

UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL

Tuesday, March 27, 2001

MINUTES OF A SPECIAL MEETING OF THE GOVERNING COUNCIL held on Tuesday, March 27, 2001 at 8:00 a.m. in the Croft Chapter House, University College.

Present:

Ms Wendy M. Cecil-Cockwell (In the Chair)	The Honourable David R. Peterson
Dr. Robert J. Birgeneau, President	Mr. Fayez A. Quereshy
Dr. Robert Bennett	Professor Adel S. Sedra
Professor Philip Byer	Professor Kenneth Sevcik
Professor Jack Carr	Professor Chandrakant P. Shah
Ms Jennifer Carson	Mr. Amir Shalaby
Professor W. Raymond Cummins	Ms Wendy Talfourd-Jones
Mr. Brian Davis	Mr. Robert S. Weiss
Mr. Ljupco Gjorginski	
Ms Naana Afua Jumah	
Mr. Josh Koziembrocki	Mr. Louis R. Charpentier,
Ms Karen Lewis	Secretary of the Governing Council
Professor Ian R. McDonald	
Professor Heather Munroe-Blum	<u>Secretariat:</u>
Dr. John P. Nestor	Mr. Neil Dobbs
Mr. Elan Ohayon	Ms Cristina Oke
Ms Jacqueline C. Orange	

Absent:

Mr. Muhammad Basil Ahmad	Professor Brian Langille
Professor Mary Beattie	Mr. Gerald A. Lokash
Mr. Brian C. Burchell	Ms Rose M. Patten
Ms Mary Anne V. Chambers	Professor Emmet I. Robbins
Professor Brian Corman	Dr. Joseph L. Rotman
The Honourable William G. Davis	The Honourable Robert K. Rae
Ms Susan Eng	Mrs. Susan M. Scace
Dr. Shari Graham Fell	Ms Carol Stephenson
Mr. Paul V. Godfrey	Mr. John H. Tory
Professor Vivek Goel	Professor Donna Wells
Dr. Anne Golden	
The Honourable Henry N. R. Jackman	

In Attendance:

Ms Susan Bloch-Nevitte, Director, Public Affairs
Mr. Adam Bretholz, President, Students' Administrative Council
Ms Susan Girard, Chief Returning Officer
Ms Manon Le Paven, President, Association of Part-time Undergraduate Students
Mr Tim Pinos, Cassels Brock and Blackwell
Mr. Paul Tsang, Executive Director, Association of Part-time Undergraduate Students
Ms Michele Wright, Cassels Brock and Blackwell

The Chairman thanked members for making themselves available for this special meeting. The Chairman noted that she had received a request from Mr. Adam Bretholz, the President of the the Students' Administrative Council (SAC), to address the Council. She had granted this speaking request and would recognize him at the appropriate point in the meeting.

1. Judicial Review Decision

(a) Request for Leave to Appeal the Judicial Review Decision

The Chairman noted that the purpose of the special meeting was to consider the recommendation to request leave to appeal the judicial review decision. She emphasized that the crucial issue underlying the appeal was respect for the Governing Council's autonomy so it was important to consider the principle at issue, and not whether a particular individual should be permitted to stand for election.

The Chairman introduced Mr. Tim Pinos and Ms Michele Wright of Cassels, Brock and Blackwell, the University's legal counsel, and invited them to summarize the recommendation to seek leave to appeal. Mr. Pinos explained that the request for judicial review had been undertaken in response to the election guideline that required a student to be registered throughout the election period which was defined as including nomination period. The Election Guidelines had been approved by the Governing Council in accordance with the *University of Toronto Act* which gave the Governing Council power to determine how the election of its members should be carried out. In counsel's view, the use of Section 2 (5) of the *Act* to quash an eligibility requirement in the Election Guidelines was incorrect because that section was intended to deal with an age qualification for students at the time the *Act* was written. The nature of the reasoning would set a bad precedent with respect to the autonomy of the University.

Mr. Pinos also noted that the judgement interpreted Section 2 (5) of the *Act* as an inalienable right for any student to stand for election, and that this interpretation could be used as a precedent to call into question any election requirement imposed on students by the Governing Council.

It was duly moved and seconded

THAT the Governing Council proceed with a request for leave to appeal as recommended by the University's legal counsel in their memorandum dated March 21, 2001.

