



Report of the Secretary-General
Investigation into AUS Executive Conduct
Regarding the POLI 339 Vote

February 27, 2019

Introduction

The Secretary-General Portfolio, composed of the AUS Secretary-General (Sophie Zhao) and Deputy Secretary-General (Nathan Mendel), has received complaints about the constitutionality of a vote undertaken by the Arts Undergraduate Society (hereafter “AUS”) Executive Committee on the POLI 339 course as well as about the behaviour of specific executive members. This AUS Executive Committee vote noted that it overturned the Legislative Council’s decision from January 30, 2019 to not approve a fee for POLI 339.

On February 14, 2019, the AUS Secretary-General portfolio suspended the Executive Committee’s vote on POLI 339 and launched an investigation in response to the complaints it has received. This document documents the findings from the Secretary-General’s investigation as per the recommendation of legal counsel.

Parties

The parties relating to this matter are the Legislative Council and the AUS Executives, whom we investigated. Specifically, the AUS Executives at the time of the POLI 339 vote (Feb 8, 2019) were:

President: Maria Thomas

VP Academic: Chloe Kemeni

VP Communications: Jamal Tarrabain

VP External: Rebecca Scarra

VP Finance: Mia Trana

VP Internal: Billy Kawasaki

VP Social: Kim Yang

Arts Representatives: Andrew Figueiredo, Ana Paula Sanchez, Garima Karia

Since the vote, VP Internal Billy Kawasaki and Arts Representative Andrew Figueiredo have resigned from their positions. They are still included in the results of this investigation given that they had been occupying their positions in the AUS Executive while the vote had been cast about POLI 339.

Role of the Secretary-General Portfolio

The Secretary-General Portfolio is responsible, according to AUS Accountability Bylaws, for addressing complaints brought against executives. Specifically, when a complaint is brought against one or more of the executive body of the AUS, the Secretary-General is tasked with ensuring that the complaint is brought to the President and the specific executive within 3 business days. If an informal resolution cannot be resolved, the implicated executive must address the concerns during the next Legislative Council of the AUS.

Due to the strong public interest in this case, the Secretary-General Portfolio has seen fit to present this investigation to the AUS Legislative Council.

Scope of the Investigation

There are two broad issues to be examined by the Secretary-General portfolio:

1. If the actions of the Executive Committee regarding the POLI 339 vote violated the AUS Constitution.
2. If the actions of individuals in the Executive Committee violated their duties as outlined under their respective employment contract and the AUS constitution and by-laws.

This report will address both in response to the complaints the portfolio has received.

Material facts

1. On January 31st, 2019, the AUS Legislative Council voted against the approval of a fee of \$1000 for the POLI 339 course with 14 no votes, 13 yes votes, and 9 abstentions.
2. On February 7, 2019, the AUS President had been emailed an updated syllabus of POLI 339 by Professor Waller. She posted this document the same day in the AUS Executive Slack channel.
3. A poll was created on February 7, 2019, on facebook messenger about whether to call an emergency legislative council. 6 executives voted no and 4 voted abstain.
4. On February 8, 2019, Arts Representative Figueiredo created a facebook messenger poll in the AUS Executive Committee chat to vote on the POLI 339 course; the motion passed with 4 yes votes, 4 abstentions, and 2 no votes.
5. On February 8, 2019, President Thomas created a second facebook messenger vote poll with the title: "Do we approve of the Poli 339 class?" This vote had 3 yes, 2 no, and 1 abstention.
6. On February 8, 2019, then-VP Internal Kawasaki created a third facebook messenger vote poll with the title: "Do we approval that the POLI 339 Course fee is Reasonable"; there were 3 yes votes and 4 no votes.
7. The AUS Executive Committee sent the results of the first vote to the professors on February 8th, 2019.
8. The AUS released on February 12, 2019, a statement regarding an executive decision to overturn the decision made by the AUS Legislative Council on January 31st regarding the course POLI 339
9. The Secretary-General portfolio released a public statement on February 14, 2019 stating that releasing the Facebook Messenger and Slack chats would not violate the AUS Constitution, noting that this was not a request to release the chats, as that is beyond the purview of the Secretary-General portfolio.
10. On February 14, 2019, the AUS Legislative Council engaged in a discussion moderated by the Secretary-General about the POLI 339 vote.

