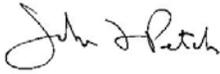




Memorandum to: Members of the Governing Council

From: John F. (Jack) Petch
Chair 

Date: May 16, 2008

Re: **Open Meetings and Meeting Disruptions**

In light of recent demonstrations on the St. George campus and the disruption of our April 10 Governing Council meeting, I wanted to provide you with my perspective on some of the comments and criticisms made about the Governing Council and how we work. The purpose of this memorandum is to reiterate and clarify for you:

- our responsibilities regarding open meetings of the Governing Council, and
- the legislative and policy framework within which our meetings are conducted.

All of us, in becoming members of the Governing Council, accept the obligation to execute our fiduciary responsibilities to the University in compliance with the *University of Toronto Act* and with the Governing Council's By-Law Number 2. Every Governor is familiar with the interests of the constituency from which he/she is elected or appointed. A Governor can and should speak to these interests in broad terms. In this context, however, each Governor is obliged to ensure that his or her actions and choices always consider the long-term impact on the University as a whole. Fundamental to executing that responsibility is a respect for the work that Council does and the manner in which it operates in its deliberations.

As Chair, I have a particular responsibility to ensure that we are able to conduct our business effectively and that we are able to consider matters before us in an open, fair and thorough manner. However, we all share the responsibility and commitment to act and to make decisions in the best interests of the University. Therefore, I expect that meetings of the Governing Council will be conducted in an atmosphere of respect and collegiality – that is, with respect for one another and respect for the procedures of the Council – and with the assurance that Governors do not contribute to activities whose goal is to disrupt the meeting.

With this as context, I will also comment specifically on the events that occurred during our Governing Council meeting of April 10 and my expectations for the future.

Requirement for Open Meetings

Under *The University of Toronto Act, 1971*, as amended, the Governing Council is required to hold open meetings. Section 2(18) states that:

“The meetings, except for meetings of committee of the whole, of the Governing Council shall be open to the public, prior notice of the meetings shall be given to the members and to the public in such manner as the Governing Council by by-law shall determine, and no person shall be excluded

therefrom except for improper conduct, but where intimate financial or personal matters of any person shall be disclosed at a meeting the part of the meeting concerning such person shall be held *in camera* unless such person requests that such part of the meeting be open to the public.”

In keeping with the *Act*, Paragraph 37 of By-law Number 2 of the Governing Council states:

“Whereas *The University of Toronto Act, 1971*, as amended, requires that meetings of the Governing Council be open to the public, and also requires that any part of a meeting during which intimate financial or personal matters of any person may be disclosed shall be held *in camera* unless such person requests that such part of the meeting be open to the public, the Council shall be bound by the provision of the said *Act* notwithstanding any amendment to this By-law.”

Participation of Non-members

We fulfill these requirements by ensuring that our meetings are open to members of the University and broader communities subject to the limitations of the seating capacity of the Council Chamber. For the Governing Council, in addition to those allocated to Governors, roughly 65 seats are available and, of these, we may reserve approximately half for members of the administration necessary for the conduct of the Council’s business, for representatives of official campus groups and security personnel. Currently, the official campus groups recognized by the Governing Council for such purposes are the University of Toronto Faculty Association (UTFA), the United Steelworkers of America (USWA), the Association of Part-time Undergraduate Students (APUS), the Graduate Students’ Union (GSU), the Students’ Administrative Council (SAC)¹, and the Scarborough College Students’ Union (SCSU). (A proposal for recognition of representative student groups at the University of Toronto at Mississauga, currently under SAC’s umbrella, is expected to be considered by the University Affairs Board in the next governance cycle.) These groups are routinely polled prior to the meetings to confirm the number of seats required. Those not needed are added to the other 30-plus seats and are available to members of the University and broader communities on a first-come, first-served basis. This practice was instituted several years ago with the endorsement of the Executive Committee.

Public Notice

Public notice of meetings and communication of a meeting’s purpose are accomplished through a number of means. The Governing Council’s secretariat communicates directly by e-mail with a lengthy list of individuals and groups beyond the Council’s membership, providing them with information on upcoming meetings, as well as links to electronic versions of the agendas and accompanying materials. Our publicly accessible website contains a comprehensive meeting schedule that is updated regularly, the consolidated calendar of business that lists all items that will appear before the Boards, Committees and Council itself, and agendas and agenda documentation. Meetings of the Governing Council are also audiocast over the internet. We are also now considering full webcasting – that is, both audio and video – for the new governance year.

¹ Although the SAC is operating under the name, University of Toronto Students’ Union, the Governing Council has not yet been asked to approve the name change through the University Affairs Board.

