REPORT OF THE INVESTIGATION INTO THE PROTESTS FILED BY SANDRA BELL, MICHAEL BELANGER AND DAWN BURNS ABOUT THE ELECTION OF 2017 YUSAPUY OFFICERS

I. Background

The election for the 2017 YUSAPUY officers had a number of distinguishing features. It was the fourth year that the Union used electronic voting. Members could vote using any device with internet access, 24 hours a day, from November 21 – 28, 2016. For what is believed to be the first time, some candidates went into the workplaces to introduce themselves to members and to seek their votes. One candidate put up election posters in common areas, such as elevators. The employer complained to the full-time officers about candidates electioneering during working hours and postering contrary to the University's Postering (Guidelines). This election had the highest turnout ever, 895 voters, and 136 votes more than the previous highest turnout. This was the first election that incumbents who ran for re-election were defeated. Some saw the increased turnout as positive, greater member involvement in their union, and enhancing YUSAPUY'S bargaining power with the University. The three full-time 2016 officers filed protests. Two of them, the President and Second Vice President were not re-elected. The third, the First Vice President was re-elected, but later resigned.

II. Investigation

I was retained by the Executive of YUSAPUY to investigate the protests filed on December 12, 2016 under Article XI section 8 of YUSAPUY's Constitution by Sandra Bell, Michael Belanger and Dawn Burns. I was given copies of the three protests, the Constitution and the Elections Policy.

I wrote to Sandy, Mike and Dawn asking for written details of their protests and for copies of the documents that they thought important to this investigation. I met with them on January 16, 2017 to hear their allegations. I sent them copies of my notes of their interview and received their corrections.

I sent the written details of the protests and the documents on which the Protesters relied to Giulio Malfatti, the newly elected President, to Sonny Day, the newly elected Second Vice President, and to Filomena Weatherill, the Administrative Co-ordinator of YUSAPUY. I sent these materials to Sylvia Bosch-Karas, the Chair of Nominations and a member of the Elections Committee, and to Breanne Whitwell, the Chair of the Constitution and Policy Committee, and also sent them copies of the documents I had received from Fil, Giulio and Sonny.

I met with Fil, Giulio and Sonny on January 25, 2017 to hear their responses and gathered documents that they thought would be helpful to my investigation. I sent copies of my notes of their interviews to each of them and received their corrections. I met with Sylvia and Breanne on January 30, 2017 to hear their responses and gathered documents that they thought would be helpful to my investigation. I sent copies of my notes of their interviews to each of them and received their corrections.

I sent Sandy, Mike and Dawn copies of the documents I had received from the others and met with them on February 3, 2017 and heard their responses. I sent copies of my notes of their interviews to each of them and asked for their corrections.

As I wrote this Report, I sent emails seeking additional documents and seeking answers to my questions.

III. Protests

The Protesters filed generic protests alleging:

- constitutional and policy irregularities with respect to the creation and composition of the Election Committee;
- the Election Committee's failure to address complaints regarding ongoing campaigning and electioneering; and
- any other constitutional and policy irregularities that may apply.

To conduct an investigation, I asked the Protesters to prepare written particulars of their allegations. Their allegations included:

1. Constitutional and Policy irregularities with respect to the creation and composition of the Elections Committee:
   i. The Chair of Nominations failed to consult with Membership Officer in compiling the Voters' List;
   ii. The Nominations Committee did not meet and the Chair established a two-person Elections Committee; and
   iii. The Nominations Committee failed to oversee the work of the Elections Committee.

2. Some candidates violated YUSAPUY'S Constitution and Elections Policy by campaigning in the workplace during working hours and failed to heed the direction of the Elections Committee.

3. The Chair of Nominations did not bring any of the electioneering/campaigning issues forward as agenda issues for the November 23, 2016 meeting of the Executive Board.

4. When electioneering/campaigning issues were raised by the 1st Vice President at the November 23, 2016 meeting of the Executive Board, the Board refused to take effective or any action to prevent further violations.

5. At the November 23, 2016 meeting of the Executive Board, one of the candidates whose conduct was being complained about, voted against taking action; this was a conflict of interest.

6. Contrary to the Elections Policy, some candidates attempted to influence voters by electioneering near workstations/computers which, with the advent of electronic voting, had become polling stations.

7. There was an error with the e-vote ballot in that members were forced to vote for three candidates if there were three vacancies.

8. A member who was on sick leave did not receive voting information mailed to her home.

9. A member of the Elections Committee was biased against the incumbents in the election.

10. During a meeting of Stewards on December 12, 2016, a member of the Elections Committee wrongfully denied ballots to Sandra Bell and Dawn Burns.

The Protesters sought the following remedies:

A. Recall and/or de-appointment

B. Re-run the YUSAPUY election.

C. All YUSAPUY elections held in the future will be done in consultation with the Nominations Committee, Elections Committee and Membership Officer to ensure integrity of the election is maintained.

D. Full disclosure to the membership. The membership is to be advised of the details of the complaints and the outcomes as well as any breaches of confidentiality. The Executive Board shall be responsible to the membership as per the Constitution (Article VI, Section 2).

E. Bring the Policy Manual and Constitution up to date in a timely fashion and present to the membership for approval.

F. If it is determined that the Constitution and/or Policies have been breached, the responsible individuals should be required to apologize to the membership.

IV. Constitution and Policies

The Protesters have alleged breaches of the YUSAPUY Constitution, the Elections Policy and of a direction of the Elections Committee. Before reviewing the facts in this matter, I began by looking at the relevant provisions in the YUSAPUY Constitution and the Elections Policy. I have also searched for the University's policies on campaigning/electioneering and on postering.

YUSAPUY is the bargaining agent for the employees of York University within a 20 kilometre radius of Metropolitan Toronto performing office, clerical, laboratory, or technical work save and except for those positions excluded from the certificate issued by the Ontario Labour Relations Board on December 10, 1975. YUSAPUY is an unincorporated association.