11. On February 20, 2019, the VP Communications sent an email titled “AUS Detailed Statement and Apology Regarding POLI 339” which was signed by all sitting executives at the time other than Arts Representative Sanchez. In it, the executive body issued an apology and description of events surrounding the POLI 339 vote, as well as a 78 page redacted chat record of the Facebook Messenger conversation in which the Executive Committee vote on POLI 339 had been cast.

Investigation of the Actions of the Executive Committee

Voting Protocol

1. The AUS’s By-laws Regarding FIOs notes in article 2.2 that to approve any FIO, the representative departmental association’s recommendation must be presented to AUS Legislative Council and must be ratified by a simple majority vote.
2. Article 2.3 of the By-laws Regarding FIOs notes that if a decision must be made when AUS Legislative Council is unable to be convened, the AUS Executive Committee must contract the representative departmental association if and when possible for their recommendation. This recommendation can then be ratified by a simple majority of the AUS Executive Committee.
3. The POLI 339 course is in political sciences department, which is represented by the McGill Political Science Students’ Association (hereafter “PSSA”) as its departmental association.
4. The PSSA President, Bella Harvey, confirmed via email on February 17, 2019, that the PSSA did not present a recommendation to the Legislative Council nor the AUS Executive Committee at any point regarding POLI 339. PSSA President Harvey also noted via email on February 14, 2019, that no member of the PSSA executive was consulted post the Legislative Council vote by either the AUS or the political science department. She stated that post the council vote, there has been no communication between PSSA and AUS, and that there was never any consultation about the second vote.
5. This situation contravenes the AUS’s By-laws Regarding FIOs articles 2.2 and 2.3.

Finding 1: The Executive Committee did not attempt to receive a recommendation from the PSSA. This contravenes Article 2.3 of the AUS By-laws Regarding FIOs.

Arts Representative Votes

1. The AUS Constitution, under Article 11.1, states that there shall be a Committee of Council called the Executive Committee, which shall govern the AUS between meetings of Council in a manner consistent with policies set out by Council and the General Assembly. This Executive Committee, under articles 11.2, shall be composed of the positions outlined under *The Parties Involved* section of this report (the AUS Executives and the 3 Arts Representatives).
2. Article 11.3 of the AUS Constitution notes that Arts Representatives to SSMU shall serve as non-voting members of the Executive Committee.
3. The Executive Committee vote (the first of the 3 facebook polls from February 8, 2019) counted the vote of the Arts Representatives, which contravened the AUS Constitution.

4. AUS Executive Committee chat records (which were released publicly) suggest that the Executives had been aware that Arts Representatives are non-voting members:
 - a. Arts Representative Sanchez stated that “Arts reps can [vote] because it is common practice now” (*Feb 8, 4:23PM*)
 - b. President Thomas stated that “it is stupid that arts rep dont get a vote i agree” (*Feb 8, 4:25PM*) and “but right now thats how our documents are” (*Feb 8, 4:26PM*)
 - c. Arts Representative Sanchez stated that “but at this point it is common practice @Andrew Figueiredo” (*Feb 8, 4:26PM*) and that “Common practice superseded bylaws” (*Feb 8, 4:30PM*) “In frosh context” (*Feb 8, 4:30PM*)
 - d. President Thomas stated that “if everyone else is okay with it i think arts reps should count at this point” (*Feb 8, 4:29PM*)
 - e. President Thomas stated that “there are times we have purposefully forgotten by laws for all of us (aka frosh payment)” (*Feb 8, 4:29PM*)
5. The aforementioned exchange suggests an awareness that Arts Representatives are non-voting members under AUS regulations, as President Thomas noted and as would have been made known to everyone else through reading that message if they did not already know that from the Constitution, which had also been their responsibility to know.
6. The aforementioned exchange suggests a deliberate decision to contravene the Constitution by counting the Arts Representatives’ votes. Had this not occurred, the vote on the motion would have resulted in “No” instead of “Yes” since all three Arts Representatives had voted yes in the first poll.
7. The aforementioned exchange suggests that one or more members of the AUS Executive body may have “purposefully forgotten by laws” (AUS President, Feb 8, 4:29PM), referring to frosh payment, which would be a circumvention of the Constitution. This statement forms grounds for a separate investigation by the Secretary-General portfolio into Executive conduct and accountability.