Participation of Non-members in Meetings

The principle of open meetings is further reflected in the Governing Council's *Procedures for Non-Members to Address Governing Council, its Boards and Committees (1995)*. The *Procedures* document outlines expectations regarding requests to address Council and its bodies, as well as factors that the Chair is to consider when making a decision on such requests. For requests related to a specific agenda item, they include "such matters as the relevance of the intervention to the agenda, the number of speaking requests and the maintenance of good relations with and fulfillment of obligations to official campus groups representing staff and students." As noted above, the official campus groups currently recognized by the Governing Council for such purposes are UTFa, USWA, APUS, GSU, SAC and SCSU. The *Procedures* note that requests from the representative campus groups normally will be granted. They also provide for circumstances in which a request could be granted through a motion approved by a two-thirds majority vote.

The purpose of the *Procedures* is to enable additional community input to the Council's deliberations while respecting the rights and responsibilities of duly elected and appointed members of the Governing Council. Appropriately, and consistent with our By-law, they are intended to permit external perspectives to inform the Council's decision-making, but are not intended to enable non-members to participate in its debates. The *Procedures* direct non-members, in the first instance, to the Boards and Committees of the Governing Council and encourage individuals to provide their views in writing in advance of the meeting, rather than requesting to speak. The decision to grant a request rests with the relevant Chair.

For matters not on the agenda of the Governing Council, the *Procedures* outline the process to be followed and stipulates that requests should be submitted to the Secretary "by the day of the Executive Committee meeting that precedes the scheduled regular meeting of Governing Council." This requirement is consistent with the Executive Committee's responsibility for setting the agenda of the Governing Council. In January of 2000, the Executive Committee clarified its expectations in fulfilling this responsibility. It noted the following factors:

- (a) the overarching need for the Governing Council to conduct its business within a limited number of two-and-one-half hour meetings;
- (b) the need to ensure proper processing of issues, and channeling of discussion through established governance processes -- and the need to avoid short circuiting those processes;
- (c) the need for the Council to hear from recognized campus groups;
- (d) any previous opportunities for non-members to address various Boards and Committees of the Governing Council on various issues;
- (e) the appropriateness of speakers being redirected to address the relevant Board or Committee;
- (f) the level of detail provided in the speaking requests;
- (g) the timing of addresses by non-members in relation to agenda items;
- (h) past experience in applying the *Procedures*; and
- (i) the permissible length of time for non-members to address the Governing Council.

The Executive Committee approved the following resolution:

THAT, in its application of the Procedures for Non-Members to Address the Governing Council, its Boards and Committees, part B, “With Respect to Items not on Agendas”, the Executive Committee would be guided by the following principles:

- 1. Statements from individuals are permitted at the discretion of the Executive Committee and are not granted as of right. In light of experience, the Committee is of the view that applicants for such speaking privileges should demonstrate that there exists a sound reason for the request from the individual to speak to this topic (i.e. that there would be real value added to the Council’s deliberations and without damage to, or duplication of, normal governance procedures);*
- 2. Statements by individuals and groups who wish to address the Governing Council on items not on the agenda will normally be heard at the outset of the meeting;*
- 3. Consistent with By-law Number 2, speakers will be required to limit their remarks to five minutes. There will be no exceptions to this rule;*
- 4. There will be no Governing Council debate or discussion of statements by non-members at the time of the speaker’s address. Members of the Governing Council may comment under “Other Business”; and*
- 5. Speaking privileges will be considered only for non-members who provide reasonably well-developed proposals meeting the above criteria in a timely fashion, normally for the Executive Committee meeting at which the Governing Council agenda is set. Speakers should outline their reasons for wishing to address the Council and their particular role with respect to the issue they are bringing forward.*

In the last few years, practice in this area has evolved along with other refinements to practice introduced by successive Chairs and Executive Committees to facilitate the Council’s work. The principle of limiting individuals’ speaking time derives from Section 58 of our By-law that states that “No member or other person invited to address the Council shall speak for more than five minutes at one time, except by leave of the majority of the members present and voting, which leave shall be granted or refused without debate, or with the permission of the Presiding Officer.” Normally, speakers – whether addressing items on the agenda or raising matters not on the agenda – are asked to limit their remarks to three minutes rather than assuming the need to take the maximum time possible.

I propose to continue this practice, and, as a matter of course, would suggest written submissions as a preferred option. If speakers require accommodations, the requester is expected to communicate with the Chair through the secretariat well in advance of the meeting, consistent with the expectations regarding timing for receipt of requests outlined below and appropriate accommodation measures will then be arranged. In keeping with the intent of the *Procedures* to enable governors to read material provided to them, written communication should be provided to the secretariat in advance of the meeting with a deadline of 24 hours before the meeting. Any documentation received after that time will not be distributed.

