

TO: Governing Council

SPONSOR: David Naylor, President

DATE: October 16, 2008 for October 23, 2008

AGENDA ITEM: 5 (c)

ITEM IDENTIFICATION:

**University of Toronto at Mississauga Students' Union: Recognition as a
Representative Student Committee – Rescission**

JURISDICTIONAL INFORMATION:

The *University of Toronto Act* (1947) provides that the Governing Council “may make provision for enabling the students of the University, University College and the federated colleges to appoint a representative committee of themselves to be chosen in such manner as shall be approved by the [Governing Council], which shall be the recognized official student medium of communication on behalf of such students between them and the [Governing Council].”

PREVIOUS ACTION TAKEN:

The Governing Council approved the resolutions listed below at its meeting on June 23, 2008.

HIGHLIGHTS:

The attached memorandum from the Interim Vice-President and Provost to the members of the Governing Council, dated October 2, 2008, provides background information for the following recommendation.

FINANCIAL AND/OR PLANNING IMPLICATIONS:

n/a

RECOMMENDATION:

Be It Resolved

THAT the following resolutions approved by the Governing Council on June 23, 2008 be rescinded:

.../2

THAT the Governing Council cease its recognition of the Association of Part-time Undergraduate Students (APUS) as the Representative Student Committee of part-time undergraduate students registered at the University of Toronto at Mississauga (UTM); and

THAT the Erindale College Students' Union (currently operating as the University of Toronto at Mississauga Students' Union, UTMSU) be recognized as the Representative Student Committee and primary representative body of part-time undergraduate students registered at UTM.

Terms and conditions of the foregoing recommendation and approval:

1. THAT for the purposes of the *Memorandum of Agreement between the University of Toronto, the Students' Administrative Council, the Graduate Students' Union and the Association of Part-Time Undergraduate Students for a Long-Term Protocol on the Increase or Introduction of Compulsory Non-Tuition Related Fees* (the "Protocol"), the Association of Part-time Undergraduate Students shall continue to represent part-time undergraduate students registered at UTM until such time as a new or revised Protocol is approved; and
2. THAT the Erindale College Students' Union (currently operating as the UTMSU) will: (a) undertake, in consultation with the Students' Administrative Council (currently operating as the UTSU), to address the formal representation of full-time undergraduate UTM students; and (b) will report to the administration the society's progress on addressing this matter no later than the spring of 2010.

MEMORANDUM

To: **Members of the Governing Council**

From: Cheryl Misak, Interim Vice-President & Provost

Date: October 2, 2008

Subject: **Rescinding the Designation of the Erindale College Student Union
(operating as the University of Toronto Mississauga Students' Union)
as a Representative Student Committee**

In the spring of 2008, the administration received a request from the presidents of the Erindale College Students Union (operating as the University of Toronto Mississauga Students' Union, UTMSU) and the association of Erindale Part-time Undergraduate Students (EPUS) to realign student society fees charged to part-time University of Toronto Mississauga (UTM) students and the formal representation to the Governing Council of part-time undergraduate UTM students. Specifically, the requests were as follows: (a) reduce the EPUS student society fee to zero; (b) reduce the Association of Part-time Undergraduate Students (APUS) fee for UTM students to zero; (c) adjust the UTM part-time student society fees as delineated in a referendum question; (d) withdraw the recognition of EPUS as a student society of the University of Toronto; (e) withdraw the recognition of APUS as the "representative student committee" (pursuant to the *University of Toronto Act*, 1947) for UTM part-time undergraduate students; and (f) recognize UTMSU as the "representative student committee" for UTM part-time undergraduate students.

The request was based upon the results of a referendum held February 6-7, 2008, in which part-time undergraduate UTM students were asked to support the proposal. For more information about the referendum, see the documentation for agenda item #3 of the June 2, 2008 meeting of the UAB.¹

As is normally the case with respect to requests for changes to student society fees, upon receipt of the appropriate supporting documentation and the assurance of student society representatives that proper and democratic procedures have been followed the administration brought forward the requests from the societies, as required by the *Policy*, and recommended approval of the requests. The matter was scheduled to be considered during the April 29, 2008 meeting of the UAB.