Therefore, YUSAPUY is governed by its Constitution, which must be approved by a vote of the membership, and its Policies, that are approved by the Executive Board. The Constitution is posted on YUSAPUY's website. The Policies are not. It was challenging to determine which policies applied to the election of the 2017 officers.

Constitution

The membership approved amendments to the Constitution in November 2015. The amendments were of three types:

i. housekeeping changes;
ii. new language about finances based on recommendations from the auditors; and
iii. new language for electronic voting.

This election was governed by the November 2015 Constitution. The full text is on the YUSAPUY website.

The provisions of the Constitution relevant to this investigate are in Article XI, dealing with elections, and in Article XV, dealing with balloting and voting.

Article XI section 3 - Elections Committee provides:

> The Nominations Committee shall set up an Elections Committee normally composed of four members who are not candidates for any position to conduct the Annual General Elections. The Elections Committee shall be responsible for:
>
> a) Preparing the ballots by office with the candidates listed in alphabetical order… For electronic voting, electronic ballots shall be made available to members in good standing via the YUSAPUY listserv, providing access to an electronic voting system, requiring appropriate authentication.
> b) For voting by polling station …. For electronic voting, ensure that the electronic voting system had all of the election related details and that members in good standing receive e-voting instructions and access to the electronic voting system.
> c) … For e-voting, the Elections Committee and the Union Office shall make a computer workstation available as a voting station so that members have access to a computer for voting purposes….
> d) … For electronic voting, arrange for a member of the Elections Committee (i.e. a Returning Officer) to oversee communications with the administrators of the electronic voting system to provide ballot details and a list of members in good standing for access to the electronic ballot.
> e) … For electronic voting, members of the Elections Committee will simultaneously receive the voting results from the administrators of the electronic voting system via email.
> f) after tabulation, inform all candidates of the results, and publish the results to the membership as soon as possible.

Article XI section 5 - Voting provides:

> The Membership Officer and/or Nominations Committee, in conjunction with YUSAPUY Office Staff shall prepare an accurate voting list of all members in good standing that shall be made available to the Elections Committee and … which will be provided by the Elections Committee to the administrators of the electronic voting system to ensure members access to the electronic voting system. …. In an electronic vote, members

who experience technical difficulties with access to the electronic voting system shall contact the Elections Committee. …

Article XI section 8 - Protests provides:

a) any member who wishes to protest any irregularity in the conduct of an election shall file a written notice of such allegation to the Executive Board within ten working days of the election, and the same shall be dealt with by the Executive Board. If an election irregularity concerns a member of the Executive Board, that member will not take part in any Executive Board decisions regarding the protest.

b) If there is no protest, the ballots, including electronic ballots shall be destroyed fifteen days after the election.

Article XV – Ballots and Voting

Article XV section 2 - Voting provides:

…

c) Electronic voting may be used in the following instances: … elections (see Article XI); ….

Article XV section 3 – Voting Stations and Voting Times provides:

…

For electronic voting, the electronic voting system will be active for no less than eight (8) days, typically beginning mid-week, to accommodate as many members as possible. Voting may take place 24 hours day, from any location via the internet.

In instances of an electronic vote, the YUSAPUY office shall make a computer workstation available as a voting station between the hours of 8:30 am and 4:30 pm during the active voting period for members who do not have access to an online computer.

Elections Policy

The Policies passed by the Executive Board are not consolidated, are not readily available in the YUSAPUY office, are not on the website, and the latest Elections Policy was not sent out to the candidates for this election.

The Elections Policy (attached as Appendix "A" to this Report) was approved by the Executive Board in 2007, eight years before the amendments to the Constitution were made allowing for electronic balloting. The 2007 Elections Policy is largely focused on paper ballots, physical polling stations, manual counts of ballots, scrutineers, etc.

The Protesters relied on only one provision of the 2007 Elections Policy:

> Polling Station(s)
> **….**
> Members who are running for a position or their scrutineers should not be interfering with or influencing any voter in any way or electioneering near any polling station. If they are found to do so, they or the member for whom they are doing the scrutineering may be disqualified from running for any position(s). The Elections Committee will bring forth all information, including witnesses, regarding any such accusations at an emergency meeting of the Executive Board. If a member of the Executive Board is also running for the position in question or is the accused, that member must excuse themselves from the emergency meeting or any further discussions by the Executive Board that relates to the accusations. The counting of the ballots or announcing the result of a count for that position may be delayed at the request of the Executive Board. The member may petition any disqualification. A rough guideline for the disqualification will follow the appropriate sections of the deappointment provisions of the Constitution.

York University

York University has a number of unions on campus, each of which holds elections for union officers. I have been told that in some years, elections within these unions have been hotly contested. I have concluded that the University does not have a written policy about what is unacceptable conduct by its employees during an election. That makes sense, as an employer must not be seen to be interfering in the internal affairs of its unions.

But, as an employer, York has the right to manage its workforce as set out in Article 2 of its collective agreement with YUSAPUY. An employer might have a legitimate concern if candidates took time away from their paid work to canvas, but could not object to candidates using their unpaid lunches or their vacations to meet with members. The University might have a legitimate concern if the electioneering was sufficiently intrusive that it interfered with the work of members. These are all management rights, enforced through the discipline/grievance process.

In 2005 York University created Postering (Guidelines) that apply to students, faculty and staff of the University. The Guidelines state that the University permits limited postering in designated places inside its campus buildings. For example, in common areas within buildings, posters are not to be placed on windows, doors, painted surfaces, inside elevators, on elevator doors, or on exit signs.

The Policy states that posters that contravene the Guidelines will be removed by the University and the cost of removal and repair may be charged to the offending party. Candidates for YUSAPUY elections might be wise to comply with these Postering (Guidelines) because failure to do so will be dealt with by the University.