Finding 2: The Executive Committee’s vote on the motion regarding an FIO for POLI 339 constitutes an invalid process, as it violates Article 11.3 of the AUS Constitution.

Finding 3: The Executive Committee accepted the results of their vote on the motion regarding an FIO for POLI 339. The Executive Committee was aware that the procedure was invalid. The Executive Committee actively and purposefully contravened Article 11.3 of the AUS Constitution.

Power of the Executive Committee

The AUS Constitution and by-laws do not clearly confer or deny the power of the Executive Committee to supersede the authority of the Legislative Council on the grounds of new evidence. This is an area of ambiguity in the Constitution. The interpretation of the Constitution falls outside the jurisdiction of the Secretary-General Portfolio.

Investigation into the Individual Actions of Executive Committee Members

As according to the AUS Constitution Article 19.1:

“Any member of the AUS Executive or representative to SSMU may be removed from office for impropriety, violation of the provisions of this Constitution and by-laws, delinquency of duties or misappropriation of funds.”

This section deals with the individual actions of the members of the Executive Committee.

President Maria Thomas

1. As according to AUS Constitution Article 12.9.1, the AUS President is responsible to Chair the Executive Committee.
 - a. *Please note there is a formatting error in the current version of the Constitution whereby the AUS President's responsibilities are not all listed under Article 12.4. We have cross-referenced the Constitution with the AUS President's contract to determine this responsibility.*
2. As chair of the Executive Committee, the President is responsible for ensuring that the actions of the Executive Committee comply with the AUS Constitution and by-laws.
3. As chair of the Executive Committee, the President has a responsibility to establish the procedures by which the committee will function and ensure these procedures are followed.
4. The following are quotes of President Thomas's messages to the Executive Committee Facebook Messenger group:
 - a. *“There are times we have purposefully forgotten by-laws for all of us (aka frosh payments)” (Feb 8 2019, 4:29 PM)*
 - b. *“@Billy for context in the summer, frosh bylaws countered contracts so we followed contractgs [sic]” (Feb 8 2019, 4:29 PM)*
 - c. *“If everyone else is okay with it I think arts reps should count at this point” (Feb 8 2019, 4:29 PM)*
 - d. *“Because I understand its [sic] not easy to break a bylaw” (Feb 8 2019, 4:30 PM)*
5. In the Facebook chat, President Thomas revealed that Arts Representatives could not vote in the Executive Committee after the first poll on approving a motion for an FIO for POLI 339. Arts Representative Figueiredo, Arts Representative Sanchez, VP Social Yang, VP External Scarra all identified that they had not previously known this rule.
6. In the Facebook chat, President Thomas asserted that she has been keeping track of Executive Committee votes throughout the year in order to ensure that Article 11.3 related to the Arts Representatives voting powers, was upheld.
7. President Thomas allowed the Arts Representatives votes to be counted (see 5c above).

Finding 4: President Thomas did not execute her duty to ensure the Executive Committee's compliance with the Constitution and By-Laws. She knowingly allowed the Executive Committee to violate Article 11. 3 of the AUS Constitution.

Finding 5: President Thomas did not execute her duty to establish and uphold proper procedural rules for the functioning of the Executive Committee. These actions led to procedural issues and resulted in the Executive Committee following an invalid process. This constitutes a delinquency of duties and impropriety.

Arts Representatives Andrew Figueiredo and Ana Paula Sanchez

1. Article 3 of the Arts Representative Contracts states:
3. *The Arts Representatives to SSMU agrees to follow the principles governing the AUS ...*
 2. The principles governing the AUS are outlined in the AUS Constitution and by-laws.
 3. The following are quotes of Arts Representative Figueiredo's messages to the Executive Committee Facebook Messenger group:
 - a. "It's been happening all year without an issue. I take issue with the notion that suddenly we can invoke something that in precedent wasn't done all year." (Feb 8 2019, 4:24 PM)
 - b. "Why is it okay to go with procedure when it comes to frosh and committees but suddenly that changes out of the blue" (Feb 8 2019, 4:45 PM)
 - c. "Do we really need to send a statement at all tbh?"
 - d. If somebody asks that's one thing"
 - e. But if not why just play it off as if nothing changed"
 - f. "Agree to disagree on that - I don't think it's wrong to avoid flak"
 4. The following are quotes of Arts Representative Sanchez's messages to the Executive Committee Facebook Messenger group:
 - a. "No its in the constitution", "that we don't", "But I think we can't just suddenly apply it now" (Feb 8 2019, 4:11 - 4:12 PM)
 - b. "Arts reps can because it is common practice now" (Feb 8 2019, 4:23 PM)
 - c. "And tbh really invalidating to bring that up, bc we all work very hard." (Feb 8 2019, 4:24 PM)
 - d. "but at this point it is common practice" (Feb 8 2019, 4:26 PM)
 - e. "Common practice superseded bylaws" (Feb 8 2019, 4:30 PM)
 - f. "We are not breaking the constitution @Billy" (Feb 8 2019, 4:44 PM)
 5. Arts Representative Figueiredo agreed with Arts Representative Sanchez about Arts Representatives votes being common practice (Feb 8 2019, 4:26 PM)