¹ <http://www.governingcouncil.utoronto.ca/AssetFactory.aspx?did=5258>

In advance of the April 29, 2008 meeting of the Board, the administration requested that consideration of this matter be deferred. The Association of Part-time Undergraduate Students (APUS) wrote to the administration on April 28, 2008 in order to request that the matter be delayed because APUS was intending to initiate legal proceedings against UTMSU and EPUS regarding the process used to support the request to the administration for this realignment of fees and representation. The administration agreed to request deferral of the matter in order to provide APUS, UTMSU, and EPUS an opportunity to consider and resolve this matter amongst themselves. However, the administration also advised APUS that it intended to ask the UAB to consider this matter on June 2, 2008 unless there are compelling reasons to do otherwise.

The administration was advised by APUS that their court application against UTMSU and EPUS was initially scheduled to be heard on June 27, 2008. APUS also provided a copy of its court application to the administration. The administration reviewed the matter and based on the information provided at the time and the assurances of UTMSU and EPUS that appropriate procedures had been followed, concluded that it did not believe there was any compelling reason to further defer consideration of the request from UTMSU and EPUS. The University was not provided with, nor was it in a position to assess, the detailed and somewhat contradictory material that was later put forward and tested through the court application described below.

Accordingly, the administration requested that the matter be considered at the June 2, 2008 meeting of the UAB.

On May 27, 2008 the University was served with notice that APUS was initiating an application seeking an interlocutory injunction prohibiting consideration of this matter at the June 2, 2008 meeting of the UAB and otherwise preventing implementation of any approval of the proposed resolutions on this matter, pending the court's consideration of APUS' main application against UTMSU and EPUS to be heard on June 27, 2008.

In consideration of the fact that the June 2nd meeting was the final meeting of the University Affairs Board for 2007-08, the administration believed it was important to proceed with consideration of the matter at that time by the full Board instead of under summer executive authority. It was noteworthy at the time that any approved fee changes would not have been effective until the fall 2008 session, that changes would not be implemented until July as part of the normal fees assessment process, and that the first instalment of student society fees is not paid to the societies until September. In addition, the administration had no reason to believe that the result of the referendum held among part-time undergraduates at UTM was not a valid articulation of students' views on this matter.

Professor Jonathan Freedman, the senior assessor to the UAB, addressed the board on this matter and reported as follows:²

“...the administration believed that it was appropriate to proceed to consider the advice of these students in support of the request from UTMSU and EPUS. The University would, of course, respect any decision of the court on the issue. The administration had assured APUS and would assure the court, if necessary, that in the event that approval was granted by the Board, the administration would delay implementation as long as possible. Further, the University had also assured APUS that should implementation proceed prior to the determination of the June 27, 2008 application, and the court subsequently found that the process leading up to the request had been defective and the change should not have occurred, the University would remit the fees which ordinarily would have been collected for APUS and EPUS to those bodies instead of UTMSU. With respect to the question of representation, if the request of UTMSU and EPUS was approved by the Board and subsequently the court found that the process leading up to the request had been defective and the change should not have occurred, the University would take steps to reinstate APUS as the representative student committee for the students in question.

“Professor Freedman noted that, on the basis of these two assurances, APUS had abandoned its application to the court for an injunction against the University. He concluded by stating that the University administration believed it was important for this matter to proceed to be considered by the full Board as a matter of significance that it had been asked to consider by recognized student societies following a democratic process. Considering the assurances that had been provided regarding respecting the outcome of court proceedings initiated by APUS, and taking into account the practical considerations of the relevant business processes related to fee approval, implementation and fees assessment, the administration believed it was appropriate to proceed to consider the matter at the June 2, 2008 meeting.”

Following discussion and debate on the matter, the University Affairs Board approved the following resolutions on the recommendation of the senior assessor:

(a) University of Toronto at Mississauga Part-time Student Societies: Fees

THAT all fees currently charged to University of Toronto at Mississauga (UTM) students on behalf of Erindale Part-time Undergraduate Students (EPUS) be discontinued, and by virtue of this change, that EPUS no longer be recognized as a student society of the University of Toronto;

THAT all fees currently charged to UTM students on behalf of the Association of Part-time Undergraduate Students (APUS) be discontinued; and

² See Report Number 148 of the UAB:

<http://www.governingcouncil.utoronto.ca/Assets/Boards+and+Committees/University+Affairs+Board/2007-2008+Academic+Year/r0602.pdf>

THAT a new fee of \$80.51 be established and charged on behalf of the Erindale College Students' Union (currently operating as the UTM Students' Union; UTMSU) to UTM part-time undergraduate students including designated portions for the Society (\$12.65), an Accident and Prescription Drug insurance plan (\$28.80, including provincial sales tax), a Dental Plan (\$27.45, including provincial sales tax), the Ontario Public Interest Research Group (\$0.50 in fall and winter, \$1.00 in summer), the Canadian Federation of Students (CFS) and CFS-Ontario (\$3.31), and the UTM Student Centre (\$7.80).

