

STUDENTS' COUNCIL

Tuesday March 1 2011
Council Chambers 2-1 University Hall

ORDER PAPER (SC 2010-23)

2010-23/1 SPEAKER'S BUSINESS

2010-23/1a Announcements – The next meeting of Students' Council will take place on Tuesday, March 15, 2011

2010-23/1b The SU Awards Night is at 7:00pm in the Horowitz Theatre on Monday, March 28, 2011. This is an important event for the SU as we recognize undergraduate students and instructors for their talents and achievements. Given the esteemed nature of this event, we feel it fitting to invite councillors to attend, but also take on ambassadorial duties at the same time. We would like Councillors from different faculties to attend and talk to award winners from their faculty and Executive Committee members will be doing the same. As is customary, the event is exceptionally catered--a bonus offered to any who wish to give a couple hours of their time.

Confirmation of the time we will need any interested council "ambassadors" to arrive will be sent out later.

2010-23/2 PRESENTATIONS

2010-23/3 EXECUTIVE COMMITTEE REPORT

2010-23/3a Executive Committee report

Please see document SC 10-23.01

2010-23/4 BOARD AND COMMITTEE REPORTS

2010-23/4a DFUTF- Report

Please see document SC 10-23.02

2010-23/5 QUESTION PERIOD

2010-23/6 BOARD AND COMMITTEE BUSINESS

2010-23/7 GENERAL ORDERS

2010-23/7a COX/STITT MOVES THAT Students' Council adopt Bill #30 in first reading based on the following principles:

The Students' Union shall not allow for the implementation of a dedicated fee unit that:

a. would cause Students' Council to breach its fiduciary responsibility to the Students Union; or

b. supports activities that are beyond the scope and mandate of the Students' Union as outlined in the *Post Secondary Learning Act* §93(3).

For the purpose of determining the scope and mandate of the Students Union, Council may consider whether the activities that are in question would:

a. provide services that are of a direct benefit to students and the campus community at the University of Alberta in their pursuit of a post secondary education, or

b. eliminate obstacles for students in pursuit of a post secondary education at the University of Alberta.

2010-23/7b

ISKANDAR MOVES THAT the Students' Council approve Bill #31 in first reading based upon the following principle:

1) That the Chief Returning Officer doesn't need to be a member of the Students' Union.

2010-23/7c

TURNER MOVES THAT Students' Council approve Bill #32 in first reading based on the following principle:

1. A Campaign Manager for a plebiscite or referendum side shall instead be referred to as a Side Manager.

2010-23/8

INFORMATION ITEMS

2010-23/8a

CAC summary report to Council

Please see document SC 10-23.03

2010-23/8b

Votes and Proceedings

Please see document SC 10-23.04

Executive Committee Report to Students' Council March 1, 2011

FEB 7

FENTIMAN/TIGHE MOVED THAT the Executive Committee approve a budgeted expense not to exceed \$1800.00 for the Orientation Volunteer Coordinator and the Orientation Programs Coordinator of CSD for the purpose of attending the NODA Region 1 Conference 2011 on March 4 & 5, 2011 in Missoula, Montana.

5/0/0 CARRIED

FENTIMAN/TIGHE MOVE TO suspend operation policy 4.01 attending conferences and MOVE TO approve Jane Lee to authorize her staff to attend the Student Advisor's conference for \$63.00.

5/0/0 CARRIED

D F U T F
Dedicated Fee Unit Task Force

REPORT TO STUDENTS' COUNCIL

MARCH 2011

Background

Before considering the limits of Dedicated Fee Units, it is important to first understand the framework within which they exist. The first part of this framework is the *Post Secondary Learning Act*. It outlines the role of the Students' Union, as well as limits our ability to charge fees. It states;

Section 93(3): The students association of a public post-secondary institution shall provide for the administration of student affairs at the public post-secondary institution, including the development and management of student committees, the development and enforcement of rules relating to student affairs and the promotion of the general welfare of the students consistent with the purposes of the public post-secondary institution.

