

**Date Filed:** March 7<sup>th</sup>, 2019

**Nature of Complaint:** Alleged Multiple Violations of the UVSS Electoral Policy in Connection with the Referendum No. 4 Electoral Event

On March 7<sup>th</sup>, 2019, the Elections Office received a complaint alleging that the respondent, a third party on-campus group, violated multiple sections of the University of Victoria Students Society (UVSS) Electoral Policy (“the Policy”) in connection with the holding of a referendum related to the said on-campus group. The following sections of the Policy are alleged to have been violated by the respondent:

- Section 5.9.5 (b) – Prohibited campaigning, insofar as the posters were posted in residences, and the posters were affixed to glass doors and painted walls;
- Section 5.9.5 (c) – Prohibited campaigning, insofar as the posters were not stamped by the Electoral Office;
- Section 6.3 (d) – Campaign referenda and election campaigning, insofar as some of the respondent’s posters contained a “Remember to Vote No” message and a link to a referendum related website, which was prohibited;
- Section 7.5 (b) – Responsibilities of candidates and campaigners during voting, insofar as at least one poster was posted within six meters of a fixed voting information station;
- Section 5.9.4 (d) – Interference, insofar as given the use of unsanctioned posters, the complainant suspects that the 100 poster limit was exceeded;
- Section 5.8 (d)(i)- Third party endorsements, insofar as the respondent solicited, received and posted about endorsements that they had received from University of Victoria faculty, which was prohibited;
- Section 5.8 (d) (iii) – Third party endorsements, insofar as the respondent worked with another prohibited on-campus group on a public and media relations strategy;
- Section 5.9.4 (b) –Defamation, insofar as the complainant has been specifically named in a separate legal action which has been initiated by the respondent relating at least in part to statements made by the complainant in the context of the referendum campaign, this constituting an attack on the complainant’s character;
- Section 5.9.5 (f) – Intentional misrepresentation of the facts, insofar as statements made by the respondent over restaurant purchases were false in the face of evidence provided by the complainant;
- Part 1 (b) – Purpose and application of the Policy, insofar as the actions of the respondent violated the principles set out in subsections (i), (ii) and (iii) of Part 1 (b) of the Policy (respect for the democratic process; right of voters and candidates to participate in fair and just electoral events; fair and open processes for resolving issues arising from electoral events);

On March 11<sup>th</sup> and 13<sup>th</sup>, 2019 the respondent provided a response. They have stated that as they were neither the proponent nor the opponent of the referendum, or a candidate, slate or campaign manager, the complaint does not apply to them, nor should it have been directed to them as an on-campus group (Section 5.9.2). The respondent has stated that they were external to the election entirely, and that electoral complaints made about the respondent do not comply with the regulations outlined in the Policy. With respect to the afore-noted specific allegations summarized above, the respondent has stated:

- That they did not post anything in residences, and that if individual students were posting their posters in their dorms or elsewhere that is the jurisdiction of the residence community leaders, and that they had no control over the actions of individuals;
- That as they were not the opponent, their posters were their own and did not need to be stamped by anyone except the appropriate authorities in specific buildings, unrelated to the election;
- That because they were not the opponent, any testimonials received from faculty or students or community members about them were within the purview of their rights as an independent organization to be posted on-line or anywhere else as appropriate;
- That they did not work directly with another on-campus community group on a public and media relations strategy;
- With respect to the allegation of defamation, the respondent has stated that they were not the opponent, that they were not aware of defamatory remarks made by the opponent, and they question why this complaint has been addressed to the respondent;
- With respect to the allegation of intentional misrepresentation of the facts, the respondent has stated that the complainant's claims are baseless and frivolous and, in their view, defamatory, and that the complainant has made false and misleading claims based on false information and has continued to do so;
- With respect to the alleged violation of Part 1 of the Policy, the respondent has stated that it sought legal action as, per their assertion, members of the UVSS made defamatory comments at the January 14<sup>th</sup>, 2019 UVSS Board of Directors meeting, and that as this is a legal matter they will not be commenting on the specifics;
- That UVSS Policy does not have jurisdiction over the actions of an independent non- profit organization.

