

Recommendations of the Governance Committee Regarding Bylaws

To AMS Council,

The Governance Committee recommends that Council, in accordance with Bylaw 4, direct the President to call a referendum to be held March 4–8 on the following question:

“Do you support and approve amending the AMS Bylaws in accordance with the changes presented in the document entitled “Proposed Changes to AMS Bylaws”?”

The Governance Committee further recommends that Council endorse a “yes” position for this question.

The document “Proposed Changes to AMS Bylaws” referred to in the ballot question is attached as an appendix to this report and would be available as a hyperlink for voters.

For the benefit of AMS Council, justifications for the Bylaw amendments are provided in the table below alongside the proposed changes. These justifications may be used to assist in the creation of campaign materials in support of the changes.

We look forward to discussing these recommendation on February 6,

AMS Governance Committee

Table of Recommended Bylaw Amendments

#	Change	Justification
1	Remove “Council Senators” from Bylaw 1(2)	This should have been removed in past Bylaw amendments but was missed. The definition is not used in Bylaws.
2	Remove “Court” from definitions in Bylaw 1(2)	Removed as part of the removal of Student Court set out in Change 14.
3	Amend Bylaw 2(1)(a)(iii) to read (new text in bold , removed text struck through): [Active members are those who meet of the several requirements including] were registered in a Credit Course on the last day of March November of the current Academic Year.	This reflects actual AMS practice. These students have paid the full AMS fee and so it makes sense for them to remain members for the full year.
4	Amend Bylaw 2(2)(a) to change “falling” to “failing”	Correction of a typo.
5	Remove Bylaw 2(2)(b)	Part of the removal of Student Court set out in Change 14.
6	Amend Bylaw 3(2)(a) to read (new text in bold , removed text struck through): “Notice of annual general or special general meetings shall be given to the Members of the Society by: <i>[remove line break]</i> → posting a notice of meeting and the proposed agenda for the	There is some confusion as to whether or not the “purpose of the meeting” required by Bylaw 3(2)(b) includes posting an agenda. If it does not, the notice could simply say something along the lines of “the purpose of this meeting is to meet our legal obligation to hold an AGM.” In the past, agendas have been provided in advance of the meeting. By posting an agenda, the purpose of the meeting is

	<p><i>meeting</i> at least fourteen (14) days prior to the meeting, on the Society’s website or other electronic notice board; and</p> <p>ii) publishing in the <i>Ubyyssey</i> or other campus publication at least fourteen (14) days prior to the annual general or special general meeting a notice of the annual general or special general meeting”</p>	<p>clear. The agenda could still be amended at the meeting (with quorum) but having a clear agenda in advance would dissuade amendments from the floor.</p> <p>The <i>Ubyyssey</i> publication requirement was added to this Bylaw when the AMS had some measure of control over the <i>Ubyyssey</i>. While the AMS currently has an agreement to have a monthly one-page advertisement which could be used to post this notice, there is no way to know if this arrangement will continue in the future. This requirement should be moved to Code in order to be more reactive to changes in circumstance.</p>
7	<p>Amend Bylaw 4(2) to read (new text in bold, removed text struck through):</p> <p>“The text of the referendum shall be drafted to ensure that the question is capable of being answered “yes” or “no” and if in the opinion of Council a petition for a referendum does not meet this requirement, Council shall forthwith refer the referendum to the Court to prepare a clear and unambiguous question.</p> <p><i>The text of the referendum question shall be drafted to ensure that it meets the following requirements:</i></p> <ul style="list-style-type: none"> (a) <i>The question is capable of being answered “yes” or “no”, with the negative response corresponding to the status quo;</i> (b) <i>The question, including any preamble, is clear and unambiguous;</i> (c) <i>The question, including any preamble, is not predicated on materially untrue statements;</i> (d) <i>The actions that would be taken if the referendum is successful are not prohibited by law.</i> (e) <i>In cases where the proposed question would break a contract, the intent to break the contract must be specifically stated and the penalty for breaking the contract must be</i> 	<p>This change addresses two issues. The first is that as it currently stands, questions can only be rejected if they cannot be answered “yes” or “no” which means that misleading ambiguous questions can be put on the ballot. Questions which could require illegal acts can also be put on the “ballot. These requirements address this.</p> <p>The second issue is that the current mechanism to review questions is Student Court which Change 15 would abolish. Given that Council may not reject questions, it is important that the reason be given. This allows the petitioners to redraft and resubmit the question at a later date. The requirement for Council to state why it is being rejected also acts as a safeguard by preventing Council from arbitrarily rejecting a question. If the petitioner disagrees with the reasons (e.g. if Council doesn’t like the question and claims it is based on materially untrue statements), the petitioner would still theoretically have recourse through the legal system. Potential for public backlash would also act as a check on Council’s ability to reject questions.</p>