And

Section 95(2)(e) in the case of a students association, the maintenance of the association by the levy of membership fees on its members;

It is also worthwhile to examine previous legal advice the Students' Union has received on the nature of DFU's. There are two opinions that contain information relevant to the debate at hand.

The first opinion reviewed in the preparation of this report was received in January of 2002, (Though we operated under the jurisdiction of the *Universities Act*, the relevant sections of the legislation did not change when it became the *Post Secondary Learning Act*.¹) The opinion delineates the referendum process used by the Students' Union, and specifically addresses both the legal nature of the Students' Union and the limits on its power, and the legal limits on referendum.

"Before you consider the legal status of referenda, it is necessary first to understand the legal status of the Students' Union and the limits on its power. It is important to understand these limits because proponents of referenda sometimes forget, in their enthusiasm for direct democracy, that the touchstone of any true democracy is the rule of law. Simply put, the students cannot by referendum exercise powers that are not given to the Students' Union under the [PSLA]."

The Students' Union does not derive its legal authority from the democratic will of students. It derives its legal authority from a statute made by the Alberta legislature - the [Post Secondary Learning Act] In law, the Students' Union is a statutory corporation and as a statutory corporation, its powers are restricted. The Supreme Court of Canada points out that a statutory corporation has

¹ We substituted PSLA for any reference to the *Universities Act* and updated numbering accordingly.

only those powers that are: expressly conferred by statute, those powers necessarily or fairly implied by the expressed power in the statute and those indispensable powers essential and not merely convenient to the effectuation of the purposes of the corporation. (Canada Ltée v Hudson, [2001] SCJ No. 42)."

The mandate of a students' association in the Act is "the administration of the affairs of students," this places a limit on the exercise of the Students' Union authority. Though Counsel was unsure how a court would interpret the purpose statement, they drew the following conclusion;

"It is important to note that each component of the purpose statement refers to students. Therefore, regardless of how broadly or narrowly one chooses to interpret the term "administration of the affairs of the students" one thing is clear - the students of the University must be the central focus of any exercise of Students' Union authority"

To further clarify the above statement, the following qualification is provided:

"This is not to suggest there can never be an external component to a Students' Union activity. A university is outward looking as well as inward looking. The phrase "general welfare of students consistent with the purposes of the university" will allow an external component, but that component must ultimately serve the welfare of the students. This may seem like a logical conundrum, but it is not necessarily so. One can argue that student altruism serves the general welfare of students. Although if one goes too far in service external interests rather than the welfare of students, the action may be invalid."

Now that we have established an understanding of the scope of the Students' Union, we must consider our authority to levy fees. Our lawyers advise us that:

"The power to levy Students' Union fees should naturally be read in conjunction with section [93(3)] so that in the final analysis all fees levied must support the Students' Union in fulfilling the purposes set out in section [93(3)] To the extent a fee does not support the Students' Union in fulfilling its purposes as set out in section [93(3)], it is invalid and subject to legal challenge. (Footnote: Again, in my view the court will tend to defer judgment of the elected members of the Students' Union about what level of fees is necessary to maintain the Students' Union and the scope of activities in which the Students' Union engages, so long as the ultimate focus is student welfare)

If the Students' Union acts outside the scope of powers granted to it by the [PSLA] and the action is challenged in court, the court can declare the actions invalid and the Students' Union can be held

liable for any damages that result. [...] In an extreme case if Council imposed a fee outside the power of the Students' Union and did so knowingly and in bad faith, the individuals responsible could be held personally liable."

Furthermore,

"It is critical to remember that:

- *the powers that students have under the referenda provisions in [Bylaw] are subject to the same limits as Council. In short, if Council is not given the power to do something under the [PSLA], the students cannot direct that it be done in a referendum;*
- *the Students' Union remains liable for invalid actions regardless of whether they are initiated or endorsed by a referendum;"*

From here, we move onto the legal limits on referenda, including;

"The referenda power is limited. The students cannot exercise more powers by referenda than the Students' Union and its Council are given by the [PSLA]. Any referendum question must address the administration of the affairs of the students at the university as set out in section [93(3)].