Given the extensive number and potentially very serious nature of the allegations, as the Chief Election Officer ("CEO") I considered it warranted, pursuant to Section 5.9.2 of the Policy (under Campaign Infractions and Sanctions), to conduct an investigation to determine if the alleged behavior constituted a minor or a major infraction. In this regard, the formal complaint process as set out in the Policy was generally followed, with the additional step of providing both the respondent and the complainant with the complete text of the allegations (as opposed to a detailed yet summarized version of the allegations as had been the Electoral Office's practice with other complaints, particularly in those instances when the attached supporting materials may have been particularly voluminous). The complainant was also afforded the opportunity to provide comment on a second response from the respondent, with the qualifier stated to the complainant that this wasn't an opportunity to raise anything new or to rehash the points already made, but a final opportunity to make comment on any of the respondent's arguments. So, as such, I consider that I have provided both the respondent and the complainant with sufficient opportunities to know the full nature of the allegations made against them, and to respond in a manner they consider warranted.

### **Relevant Policy Sections**

*Part 1 (b) of the Policy (Purpose and Application): States that it is based on the principles of:*

- i. Respect for the democratic process and persons involved in that process.*
- ii. The right of voters and candidates to participate in fair and just Electoral Events.*
- iii. Fair and open processes for resolving issues, arising from Electoral Events.*

*Section 2.6 (Definitions): Candidate- is a person whose nomination form has been accepted as complying with this policy to stand for election or as a referendum proponent/opponent.*

*Section 2.25 (Definitions): Third Party Endorsement – is official support from a recognized on-campus group for a candidate.*

*Section 2.26 (Definitions): Third Party - is a recognized on-campus group which supports a candidate or side in an Electoral Event.*

*Section 5.4 (f): Posters and banners may only be posted in accordance with UVic’s Student Election Poster and Banner Procedures. It is the candidate’s responsibility to read and comply with those regulations.*

*Section 5.4 (g): All posters and banners must be stamped by an Electoral Officer before being posted.*

*Section 5.4 (m): Candidates are responsible for all of their campaign materials complying with posting regulations, including materials prepared or posted by their slate, campaign supporters, or third- party endorsers.*

*Section 5.8 (b): Third party endorsers are obligated to comply with the responsibilities and obligations of candidates under this policy.*

*Section 5.8 (d): The following on-campus groups shall also be prohibited from providing endorsements, interfering, or otherwise intervening as third parties:*

- i. UVic or any UVic departments or affiliates,*
- ii. UVSS Businesses*
- iii. The Martlet*
- iv. CFUV 101.9FM*
- v. VIPIRG, and*
- vi. Labour Unions*

*Section 5.8 (e): Candidates are responsible for any campaign activities carried out by or campaign materials produced by a third-party endorser on behalf of the candidate and all posters and banners must be stamped by an Electoral Officer before being posted and will be counted as if produced by the candidate when determining the candidate’s maximum permissible numbers of posters and banners and the candidate’s campaign spending limit.*

*Section 5.9.1 (Campaign Infractions and Sanctions): The Electoral Office shall make every attempt to uphold the principles of the UVSS Electoral Events, including being:*

- a. Fair and equitable for all participants*
- b. Administered in a manner that is independent and impartial*
- c. Transparent and accountable;*
- d. Democratic;*
- e. Environmentally and financially sustainable; and*
- f. Grounded in professionalism and respect for all parties.*

*Section 5.9.4: Major infractions of electoral policy shall result in immediate disqualification of the candidate(s). The following actions toward any Electoral Event participants, including Electoral Officers, the Electoral Office, or its Voting Information Stations, constitute major infractions of Electoral Policy.*

*Section 5.9.4 (d) Interference: Any overt attempt to interfere with the administration of a free and fair Electoral Event which includes but is not limited to fake polling stations, impersonating an Electoral Official, cyberattacks on the webvote portal or Electoral Office website and communications, intentional voter suppression, loitering at, or approaching members at Voting Information Stations during the voting period.*

*Section 5.9.5 (b) (Prohibited Campaigning): campaigning, distributing, posting, or publishing in a prohibited area including ...in or around resident buildings, or within sound or six metres of a Voting Information Stations.*

*Section 5.9.5 (c) (Unauthorized campaign material): material that has not been stamped by the Electoral Office, exceeds the allowable dimensions, or does not meet University poster guidelines.*

*Section 5.9.6: Any action not listed under “campaign infractions” which violates the principles of the Electoral Event as previously outlined may be punishable by the CEO and shall follow the complaints and appeals process set out in this policy.*

*Section 6.1 (l) (Referenda): Proponents and opponents have and must comply with all the obligations, limitations and responsibilities of a candidate, except that both referenda sides, for and against, may each post a maximum of one hundred (100) posters and six (6) banners.*

