

UNIVERSITY OF TORONTO  
THE GOVERNING COUNCIL  
**REPORT NUMBER 333 OF**  
**THE EXECUTIVE COMMITTEE**  
**Thursday, March 22, 2001**

To the Governing Council,  
University of Toronto.

Your Committee reports that it held a special meeting on Thursday, March 22, 2001 at 4:30 p.m. in the Board Room, Simcoe Hall, with the following members present:

Ms Wendy M. Cecil-Cockwell (In the Chair)	
Dr. Robert J. Birgeneau, President	Non-Voting Member:
Ms Jennifer Carson	
Professor W. Raymond Cummins	Mr. Louis R. Charpentier
Mr. Brian Davis	
Professor Vivek Goel	Secretariat:
Ms Naana Afua Jumah	
Professor Brian Langille	Ms Cristina Oke
Mr. Gerald A. Lokash	
Dr. John P. Nestor	

Regrets:

Mrs. Mary Anne V. Chambers  
Mrs. Susan M. Scace  
Mr. John Tory  
Dr. Joseph L. Rotman

In Attendance:

Mr. Brian Burchell, Chair, the University Affairs Board  
Professor Jack Carr, Chair, the Academic Board  
Ms Wendy Talfourd-Jones, Chair, the Elections Committee  
Professor Philip Byer, member, the Governing Council  
Mr. Elan Ohan, member, the Governing Council  
Ms Susan Girard, Chief Returning Officer, Governing Council Elections  
Mr. Tim Pinos, Cassels Brock and Blackwell

The Chairman thanked members for making themselves available on short notice for this special meeting.

## 1. Governing Council Elections: Judicial Review Decision

The Chairman outlined for members the reason for the special meeting: to provide advice on a recommendation to the Governing Council as to whether to proceed with a request for leave to appeal. She emphasized that the issue to be kept in mind was that of respect for the Governing Council's autonomy, and that the question that was being considered was not whether a particular individual be permitted to stand for election, but whether to accept the judicial review decision – or to appeal that decision on the ground that it was inappropriate.

The Chairman introduced Mr. Tim Pinos of Cassels, Brock and Blackwell, the University's legal counsel, and invited him to summarize the recommendation to seek leave to appeal. Mr. Pinos explained that, in the opinion of counsel, the decision should be appealed because it set a precedent with respect to the autonomy of the Governing Council and the degree to which the University could conduct its own affairs. He noted that, on a consistent basis, the appellate court had recognized the autonomy of universities and had overturned the rulings of lower court judges against a university. It was the view of counsel that there was a reasonable chance of obtaining leave to appeal the decision. The reasoning with respect to Section 2(5) of the *University of Toronto Act* was incorrect in counsel's view because it related solely to the age requirement and was not intended to have a broader application.

In discussion, members raised the following:

- Would there be any negative implications for pursuing an appeal? Mr. Pinos replied that there was always a risk in pursuing an appeal. The first step was to seek leave to appeal, which could be denied. If the leave to appeal were granted, the panel hearing the appeal could also uphold the judgement.
- Could the precedent of the judgement have an effect on other policies and procedures adopted by the Governing Council? Mr. Pinos replied that such a precedent would be established by this ruling. Members suggested that a request for leave to appeal should be pursued because the judgement established a dangerous precedent. It was, however, suggested that the Election Guidelines should be reviewed and changed if appropriate to make the election process more accessible, equitable and democratic.
- What would be the timeline of the appeal? Mr. Pinos replied that the request for leave to appeal had to be heard within 30 days of filing, and that a decision had to be made within 36 days of the appeal being heard. If leave to appeal were requested, counsel would ask for an expedited hearing, which could allow the appeal to be heard within a shorter period. A decision would be available by the summer.

1. **Governing Council Elections: Judicial Review Decision** (cont'd)

- What would happen if the appeal were successful? Mr. Pinos replied that, in that event, the acclamation of the two part-time undergraduate students under the existing Guidelines would stand. It was also noted that there would be no obligation to change the current Guidelines for the 2001 elections if the appeal were successful. A member stressed that it would be fair in that event to proceed under the Guidelines to ensure that there would not be an injustice done to the students who had met the existing requirements.

The Chairman invited a member of the Governing Council to comment. The member expressed his view that proceeding with an appeal would not be an appropriate action.

On motion duly moved and seconded,

YOUR COMMITTEE ENDORSED AND FORWARDED

to the Governing Council for consideration the recommendation

Be It 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.

The motion carried unanimously.

The Chairman suggested that, to facilitate handling this matter during the course of the appeal, a recommendation be made to delegate authority to a smaller group for any decisions required with respect to the appeal.

On motion duly moved and seconded,

YOUR COMMITTEE ENDORSED AND FORWARDED

to the Governing Council for consideration the recommendation

Be It 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 of the University Affairs Board and the Chair of the Elections Committee.

## 2. Notices of Motion

The Chairman recalled that two notices of motion were given at the March 8 meeting of the Governing Council.

The two motions were:

- (1) THAT part-time 'special students' have the right to vote and run for election as part-time students in accord with the *University of Toronto Act*.
- (2) THAT the invalidation of David Melville is overruled and that he is found eligible to run and vote in the 2001 Governing Council Elections.

With respect to the first motion, the Chairman noted for members that the Secretary had undertaken to seek expert advice from a small group of senior registrars. That advice would have to be considered by the Elections Committee which, in turn, would make a recommendation to the University Affairs Board. It was understood that approximately 250 students fell under the title "special student", and that their circumstances were many and varied – from students who were doing full course loads in preparation for graduate programs, to students from other universities who were taking courses for credit at their home universities.

It was noted that the second motion assumed a particular outcome with respect to the first motion, and that the Governing Council had declined to add to the agenda a similar motion at the March 8 meeting.

The Chairman suggested that it would be appropriate to refer the matter of "special students" to the Elections Committee for its consideration. This issue merited exploration - it was not simply an issue of addressing an individual case, but rather an issue of focusing on principles. Two principles were relevant: that of the general authority of the Governing Council to manage its elections processes and to determine the composition of constituencies, and second, the appropriateness of non-degree students being represented on the Governing Council.

Members raised a number of concerns regarding the implications of this issue for other areas of the University. In addition to the roughly 250 students noted above, there could be several thousand students in continuing or professional development education who would have to be considered. The questions went beyond the matter of the Governing Council elections. As a result, it was suggested that the matter be referred first to the administration for its advice.

On motion duly moved and seconded,

YOUR COMMITTEE APPROVED

That the matter of "special students" be referred to the administration for advice.

Commenting on the previous two items, a member stressed the importance of having an informed discussion of issues at the appropriate Board or Committee, rather than raising them at the Governing Council meeting for immediate debate. It was critical, in his view, that the Governing Council not consider these kinds of matters 'on the fly' and without the benefit of full information.

On motion duly made and seconded,

IT WAS RESOLVED

THAT, pursuant to sections 28 (e) and (f) of *By-Law Number 2*, consideration of agenda item 3 take place *in camera*.

**3. University Affairs Board Membership: Appointment of Student Member**

As a result of the vacancy created by the resignation of Ms Nancy Watson, the Committee considered an assignment to the University Affairs Board.

On motion duly moved and seconded,

YOUR COMMITTEE APPROVED

THAT Ms Naana Afua Jumah be assigned to the University Affairs Board for the remainder of 2000-2001.

The meeting adjourned at 5:35 p.m.

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Secretary

March 23, 2001

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Chairman