Bldg, Rm 621  
McGill University / Université McGill

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**From:** LICM Executive Director

**Sent:** January-20-17 3:07 PM

**To:** Jonathan Nordland <jonathan.nordland@mcgill.ca>

**Subject:** RE: LICM Fee question

Hi Mr. Nordland,

Here is our new question for your approval:

Do you agree to increase the non-opt-outable Legal Information Clinic at McGill association fee paid by all graduate students on the downtown campus, excluding post-docs, from \$2.00 per student per semester (excluding summer) to \$4.50 per student per semester (excluding summer), starting in Fall 2017 **and ending Fall 2019(inclusive)**?

Thank you,

**Marie-Pier Gauthier**

Executive Director

Clinique d'information juridique à McGill

3480 McTavish, room 107

Montréal (Québec), H3A 0E7

<http://licm.mcgill.ca/>

[ed.licm@mail.mcgill.ca](mailto:ed.licm@mail.mcgill.ca)

## **Appendix Nine:**

Mon 02-27, 9:04 AM

To: ELECTIONS\_LICM@lists.mcgill.ca

Good Morning

The Legal Information Clinic at McGill University will be holding a Fee Levy Referendum this Spring to change the fee assessed on graduate student members from the current \$ 2.00 per semester to \$ 4.50 per semester (excluding summer). We invite interested graduate students to come forward to sit on a Referendum Option Committee. These Committees are tasked with campaigning for or against the proposed change. Referendum Option Committees are provided with access to campaign funding, as well as certain advertising channels.

Anyone interested in participating on a Committee should please email [elections.licm@mail.mcgill.ca](mailto:elections.licm@mail.mcgill.ca). **Nominations are accepted until Sunday March 5th at 11:59 pm (EST).**

Voting on the referendum will be held online from March 20th to 26th.

Please note that only those assessed the fee (Graduate students, excluding postdoctoral fellows, who are based on the downtown campus) may participate and vote in the referendum.

### **More about the LICM:**

The Legal Information Clinic at McGill (LICM) is a non-profit, student-run, bilingual, and free legal information service. Their mandate is to provide legal information, referral, and community services to the McGill and Montreal communities, with a continuing commitment to meeting the needs of marginalized groups. For issues within the McGill community, Student Advocacy, a proud part of LICM, offers free advice and representation to students accused of a disciplinary offence, for students who feel unjustly treated by the University, or for grievances and appeals. It is the only service of its kind offered to graduate students at McGill. The clinic is supported by student fees charged to Undergraduate, Master, and Doctoral students on the downtown campus.

Thank You

- Elections LICM

**To unsubscribe, please email [elections.licm@mail.mcgill.ca](mailto:elections.licm@mail.mcgill.ca)**

**Pour vous retirer de la liste, veuillez vous adresser à [elections.licm@mail.mcgill.ca](mailto:elections.licm@mail.mcgill.ca)**

## Appendix Ten:

**From:** PGSS Chief Returning Officer  
**Sent:** November 29, 2016 8:17 AM  
**To:** LICM Communications <pub.licm@mail.mcgill.ca>  
**Subject:** Re: LICM Potential Referendum - Update

Hi! Sunny,

Thanks for your message. The answer to your questions is as follows:

1. Is there a way for the Yes Committee to view the No Statement, if there is one, before it appears on the ballot to ensure that it doesn't contain misrepresentation and/or misleading information? Alternatively, if the Yes Committee cannot view it, can it be viewed by a neutral third party?

The Bylaws are silent on this aspect and it is upon me to collect the statements from the committees and evaluate them to ensure that there is no misrepresentation and the language used is to further the campaign, and not to malign the organization. As the CRO, I will do my due diligence before the statements are circulated.

2. Can we object to the No Statement for misrepresentation, either before or after the vote?

If you are concerned, I can formulate a mechanism where the committees can read the statements and raise objections before they are put on the ballot, but I do not see this as a major concern. Before the campaign begins I will have an info session where I will address these questions.

3. Is there a dispute resolution mechanism during the referendum? Would it be you, as CRO, during the referendum, and the Judicial Board after?

Yes, any dispute arising during the election will be submitted to me, where I will give both sides an opportunity to be heard and make a detailed decision and impose penalties if needed. If any side wants to appeal, they can go to the Judicial Board which decides the appeal within 3 days.

4. The referendum quorum is 5% of the PGSS membership if our memory serves us right? About how many PGSS members are there right now?

The bylaws do state the quorum as 5%, but that is only for PGSS internal referendums. For external referendums the quorum requirement is as per your constitution, or if you would like

to have the 5% that is fine too. Please be advised that PGSS only facilitates your referendum process and ensures transparency. How your use the referendum results is upon you.

Please let me know if you may have any further questions or concerns.

