

## IMPERIAL COLLEGE UNION COURT

### DETERMINATION

#### Graduate Students' Association election (No. 07/06)

Panel consisting of:

Hamish Common (Court Chair),  
Katherine McGinn (Deputy Court Chair),  
Simon Matthews, and  
Lara West.

4<sup>th</sup> July 2007

The COURT CHAIR:

#### Facts

1. An election was held for the post of Graduate Students' Association ("GSA") Chair, which from the 1<sup>st</sup> August 2007 will no longer also be of Deputy President ranking. The incumbent GSA Chair and Deputy President (Graduate Students), Shama Rahman, was the returning officer. The elections committee consisted of Paul Wobkenburg, Tushar Singhanian and Alison Williams (replaced in her absence and apparent lack of registered student status by Alex Guite).
2. There was some initial confusion about which posts were being contested and which version of GSA rules were in force.
3. The election was publicised and held on a date in June 2007. The ballot was run online. Publicity for the election included a missive on an electronic mailing list to all postgraduates on the 14<sup>th</sup> May 2007, though some may not have received the e-mail due to email filtering prompted by previous misuse of the mailing list. There were also posters advertising nomination dates (nominations opened on the 21<sup>st</sup> May 2007 and closed on the 4<sup>th</sup> June 2007), and a cover page and internal two page spread in "Postscript" on the 15<sup>th</sup> June 2007 (circulated at 2pm). In Postscript there was a small advert within the two page spread advertising the ballot box opening times. There was no 'event' posting on *Live!* for the election.
4. On the 4<sup>th</sup> June the returning officer had sent an e-mail announcing a reduction in required seconders from 10 to 5. On the 5<sup>th</sup> June, the returning officer had sent an e-mail stating she had made a preliminary interpretation, reducing the number of seconders required to one. At this stage Jon Matthews had three seconders and George Bazoua had one. Forty minutes later there was another such interpretation which declared the categories of students eligible to stand, second or vote in GSA elections. The alteration in qualification for seconders had reduced the number of valid seconders, which later precipitated the reduction in numbers needed to qualify a nomination.
5. Unhappily, not one single postgraduate was properly nominated for any of the other GSA Executive Committee posts.
6. The ballot was held in electronic form from Friday 15<sup>th</sup> June to Monday 18<sup>th</sup> June 2007 inclusive. A candidate withdrew during the balloting stage, which left the GSA Chair post contested by Jon Matthews and George Bazoua. At one stage during the ballot Dave Parry told the returning officer that only 3 candidates had voted. The returning officer did not know the number of votes cast when counting began.
7. On the 19<sup>th</sup> June the two nominated candidates for GSA Chair were asked to respond to the returning officer stating whether they were happy for the count to go ahead at 5pm. Jon Matthews was.

8. RS was allowed to observe the count on behalf of Jon Matthews after Eric Lai intervened and made it clear she was entitled to do so. Jon Matthews was told the preliminary result of the ballot.
9. At 6.35pm the returning officer e-mailed Eric Lai, the Acting President (in John Collins' absence), to say that she "[did] not believe that the recent GSA elections were fair and democratic as there were only 10 votes cast out of a possible 3500." She further asked that the results were not released to anyone. The e-mail had been sent after the returning officer had consulted with other sabbaticals (excluding the candidate).
10. Eric Lai decided after consultations to call an Executive Committee meeting to discuss the matter informally. That meeting made a request to the Union Court, which was later accepted.
11. RS, Jon Matthews' designated observer, wrote a comment on *Live!* at 6.37pm on the 20<sup>th</sup> June, as follows:
 

"Observer of the count  
Jun 20 2007 18:37

I saw the count happen, there were only ten votes, two of them from current sabbatical officers. Don't rememeber seeing George's name on the list, did anyone tell him he was running?