(b) University of Toronto at Mississauga Students' Union: Recognition as a Representative Student Committee

Recommendation to the Governing Council:

THAT the Governing Council cease its recognition of the Association of Part-time Undergraduate Students (APUS) as the Representative Student Committee of part-time undergraduate students registered at the University of Toronto at Mississauga (UTM); and

THAT the Erindale College Students' Union (currently operating as the University of Toronto at Mississauga Students' Union, UTMSU) be recognized as the Representative Student Committee and primary representative body of part-time undergraduate students registered at UTM.

Terms and conditions of the foregoing recommendation and approval:

1. That for the purposes of the *Memorandum of Agreement between the University of Toronto, the Students' Administrative Council, the Graduate Students' Union and the Association of Part-Time Undergraduate Students for a Long-Term Protocol on the Increase or Introduction of Compulsory Non-Tuition Related Fees* (the "Protocol"), the Association of Part-time Undergraduate Students shall continue to represent part-time undergraduate students registered at UTM until such time as a new or revised Protocol is approved; and
2. That the Erindale College Students' Union (currently operating as the UTMSU) will: (a) undertake, in consultation with the Students' Administrative Council (currently operating as the UTSU), to address the formal representation of full-time undergraduate UTM students; and (b) will report to the administration the society's progress on addressing this matter no later than the spring of 2010.

The Governing Council approved the recommendation of the UAB with respect to representation on June 23, 2008.

In summary, the approvals had the following effects:

1. Part-time UTM students would no longer be charged APUS fees and, consequently, would no longer be members of APUS.
2. EPUS would be merged with UTMSU and a fee for EPUS would no longer be charged.
3. Part-time UTM students would be charged a new fee for UTMSU and would become members of UTMSU.
4. UTMSU would replace APUS as the formal representative of part-time UTM students to the Governing Council.

While APUS' court application was initially scheduled to be heard on June 27, 2008, the hearing was delayed until August 11, 2008.

APUS sought an order from the Ontario Superior Court of Justice which would invalidate the process leading up to the request to the administration. Specifically, APUS argued that APUS' own by-laws and rules must be used to effect membership and fee changes which impact APUS and that, in any event, the process was unfair because APUS did not receive appropriate notice of the referendum.

On August 27, 2008, the Honourable Madam Justice Beth Allen issued an order in favour of APUS' application.³ Specifically, the court determined that there were fundamental flaws in the referendum process.

As noted above, the administration relied on the results of the referendum to support its recommendations to the Governing Council with respect to the changes in fees and representation. In accordance with the court's judgment, the University can no longer depend upon the results of this referendum in support of the requests made by UTMSU and EPUS.

Accordingly, as it undertook to APUS, since the court found defect with the process leading up to the request to the administration, the fees which ordinarily would have been collected for APUS and EPUS will be remitted to those bodies.

As recorded in Report Number 148 of the University Affairs Board, the Board was fully informed of the possibility that a court decision might impact the new fees if APUS received a court decision in its favour. Therefore, a resolution to rescind the original approval of fee changes is not required. The administration will undertake the appropriate actions to remit the appropriate amounts of funding to APUS and EPUS and will, beginning with the summer 2009 session, adjust the fees schedule to reflect the changes.

In addition, the administration also undertook to APUS that it would be reinstated as the "representative student committee" for part-time UTM students should the court determine that there was defect in the process leading up to the request to the

³ *Association of Part Time Undergraduate Students of the University of Toronto v University of Toronto Mississauga Students' Union and Erindale Part Time Undergraduate Students' Association*, unreported decision of Allen, J, SCJ, August 27, 2008

administration. Accordingly, a recommendation to rescind the approval for the change in representation is being presented.

Recommendation:

THAT the following resolutions approved by the Governing Council on June 23, 2008 be rescinded:

THAT the Governing Council cease its recognition of the Association of Part-time Undergraduate Students (APUS) as the Representative Student Committee of part-time undergraduate students registered at the University of Toronto at Mississauga (UTM); and

THAT the Erindale College Students' Union (currently operating as the University of Toronto at Mississauga Students' Union, UTMSU) be recognized as the Representative Student Committee and primary representative body of part-time undergraduate students registered at UTM.

Terms and conditions of the foregoing recommendation and approval:

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