

**ELECTION PROCEDURES COMMITTEE RESPONSE  
TO THE CHALLENGE TO THE 2023 LINCOLN ALEXANDER LAW  
STUDENT SOCIETY FEE REFERENDUM RESULTS**

TO: [REDACTED], Lincoln Alexander School of Law  
FROM: Members of the Election Procedure Committee  
RE: Response to Challenge to the 2023 Lincoln Alexander Law Student Society Fee  
Referendum Results  
DATE: November 28, 2023

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## **I. INTRODUCTION**

Section 9.2. of the Toronto Metropolitan University Referendum Procedures (“Procedures”) requires the Returning Officer to consider any challenge made to the results of a referendum and to provide their recommendation regarding the disposition of the challenge to the Election Procedure Committee (the “Committee”) to consider. In accordance with the Procedures, the Returning Officer, Jennifer Webster, reviewed the challenge received from [REDACTED], students in the Lincoln Alexander School of Law, in respect of the 2023 Lincoln Alexander Law Student Society Fee Referendum attached hereto as Schedule A (the “Challenge”), and provided a written report to the Committee. A copy of the Returning Officer’s report is attached hereto as Schedule B.

On November 24, 2023, members of the Election Procedures Committee (the “Committee”) held a meeting to review the Challenge and the report provided by the Returning Officer. In considering the Challenge the Committee considered the issues raised in the Challenge, the recommendation of the Returning Officer, previous challenges to referendum that have been filed, and all relevant facts respecting the administration of the 2023 Lincoln Alexander Law Student Society Fee Referendum.

## **II. DECISION**

The Committee voted unanimously to accept the recommendation of the Returning Officer, and hereby denies the challenge to the 2023 Lincoln Alexander Law Student Society Fee Referendum (the “Referendum”) and upholds the Referendum results.

## **II. REASONS**

The Referendum was held in respect of the introduction of a proposed \$140 annual fee to support the operations of the Lincoln Alexander Law Student Society. Voting on the referendum took place online from October 31, 2023, to November 2, 2023. 167 out of 445 eligible students voted in the referendum. Of those students 91 or 54% voted against (No) the proposed fee, while 72 or 43% voted in favour (Yes) of the fee. There were 4 abstentions. Based on the votes, the Referendum did not pass. The vote results

were confirmed by the Committee at its meeting on November 6, 2023, and were communicated to the student body via email.

The Returning Officer received the Challenge via email on November 14, 2023. As set out in the Challenge there were 3 grounds on which the Referendum results were being challenged:

1. The voting dates disfavoured a substantial segment of eligible students;
2. The voting dates occurred during an exceptional period for the student body;
3. The lack of a physical option to vote in practice reduced the accessibility of the vote.

In her report the Returning Officer noted that the challengers presented allegations and assertions about a lack of participation in the LALSS Referendum without providing any evidence that students were prevented from participating. The Returning Officer noted that the participation rate in this referendum was 37.53%, the second-highest participation rate of the ten referendums held since 2015. The Returning Officer also noted that the dates of the LALSS Referendum were specifically chosen with consideration for the dates of the interviews related to the Summer Student recruitment. Finally, the Returning Officer observed that the issues raised in this challenge could have been submitted as an appeal under section 9.1 of the Procedures prior to voting taking place, and the challengers chose not to. The Returning Officer's recommendation was that the Challenge did not make out sufficient grounds to overturn the results of the Referendum.

The Election Procedures Committee concurred with the recommendation of the Returning Officer.

The Committee noted that groups were eligible to campaign in respect of the Referendum as of October 4th and that two groups officially registered to campaign in support of the Yes campaign for the referendum. Both groups had ample time to campaign, both online and in person, in support of the question and to raise interest within the School. In addition, the Board Secretariat sent a number of emails to the student body alerting them to the Referendum and the voting dates.

Furthermore, the Committee recognized that the participation rate in the election was in direct contrast to the claims that either the voting dates or the method of voting negatively impacted voter participation.

While the Committee was sympathetic to the events occurring in the Law School at the time of the voting, the Committee recognized that consideration was given to delaying the vote, but that the decision was made to proceed with the original dates to both avoid the Summer Student Recruitment interview dates, and to ensure that the Referendum would be completed by the November 15<sup>th</sup> deadline to have the fee take effect for the 2024-25 academic year if the Referendum passed.

For the reasons above the Committee accepts the recommendation of the Returning Officer, denies the challenge, and upholds the Referendum results. The Committee is of the view that the Challenge has not established that anyone eligible to vote in the Referendum was effectively prevented or discouraged from voting, or that the timing of or method of voting in the Referendum materially affected the fairness of the Referendum.