V. Findings

1. Nominations Committee:

- **i. Voters' List;**
- **ii. Nominations Committee did not meet and the Chair established a two-person Elections Committee; and**
- **iii. Nominations Committee failed to oversee the work of the Elections Committee.**

i. Voters' List

The Protesters allege that the Chair of Nominations failed to consult with the Membership Officer in compiling the Voters' List.
The 2015 Constitution states that the Membership Officer and/or Nominations Committee, in conjunction with the office staff, shall prepare an accurate voting list of all members in good standing that shall be made available to the Elections Committee.

The 2007 Elections Policy states that the Membership Officer will provide the Elections Committee with two copies of an up-to-date list of YUSAPUY members. This Policy predates electronic voting which began in 2013.

Since electronic voting, the preparation of the Voters' List has been the responsibility of the University and YUSAPUY staff. Each year, lists of YUSAPUY members are prepared by the University in early November based on the employment status of each person on October 31st. These lists are sent to YUSAPUY staff who create the Voter's List and provide it to the administrators of the electronic voting system for electronic voting.

Every year during voting, problems arise with respect to the Voter's List because the employment status of some members changes. That is, some people start work after October 31st but before voting begins. Some members become ill and are not a work during the voting period, and may on the wrong list. If problems arise with respect to their eligibility to vote, members are directed to yusapuyvoting@gmail.com, an address that is closely monitored by the Elections Committee during the voting period.

The election for the 2017 officers was not an exception. I am satisfied that the Voters' Lists were prepared consistent with the Constitution and when problems arose about eligibility to vote, they were dealt with appropriately by the Elections Committee. Under electronic voting, there is no role for the Membership Officer to play in the creation of these lists. Tasking the Membership Officer with the sole responsibility to prepare the Voters' List, is inconsistent with the Constitution. With the advent of electronic voting, the Elections Policy became out of date.

ii. Elections Committee

The Protesters allege that the Nominations Committee did not meet and that the Chair established a two-person Elections Committee.

The Constitution provides that the Nominations Committee establishes an Elections Committee, normally of four persons, who are not candidates for any position. In November 2016 there were three persons on the Nominations Committee: Sylvia Bosch-Karas, Chair, Breanne Whitwell, and Michelle Cousins. Both Sylvia and Breanne were seeking re-election; Breanne's position was contested; Sylvia was unopposed. During this period, Michelle had family issues and was unable to participate. As she was acclaimed, Sylvia understood that as the only member of the Nominations Committee who was available and able to act, she could appoint Tammy Paglia, a person who had volunteered to be on the Nominations Committee for 2017, to join her on the Elections Committee. That is, for the election of the 2017 officers, there were only two persons on the Elections Committee.

The Constitution is clear that normally the Elections Committee consists of four persons, none of whom are candidates for any position. Sylvia was advised about the constitutional requirement for four persons by Kerrianne Brown, YUSAPUY's Events Coordinator, in an email dated October 28, 2016, by Sonny Day, in an email later on October 28, 2016, by Fil Weatherill, YUSAPUY's Administrative Coordinator, in an email dated November 1, 2016, and by Mike Belanger, the First Vice President, in an email dated November 15, 2016. Sylvia took the position that 'normally four persons' did not actually require four persons. She said that with the strong support of the YUSAPUY staff, four persons were not needed to carry out the responsibilities of the Elections Committee. In 2015 there were only two persons on the Elections Committee, and in 2014 and 2013 there were only three persons on the Elections Committee. That is, Sylvia understood that in creating an Elections Committee of less than four persons, she had the right to follow past practices.

The YUSAPUY Constitution governs how the election of the 2017 officers should have been conducted. There were no extraordinary circumstances that would have prevented the Nominations Committee from appointing four persons to the Elections Committee. Although the practice has grown up to having an Elections Committee of less than four persons, the requirements in the Constitution must be followed.

I am satisfied that having only two members of the Elections Committee for this election played no role in the outcome of the election. Problems that arose with respect to the Lists, perceived problems with the ballot, were all dealt with appropriately by the Elections Committee. When the Elections Committee received the complaint from York University about campaigning in the workplace and postering, in good faith they sent out an email to all candidates. When their email was ignored, that issue was discussed by the Executive Board in its meeting of November 23, 2016.

Going forward, unless the Constitution is changed, the Elections Committee should have four members.

Although not raised in the protests, consideration should be given as to whether candidates who are not opposed for re-election should serve on the Elections Committee. The past practice has been that candidates who are acclaimed in their position have served on the Elections Committee. Although there

have not been any challenges to this practice, I recommend that when the election process is examined, this issue be addressed as the Constitution says, " … Elections Committee normally composed of four members *who are not candidates for any position* to conduct the Annual General Elections."

iii. Nominations oversees Elections Committee

The Protesters allege that the Nominations Committee failed to oversee the work of the Elections Committee. Mike Belanger, who had been Chair of the Constitution and Policy Committee for a number of years, wrote to Sylvia on November 15, 2016 saying:

> By the way, it is my understanding that the Nominations Committee finds 4 members to be on the Elections Committee and the Nominations Committee would oversee that Committee.

In setting out the duties of the various committees, Article V Section 1 g) of YUSAPUY's Constitution states that the Nominations Committee "shall oversee the procedures for YUSAPUY's Annual General Elections.

In Article XI – Elections, the Constitution states that it is the Elections Committee that is responsible for the preparation of ballots, ensuring the electronic voting system is in order, making a computer workstation available as a voting station, communicating with the administrators of the electronic voting system, receiving the voting results from the administrators of the electronic voting system, and informing the candidates and the membership of the results as soon as possible. The Elections Committee is also responsible for administering voting, including determining whether a person may vote.

The Constitution gives the responsibility for establishing procedures for YUSAPUY's annual general elections to the Nominations Committee, but specifically delegates how those procedures are to be carried out in any election, to the Elections Committee. Both the Constitution and the Elections Policy are silent whether the Nominations Committee has an ongoing obligation to supervise the work of the Elections Committee.