	<p><i>included as part of the question.</i></p> <p><i>If Council decides by resolution that a referendum does not meet one or more of these requirements, the referendum shall not be put to the membership. Such a resolution shall state the requirements which have not been met.</i></p>	
8	<p>Add Bylaw 4(6) which reads:</p> <p><i>“Records of all successful referenda shall be included in an appendix to the Bylaws of the Society until such time as they are repealed.”</i></p>	<p>We do not have any easily accessible record of referenda currently in effect. This allows members to know what referenda are still in effect and helps ensure that we are meeting any obligations imposed by referenda which are still in effect.</p>
9	<p>Amend Bylaw 5(3)(c)(iii) to read (new text in bold, removed text struck through):</p> <p><i>“Any Notwithstanding Bylaw 5(3)(b)(i), any active member, except for including the member so recalled, may be nominated to fill the vacancy, and any member declared duly elected shall take office immediately.”</i></p>	<p>In the past, Executives could be fired by Council. In such a case it would make sense for the fired Executive to contest the election to fill the vacancy. However, under our current rules, Executives may only be removed by a recall ballot. Since any Executive so recalled would have been removed from office by the electorate immediately prior, and therefore does not have the confidence of the membership, it does not make sense to allow them to run in the subsequent election.</p>
10	<p>Amend Bylaw 5(3)(c)(iv) read (new text in bold, removed text struck through):</p> <p><i>“During any vacancy in an office, Council shall appoint from amongst its members the active members of the Society, a temporary replacement for that position who shall be assigned the regular duties befalling the vacant office.”</i></p>	<p>This opens eligibility to serve as an interim Executive to all students rather than just Councillors. While Councillors may well be amongst those most qualified to serve as an interim Executive, there may be other students who are even more qualified, including Associate Vice Presidents.</p>
11	<p>Remove Bylaw 9(1)(d): [The Ombudsperson shall] (d) represent or cause to be represented any active member in approaching the University on individual matters.</p>	<p>This was enacted before the establishment of the UBC Ombudsperson. These activities are best performed by the UBC Ombudsperson rather than the AMS Ombudsperson.</p>
12	<p>Amend Bylaw 13(9) to read (new text in bold, removed text struck through):</p> <p><i>All subsidiary organizations shall on or before ten (10) days prior within the week prior to April 1st in each academic year submit to the</i></p>	<p>The wording of this section is weird. This makes it much easier to read.</p>

	<p>Vice-President Finance its annual report which shall include: (1) a statement of revenues and expenditures of the present fiscal year, (2) a statement of proposed revenues and expenditures for the next fiscal year, and (3) a list of all assets and inventories currently being administered by the organization.</p>	
13	<p>Amend Bylaw 18(2) to read (new text in bold, removed text struck through):</p> <p>“Subject to any restrictions imposed under applicable privacy laws and other applicable laws, the books and records of the Society may be inspected by the Members of the Society at the offices of the Society on any school day between the hours of 10:00 a.m. and 3:00 p.m. <i>However, Council may establish a policy to keep certain records confidential where disclosure would be harmful to the financial or economic interests of the Society, the business interests of a third party, or the security of the Society’s buildings or its computer or communications systems, as well as where disclosure would disrupt an ongoing investigation, violate solicitor-client privilege, or reveal in camera discussions.</i>”</p>	<p>Currently, the AMS is very transparent with the documents that it makes available to its membership. However, there have been some concerns that the documents available are too broad. For example, documents subject to solicitor-client privilege or arising from <i>in camera</i> discussion are theoretically available to be viewed upon request which presents a significant risk that they could be made public and damage the Society. This amendment would set out categories of documents which would no longer be available. Even with these changes the documents available would be far more than is typically available to the general membership of a society.</p>
14	<p>Repeal Bylaw 21 (Student Court) in its entirety.</p>	<p>Student Court has not been active for several years. There is a long history of issues with Student Court. Even when Student Court is constituted, Council was not bound to follow its rulings and so there was no true teeth to its rulings. In 2018, abolition of Student Court was put on a referendum ballot. The results were in favour of abolishing Student Court but did not meet the quorum requirement. Given that the AMS and the electorate both have expressed a desire to abolish Student Court, it’s abolition should be proposed annually until it is achieved or the views of the membership change.</p>

Appendix: Proposed Changes to AMS Bylaws

SUMMARY OF BYLAW CHANGES

REFERENDUM 2019

- 1) **Student Court is abolished.** The Court's power to review referendum questions will be transferred to Student Council.