This decision of the Committee is final and is not subject to further appeal.

From: [REDACTED]

Attn: Returning Officer  
C/O Board Secretariat

**Re: Lincoln Alexander Law Student Society Fee Referendum 2023**

Dear Returning Officer,

Please accept this letter as a formal challenge to the conduct and results of the above referendum, as set out in section 7.7 of the Board of Governors Referendum Procedures. We wish to put forward challenges on the following grounds:

1. The voting dates disfavoured a substantial segment of eligible students
2. The voting dates occurred during an exceptional period for the student body
3. The lack of a physical option to vote in practice reduced the accessibility of the vote

I set out below the reasoning that has led me to this conclusion.

**1. The voting dates disfavoured a substantial segment of eligible students**

The voting days overlapped with the Law Society of Ontario's Summer Student Recruit Period (the "Recruit"), and this particular recruit was exceptionally onerous for students due to concerns raised by the legal community's response to the ongoing conflict in the Gaza Strip. The Recruit, which occurs annually during the Fall semester, is how second-year students apply for summer law positions across prestigious private and public employers. The Recruit is a multi-stage process, with detailed in-firm interviews between November 7 and 9. Students may register for up to 8 interviews.

A significant portion of the second-year law students who participate in the Recruit will use the preceding week to prepare for in-person interviews. A student may have anywhere from 1-12 interviews scheduled. It is common and generally understood by the Faculty that students who participate in the Recruit will make specific arrangements with their instructors and professors so that any academic obligation does not interfere with the Recruit.

Student participants in the Recruit have experienced undue pressure from certain potential employers and the legal community, arising from a student-organized petition concerning the conflict in the Gaza Strip. The situation was sufficiently exceptional and of such importance as to require the Law School to respond in the background by

reaching out to potential employers and to offer individual students support to address ongoing safety and employment concerns.

## **2. The voting dates occurred during an exceptional period for the student body**

The referendum overlapped with heightened student engagement in matters of pressing international concern, specifically the situation in the Gaza Strip. The associated student-organized petition and the consequential intense responses from various entities within the university community have diverted attention and resources that could have otherwise informed students about the referendum. The lack of due consideration for these exceptional circumstances violates the spirit of inclusive and informed voting.

### **1. The lack of a physical option to vote in practice reduced the accessibility of the vote**

The referendum's exclusive reliance on electronic voting failed to consider the unique communication context of law students, who receive a high volume of emails from multiple sources. This oversight resulted in reduced vote accessibility, contradicting the principle of inclusiveness. We believe that hosting a physical ballot alongside the e-vote would remove barriers to the vote by making the vote visible to all members of the law school community.

The broad accessibility of an online vote is undercut by law students receiving an unusually large number of emails. To illustrate this fact, law students will regularly receive emails from the following organizations:

- TMU
- TMSU
- The Lincoln Alexander Law Student Society
- The Lincoln Alexander Law School
- The Career Development & Professional Placement Office
- The Law Society of Ontario
- The Canadian Bar Association
- Lexis Nexis/ WestLaw

A physical voting box would improve the student body's awareness of voting days and ensure that a more significant proportion of the student body can participate in the vote. A physical voting box would significantly improve the visibility of the referenda in our program.

Conclusion:

We urge the Board to re-issue a second vote, with a physical presence, for the above reasons.

## RECOMMENDATION

TO: Election Procedures Committee

FROM: Jennifer Webster  
Returning Officer

DATE: November 16, 2023

RE: Challenge in relation to Lincoln Alexander Law Student Society Fee Referendum 2023

### **Background**

On September 26, 2023, the Board of Governors of Toronto Metropolitan University approved the holding of a referendum among all Lincoln Alexander School of Law (LASL) to seek approval to create a levy to fund the activities of the Lincoln Alexander Law Student Society (LALSS). The referendum was proclaimed on October 3, 2023.

The approved referendum question was:

Do you agree to the creation of a fee of \$140 per academic year (payable over two terms) to support the operation of the Lincoln Alexander Law Student Society, to be paid by all students enrolled in the Juris Doctor degree program in the Lincoln Alexander School of Law, starting in the fall 2024 term, and indexed annually to the Toronto Consumer Price Index?

The referendum took place from October 4, 2023 to November 2, 2023.

Two groups officially registered to campaign in support of the Yes campaign for this referendum in accordance with the Referendum Procedures (the Procedures).

Voting for the referendum took place online from October 31, 2023 at 12:01 am to November 2, 2023 at 11:59 pm.