Of course there are still the other positions to be filled mabye everyone should be focusing on filling those with people who give a sh!t rather than trying to get rid of the only candidate that seemed to want to run...?"
12. This was drawn to the attention of the *Live!* editor on the 21<sup>st</sup> June, and after some discussion was removed the next day. The returning officer took a particularly stringent view, believing it provided grounds for the disqualification of the candidate whose observer breached the secrecy of the ballot. The reason for this, as suggested by the returning officer, was that it compromised anonymity and that students would lose confidence in the Union's processes.

### **Publicity**

13. Regulation 2.41 contains a refreshingly short rule on election publicity:
 

"The returning officer is responsible for ensuring the election is publicised in advance of nominations."
14. The returning officer had sent a mass e-mail to all postgraduates. There was some discussion about the degree to which a mass e-mail could involve individual flourishes, such as the first name of each recipient in an apparent individual e-mail to each person and other such matters. This may have got around the hesitancy with which many postgraduates read such e-mails; it was said that many delete such Union e-mails without reading them.
15. The panel was also provided with a copy of "Postscript", the internal GSA newspaper. Its publication was advertised by a mass e-mail within one department and possibly others. The GSA Chair election was the front page article and included large photographs of each of the candidates. The article continued inside the newspaper, with a relatively small coloured box in the bottom right hand corner of one page showing the times during which the electronic ballot would be open.
16. The purpose of election publicity is two-fold. It serves firstly to increase interest and awareness among the electoral constituency that an election is taking place (thus increasing voter turnout and the democratic legitimacy of the winning candidate), and secondly to ensure that the election is not held in secret. It is clear that a secret election

would result in a wholly undemocratic result: only those candidates and electors who had some inside knowledge of the election would be able to stand or vote. I can confirm that it would be unconstitutional as well, and most likely be deserving of serious disciplinary sanction.

17. However, there was no secret election here. Unfortunately Felix, *Live!* or other such publications were not used or capable of being used to publicise the election, and a miscellany of other methods of publicity were canvassed during the hearing. But there was a clear and creditable attempt on behalf of the returning officer to publicise the election and raise awareness.
18. The difficulty in holding an election unconstitutional for poor publicity would be that many elections, especially for junior Union posts, are not capable of wide publicity. There are around 1,000 elected posts in the Union, and publications (paper and electronic) and mass e-mails can sustain only a limited number. Clearly certain elections, such a club or society elections, need only be publicised among their membership.
19. One would also expect candidates to play their part – publicising their own candidature can only publicise the election in which they are standing. There is normally an incentive upon candidates to do so. It has also been conventional (though not mentioned in the Election Regulations) for there to be a requirement upon election candidates to include the time and date of hustings and the ballot in their publicity.
20. In my opinion, the constitutional test for election publicity is whether a member of the constituent part of the Union holding the election, who reads his or her e-mails, attends their campus and is not actively disengaged from the Union would be aware of it. This election certainly satisfies that test. Its publicity is therefore constitutional.

### **Elections committee**

21. An elections committee was appointed by the returning officer, consisting of four people (including the returning officer). Unfortunately, at least one candidate for GSA Chair was unaware of the existence of an elections committee, let alone its membership. The existence of an elections committee was alluded to in the standard form candidates' pack, but the lack of any mention of it thereafter led to an understandable assumption that it did not exist. The elections committee never met in person, but instead held some "e-meetings".
22. As a preliminary issue, the number of members of this elections committee was unconstitutional. Regulation 2.74 explicitly requires any elections committee to have two, four or six members, excluding the returning officer. This had three such members.
23. An elections committee is also supposed to be appointed by the supervisory authority. In this case the GSA would be entitled so to appoint under regulation 2.67.1. It is not clear however that the GSA Chair was delegated powers to act as a supervisory authority. Given the draconian powers possessed by a supervisory authority in respect of the conduct of elections, I do not see that such delegation can be implied. It must be an express delegation, either in a minuted meeting, part of a constitutional document or policy. I would thus hold that the appointment of the elections committee itself was unconstitutional.
24. Under regulation 2.71, the elections committee is required, if appointed, to reserve certain duties of the returning officer to itself. This means that the returning officer does not have the discretion to act in certain capacities which he or she would be able to were there to be no elections committee. These duties are: counting the votes, ratifying an election, ordering a re-run, and disqualifying a candidate. Unfortunately, the elections committee, as it was, did not appear to have been invited to participate in any of these decisions.