The Protesters say that as part of its oversight of the elections process, issues or problems are to go first to the Nominations Committee to be dealt with. There is nothing in the Constitution or in the Elections Policy that says that the Elections Committee must be persons who are not on the Nominations Committee, that is, the Elections Committee is arm's length from Nominations. The reality for many years has been that at least one of the members on the Elections Committee has also been on the Nominations Committee. Given the overlapping membership on both committees, it would make no sense for complaints about the decisions of the Elections Committee go to Nominations.

The Constitution does provide that protests of irregularities in the conduct of an election are to be dealt with by the Executive Board, not the Nominations Committee. That is, the Constitution sets out how the work of the Elections Committee is to be reviewed. For these reasons, I find that the Nominations Committee does not oversee the functioning of the Elections Committee.

2. Candidates violated YUSAPUY'S Constitution and Elections Policy by campaigning in the workplace during working hours and failed to heed the direction of the Elections Committee.

Giulio and Sonny acknowledged that they went into workplaces to introduce themselves to members and to seek their votes. As a computer analyst, Giulio's duties included setting up computers, trouble shooting

at workstations, and taking away old equipment. Giulio used the opportunity his work provided to ask members to vote for him. Giulio and Sonny used their unpaid lunch periods to meet members in their workplaces and to seek their vote. Sonny asked some officers to introduce him to the YUSAPUY members who worked in their buildings. Some officers complied with his request and others refused. In addition, Sonny put up posters in common spaces at the University asking members to votes for him to be '2nd VP & Constitution & Policy".

On November 14, 2016 Francesca Pintucci, a Senior Advisor in Human Resources at York, sent an email to the three full-time officers saying:

> It has been brought tour attention that a YUSA member may have been campaigning over in the Physical Resources Building (PRB) mid-afternoon on November 11, 2016. This person was wearing a YUSA pin and indicated to management that he was looking for YUSA members. Late that afternoon, management noticed the attached posters posted in the PRB cafeteria. [a poster for Sonny Day]
> Can you please remind your candidates that any campaigning must be done during non-work hours? We recognize that this person may not have been 'working' on Friday afternoon, however, the person did indicate they were looking to speak with YUSA members.
> The University has postering guidelines which all community members must follow. For ease, here is the link to the information: http:/secretariat-policies.info.yorku.ca/policies/postering-guidelines/.
> Please let me know if you have any questions.
> Thanks.

Sandy Bell forwarded this email to Fil Weatherill asking her to " … forward this email to Sylvia and ask her to address the Employer's concerns as indicated in the email."

Fil forwarded Sandy's email to the Elections Committee, saying:

> Good afternoon Sylvia and Tammy. Please see email below for your attention and action.
> **Please confirm that you have received this email.**

Sylvia explained that she understood these emails to be a direction from Sandy to write to the candidates. Tammy drafted the email that was sent to all candidates on November 15, 2016:

> Good Morning to everyone:
> This is a friendly reminder to all Candidates that any campaigning must be done during non-work hours. We recognize that some may have different work hours, however, please refrain from disrupting work schedules for other YUSA members. The University has postering guidelines which all community members must follow.
> For ease, here is the link to the information: http:/secretariat-policies.info.yorku.ca/policies/postering-guidelines/.
> Thanks for your cooperation with the above.
> Sylvia & Tammy
> Sylvia Bosch-Karas
> Tammy Paglia
> Elections Committee

Sonny said that he had never seen York's Postering Guidelines before reading this email and that he immediately stopped postering in common areas. He did not remove his existing posters and York took no action against Sonny for his breaches of these Guidelines.

After receiving this email, Giulio and Sonny continued to go into workplaces to seek members' votes. The University took no steps to warn or discipline these candidates. The Protesters say that Giulio and Sonny disobeyed a direction from the Elections Committee and in so doing put those candidates who obeyed the direction at a disadvantage.

Given that the University does not have a written policy about campaigning during elections, when Pintucci wrote, "any campaigning must be done during non-work hours", she must have been referring to management's right to direct the workforce and to require its employees not to campaign during their paid work time.

The Election Committee read Pintucci's email as also complaining that by campaigning during the work hours of members, the candidates were disrupting the work of other YUSAPUY members. It is difficult to believe that the University would pursue a candidate for disruptive conduct who took a short time to introduce himself and ask for a member's vote.

As set out above, there is nothing in the Constitution or in the Elections Policy that speaks to campaigning or to postering. Therefore the Elections Committee could not rely on any YUSAPUY rule or obligation to govern the conduct of candidates. Was there any other basis for the Election Committee's direction?

The University's Postering Guidelines set out how they will be enforced: "Posters that are posted in contravention of the Guidelines will be removed by the University and the cost of poster removal and repair may be charged to the offending party." YUSAPUY plays no role in enforcing these Guidelines. The University has not charged Sonny with any of its poster removal costs.

Taking time away from paid work to campaign is an issue for management. Disruption of the workforce is also a management issue. The Union does not enforce management rights; the Employer does. York has chosen not to warn or discipline Giulio or Sonny for their campaigning.

The Elections Committee might have called a special meeting of the Executive Board to deal with Pintucci's concerns. No one suggested a special meeting and these issues were not discussed until the Executive Board met at its next regular meeting, more than a week later.

If the Elections Committee thought it necessary to respond to Pintucci's email, it would have been preferable to simply forward her email to the candidates and to let the candidates govern themselves accordingly. Instead, the email titled 'Important Notice regarding Campaigning' sent to all candidates by the Elections Committee on November 15, 2016 implied that campaigning during work hours, disrupting the work of others, and postering were infractions against YUSAPUY rules. They were not. Giulio and Sonny had not breached YUSAPUY's Constitution or Elections Policy.

What happens when a candidate fails to follow a direction of the Elections Committee, even if it is wrong? The Protesters state that once the Elections Committee issues a direction, candidates must follow that direction. They said that if most candidates comply, but others do not, the direction creates an uneven

playing field that disadvantages compliant candidates. It is valid to seek a level playing field for elections, but the Union cannot punish candidates who have not breached the Constitution or the Elections Policy.