*Section 6.1 (n): If a disqualifiable offence is committed by a proponent, opponent or third- party, the referendum may be considered invalid. The CEO must make all reasonable attempts to investigate, rectify, and/or resolve any issues before resorting to invalidating the result of a referendum question.*

*Section 6.3 (d): Referendum proponents and opponents are not permitted to endorse slates or candidates if elections are being held concurrently.*

*Section 6.4 (c): If a referendum is called that concerns the fee of a separately incorporated fee-levied group, that group may choose to endorse and provide resources to one side.*

- i. Should a separately incorporated fee-levied group choose to support a side for a referendum concerning their fee levy, they may provide their resources with the same restrictions as an endorsed proponent of the UVSS.*
- ii. Separately incorporated fee-levied groups may not endorse, interfere, or intervene in any other aspect of the Electoral Event. The CEO may place sanctions on their referendum campaign.*

## **Issues to Determine**

1. Does the UVSS Electoral Policy apply to the respondent?
2. Did the respondent contravene any or all of those sections of the Policy as alleged by the complainant, and which have been set out above?

3. If so, does the contravention or contraventions amount to a major infraction requiring the CEO to annul Referendum No. 4?

### **Analysis – Does the UVSS Electoral Policy Apply to the Respondent?**

In its response the respondent has stated that as they were neither the proponent nor the opponent in the referendum campaign, or a candidate, slate or campaign manager, the complaint does not apply to them and should not have been directed to them. They have stated the position that as they were neither of the above, they considered themselves external to the referendum entirely, meaning that complaints under the Policy made about them do not apply.

I disagree. In my view, the cumulative effect of the following sections makes it very clear that the Policy and the complaints and appeals processes contained therein were fully intended by the drafters of the Policy to apply to on-campus groups, including “separately incorporated fee-levied group(s)”, such as the respondent.

In Section 2.26 a third party is defined as a recognized on-campus group which supports a candidate or side in an electoral event. Section 2.25 defines a third party endorsement as official support from a recognized on-campus group for a candidate. I find, therefore, that the respondent was a third party as defined by the Policy.

In Section 5.8 (d) the Policy lists a number of specific on-campus groups that are prohibited from providing endorsements, interfering or otherwise intervening as third parties. The respondent is listed as one of those on-campus groups, a third party, to which section 5.8 (d) applies. I note that section 5.8 (c) of the Policy also applies to all off-campus groups whether they are registered with the Elections Office or not. Therefore, even off-campus groups are subject to the Policy.

Section 6.4 (c) provides further indication that the Policy applies to the respondent. It provides that if a referendum is called which concerns the fee of a “separately incorporated fee-levied group”, the group may choose to endorse and provide resources to one side of the referendum subject to the stipulations and limitations set out in subsections (i) and (ii). Notwithstanding the use of the term “separately incorporated fee-levied group”, I find that such a term is simply another way of saying “on-campus group” that receives a fee-levy from students, which constitutes a third party for the purposes of the Policy and is therefore applicable to the respondent. I pause to highlight the inconsistency between section 5.8 (d) and section 6.4 (c) and suggest that the Board of Directors turn their minds to clarifying this.

For the purposes of this ruling, I have interpreted these sections to mean that the on-campus groups listed in section 5.8 (d) are prohibited from providing endorsements, interfering, or otherwise intervening as third parties in referenda unless the referendum question concerns the group’s fee-levy. Where that is the case, I find that such a fee-levied group would be subject to the Policy.

In the present case, the respondent did not argue that it was conducting its campaign activities as a “separately incorporated fee-levied group”. It simply responded that the Policy did not apply to it; therefore it could not be held responsible under or subject to the limitations and sanctions set out in it.

In my view, whether or not the respondent was or ought to have been a properly registered third party endorser or a “separately incorporated fee-levied group”, there is no doubt in my mind that by its actions and conduct the respondent did in fact endorse the opponent’s position against Referendum Question No. 4.

Accordingly, I am satisfied that the Policy applies to the respondent. It would be absurd for the Policy not to apply to third party on-campus groups simply because they did not formally declare under either section 5.8 (a) or section 6.4 (c) that they intended to be a third party endorser.

### **Did the Respondent Contravene the Policy?**

The Policy attributes conduct of a third party endorser to a candidate (in this case an opponent to a referendum question).