25. In this election, nothing turns upon the constitutionality of the elections committee as the Union Court is entitled to consider any of its decisions or that of the returning officer on appeal and substitute its own judgment. However, it is unfortunate that the elections committee was administered unconstitutionally in practically every respect.

### **Voter turnout**

26. 10 people voted in an election with an electoral constituency of 3,500. This is by any standards wholly lamentable. It was particularly regrettable that the returning officer was made aware that only 3 people voted by 7pm on the second of the four days during which voting was possible, yet assumed – incorrectly – that there would be a rush of votes later.
27. There have been many elections for which turnout was unimpressive: some elections are held by and from the membership of committees with small memberships in barely quorate sessions. Other posts are elected at general meetings with single figure attendance.
28. Normally elections for major posts, let alone one which is a direct successor of a sabbatical post, have significantly higher turnouts: historical low points for sabbatical elections were in the several hundreds. In more recent times several thousand people have voted in them.
29. Until the 2001 constitutional review, the constitution stipulated that a voter turnout of less than 10 per cent in the sabbatical elections meant that only the Council could ratify the result of the election (a task otherwise performed by the elections committee). This stipulation was then abolished, as it made little sense for a committee of 50 people to ratify the decision of perhaps 900 voters. If the ratification failed, the only option would be to hold a new ballot, with no guarantee that voter turnout would be higher.
30. Any attempt to suggest a constitutional minimum number or proportion of votes to make an election valid encounters a number of objections. Firstly: how many? Some elections in living memory have involved a single elector at a meeting. Secondly: what steps would have to be taken to increase turnout – and what if these steps were unsuccessful? Thirdly: there is no basis anywhere in the constitution or regulations for implying such a rule.
31. Whereas the first two objections are persuasive, the third is decisive: it would be stretching the Union Court's interpretation powers too far to suggest it could imply a minimum number or proportion of voters to qualify an election as valid. A small number may potentially be evidence of unconstitutionality of some other form, but is not a reason in itself for ordering a re-run.

### **Extension of balloting times**

32. At the end of the ballot it had been established that only 10 people had voted. The returning officer then wished to extend the time during which the ballot was open – in this case by re-opening voting for a period of time.
33. This was with the ostensibly creditable intention of increasing voter turnout and democratic legitimacy. The returning officer also indicated that it was duty of pastoral care towards the GSA to ensure as many of its members voted as possible.
34. The particular difficulty in this case was that the returning officer knew the result, as did the winning candidate. Therefore re-opening of the ballot would put into doubt the result of an election whose result had just been counted. Whatever certainty one may have in the integrity of a returning officer, a discretion to re-open a ballot in the knowledge of the identity of the then winner would be stretching democratic credibility too far.