On November 6, 2023, I reported the results of the referendum voting to the Election Procedures Committee. The results were:

Student Eligible to Vote:	445
Ballots Submitted:	167
Votes Cast:	163
YES Vote:	72
NO Vote:	91
Declined to Vote:	4
Participation Rate:	37.53%

Based on these voting results, I reported that a sufficient number of students in the LASL had not agreed to the creation of the fee and that the referendum question was unsuccessful. The Election Procedures Committee accepted my report at its meeting on November 6, 2023. The referendum results were official announced on November 7, 2023.

### **The Challenge to the Referendum**

On November 14, 2023, I received an email from [REDACTED] with a challenge to the Fee Referendum results. I would highlight that this email was sent at 9:14 pm, with the result that I became aware of the challenge on November 15, 2023.

The challenge is timely because it was received within one week of November 7, 2023, the date of the official announcement of the referendum results, as required by Section 7.7 of the Procedures.

The challenge was communicated in an attachment to [REDACTED] email. The challenge is from [REDACTED] (the challengers). They indicate that they are challenging the conduct and results of the referendum on the following grounds:

1. The voting dates disfavoured a substantial segment of eligible students;
2. The voting dates occurred during an exceptional period for the student body; and
3. The lack of a physical option to vote I practice reduced the accessibility of the vote.

### **Returning Officer's Investigation**

I will address each of the grounds identified in the challenge.

#### **I. Law Society of Ontario Summer Student Recruit**

Firstly, the challengers allege that the voting dates affected the ability of a group of students to participate because the dates overlapped with the Law Society of Ontario's Summer Student Recruit Period.

I note that the relevant dates for the Summer Student Recruit are as follows:

- Students are called for interviews on October 27, 2023
- Interviews are scheduled between November 6, 2023 at 8:00 am and November 8, 2023, at 3:00 pm
- Offers are made starting on November 8, 2023, at 5:00 pm

The Summer Student Recruit is only relevant to second-year law students because it involves the recruitment of students for summer work positions between the second and third year of law school studies. The Summer Student Recruit is also only for positions in Toronto.

Students who wish to work in positions outside Toronto would not participate in the Summer Student Recruit. Therefore, the students affected by the interviews for the Summer Student Recruit are less than one-third of the eligible voters in the referendum – being those second-year law students who elected to participate in the recruitment process for summer 2024 positions in Toronto.

The challengers argue that a significant portion of second-year law students who participate in the Recruit will use the preceding week to prepare for in-person interviews and, therefore, will not engage in the referendum process and voting.

The voting period for the referendum was October 31 to November 2. This voting period concluded well in advance of any scheduled interviews related to the Summer Student Recruit. In addition, the voting dates were selected by the Board of Governors in recognition of black out dates identified by the LALSS and the LASL due to the interview dates in the Summer Student Recruit.

I find that the challengers present allegations and assertions without providing a factual basis for their claim that second-year students were prevented from participating due to the Summer Student Recruit process. The voting dates were set in accordance with black out dates submitted by the LALSS and LASL to avoid the interview dates. At the same time, the voting dates were set to comply with the Procedures such that the referendum could be proclaimed at least three (3) weeks in advance of the voting date (see section 6.2) and the referendum would be held prior to November 15 (see section 5.1). The Interview dates were after the conclusion of voting, and there is no evidence to support a claim that the preparation for interviews interfered with voting by the second-year students who had chosen to participate in the Summer Student Recruit Process.

The participation rate in this referendum was 37.53%, meaning that 37.53% of eligible voters submitted a ballot. I have included below a table that summarizes the participation rates in past referenda held by the Board of Governors.

<b>Referendum</b>	<b>Participation Rate</b>
Faculty of Community Services Society Fee Referendum 2022	9.1%
Future of Student Wellbeing Referendum 2022	8.5%
Ryerson Graduate Students' Union Fee Referendum 2020	17.1%
RU-Pass Referendum 2018	42.8%
Ted Rogers Students' Society Referendum 2018	7.4%
RSU Equity Centre Referendum 2017	11.3%

Faculty of Science Referendum 2017	24.7%
Ryerson Architectural Science Society Referendum 2016	24.6%
Faculty of Science Referendum 2015	15.4%
Faculty of Arts Referendum 2015	9.0%

There is only one referendum with a higher participation than the 2023 referendum. That referendum is the 2018 RU-Pass referendum in which 42.8% of eligible votes submitted ballots. The participation rate of 37.53% of eligible voters for the 2023 referendum is higher than every other referendum held by the university between 2015 and 2022. In most instances, the participation rate for the 2023 referendum is more than double the participation rate for the other referenda.