The Policy provides that where an endorsement is provided by a separately incorporated fee-levied group, the candidate (which in section 2.6 includes a referendum proponent or opponent) is responsible for all of the campaign materials complying with posting regulations, including materials prepared or posted by their third party endorser (section 5.4 (m)).

Section 5.8 (b) provides that third party endorsers are obligated to comply with the responsibilities and obligations of candidates under the Policy. Section 5.8 (e) provides that the opponent is responsible for any campaign activities carried out by or campaign materials produced by a third party endorser on behalf of the opponent, that all posters and banners must be stamped by the Electoral Officer before being posted and will be counted as if produced by the opponent when determining the opponent’s maximum permissible numbers of posters and banners and campaign spending limit. Section 5.8 (f) further provides that if an on-campus group spends money to promote or endorse an opponent in a non-official capacity, and the opponent is known to be affiliated with that group, the candidate may be held responsible for the expense.

Flowing out of the analysis above, I am satisfied that contrary to sections 5.4 (f) and (g), 5.9.5 (b) and (c) and 6.3 (d) of the Policy, the respondent improperly posted or allowed to be posted in residences, on glass doors and painted walls campaign referendum campaign material containing a “Remember to Vote No” message and a link to a referendum related website that were not stamped by the Electoral Office, as well as a poster that was affixed within six meters of a Voting Information Station contrary to section 7.5 (b). I am also satisfied that the respondent solicited, received and posted endorsements from University of Victoria departments or affiliates contrary to section 5.8 (d)(i) and exceeded the poster limit of 100 contrary to section 6.1 (l) of the Policy.

### **Does the contravention of the Policy amount to a major infraction requiring the CEO to annul Referendum No. 4?**

In my view the Policy should be read and interpreted broadly and purposefully to reflect the purpose and principles enumerated in Part 1 and Section 5.9.1 of the Policy. The Policy states that the Electoral Office shall make every attempt to uphold the principles of the UVSS Electoral Events, including, among other things, being fair and equitable for all participants. In my view the clear intent of the Policy is to ensure, to the fullest extent possible, a level playing field for all participants in the referendum process.

With that in mind, I am of the view that the nature and extent of the contraventions of the Policy as described above constituted both “intervening” and more significantly, “interference” as referred to in section 5.9.4 (d) of the Policy.

Intervening is not defined in the Policy, but generally means to come between so as to prevent or alter a result or course of events. Interference is defined in the Policy as any overt attempt to interfere with the administration of a free and fair electoral event (in this case, a referendum), which includes but is not limited to a range of violating activities which are specifically referenced in the definition.

Interference is one of seven listed major infractions of the Policy and is a disqualifiable offence. Pursuant to section 6.1 (n) of the Policy, in the context of a referendum, if a disqualifiable offence is committed by a proponent, opponent or third party, the referendum may be considered invalid. The CEO, however, must make all reasonable attempts to investigate, rectify, and/or resolve any issues before resorting to invalidating the result of a referendum question. The CEO’s authority to impose potentially significant sanctions are supported by the language in Section 5.9.6 of the Policy which provides that any action not listed under “campaign infractions” which violates the principles of the electoral event may be punishable by the CEO, and shall follow the complaints and appeals process set out in the Policy.

Because of the support provided to the opponent, as well as the respondent’s behaving as if the Policy did not apply to it, what resulted was a significant proliferation of unapproved, unstamped campaign-related posters placed throughout the campus without any previous review or discussion with the Electoral Office, and far exceeded the maximum allowable campaign material limits for proponents and opponents.

In my view, the overall cumulative effect of the respondent third party’s multiple contraventions, conducted with impunity, violated the most fundamental principles of Part 1 (b) and section 5.9.1, significantly undermined the credibility and legitimacy of Referendum Question No. 4 and amounted to interference, a major infraction under the Policy warranting a serious sanction.

## **Decision**

Accordingly, I rule that Referendum No. 4 be declared invalid pursuant to Sections 5.9.4 (d), 5.9.6 and 6.1(n) of the Policy. Assuming that the January 14<sup>th</sup>, 2019 motion of the UVSS Board to take the matter of the fee levy in question to a referendum has not otherwise been repealed or rescinded, it is my further view that the referendum should be conducted again, as soon as possible.

Given that I have determined that a disqualifiable offence has been committed by the respondent relative to this referendum, I do not consider it necessary to decide on the allegations related to defamation and intention misrepresentation of the facts.