35. It was a particularly regrettable decision in this case because the winning candidate had been told of his preliminary victory. There was a dispute of evidence upon the question of whether the returning officer or RS had told the candidate, though it is not a matter we needed to decide, not least because the returning officer did not prohibit RS from mentioning it. There have been other elections where observers or members of elections committees have revealed the results early.
36. However our attention was drawn to the wider question of whether it is constitutional ever to extend balloting times or re-open closed ballots. Part C of the Election Regulations set out the timetable in certain respects for Union elections, though covering the advance publicity, nominations and campaigning time only. There are additional provisions for the Sabbatical Officers, though these do not apply to the GSA Chair in its new form. No specific rule governs the balloting timetable for non-sabbatical elections (unless incorporated into a subsidiary rule, which was not applicable here.)
37. In a Union election the returning officer or appropriate committee sets out a timetable for publicity, nominations, campaigning and the ballot. The election then follows that timetable. There have occasionally been cases where the ballot has been extended for some exceptional reason.
38. Is there a category of election in which the propriety of a democratic election is sufficiently imperilled to require an extension of the ballot, but not to require a re-run? The normal reason why a ballot would be extended was a low turnout which was unexpected when the balloting times were established. This would normally be the result of poor timing of the ballot, inauspicious publicity (by the returning officer or candidates) or a longer term disengagement by the electorate with the post concerned.
39. These problems do not have to be so serious as to render an election unconstitutional. Regulation 2.95 requires an election to be re-run if found to be unconstitutional, but does not prohibit a discretionary re-run if there have been other difficulties with the election. The returning officer does have a measure of discretion if there have been serious difficulties in an election.
40. The difficulties in allowing a returning officer to extend balloting times is that, quite apart from the admission of failure by a returning officer which ought to make them consider re-running the whole ballot with proper publicity, it may allow (or be perceived as allowing) tactical considerations about which candidates' core voters may be likely to vote at particular times. It removes certainty among the candidates as to how they plan their campaigns during the balloting period – particularly now that the ballot lasts over several days. It may also allow an unnecessarily casual approach towards the election timetable if a returning officer knows it can be extended at their discretion.
41. Thus I am of the opinion that it is unconstitutional to extend balloting times. The proper recourse is to re-run the ballot, and then only upon a finding by the returning officer of unconstitutionality or other serious difficulties.
42. Incidentally, elections held earlier in the year involving an extension of balloting times do not thereby become void. Regulation 2.102 institutes a three week time limit for election complaints, which has long since expired. Thus the results of any of those elections as declared by the returning officer remain valid.

#### **Breach of secret ballot**

43. The post on *Live!* by RS led to the returning officer forming the view that Jon Matthews ought to be disqualified on the basis of his agent's actions in breaching the secrecy of the ballot. No-one was formally disqualified since by that stage the matter had already been referred to the Union Court. However, it was a matter which required the panel's attention.

44. RS attended as an observer of the count under regulation 2.76. Candidates have the right to send an observer to an election count, and the prohibition by a returning officer of an observer for some reason other than disorder or disreputable conduct during the count is extremely likely to render the count invalid.
45. The electronic balloting software allows the user to see who voted, but not which candidates they voted for. The ballots from individual voters are disconnected from the identity of voters themselves. It is technically possible in certain circumstances to trace the sending of electronic ballots from particular terminals, but this is a labour intensive exercise and there was no suggestion it was undertaken here.
46. The post mentioned the number of voters, the fact that two sabbaticals had voted (out of a possible 6 eligible people) and that one of the candidates probably did not vote. It did not mention how they voted.
47. Previous methods of voting in Union elections involved the hole punching of one's plastic Union membership card – obvious to anyone using it – and from 2001, the scoring of a voter's name in a booklet held at a ballot box. Both methods existed to ensure that voters could not vote more than once in an election, and each made no secret of whether a person voted or not. It is difficult to see why there should be any embarrassment or difficulty in admitting that one has or has not voted in an election.
48. Nevertheless, those involved in or observing the count would be advised not to draw active attention within the Union media or elsewhere to the identity of voters in a secret ballot election, and to this extent, it would have been better had the post not been made.
49. There are however no grounds whatsoever for imputing misconduct to either RS or Jon Matthews, and thus there will be no disqualification or re-run based upon breach of the secrecy of the ballot. I would say that the ballot's secrecy has not been breached.
50. In any event, if the results had been declared (and it did not need to be established precisely if they had been or not), the election is over and the jurisdiction of the returning officer ceases. Therefore a breach of a secret ballot or other misconduct at a late stage would have to be dealt with by normal disciplinary action and not by disqualification or other election remedy.

