

May 22, 2014

Cheryl Regehr
Vice-President and Provost
Simcoe Hall
27 King's College Circle
Toronto, ON M5S 1A1

Dear Ms. Regehr:

Re: University of Toronto Student Societies Summit

I have been requested by the Association of Part-Time Undergraduate Students of the University of Toronto (APUS) to review the "Report of the University of Toronto Student Society Summit" dated April 14, 2014 with respect to its legality, and to correspond with you in that regard.

Among other things, the Report recommends that the Governing Council of the University of Toronto implement a policy for student societies that includes a process for restructuring existing societies, establish a University-wide "Student Society Appeals Board," and otherwise allow the University administration to embed itself in the governance and administration of student societies.

It is readily apparent that the recommendations set out in the Report are *ultra vires* the Governing Council of the University of Toronto. Since the Governing Council has no jurisdiction or authority to unilaterally implement those recommendations or any other initiatives that may interfere with the autonomy of independent student societies, it would be advisable for the Governing Council and the administration of the University to refrain from taking any further steps toward implementing the proposed policy or the other recommendations set out in the Report.

Any process that the University may wish to undertake that might affect the governance, autonomy, or membership of APUS could only be done with the consent of APUS. I understand that APUS does not consent to the process that has led to the report or to any process arising from it.

The powers of the Governing Council of the University of Toronto are enumerated in section 2(14) of *The University of Toronto Act, 1971*. All of those powers relate to the governance and administration of the University, particularly in connection with its academic function. Nothing in the *Act* authorizes the University to interfere in any way with the governance or administration of organizations that are independent of the University of Toronto. There is also no authority at common law for such a proposition, and in fact the law is clear that such interference is *not* permitted.

While most of the members of the student societies at the University of Toronto are also students at the University, that fact alone does not give the University the right to unilaterally involve itself in the manner in which students decide to organize themselves, or with the governance and administration of the corporations or unincorporated associations which they have formed.

It is necessary that student societies be able to advocate for the interests of their members without interference or influence from any element of the institution's administrative or governing bodies. While this may not always be desirable to members of the administration and governance whose ideas may be subject to challenge by student organizations, it is essential that this kind of discourse be able to occur freely. Indeed, history has shown that students and student organizations have made great contributions in making progressive improvements at the University of Toronto when they have overcome resistance from the establishment. Any University-level involvement in how student societies are governed or administered may undermine this freedom.

The right of student societies to be governed in accordance with their own by-laws, without interference from external organizations, was confirmed by the Ontario Superior Court of Justice in *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*, (2008) 297 DLR (4th) 122. That case involved an attempt by an external organization to unilaterally take steps that would affect the fees payable to and membership in APUS. In that context, Allen J. stated:

There is a practical rationale underlying why the application of an external organizations rules would not be reasonable. As APUS points out, decisions as to membership and the payment of fees would have a profound effect on the internal affairs of the organization, that is, on its financial status and thus the services and programs it can make available to students. I accept APUS's position and conclude it only makes sense that APUS's by-laws and referendum rules be applied to the matters of APUS membership and fees.

Clearly, the same rationale would apply with respect to any effort by any other external organization to affect the internal affairs of APUS. As further stated by Allen J.:

I find simply because EPUS members are also members of APUS does not confer jurisdiction on them to interfere in the internal affairs of APUS. I accept APUS's argument that EPUS and UTMSU have authority over their own internal affairs and, as organizations external to APUS, they had no authority to take actions that affected fees and membership in APUS without APUS's consent. As such, I find their actions in that regard to be invalid.

Similarly, the fact that APUS members are also students at the University of Toronto does not confer on the University of Toronto the jurisdiction to interfere in the internal affairs of APUS.

The letter from APUS, UTSU, SCSU, and UTMSU to you dated May 9, 2014 states: "Neither the University administration nor the Governing Council has a role in the administration of student union elections, the establishment of bylaws, policies or guidelines for our organizations, the adjudication of member grievances, or the democratic process established for and by our membership." This statement is correct at law, and it is consistent with the ruling of Allen J.

The University has adopted a "Policy for Compulsory Non-Academic Incidental Fees." Among other things, the policy concerns the University's role as a trustee when it collects student society fees on behalf of various student organizations with whom it has an agreement. The current Policy provides that the University shall collect fees on behalf of student societies so long as they operate "in an open, accessible and democratic fashion." The Report of the University of Toronto Student Societies Summit seeks to expand the University's power to withhold fees by interpreting this phrase liberally, rather than in the very restricted manner in which it is intended. In our view, any effort to expand the power to withhold fees collected on behalf of student societies would be vulnerable to a court challenge, and any attempt to exercise such power may constitute a breach of trust and a breach of fiduciary duty. The current policy exists with the consent of the interested student societies, but if they were to withdraw their consent, even powers exercised under the current policy would be vulnerable to a court challenge.

In summary, it is apparent that the University would have no jurisdiction to act on any of the recommendations set out in the Report of the University of Toronto Student Societies Summit. It would therefore be appropriate to terminate the process of seeking to make policy changes affecting student societies, without the consent of the affected student societies.

Yours very truly,
ZBOGAR ADVOCATE PROFESSIONAL CORPORATION

Vilko Zbogor

cc. Judy Goldring, Chair of the Governing Council of the University of Toronto

Kriya Siewrattan, President, Association of Part-time Undergraduate Students