For matters not on the agenda, individuals are normally granted speaking privileges under “other business” and I propose that we continue with this approach.

The *Procedures*, reflecting our By-law, define both the Chair's authority for granting speaking privileges to non-members and the Executive Committee's role in those decisions. At various times in the past, the Chair and the Executive Committee have accommodated individuals and groups who have made requests not submitted within the required time. Respecting good governance, however, it is reasonable to expect that requests will be submitted in a timely fashion with sufficient information for the Chair and the Executive Committee to consider them. Meeting dates, calendars of business and agendas are all readily accessible on the Governing Council website and individuals or groups wishing to address the Governing Council or its Boards or Committees should be able to plan their submissions accordingly.

We have always attempted to deal with speaking requests in a principled and disciplined manner. It is my intention, therefore, to continue to bring speaking requests to the Executive Committee both with respect to requests pertaining to matters on the agenda and with respect to those that are not. If requests are not received in time for such consideration – that is, at the regular meeting of the Executive Committee preceding the Council meeting – I would expect that requesters would normally provide their views in writing for distribution by the secretariat. Our intention has been and continues to be to ensure that the responsibilities of duly elected and appointed Governors are respected, and that there are opportunities for non-members to communicate to the Governing Council and its bodies. Those opportunities must be pursued, however, with regard for the reasonable requirements defined by the Governing Council.

Role of Presiding Officer

Our By-law Number 2 includes the Governing Council's rules of order (Sections 47-75). The rules are very comprehensive but, in those rare situations not covered, we refer to *Bourinot's Rules of Order* (Second Edition, 1963). The purpose of the rules is threefold:

- to enable respectful debate among members;
- to ensure that all members' views may be heard and presented fairly and openly; and
- to support the orderly transaction of business.

Section 47 of the By-law specifies the role of the Presiding Office, the Chair, in establishing and maintaining an environment in which these intentions can occur:

“At all meetings of the Governing Council, the Presiding Officer shall, in addition to his or her duties as a member of the Council, maintain order and decorum, exercise the authority under *The University of Toronto Act, 1971*, as amended, to exclude or cause to be removed from the meeting any persons whose improper conduct impedes the orderly transaction of business of the Council, and conduct the meeting in conformity with the By-laws of the Council.”

Other elements of our rules of order reinforce the objective of respectful interchange and define particular expectations for members and, by extension, non-members who are permitted to contribute to the Council's deliberations. These include, for example, Sections 55, 56, 57 and 58 that address recognition by the Chair if one is to speak, make provision that members may not interrupt one another, limit members to one intervention and limit the time of such interventions.

It is my firm belief that our rules of order are tools to facilitate fair and open debate: our related practices also reflect that intent. Together, they provide a framework in which we, as Governors, fulfill our responsibilities. My expectation – for all of us – is that our meetings are conducted with courtesy, with mutual respect for the roles that each participant plays and with minimal reliance on, or the need for, procedural motions under the rules of order. Procedural motions should be rare, not invoked regularly in the normal course. Used frequently or inappropriately, they are not conducive to productive discussion. Too often, they distract from the substance of the matter before the Council and what should be the focus of Governors’ attention.

Meeting Disruption

Policy on the Disruption of Meetings

The University’s *Policy on the Disruption of Meetings*, approved by the Governing Council in 1987, emphasizes the essential function of a university – to question and debate any subject – and the fundamental need to ensure freedom of speech. It describes the obligation of every member of the University “to uphold freedom of speech and the freedom of individuals and groups from physical intimidation and harassment.” With reference to these principles, the *Policy* requires that reasonable steps will be taken to avert a disruption if one is expected. In practice, this has generally meant coordinated planning initiated by the secretariat working with Campus Community Police and relevant portfolios within the administration.

The *Policy* also recommends a process to be followed in the event of a disruption:

1. *The chair of the meeting should attempt to identify those who are obstructing its business and request them to desist.*
2. *The chair should inform those who are obstructing of the existence of this policy and of the University’s commitment to take the steps necessary to protect freedom of speech, including disciplinary action against University members if appropriate.*
3. *If the obstruction continues, those responsible should be asked to leave.*
4. *If they refuse to leave and it is not possible to remove them without risking violent resistance, the meeting should be recessed or adjourned. An adjournment under such circumstances should generally last for as short a time as possible, and the University authorities will undertake to provide the opportunity for the meeting to take place in a suitable environment.*
5. *If it is determined by the President of the University or his or her designate that the basic right to freedom of speech has been infringed, the opportunity provided by the recess or adjournment should be used to take whatever measures are needed to ensure that the meeting will take place, including the following:*
 - a. *take steps to advise those involved of the University’s determination to protect the basic right of freedom of speech and its intention to use its full authority if necessary to do so;*
 - b. *consider seeking an injunction against those who might prevent the second meeting from taking place;*
 - c. *provide appropriate security for the second meeting.*

6. *If after taking these interim measures the University finds it impossible to preserve freedom of speech and the freedom of individuals and groups from physical intimidation and harassment without the help of outside authorities, the University must be willing to seek such help.*

I would like to comment on the disruption of the Governing Council meeting on April 10, referring first to paragraphs 1 through 4 above.