Normally the three full-time officers have an advantage when seeking re-election. They have name recognition. They are released from work for a year to carry out Union business. They meet with members to assist them with workplace issues. They communicate to members in email blasts and on the website. For a year, they are the face of YUSAPUY.

I am not persuaded that the Elections Committee's directive, sent in good faith, changed the outcome of this election. The three full-time officers planned to follow the long-established practice of not campaigning one-on-one with the members. They believed that the work they had done for the members, their candidate's profiles, and the all-candidates meetings were sufficient to ensure re-election. The membership thought otherwise.

Executive Board Meeting November 23, 2016

The Protesters allege that their concerns about the conduct of Giulio and Sony were not taken seriously by the Chair of Nominations and that she did not bring these issues to the meeting of the Executive Board. They also allege that when their concerns were raised, the Executive Board refused to act and that Sonny, whose conduct was under discussion, was in a conflict of interest when he voted against taking action.

In this section, I have dealt with the following three complaints:

3. The Chair of Nominations did not bring any of the electioneering/campaigning issues forward as agenda issues for the November 23, 2016 meeting of the Executive Board.

4. When electioneering/campaigning issues were raised by the First Vice President at the November 23, 2016 meeting of the Executive Board, the Board refused to take effective or any action to prevent further violations.

5. At the November 23, 2016 meeting of the Executive Board, one of the candidates whose conduct was being complained about, voted against taking action; this was a conflict of interest.

On November 23, 2016 Sandy wrote to Sylvia:

> It is my understanding that despite your message below [the email from Sylvia to all candidates on November 15, 2016] and further to my phone call to you last week, there are candidates that continue to campaign during working hours. Would you please advise what measures the Elections Committee has taken or will take to end this practice and to level the playing field for those who abide by the direction of the Elections Committee?

Members had telephoned the Protesters advising that Giulio and Sonny were in the workplace soliciting votes. The Protesters explained that in compliance with the Election Committee's Important Notice regarding Campaigning on November 15, 2016, they had not campaigned in the workplace. They said that by ignoring the electioneering of Giulio and Sonny, the Elections Committee had created an uneven playing field that advantaged candidates who disobeyed the rules. The Protesters complained that Sylvia, as Chair of Nominations, failed to call a special meeting of the Executive Board and failed to put this issue on the Agenda for the November 23rd Executive Board meeting.

Sylvia read Sandy's email at 11:15 as she headed to a Stewards Meeting where everyone would be present. The topic was not raised in that meeting, so Sylvia decided to deal with the issues at the 5:00 meeting of the Executive Board during her report as Nominations Chair. Sylvia said that Mike Belanger pre-empted her and raised the issue during his First Vice President report, which was scheduled earlier on the Agenda.

The original Agenda shows that both the First Vice President and the Chair of Nominations were to give reports, and that the First Vice President's report was scheduled earlier than the Nomination's report. On this issue, the Amended Agenda is the same. I heard from seven persons who were at this meeting and have reviewed the handwritten notes of Fil Weatherill and the draft Minutes Fil prepared using her notes.

Mike raised election issues during his First Vice President Report. He said that some candidates were ignoring the notice everyone had received from the Elections Committee about campaigning during working hours. Sandy said that those candidates who followed the direction were being put at an unfair disadvantage and that there was an uneven playing field. Sylvia explained that when she received complaints about campaigning, she spoke to the candidate but that she could not discipline candidates because there was no Policy. Others took the position that the Constitution was silent on these issues and that YUSAPUY had no policy against campaigning. They said that campaigning and postering were issues for the employer, to be enforced by the University through the discipline process. The next question was what should be done as it was now the middle of the election period.

Mike moved and Bruno Ritacca seconded a motion: Elections Committee should send out an email that the candidates were told not to campaign; the employer doesn't allow it; but it has been done. That motion was amended as follows: The Elections Committee should advise the members that the Employer had raised a Labour Relations issue that campaigning during work hours is not permitted. Postering should conform to postering guidelines. This motion was defeated.

At this meeting, seven of the eleven attendees were running for office. No one declared a conflict of interest. Two voted in favour, six were opposed and the three Protesters abstained.

I have concluded that given that the Constitution is silent about campaigning in an electronic election, and given that the 2007 Elections Policy had not been updated when electronic voting began, the elections issues were brought to the Executive Board and were dealt with on the same day that the complaint was made. The fact that Mike first raised these issues in the First Vice President's Report reflects the order of items on the Agenda, not that the Chair of Nominations planned to ignore these issues.

The absence of an up-to-date Elections Policy meant that there was no guideline for candidates, the Elections Committee did not have a written policy to enforce, there were no procedures for dealing with complaints during the election period, and there were no enforcement or penalty provisions.

Although no motion was proposed during this meeting, it was agreed that, going forward, a policy should be drafted to cover conduct during an election.

6. Some candidates attempted to influence voters during the election period by electioneering near workstations/computers which, with the advent of electronic voting, had become polling stations.

Giulio acknowledged that he visited members at their workstations during the election period. Giulio said that he spoke to members when he went to set up their computers, to trouble shoot, or to take away old

equipment. He said that during the eight-day election period, he focused on urging members to vote and, if members engaged, Giulio would seek their vote. Sonny said that once polls opened, there were diminishing returns in seeking members' votes.

The Protesters allege that by going to the workstations where a member could vote, Giulio and Sonny violated the Elections Policy. The Elections Policy states:

> Members who are running for a position or their scrutineers should not be interfering with or influencing any voter in any way or electioneering near any polling station. If they are found to do so, they or the member for whom they are doing the scrutineering may be disqualified from running for any position(s).

The Protesters maintain that with the advent of electronic voting, every workstation with a computer is a potential polling station. To support this position, the Protesters first relied upon the Constitution, Article XV – Ballots and Voting section 3 which states:

> In instances of an electronic vote, the office shall make a computer workstation available as a voting station between the hours of 8:30 am and 4:30 pm during the active voting period for members who do not have access to an online computer.