Thanks,

--

**Manmeet S. Rai**

**End of Document**

# Legal Information Clinic at McGill Referendum

## Memorandum of Understanding

### General Provisions

1. This memorandum of understanding is made between Manmeet S. Rai (herein CRO) acting on behalf of the Post Graduate Student Society (hereinafter “PGSS”) and the Legal Information Clinic at McGill (herein LICM).
2. The CRO will, upon the approval of the PGSS council and subsequent ratification by the PGSS board of Directors (hereinafter “BOD”), run a fee levy referendum for the LICM. This Referendum must meet the standards outlined below, which will be determined by the mutual agreement of the CRO, and LICM, subject to general PGSS and McGill policy.
3. The referendum question, with options, will be presented before the January council for its approval. Upon receiving the approval from the council, and subsequent ratification by the PGSS BOD, the CRO will present the questions to the PGSS membership for voting.
4. The LICM is charged with ensuring their referendum question meets McGill policy. They are further obliged to inform the CRO of any McGill-, PGSS-, or Government-imposed modalities that are not addressed in in this memorandum before the end of the referendum option committee nomination period.
5. Upon the approval by the Council, LICM will have the permission to use the OVS and send emails to the PGSS membership, only through the CRO.
6. The LICM is charged with obtaining unofficial translations of Referendum Option Committee statements and the referendum question within the delay determined by the CRO.
7. The LICM is also obligated to send the draft email blasts that LICM wants to be disseminated among the PGSS membership.
8. The LICM is also obligated to collect the nomination forms from the members wishing to join the ‘Yes’ and ‘No’ committees and submit those form to the PGSS office for scrutiny.

### Fees & Relationship

1. CRO will be a PGSS contract worker.
2. Should the LICM referendum require labor hours of the CRO in excess of a reasonably foreseeable amount (approximately 10 hours), the CRO will keep the LICM apprised of the amount of hours used. This work will be billed at a rate of \$20.00 / hour.

### Timeline

1. The CRO and LICM agree to the following timetable, subject to any timeline modifications that best serve the democratic needs of the PGSS, in an extenuating circumstance:
  - 1.1 The LICM will submit its referendum question to the January Council meeting occurring on January 18<sup>th</sup>, 2017.

1.2 Following the ratification by the Board of Directors, the CRO will call for the creation of referendum committees for the referendum question by way of an email to the membership explaining the process, deadlines and questions. The nomination period for referendum committees and Chairpersons will be one calendar week, specifically from Monday, January 23rd to Sunday, January 29<sup>th</sup>

1.3 If a person or persons do not come forward to run the No referendum option, no, No ballot statement shall be submitted.

1.3.1 The statements, if any, submitted by the 'Yes' and 'No' committees will be available to any committee member prior to it forming a part of the referendum ballot. The CRO shall ensure that the statements comply with the PGSS standards and upholds the democratic value of the process. In case of an objection raised to the wording of the statement, the CRO will expeditiously hold an open hearing and give an opportunity to chairs of both of the committees to put forth their arguments. Upon the conclusion of the hearing the CRO's decision shall be final and binding on the LICM with no right to appeal to the Judicial Board.

1.4 The Chief Returning Officer (CRO) will send in the Guidelines outlining the rules of the referendum to the committees by 10AM on January 30.

1.5 The campaign period will start on Monday, February 6 and last for two (2) weeks. It will end on Sunday, February 19 at 11:59pm.

1.6 Active campaigning must cease the evening (11:59pm) before the opening of the polls. LICM, through the CRO, can send multiple email reminders to the PGSS membership encouraging them to vote. Neither any committee member, nor any executive of LICM, will approach any PGSS member, directly or indirectly to persuade any PGSS member to vote for or against the referendum.

1.7 The voting period will last seven (7) calendar days, namely from Monday, February 20th at 9:00AM to Sunday, February 26 at 9:00PM.

1.8 The quorum will be met with 5% of the PGSS membership.

1.9 Upon the conclusion of the referendum, the CRO will electronically transmit the official results of the referendum to LICM before publishing them on the OVS.

1.10 LICM will ensure that the referendum results are duly submitted to McGill, and an official copy of the communication is send to the CRO for his records.

## **Campaigning**

1. Campaign material includes any material intended to affect the ballot choice of a PGSS member. It does not include materials existing prior to the campaign that was not created with the intent to campaign; it also does not include external materials that were not created with the intent to campaign, such as professional pages (LinkedIn, McGill, etc.).

2. Campaign materials used in support of the election campaign of a candidate or referendum committee, including all gifts and contributions, shall not exceed a retail market value of three hundred (300) dollars, including taxes.

3. An itemized account of all expenditures (along with the receipts) must be submitted to the CRO after campaigning has ended.