Declaration of a recess

Members will recall that, at the beginning of Governors' debate of the tuition fee proposal following the external speakers, several members stated their objections to what they considered was an external speaker's inappropriate characterization of the President's response to the incidents of March 20. Two members then spoke to the motion: the first spoke briefly in support; the second spoke against. As part of his remarks, the second member produced a petition from which he began to read comments. In keeping with our rules of order, when the member had been speaking for five minutes, I asked that he wrap up his comments. I also requested that he provide the petition to us and noted that written material could be distributed to members. The member, having stood for his address to the Council, ceased speaking and resumed his seat.

A non-member then rose and began to read from the petition. At the time, I indicated to the speaker that she was interfering with the Council's deliberations and requested that she desist. Unfortunately, she continued to speak and I repeated my request that she desist. A second non-member also rose to speak, followed shortly thereafter by a third – an individual who had been granted speaking privileges on behalf of one of the student governments and who had already addressed the Council. A fourth guest rose and joined in the reading.

In spite of the unruly behaviour, I asked that Governors continue the debate. Non-members in the Council Chamber continued to speak loudly, preventing the members of Council from speaking or being heard. Again, I asked the disruptive guests to desist, reiterating that they were interfering with the meeting. I also indicated that if the individuals failed to respect this call to order, they would be asked to leave the Council Chamber. However, the non-members continued to obstruct the meeting by speaking out, so that members could not be heard.

It became clear to me that further calls to order would continue to be ignored and that the intimidating and noisy atmosphere in the Council Chamber made open debate amongst Governors impossible. I therefore declared a recess pursuant to my responsibilities under section 47 of By-Law Number 2 and under the *Policy*. My decision to call a recess rested on several considerations:

- the events in Simcoe Hall on March 20;
- the subsequent demonstration at the University Affairs Board meeting on March 25;
- the refusal of the individuals engaging in inappropriate behaviour to desist and an assessment that any action to remove the unruly individuals might raise safety concerns; and
- a concern for members' ability to conduct business with a reasonable expectation of order and security.

Governors were informed of an alternate venue by members of the secretariat and we were able to re-convene in an alternate venue and complete our agenda. The re-convened meeting was closed to most non-members, in particular those responsible for disrupting the meeting. In keeping with the

requirement to ensure openness – but keeping in mind the need to function without persistent intimidation and attempts at disruption – members of the media were permitted to attend.

Future Meetings

While we had planned for the possibility of a disruption and had arranged for another location, it is my view that, in future, we should avoid moving our meetings in response to such actions. Rather, we will take steps that ensure we are able to continue our meeting in the planned original venue. It is highly unreasonable and inappropriate to expect the Governing Council to conduct its legitimate business on the basis of having to plan for potential interruptions and relocation. Governors have the right to freedom of speech and to conduct the business of the University in an environment without intimidation and harassment. In this context, I have communicated with individuals involved in the disruption, noting that their behaviour was inappropriate and a violation of University policy and that it may constitute an offence under the University's *Code of Student Conduct*. I also informed them that, in future, any such behaviour would be pursued under the *Code*. While it is unfortunate that such steps may need to be taken, it is also essential that we be able to engage in the University's work unimpeded. We continue to uphold the fundamental values of the University – that of freedom of speech and inquiry – and encourage expression of dissenting views and vigorous debate. All individuals' rights in this regard must be respected, however.

It goes without saying that Governors, by virtue of their role, should not themselves participate, either directly or indirectly in activities which give rise to a disruption of Council's meetings. The conflict of interest in doing so is obvious. I am confident that Governors, by conducting themselves in a respectful and civil manner, will in fact continue to set an appropriate tone for Council's meetings that will both enhance the effectiveness of the meetings and also will guide our expectations of guests and the community as a whole.

Conclusion

This communication was intended to clarify the framework within which we, as Governors, fulfill our responsibilities. It was also intended to signal how I, as Chair, intend to guide us through our agendas and enable us to do the work we have committed to do. I look forward to continuing to our ongoing interaction and welcome your input at any time.