The evidence does not demonstrate that second-year students were prevented from participating due to the Summer Student Recruit process.

## II. Petition about conflict in Gaza

The second ground of challenge advanced by the challengers is that the voting days overlapped with exceptional circumstances related to a student-organized petition about the conflict in Gaza. The challengers argue that students were distracted from the referendum due to the circumstances surrounding the petition, and that this distraction undermined informed voting.

The LALSS asked if the Board would delay the vote by a week due to the issues about the petition. The Board decided to not change the voting dates in part due to the deadlines set by the Procedures. Section 5.1 of the Procedures requires that a referendum conclude by November 15. In addition, delaying the vote by a week would have moved the voting dates into the dates of the scheduled interviews as part of the Summer Student Recruit and the LASL and the LALSS had expressly asked the Board to not schedule voting during these dates.

As noted above, there were two officially recognized groups campaigning in support of a Yes vote. No groups sought to officially campaign for the No vote. The two Yes groups had expressly undertaken the role of engaging and informing students about the referendum and the reasons for voting in favour of it. There is no evidence that the petition affected the voting in this referendum or the ability of students to inform themselves about the referendum.

I would also note, as outlined in the above section, that the participation rate for the referendum was the highest participation rate in any referenda between 2015 and 2022 with the exception of the RU-Pass referendum in 2018.



### III. The lack of a physical option to vote

Finally, the challengers allege that the exclusive use of electronic voting fails to consider the unique communication context of LALS student who receive a high volume of emails from multiple sources. They argue that there was reduced access to voting due to the exclusive use of online voting and submit that a physical ballot would remove barriers to voting and raise awareness of the referendum.

There is no evidence that the use of online voting affected access to voting. The fact that LALS students receive a high volume of emails from multiple sources is not unique to this constituency at the university. The Board of Governors holds its annual elections exclusively through online voting. The voters for the Board of Governors elections are students, staff, faculty, and alumni. Each of these voting constituencies also receive multiple emails from multiple sources. The participation rates for each of these constituencies in the 2023 Board of Governors election were significantly smaller than the participation rate for the 2023 LALSS referendum.

I do not find that adding a physical option to vote is required as part of the referendum process.

#### Recommendation

I have elected to treat this challenge as a challenge to the referendum results under section 9.2 of the Procedures. However, it is my view that the issues raised in this challenge should have been submitted as an appeal under section 9.1 while the referendum was underway.

Section 9.1 reads as follows:

Any individual or group may appeal a decision rendered against them under these Procedure by submitting a written statement to the Returning Officer that outlines the grounds for the appeal (“Appeal Notice”). If the Referendum is still underway the appellant shall send the Appeal Notice to the Returning Officer within one (1) Working Day of the decision begin appealed. If the Referendum has concluded the appellant shall send the appeal Notice to the Returning Officer within ten (10) Working Days of the last voting day.

If the Referendum is currently underway, the Elections Procedures Committee shall convene a hearing of the Appeal Panel within on e(1) Working Day of the Returning Officer receiving the Appeal Notice. If the Referendum has concluded the Appeal panel hearing shall be scheduled within ten (10) Working Days of the Returning Officer receiving the appeal Notice. The appellant will be permitted to make oral representations before the Appeal Panel if they wish. The Appeal Panel may also request the Returning Officer to make oral submissions.

...

All of the issues identified by the challengers relate to decisions made about the voting procedures, specifically the dates selected for voting and the exclusive use of online voting. Section 4.2 of the Procedures provides that the Returning Officer is responsible for the

conduct of referenda within the policies and procedures established by the Election Procedures committee and that the Returning Officer makes any and all decisions about the conduct of the referenda.

The decisions about voting dates and the exclusive use of online voting were made prior to the proclamation of the referendum. The challengers are appealing these decisions under the guise of a challenge to the results of the referendum. The appeals about the voting dates and online voting should have been brought as appeals while the referendum was underway. In addition, the LALSS asked that the voting dates be delayed by a week due to the circumstances surrounding the petition about the conflict in Gaza. The decision was made to not change the voting dates. Again, the challengers are essentially appealing this decision in a challenge to referendum results.

The Procedures provide for appeals of decisions under section 9.1 and challenges to referendum results under section 9.2. Although I have accepted the challenge as a challenge under 9.2, I recommend to the Committee to review and clarify the differences between 9.1 and 9.2 for future referenda.

In conclusion, I can find no reason to reconsider the results of the 2023 Referendum. There was a high participation rate of the eligible students and the challengers have presented no evidence of actual impact on voter participation.

*Jennifer Webster*