Invited to address the Council, Mr. Adam Bretholz expressed the opinion that the appeal was ill-advised, as the continuing litigation would be costly and would take away the rights of students to choose their representatives. He noted that the nomination period overlapped with the deadline to add courses.

Members of the Governing Council discussed the motion and made the following points:

- The appeal should be pursued because the decision challenged the authority of the Governing Council; however, the guidelines governing elections should be reviewed and changed if and as appropriate.

1. Judicial Review Decision (cont'd)**(a) Request for Leave to Appeal the Judicial Review Decision (cont'd)**

- When asked by a member to differentiate between technical invalidations and appealable rulings on nominations, the Chief Returning Officer stated that technical invalidations were based on non-compliance with the formal requirements of the guidelines, for example not signing the form or not providing proof of citizenship. Appealable rulings were judgements made by the Chief Returning Officer on particular aspects of a nomination, for example a list of nominators that appeared from the similar printing and signatures and misspellings of names to be written by one person.
- There was a perception that the relationship between the Governing Council and students had been flawed throughout the year, and the Council's decision should seek to bring about harmony among the various constituencies.
- In response to a question on whether the Council could address the specific case at the same time as appealing the decision, Mr. Pinos stated that nothing would stop the Election Committee from reviewing and making recommendations on the Election Guidelines. However, he noted that there would be an issue of fairness, with respect to implementing new guidelines for this year, because all the candidates who had been elected had followed the current guidelines.
- Several members asked about the timelines of the appeal, and expressed concern at the possible delay in reaching a decision. Mr. Pinos explained that, while an appeal could take as long as six months, it was possible to request an expedited hearing to resolve the matter with minimal delay.
- Several members expressed concern about the financial implications of pursuing an appeal and asked for an estimate of the potential costs. Mr. Pinos indicated that he could provide a rough estimate at a later date.
- A number of members spoke strongly in favour of pursuing the appeal, stressing the need to ensure respect for the University's autonomy, and, at the same time, the importance of reviewing the Election Guidelines.
- A member asked whether an election could proceed at the same time as the appeal. Mr. Pinos replied that such an action would serve to indicate to the court that the judgement had been accepted, and the appeal would not be heard because any decision would be moot if the election had been held.
- A member expressed his view that an appeal for the sake of appeal was not the right thing to do. The member noted that a number of speakers had indicated that the election guidelines needed to be examined, and suggested that, if members of the Governing Council were to leave the meeting without proposing concrete action to address the issues raised, they would be abdicating their responsibility.

On a motion duly moved and seconded,
That the question be put.

The motion to put the question was
carried with the necessary two-thirds
majority.

A recorded vote was requested.

On a motion duly moved and seconded,

IT WAS RESOLVED

THAT the Governing Council proceed with a request for leave to appeal as recommended by the University's legal counsel in their memorandum dated March 21, 2001.

In favour: 19
Opposed: 5
Abstaining: 0

(b) Delegation of Authority

It was duly moved and seconded,

THAT the Governing Council delegate authority for future action with respect to the judicial review decision to the Chairman, the Vice-Chair and the President in consultation with the Chair of the University Affairs Board and the Chair of the Elections Committee.

A member noted that no students were included in the group named in the motion. The mover and seconder agreed to change the wording of the motion to include the Vice-Chair of the University Affairs Board, who represented a student constituency.

A member expressed his view that the motion was problematic, and removed authority from the Governing Council to act on this matter. Mr. Pinos commented that, once a governing body had made a decision on principle, it was standard practice to delegate operational authority to a small number of appropriate executive officers to expedite the signing of documents and other matters requiring a rapid turnaround time.

In response to a member's request for clarification, the Chairman stated that, if the appeal were unsuccessful, the decision for any future action would be made by the Governing Council.

A member requested that regular updates on this matter be provided to the Governing Council.

IT WAS RESOLVED

THAT the Governing Council delegate authority for future action with respect to the judicial review decision to the Chairman, the Vice-Chair and the President in consultation with the Chair and Vice-Chair of the University Affairs Board and the Chair of the Elections Committee.

In Favour: 17
Opposed: 7
Abstaining: 0

The meeting adjourned at 9:40 a.m.

Secretary

Chairman

March 27, 2001