If a referendum question wishes to add a new fee or to increase the fees that students are required to pay, the object of the fee must be "the maintenance" of the Students Union. In interpreting what is meant by "maintenance" of this Students' Union, it is necessary to consider the purposes of the Students' Union set out in section [93(3)]."

The recommendations of the lawyer include the following;

"The proponents of a referendum should bear the onus of demonstrating how the referendum falls within the power of the Students' Union under the [PSLA]. In particular, if the referendum proposes a compulsory fee, the proponent must demonstrate how that new fee will serve the object of the "maintenance of the" Students' Union as required under section [95(2)(e)]."

The next opinion reviewed was received in October of 2009, and it was to determine if Bill 10 violated the *Post Secondary Learning Act*.

"Based upon a purposive interpretation of the Act, the Students' Union can amend its bylaws so that Council can review and approve a "petition" to ensure that it is in accordance with the purposes

specified in the proposed motion"

Our lawyer then suggests an alternative wording for Bylaw 2000, clarifying the scope of Bill 10.

"13(4) Students Council shall, at the meeting following the drafting of the petition question by the Bylaw committee as set out in section 13(3), approve a question which meets the criteria set out in section 13(3) unless the question:

- a. would cause Students' Council to breach its fiduciary responsibility to the Students Union;*
or
- b. requests the implementation of a dedicated fee unit that supports activities that are beyond the scope and mandate of the Students' Union.*

13(4.1) For the purpose of determining the scope and mandate of the Students Union, Council may consider whether the activities that are in question would:

- a. provide services that are of a direct benefit to students and the campus community at the University of Alberta in their pursuit of a post secondary education, or*
- b. eliminate obstacles for students in pursuit of a post secondary education at the University of Alberta."*

For reference, current Students' Union legislation (Bylaw 3000 §7) reads as follows:

The Students' Union shall not allow for the introduction of a dedicated fee unit unless:

- a. undergraduate students' at the University of Alberta are the direct and primary beneficiaries, or*
- b. the purpose of the fee is to eliminate obstacles for undergraduate students in pursuit of a post-secondary education at the University of Alberta.*

Recommendation

Given the background information above, we propose that Students' Council amend its bylaws in the following manner.

Amend §7(13) from Bylaw 3000, which states:

The Students' Union shall not allow for the introduction of a dedicated fee unit unless:

- a. undergraduate students' at the University of Alberta are the direct and primary beneficiaries, or
- b. the purpose of the fee is to eliminate obstacles for undergraduate students in pursuit of a post-secondary education at the University of Alberta.

To the following:

The Students' Union shall not allow for the implementation of a dedicated fee unit that:

- a. would cause Students' Council to breach its fiduciary responsibility to the Students Union; or
- b. supports activities that are beyond the scope and mandate of the Students' Union as outlined in the *Post Secondary Learning Act* §93(3).

For the purpose of determining the scope and mandate of the Students Union, Council may consider whether the activities that are in question would:

- a. provide services that are of a direct benefit to students and the campus community at the University of Alberta in their pursuit of a post secondary education, or
- b. eliminate obstacles for students in pursuit of a post secondary education at the University of Alberta."



COUNCIL ADMINISTRATION COMMITTEE MEETING SUMMARY REPORT TO COUNCIL

Date: February 15, 2011

Time: 4:36 PM

2010 – 2011/CAC/21

Motions

1.	<i>KAAI/ROSS</i> moved the CAC to adopt the new standing order.	<i>CARRIED</i> <i>5/0/0</i>
2.	<i>LUIMES/KAAI</i> moved the CAC to recommend to the Students' Union that the following bill be adopted in first reading: The Speaker and the Chief Returning Officer shall be considered employees of the Students' Union and shall be subject to SU Operating Policy.	<i>CARRIED</i> <i>5/0/0</i>