The Protesters argued that if one workstation is a voting station (polling station), then every computer where a member could vote is a polling station.

The Protesters also claim that this issue was discussed at the Executive Board in 2014 & 2015 when the Constitution was being amended to permit electronic voting. They claim that a consensus was reached that during the election period there would be no electioneering where members work because their work stations were now polling stations.

I am unable to accept either of the Protesters' arguments.

When the Constitution was amended in 2015 to enable electronic voting, YUSAPUY realized that some of its members might not have access to a computer in order to vote. To ensure universal access, a computer would be set aside in the Union's offices to allow members to vote. The workstation where that computer was located became a voting (or polling) station. The creation of one workstation as a polling station for members without computer access, does not turn every computer at York into a polling station.

With the advent of electronic voting, members were able to vote using any device with internet access. This includes not only the members' computers at work, but also their home computers, their smart phones and their tablets. If the Protesters were correct, this would mean that during the eight-day election period, all candidates would have to avoid every member at their workplaces with a computer that could be used at some point to vote. This would not be possible for candidates who work with other members. Second, it would also mean that during the election period candidates would have to avoid any member who had a smart phone or tablet, because these devices could be used to vote. This is not logical or practical.

Others who were on the Executive Board when the Constitution was being amended have no recollection of any discussion that every workstation would become a polling station. Officers say that had the issue been discussed, they would have remembered it and would have spoken against it.

Finally, there is no evidence that a consensus was reached on such fundamental change to elections. The Minutes of the meetings of the Executive Board where constitutional changes were discussed do not record any such discussion. There is no record of any motion being made to support this proposition.

The Protesters gave me the Minutes of the Executive Board meeting of May 15, 2013 which they said supported their position. These Minutes are not helpful to the Protesters' position. The Minutes are silent about workstations being polling station. In fact, one officer is recorded as saying, "Difficult to create a policy on electioneering." The Motion that followed this discussion was:

> Following the AGM all candidates will be profiled on the YUSA website with a photo, if they are in agreement. Motion carried.

In that meeting the Board discussed the desire to move forward and create policies where necessary and create guidelines for everyone involved in the process in advance of the 2013 AGM and 2013 elections. No such policy was ever developed.

Therefore, campaigning during the election period is governed by the same policies and rules as other campaigning.

7. Errors with the e-vote ballot

Dawn Burns alleged that there was an error in the set-up of the electronic ballot in that the system forced members to vote for three candidates if there were three vacancies. A member who had voted for only one candidate told Dawn that when she tried to exit the ballot, she received an error message and could only save and exit the ballot if she voted for two more candidates. Dawn received this complaint after the election was over.

Sylvia advised that there was no error and that members were able to vote for less than the number of vacancies. During the election, a member emailed Sylvia complaining that she was being required to vote for three candidates. Sylvia contacted the administrators of the electronic voting system, IDIS, who explained that the member had received a POP Up message, a prompt, advising that there were two more possible votes, not a command to vote for three persons. Sylvia contacted the member, who, with this information, was able to vote for only one candidate.

Each morning during the elections period, members received an email from the Elections Committee containing the names of the members of the Elections Committee, asking them to vote and a gmail address if there were any problems. When the person who complained to Dawn had this problem, she did not contact the members of the Elections Committee nor did she use the gmail address.

8. Members on sick leave did not receive voting information mailed to their home

Sandy received a complaint from a member who had been off work ill during the election but had not received written material about the election at her home. The member who complained had voted. Based on that complaint, there was a concern that members on various forms of leave were effectively denied the right to vote because they did not have sufficient information.

YUSAPUY members who are off work because they are ill, on maternity leave, or on some other form of leave, are still members in good standing and entitled to vote. The Elections Committee sends information about the election to members using their York University email addresses. Members who

are off work are encouraged not to check their York email addresses, because they are on leave, and not at work. To ensure that members on leave receive information about voting, YUSAPUY mails written materials about the election to their homes.

The Administrative Coordinator explained that YUSAPUY receives the lists of members from the University. These lists, including the list of those on leave, are effective as of October 31st. Fil showed me the written information that was mailed to the home of each member on leave.

This member did not receive a written package because she was at work on October 31st and did not go off ill until sometime later in November. This member was not sent written materials because she was not on the University's list of persons on leave.

This is a system problem that cannot be easily fixed. In any election, there will always be members transitioning from being at work to being on leave. Mailing election materials to every member would be a very expensive fix and would still miss those members who had moved and failed to advise the University of their new address and those who moved after October 31st. Perfect members' lists can never be achieved.

9. Member of the Elections Committee was biased against the incumbents in the election.

The Protesters alleged that Sylvia demonstrated bias and disregard for the current full-time officers when she sent an email stating that she was "glad that Sonny Day was taking over."

The email in question was sent on December 7, 2016 by Sylvia to Fil Weatherill. The email was meant for Sonny Day, but was sent to Fil in error. The email does not say what is alleged, but rather says, "Hope that you can get this changed once you get in there or you could be the web person."

The email does not show bias against the incumbents. Sylvia explained that ten days after the election was over, the Elections Committee had not been able to get the elections results posted on the YUSAPUY website. She had received numerous complaints from members and was frustrated. Sylvia said that she sent the email to Sonny because he was the incoming Second Vice President, transparency had been one of his issues, and he had the technical expertise to make the needed changes to the website.

It is unfortunate that the email was taken as criticism of their work by YUSAPUY staff. It was not meant to be so. Posting on the website is done by a third party provider, not by YUSAPUY staff. Sylvia said that she would apologize.

10. Full-time officers were wrongfully denied ballots

Sandy and Dawn complained that during a meeting of Stewards on December 12, 2016, Sylvia wrongfully denied them ballots to elect the Grievance Committee in an attempt to cut them out of further leadership in the union and to humiliate them. Mike, the other full-time officer, was chairing this meeting. Sandy explained that that as a full-time officer, she had voted in previous years. Others claimed that in the past the full-time officers had not voted.