Finding 6: After the Chair of the Executive Committee, President Thomas, clarified the constitutional restraints related to Article 11.3, Arts Representatives Figueiredo and Sanchez placed further pressure on President Thomas to take action that contravenes Article 11.3. The actions of Arts Representative Figueiredo and Sanchez contradict their agreement and duties as outlined in Article 3 of the Arts Representatives contracts.

Finding 7: Arts Representative Figueiredo suggested that the results of the Executive Committee vote not be presented for ratification to the Legislative Council. This was a suggestion to take action which would contravene Article 12.3 of the AUS Constitution. This action does not uphold the trust placed in him by the Legislative Council as a member of the Executive Committee.

VP Academic Chloe Kemeni, VP Communications Jamal Tarrabain, VP External Rebecca Scarra, VP Finance Mia Trana, VP Internal Billy Kawasaki, VP Social Kim Yang, and Arts Representative Karia

The investigation into the actions of the above Executives is inconclusive. As part of the Executive Committee, these individuals did not uphold the Constitution.

Conclusion and Recommendations

The Executive Committee vote on POLI 339 was suspended by the Secretary-General portfolio on February 14, 2019, pending the results of the investigation. After gathering relevant facts and conducting interviews with the AUS Executives, the Secretary-General portfolio deems the Executive Committee vote on POLI 339 unconstitutional. It violates Article 11.3 of the AUS Constitution and Article 2.3 of the By-laws Regarding FIOs. It does not have validity under the AUS Constitution and Bylaws Regarding FIOs.

The actions of the Executive Committee satisfy Article 19.1 of the AUS Constitution to remove Executive Committee members from office.

At the core of this complex issue lies the question of the extent to the AUS Executive Committee's power. The AUS Constitution neither provides nor denies the Executive Committee the power to overrule the Legislative Council in cases such as these. This is one of many areas where the Constitution is vague or ambiguous. It is thus the recommendation of the Secretary-General Portfolio that the Legislative Council opens a large-scale review of the entire AUS Constitution in order to clarify these many grey areas.

As according to Article 18 of the AUS Constitution, the Judicial Board of the Student Society of McGill University (SSMU) has the role of interpreting the Constitution. Any concerns with the findings of this investigation or over the correct interpretation of the Constitution can be appealed to the Judicial Board.

The Secretary-General Portfolio believes another key factor in this situation is the lack of knowledge displayed by many of the AUS Executive Committee. It is thus the recommendation of the Secretary-General Portfolio that a motion be presented to Legislative Council requiring members of the AUS Executive Committee to attend an information session on the AUS Constitution and By-Laws, facilitated by the Secretary-General Portfolio.

The Secretary-General Portfolio hereby closes this investigation.

“As for the consequences for the actors responsible for the findings in the present investigation, the AUS Constitution as a mechanism in place according to article 19 as mentioned hereabove.”

“19.2 A motion to remove a member of the Executive or representative to SSMU must be presented in writing to the Speaker of Council and signed by at least eight (8) members of the Council, or one hundred and fifty (150) members of the AUS and

distributed to the AUS membership. The motion to remove will then be inscribed on the agenda of the next meeting of the AUS (Council or General Assembly). A person against whom a motion to remove is directed shall be afforded the opportunity to respond to the allegations made at the meeting.”

It is the right and prerogative of Legislative Council to determine the next steps related to this issue.

Respectfully Submitted,

Sophie Zhao (Secretary-General)

Nathan Mendel (Deputy Secretary-General)