#### **Retrospective reduction in seconders**

51. The number of seconders required to nominate a candidacy fully was reduced upon two occasions, firstly from 10 to 5, and later from 5 to 1. This done with the intention of widening the field of fully nominated candidates to ensure a contested election. No-one doubted the good intentions of the returning officer in attempting to widen the field. Indeed, the two candidates remaining in the race for GSA Chair owed their fully nominated status to the decision to reduce the number of qualifying seconders.
52. However, had the returning officer chosen a different number of seconders to qualify as a valid nomination, either, both or none of the nominated candidates could potentially have been validly nominated.
53. One of the reasons for the reduction in qualifying seconders was the somewhat late removal of undergraduates from the pool of candidates, proposers and seconders. This reduced significantly some of the registered candidates and seconders rather late in the nomination process.
54. Regulation 2.15.3 requires that an election for a Union Officer post (of which the GSA Chair is one) states that "at least four seconders are normally required". This has recently been reduced from a "normal" minimum of 10. Clearly this gives a discretion to the returning officer to require fewer than four seconders, though there ought to be a justification for doing so.

55. It is also easy to sympathise with a returning officer's desire for administrative convenience and the wish to extend the field of candidates by reducing the number of qualifying seconders.
56. There are however two fundamental objections to reducing the number of qualifying seconders in the middle of an election. Firstly, the returning officer is changing the rules of the game mid-way. Candidates have a right to expect that the rules they are provided with at the beginning (and face potential disqualification for breaching) are not amended to meet the exigencies later found by the returning officer. In an election, there is no such thing as a rule change that favours all candidates equally: changes are bound to assist some candidates more than others. For example, a reduction in the number of seconders means that those who achieved the required number of seconders then faced competition from those who failed to do so. In my opinion that competition is unfair.
57. The second and more serious objection is that the returning officer faced with a range of candidates with differing numbers of seconders can set the bar at any point he or she likes and involve as many or as few candidates as he or she may choose. This is a wholly unacceptable discretion. It allows the returning officer to choose who is nominated. The nomination process is there to filter candidates down to those who have sufficient support even to stand. It is not for the returning officer to allow some of the field of candidates to circumvent the election rules. There is also the particular danger that a returning officer could favour one particular candidate by lowering the seconders required just enough to allow him or her to become nominated: it becomes easier to run an election in a partial and dishonest manner.
58. I am therefore of the opinion that it is unconstitutional to reduce retrospectively the number of seconders qualifying a nomination.

### **Remedies**

59. Having made a finding that the retrospective reduction in seconders was unconstitutional, the Court is bound by regulation 2.95, which states:  
 "The election or referendum shall be re-run [...] if the election has been run unconstitutionally."
60. This uses compulsory wording which leaves the Court no discretion but to order a re-run. Since the unconstitutional act occurred during the nomination phase, the election must be re-run in its entirety, nominations included.
61. The compulsory nature of this rule will not survive the new election regulations which are expected to come into force. These will provide a discretion to order a re-run or not in any case where a finding of unconstitutionality is made. However, that is of little assistance in this case.
62. Regulation 2.100 gives the Union Court the power to act as a supervisory authority if it orders a re-run. In these circumstances we have decided to remove the returning officer and revoke the appointment of the elections committee.
63. Stephen Brown, the President-elect, is appointed as returning officer without an elections committee. The new election is to be conducted as soon as is reasonably practicable.

The DEPUTY COURT CHAIR:

64. I agree with the Court Chair.
65. Also, I believe it to be highly regrettable that such a modest level of publicity for the election of high profile posts was deemed acceptable by the returning officer. One

would hope that in future some of the problems these elections encountered might be ameliorated or avoided altogether by more widespread publicity.

Simon Matthews:

66. I agree with the Court Chair.
67. Also, as an amplification of paragraph 58 above, I would hold it to be unconstitutional to change the numbers of seconders required at any time after the number has been initially set, even if this were to occur before nominations open. Once the fundamental rules for the election have been agreed and announced then they are fixed for its duration.
68. Further, it is important to realise that “New Election” (“RON”) is a legitimate candidate and that while there is understandably a desire to have ‘real’ people win elections, all decisions of the Returning Officer must be equally fair to RON. This encompasses the objection made in paragraph 56 regarding increased competition for a post.
69. With regard to the secrecy of the ballot, I am in whole-hearted agreement with the Court Chair; a secret ballot is designed to conceal which way individuals vote, rather than whether or not they actually vote. As such a post identifying voters, while possibly ill-judged, cannot be said to have breached the secrecy of the ballot unless it were also to indicate for whom those individuals had voted.
70. Although the Court did not reach a decision on whether the results had been declared or not, having decided that it was irrelevant due to the post on *Live!* not breaching the secrecy of the ballot, it was agreed that, as per paragraph 50, once results are declared the jurisdiction of the Returning Officer and of Regulation 2 ceases and a candidate cannot be disqualified, or any action taken under Regulation 2 for any subsequent misconduct. Consequently I feel it is important to clarify that, in my opinion, had the Returning Officer informed any of the candidates, or indeed any person not present at the count and not part of a supervisory body, of the result then that would have constituted a declaration and a consequent cessation of jurisdiction.
71. Regarding the publicity, it is clear that, even though the quality of the material was lamentable, there was sufficient publicity produced and distributed that a reasonably engaged member of the electorate should have been aware that an election was occurring and would have had the opportunity to participate if they had so desired. It is extremely disappointing, however, that the Returning Officer seemed to be unaware of the existence of certain forms of publicity, such as personalised mass-emails, which have proved themselves to be extremely effective at increasing turnout.
72. Finally, regarding the proposed extension of the balloting times, I fully agree with the Court Chair that there are no circumstances in which it would be acceptable to extend balloting times and that the ballot should be re-run instead. However I am of the opinion that it would not be constitutional to re-run a ballot simply because of a low turnout. A re-run is a remedy for constitutional or procedural irregularities (say, for example, if there had been problems with the balloting software). I find it difficult to see any circumstances in which it would be constitutional to order an election or ballot re-run if there were no problems. Having found that there is no minimum turnout that is required for an election to be constitutional, I fail to see that low turnout can be used to justify a re-run.

Lara West:

73. I agree with the Court Chair.
74. In reference to the publicity, sufficient publicity for the nominations was produced and distributed via e-mail on several dates, and it is then the responsibility of the recipients to read and respond to such notices. Hustings were held, and publicised, and in addition there were some posters on campus to advertise nominations. However, I do not

believe that there were sufficient efforts from the Returning Officer to publicise the voting period itself. Postscript was released on the first day of voting, a Friday, and there were no e-mails during the voting period to prompt voters. In addition, I would expect, and recommend, candidates themselves to be active throughout the voting period, echoing point 19

75. The voter turnout of 10 is extremely disappointing, especially in consideration of the electoral constituency of 3,500. With the Returning Officer being made aware of the fact that only 3 votes had been cast by Saturday evening, I am astonished that action was not taken to rectify the situation. With improved publicity by electronic, poster and paper means this situation may have been avoided.
76. Point 41 states that it is unconstitutional to extend balloting times. This is of uttermost importance if confidence is to be maintained in any election. This may not just have implications on the election of which it concerns, but also future elections. If trust is ever compromised, it can be a very hard thing to earn back; both the Returning Officer and election committees should always be aware that their actions can unwittingly have consequences on future elections, and maintain respect for the role which they undertake.
77. Finally, I would like to stress the importance of point 58. Once an election is announced, and the rules are stated, they should be strictly adhered to. Any change which is made after this announcement could potentially have serious consequences on the fairness of the election, and the rules are there for fairness to all, whether they be a candidate or a voter, and this should not be compromised at any stage.

#### ORDERS:

1. It is declared that the extension of balloting times once the ballot has been opened is unconstitutional.
2. It is declared that a reduction in seconds to qualify a nomination after nominations have begun is unconstitutional.
3. The election for Graduate Students' Association Chair is to be re-run from the beginning, including nominations.
4. The returning officer and elections committee are removed.
5. Stephen Brown is appointed as returning officer.

#### RECOMMENDATIONS:

1. The election should be conducted as soon as is reasonably practicable.

The orders and recommendation were agreed unanimously.