4. The PGSS shall not fund any referendum committee.

### **Signatures**

We, as designated authorities of the LICM and as the CRO, do agree to this Memorandum of Understanding, on this 19th day of January of 2017 in the city of Montreal:



I have the authority to bind the LICM  
Marie-Pier Gauthier  
Executive Director, Legal Information Clinic at McGill



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Name: Manmeet S. Rai  
Position: PGSS Chief Returning Officer



## **LICM Meeting with Manmeet S. Rai– January 24, 2017**

### **Present:**

**LICM Executive Director**

**LICM Communications Director; and**

**PGSS CRO**

Manmeet said the following:

- Offered to be our independent CRO while still PGSS' CRO.
- The LICM running the referendum independently would allow the LICM to bypass a PGSS Council vote on the referendum question because the only reason the PGSS Council needs to vote on the question is because we are asking to use PGSS' CRO and PGSS' voting system and the referendum is being run in accordance with PGSS rules as stipulated in GSS SAM.
- The PGSA executives can endorse a referendum position, but that PGSS executives cannot. Apparently, this is true despite him also saying that the PGSA executives must comply with the rules of the PGSS.
- Manmeet is making his referendum (I do not make referendums to anyone) to the PGSS Board, comprising the Secretary-General and other members, which do not include the Speaker (Logan). In an earlier conversation, Manmeet had said that he would make his recommendation to the Secretary-General and the Speaker (Logan).
- There is no mechanism for a member of PGSS to move to undo an approval of a motion in January.
- PGSA Council will pass the resolution if we run the question again at February council—they just want to deliberate on it.
- PGSA Council has the right to deliberate on the substance/merits of the question.
- He's received three complaints about the referendum question from January 18 passing.
- He personally thinks the fee increase is too high.
- Midnight Kitchen had to resubmit their referendum question to PGSA Council because no one counted the number of objections to the motion.

### **Comments of Mr. Rai:**

**The number corresponds to the bullet point (above)**

1.

Inaccurate. When LICM approached me with the LICM Agreement in 2016, I categorically mentioned that I cannot be their CRO while simultaneously being

PGSS CRO. This was because LICM was running its referendum under the PGSS rules.

In the meeting on January, 24, 2017, I was asked if I could be LICM CRO, if LICM decides to run their referendum 'independent' of PGSS. In response to this I stated that yes, it is possible since I am an independent contractor, however, it would be unethical to do so without informing PGSS and taking into consideration any objections they may have. I further emphasized that in a scenario where I do run LICM referendum, LICM will need to procure the emails ids from McGill pursuant to their MoU and also subscribe to an online voting system.

2.

Inaccurate. The reason why the LICM was asked to approach the PGSS Council is because they were running their referendum pursuant to the PGSS referendum rules as stipulated in the PGSS SAM Chapter 9. This was also incorporated in the MoU signed by me in the capacity of PGSS CRO.

LICM would not have to approach the PGSS Council if it ran a referendum independently as it has done now.

3.

Partially correct. In accordance with PGSS bylaws Section 9(3.3), which states, "[t]he PGSS shall maintain a conflict of interest policy for those who are in titled positions, management, and employees." As of now PGSS has no such policy in place and I was asked to provide an opinion on this, to which I recommended that no PGSS Executive may endorse any external organization. PGSA executives are not covered by this clause and hence can endorse external organizations. Since every PGSA Constitution is approved by PGSS, they are obligated to follow PGSS rules and regulations.

4.

Inaccurate. The Speaker presides over the PGSS council and GM. Once a referendum question is passed by the council, the speaker forwards it to the BoD in accordance with SAM, which is then sent to the CRO by the Sec Gen. When the inaccurate information given by LICM came to light, it had already been passed by the Council. I made a recommendation to the BoD, which comprises of Sec Gen and other members as stipulated in PGSS bylaws Section 6(3). This recommendation was made through the Sec Gen. The 'Speaker' is not a member

of the PGSS BoD.

To bring the agenda back due to a mistake, it can only be tabled before the Council if moved by the Sec Gen and approved by the Speaker. To get the LICM referendum question back in the subsequent council, this recommendation was made to the Sec Gen and Speaker.

5.

Motions are different from special referendum questions. There is no procedure for undoing a vote on the referendum question. See SAM Chapter 9.

6.

Inaccurate. I do not control the Council and neither can I or anyone else predict the outcome. I recommended that after the council receives the LICM referendum question again, they will vote on it before it can be placed on the ballot.

7.

Accurate, There is nothing that prohibits the council to raise questions on the referendum question. See Bylaws Section 6(1) and SAM Chapter 9.

8.

Inaccurate. The concern was raised on the PGSS Facebook page which was duly informed to the Sec Gen and Societies Affairs Manager. Two other PGSS members raised their concerns on the issues raised in the FB post which was duly communicated to Societies Affairs Manager and LICM. As per the CRO contract, I also assist the council in following the Robert's Rules, attendance and providing my input to ensure that the Society functions as per rules. However, as a CRO I do not control any decision making of the Council.

9.

Emphatically denied. During my meeting with the LICM, neither I questioned the structure of the 'question' nor the proposed fee increase, which is for the graduate membership to vote on. If I had any concerns with the intent or opposition to the fee increase, I was recused myself from even getting involved in this process on ethical grounds.

10.

Inaccurate. The Mid Night kitchen referendum question was passed by the council with a majority vote, whereas SAM Chapter 9, Section 2.4, mandates a 2/3 vote. After I brought this to the attention of the Sec Gen and the Speaker, Mid Night Kitchen representatives were asked to come back to the Council and re-do the process, which the Council passed with a 2/3 vote. The votes were counted and ensured that a 2/3 majority was achieved.