Sylvia understood Article IV – Officers section 2 provides that the three full-time officers are non-voting ex-officio members of all Committees and therefore not eligible to vote.

Stewards are appointed by the Executive Board and continue to hold office until they resign, miss three consecutive regular Stewards meetings, or are de-appointed by the Executive Board. The body of

Stewards is not a committee of YUSAPUY. Section 1 Article IV states that all officers shall be designated as Stewards. In addition, Article VII – Stewards section 1, states that Officers and Executive Board members shall be designated as Stewards. The newly elected officers did not take office until January 1st. Therefore, on December 12, 2016 Sandy and Dawn, who were still officers, were Stewards and were entitled to vote for the Grievance Committee. Sylvia was wrong.

A heated debate ensued when Sandy and Dawn were denied ballots. It was suggested that their ballots be segregated and legal advice sought. Sandy and Dawn prevailed, they were given ballots, and they voted.

VI. Recommendations

Although I have not found any breaches of the Constitution or the Elections Policy that, in my opinion, affected the outcome of the election of the 2017 officers, the Protesters, the two full-time officers, the Chair of the Nominations Committee, and the Chair of Constitution and Policy have all asked that I make recommendations to the Executive Board for practical suggestions that would make the elections process fair and transparent going forward.

The exact wording in the Constitution and Policies are seldom relied upon until there is a problem and then the actual words used or the existing policies may be inadequate or outdated. Drafting constitutions and policies is meticulous and challenging work. At YUSAPUY, this important work fell to the bottom of the "To Do Lists".

The Constitution should be changed to address the issues that arose in this election. The 2007 Elections Policy is seriously outdated and not applicable to problems that arise in electronic voting.

I recommend that any changes to the Constitution or drafting a new Elections Policy be agreed to in principle by the Executive Board and that counsel for YUSAPUY be asked to assist with the actual drafting.

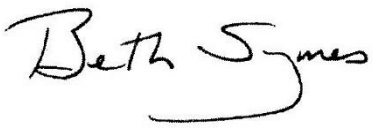
I also recommend that the changes be in place before the next election for officers in November 2017.

I further recommend that all Polices that are in effect be immediately posted on the YUSAPUY website.

I recommend that the Nominations Committee hold an information session or candidates' school before nominations close to encourage members to run for union office and to set out the procedures and policies that govern elections.

To be held accountable, candidates must know what are the procedures and rules for them during an election. I recommend that each candidate be sent an outline of the procedures that will be followed, a copy of the Constitution, and a copy of the Elections Policy.

Dated at Toronto this 14th day of February, 2017



Beth Symes, C.M., L.S.M.

Appendix "A"

Policy Manual
Elections

Members of the Nominations Committee should review the Constitution and Policy Manual as they relate to elections and voting. These members should inform the Election Committee of their duties as per the Constitution and Policy Manual and be available for any questions that may arise.

In consultation with the Executive Board, the Nominations Committee will prepare a timetable listing dates for the opening of nominations, the Annual General Meeting (AGM), All-Candidates Meetings and the Annual General Elections. Normally the AGM will take place in October, the All-Candidates meeting and the elections will follow.

The Nominations Committee, together with the Membership Officer and with the assistance of the Union office will be responsible for the composition and mailing to the membership notices regarding nominations, elections and by-elections. Such notices will contain descriptions from the YUSAPUY Constitution of the duties of Officers and Committee members.

The Membership Officer, or designate, will verify that all candidates running for a position or voting are YUSAPUY members in good standing.

Annual General Meeting

A 'Call for Nominations' notice will be sent out to the membership approximately two days before the 'AGM' notice. The Notices will be sent to all members of YUSAPUY for which the Union has a campus mailing address. The notices will be sent to a member's home if they are on any type of leave of absence. Notice of the AGM will go out to all the members in sufficient time prior to the meeting. The members would normally receive the notices at least 5 working days prior to the AGM.

The AGM will normally take place on a Tuesday, Wednesday or Thursday. Included in the AGM notice is an agenda and the date, time and place of the AGM.

Nomination Forms

The Call for Nominations notice includes a list of the positions and their description as taken from the Constitution, and the Nomination Form. Nominations Forms should include a space to fill in the following; Name of the Nominee (both printed and signed) their office address and phone number, and their acceptance of the position being nominated for; also to be included is the name of the Nominator (both printed and signed) their office address and phone number.

The notice will include the date that the Nomination Forms are required to be received by hand-delivery, mail or fax at the Union office. The Forms must be received at the Union office by 4:30 pm on the day preceding the AGM. The Form will also include a notice advising candidates to hand-deliver their nomination forms and state that YusApuY cannot accept responsibility for nominations not received in the office before the deadline.

Finally the notice will state that the Form can be handed in from the floor by any member during the Call for Nominations at the AGM. The Form may be submitted during either YusApuY Unit 1 or 2 meeting and during the call for nominations for the position that is being nominated for. Neither the Nominee nor the Nominator need be present at the AGM for the completed form to be accepted.

A reasonable facsimile of the Form can be used. Such a facsimile must contain all of the information of the original Form. Any Form must be filled out completely for it to be accepted.

Call for Nominations

During the Nomination portion of the AGM, a member of the Nominations Committee will, in turn, read out the description of each position that the Constitution allows for an election. The member will then read out all the names of the Nominees and Nominators that have been received via Nomination forms.

The positions will be called out in turn for all Officer and Committee member positions in the order that they are listed in the Constitution.

The Committee member will then call three times if any one wishes to nominate another member for the position being called. A sufficient pause between each call will be allowed for all members to consider nominating a fellow member. If a member is nominated they must choose to agree or to decline to accept the nomination of the position. During the Call for Nominations a completed Nomination Form may be presented as an acceptance to run for a position.