- 2) **Referendum questions will have to meet several new requirements:**
 - a) They will have to be clear and unambiguous.
 - b) They may not include any materially untrue statements.
 - c) They may not call for actions that would be illegal.
 - d) If they would result in actions that would violate a contract, they must state that and also state what the penalty will be for violating the contract.

- 3) **Membership period:** Students will continue to be members of the AMS after Christmas even if they complete their studies by Christmas.

- 4) **General Meetings:** Notice for such meetings must include agendas. Notice will no longer have to be published in the *Ubyyssey*, but will have to be published on the AMS website.

- 5) **Records:** Council will have the power to restrict access to records whose disclosure would be harmful to the AMS, third parties, ongoing investigations, solicitor-client privilege, or the secrecy of in camera discussions.

- 6) **Executive Vacancies:** Council will be able to fill these temporarily with any AMS member, not just Council members. If an Executive is removed by the membership (by referendum or general meeting), they will not be allowed to run to fill the resulting vacancy.

- 7) **Ombudsperson:** The AMS Ombudsperson will no longer be required to represent students in issues with the University. This will be left to the UBC Ombudsperson.

- 8) **Referendum results:** Records of successful referenda will be appended to the Bylaws.

- 9) **Housekeeping issues:**
 - a) The reference to the old category of Council Senators is removed.
 - b) A typo ("falling" for "failing") is corrected.
 - c) Awkward phrasing about the deadline for Subsidiary Organizations to submit financial statements is corrected.

**PROPOSED CHANGES TO AMS BYLAWS
MARCH 2019**

Additions are indicated by ***bold italics***. Deletions by striking through (~~like this~~).

BYLAWS

BYLAW 1: INTERPRETATION AND DEFINITIONS

2. In these Bylaws unless the context otherwise requires:

~~! Council Senators~~ shall mean the student Senators who hold voting seats on Council

~~! Court~~ shall mean the student court of the Society

BYLAW 2: MEMBERS OF THE SOCIETY

1. Members

The society shall consist of active members and associate members:

(a) ACTIVE MEMBERS

Active members shall be those persons who are not in default of payment of the fees of the Society, as determined in accordance with Bylaw 14, and who:

- i) are enrolled in a degree or diploma program administered by UBC Vancouver or an Affiliated Institution; or
- ii) are registered in a Credit Course; or
- iii) were registered in a Credit Course on the last day of ~~March~~ ***November*** of the current Academic Year.

2. Expulsion From the Society

A Member ceases to be a member of the Society upon:

- (a) ~~falling~~ ***failing*** to meet the requirements as set out in Bylaw 2(1); or
- (b) ~~on the ruling of the Court pursuant to Bylaw 21; or~~
- (c) upon a Resolution of the Members of the Society

BYLAW 3: ANNUAL GENERAL AND SPECIAL GENERAL MEETINGS

2. Notice

- (a) Notice of annual general or special general meetings shall be given to the Members of the Society by:
 - ï) posting a notice of meeting *and the proposed agenda for the meeting* at least fourteen (14) days prior to the meeting, on the Society’s website or other electronic notice board; and
 - ii) ~~publishing in the *Ubyyssey* or other campus publication at least fourteen (14) days prior to the annual general or special general meeting a notice of the annual general or special general meeting.~~

BYLAW 4: REFERENDUM

- 2. ~~The text of the referendum shall be drafted to ensure that the question is capable of being answered “yes” or “no” and if in the opinion of Council a petition for a referendum does not meet this requirement, Council shall forthwith refer the referendum to the Court to prepare a clear and unambiguous question.~~

The text of the referendum question shall be drafted to ensure that it meets the following requirements:

- (a) *The question is capable of being answered “yes” or “no”, with the negative response corresponding to the status quo.*
- (b) *The question, including any preamble, is clear and unambiguous.*
- (c) *The question, including any preamble, is not predicated on materially untrue statements.*
- (d) *The actions that would be taken if the referendum is successful are not illegal.*
- (e) *In cases where the proposed question would break a contract, the intent to break the contract must be specifically stated and the penalty for breaking the contract must be included as part of the question.*

If Council decides by resolution that a referendum does not meet one or more of these requirements, the referendum shall not be put to the membership. Such a resolution shall state the requirements which have not been met.