There will be a separate Call for Nominations at both the Unit 1 and 2 Annual General Meetings. A Unit 1 or 2 member may be nominated at either meeting. Nominations will close at the end of the second (normally the Unit 2) meeting.

If a member is nominated for a position but it is found that the member so nominated does not satisfy the criteria for the position, such as; insufficient length of service for the Bargaining Committee long service member position, or a member is not in good standing etc., that nomination or election will be forfeited and the member will be disqualified from the position. This can occur during any time during the term of the position. The member may petition the disqualification. A rough guideline for the disqualification will follow the appropriate sections of the deappointment provisions of the Constitution.

All-Candidates Meeting

The All-Candidates Meeting notice will be made up as outlined in the Constitution. For a member's statement to be included in the notice it must be received by the Union office by 4:30 pm of the day following the AGM.

A Union official will ensure that an equal opportunity to speak is made available for all Nominees at the All-Candidates Meeting. Each candidate will be given a specific length of time to speak to address the membership at the beginning of the meeting. Time will be allowed for the candidates to respond to questions from the floor. First time speaker rules will apply.

There will be an All Candidates Meeting at both the Keele and Glendon campuses.

Any candidate running for an Office or Committee in YUSAPUY may request one set of mailing labels.

Voting

Membership List

The Membership Officer will provide the Elections Committee with two copies of an up-to-date list of YUSAPUY members, in alphabetical order, by surname. One of the copies will be for use at the Keele campus and the other copy for use at Glendon. Once proof of membership is shown at a polling station, the name of the member voting will be crossed off the list with red ink and a ballot will be issued. When the Elections Committee member serving at the Glendon campus returns to the Keele campus, names crossed off her/his copy will be transferred to the master list being used at the polling station at the Keele campus.

The ballot of a member who attempts to vote and whose name is not on the membership list will be placed in a sealed blank envelope. All Proxy ballots that are filled out by the member will also be placed in the same blank envelope. The envelope is then placed in a second envelope on the outside of which will include their name, office address and phone number. The secrecy and security of the ballot will be ensured by the members of the Elections Committee. Before the ballot(s) is/are to be included in the ballot box with the cast ballots, the Membership officer or their designate who will be overseen by an Elections Committee member(s) will determine whether the member is permitted to vote as per the Constitution.

If it is found that the member is permitted to vote, only then will the inner blank unopened envelope be given to the volunteers counting the ballots. The volunteers will include the ballot(s) with all the cast ballots. If it is found that the member is not permitted to vote as per the Constitution, the unopened envelope will be destroyed.

Spoiled Ballot

A member may request a new ballot if they return their original spoiled ballot to the Elections Committee member (i.e. Returning Officer) at the polling station. The Elections Committee member will then clearly mark VOID on the returned spoiled ballot. They will then place the spoiled/voided ballot in an envelope marked 'Spoiled/Voided Ballots'. The Elections Committee member will give the member who returned the ballot a replacement ballot.

Polling Station(s)

The polling station will be centrally located at each campus. If there is more than one polling station at a campus the Executive Board must have previously discussed and agreed that there are sufficient safeguards in place to prevent members voting more than once.

The YUSAPUY banner may be used as an effective means of identifying a polling station.

Members who are running for a position or their scrutineers should not be interfering with or influencing any voter in any way or electioneering near any polling station. If they are found to do so, they or the member for whom they are doing the scrutineering may be disqualified from running for any position(s). The Elections committee will bring forth all information, including witnesses, regarding any such accusations at an emergency meeting of the Executive Board. If a member of the Executive Board is also running for the position in question or is the accused, that member must excuse themselves from the emergency meeting or any further discussions by the Executive Board that relates to the accusations. The counting of the ballots or announcing the result of a count for that position may be delayed at the request of the Executive Board. The member may petition any disqualification. A rough guideline for the disqualification will follow the appropriate sections of the deappointment provisions of the Constitution.

Volunteers

Any member running for a position in the election, or any member of the Nominations Committee or the Executive Board is not permitted to volunteer at a polling station, or permitted to count ballots.

Members of the Nominations Committee will have a meeting to review with the volunteers all the parts of the Constitution and Policy Manual as they relate to elections and voting. The volunteers will specifically be given instructions on what their duties are and how to handle any anomalies they may encounter.

The Nominations Committee will provide a kit to the volunteers to allow them to perform their duties. The kit will include at least the following; a copy of the Constitution and Policy Manual with the relevant sections highlighted, ballots, membership lists, envelopes, pens, pencils, markers and tape (or lock, to seal the empty ballot boxes), ballot boxes, rulers, pads of paper, tables, chairs, voting guards/shields, and the YUSAPUY banner.

Counting the Ballots

The ballots will be counted by members at large. The volunteers should be members who are not closely associated with any member running in the election.

Any member running for a position in the election, or any member of the Nominations Committee or the Executive Board is not permitted to volunteer at a polling station, or permitted to count ballots.

The counting of Ballots and informing the nominees of the results will be concluded as soon as practicable following an election. Once the call for nominations results in an acclamation or election results have been tabulated it will be the responsibility of the Nominations Committee to as soon as possible advise the candidate(s) of this fact, and, as soon as possible thereafter, the general membership.

After the election, the number of ballots printed must tally with the total numbers of ballots cast, spoiled and unused. If this is found not to be the case and if this would possibly result in the altering of an election result an emergency meeting of the Executive Board would be called. All members who were involved in the voting, such as those overseeing the polling stations, the Elections Committee, the volunteers who counted the ballots etc, would be made available and allowed to speak to, or be questioned by, the Executive Board. After due consideration which would include a vote, the election could stand or the rerunning of the election could be called by the Executive Board.

Any Executive Board member who would be in a conflict of interest would declare this and not take part in the Executive Board's decision. If this would result in not having quorum for the Executive Board, then alternate members from the respective Committees would be included to increase the representation. There would be no alternates for any Officer positions.

The ballots would be destroyed 15 working days after the resolution by the Executive Board and after any and all appeals.