...

- 6. *Records of all successful referenda shall be included in an appendix to the Bylaws of the Society until such time as they are repealed.”*

BYLAW 5: STUDENT COUNCIL

- 3.

(c) **RECALL OF EXECUTIVE MEMBERS OR VACANCY IN AN EXECUTIVE OFFICE**

- i) A member of the Executive of Council may be removed from office upon:
 - (1) a referendum held in accordance with Bylaw 4; or

- (2) a Special Resolution passed at a special general meeting held in accordance with Bylaw 3.
- ii) Upon recall of an Executive member, or upon a vacancy in an office arising by other than recall, Council shall hold, not less than twenty-one (21) and not more than thirty-one (31) days from the date of recall or vacancy, a by-election to fill the vacated office. Should the by-election fall outside the School Year, Council may postpone such by-election until the earliest convenient date within the School Year, but such said date shall not exceed thirty-one (31) days after the start or resumption of the School Year.
- iii) ~~Any~~ **Notwithstanding By-Law 5(3)(b)(i), any** active member, ~~including~~ **except for** the member so recalled, may be nominated to fill the vacancy, and any member declared duly elected shall take office immediately.
- iv) During any vacancy in an office, Council shall appoint from amongst ~~its members~~ **the active members of the Society**, a temporary replacement for that position who shall be assigned the regular duties befalling the vacant office.

BYLAW 9: THE OMBUDSPERSON

1. Powers and Duties

The Ombudsperson shall:

- (a) be responsible for investigating and reporting to Council or the appropriate member of the staff of the Society or the Executive, any reasonable complaint or question that an active member has with the Society and its organizations;
- (b) be responsible for the resolution of any such complaint referred to in Bylaw 9(1)(a) where possible;
- (c) recommend a course of action to Council or any of the Society's organizations where such action is necessitated;
- ~~(d) represent or cause to be represented any active member in approaching the University on individual matters;~~

BYLAW 13: SUBSIDIARY ORGANIZATIONS

- 9. All subsidiary organizations shall ~~on or before ten (10) days~~ **within the week** prior to April 1st in each academic year submit to the Vice-President Finance its annual report which shall include: (1) a statement of revenues and expenditures of the present fiscal year, (2) a statement of proposed revenues and expenditures for the next fiscal year, and (3) a list of all assets and inventories currently being administered by the organization.

BYLAW 18: RECORDS

1. The minutes of the meetings of the Society, its subsidiary organizations, branch societies and committees and Council shall be kept at the offices of the Society, except as otherwise provided for in the Bylaws or the Code, or in policies adopted by Council. All reports, correspondence and any records of the Executive of Council, the Managing Director, the Staff, and other Members acting on behalf of the Society are the property of the Society and shall remain with the Society to be kept at the offices of the Society, except as otherwise provided for in the Bylaws or the Code, or in policies adopted by Council, all in compliance with the provision of the Societies Act regarding location of records.
2. Subject to any restrictions imposed under applicable privacy laws and other applicable laws, the books and records of the Society may be inspected by the Members of the Society at the offices of the Society on any school day between the hours of 10:00 a.m. and 3:00 p.m. ***However, Council may establish a policy to keep certain records confidential where disclosure would be harmful to the financial or economic interests of the Society, the business interests of a third party, or the security of the Society's buildings or its computer or communications systems, as well as where disclosure would disrupt an ongoing investigation, violate solicitor-client privilege, or reveal in camera discussions.***

BYLAW 21: STUDENT COURT

1. ~~(a) The Court shall, subject to the *University Act*, the *Societies Act*, and the Constitution and Bylaws, exercise disciplinary powers over the Society's organizations and members.~~
- ~~(b) Notwithstanding this Bylaw, the Court shall have no authority to fetter the discretion of Council with regard to handling or disbursing the funds of the Society.~~
- ~~(c) For greater certainty, the Court shall have jurisdiction:

 - i) over individuals:
 - ~~(1) for any alleged violation of the Society's Constitution, Bylaws or Code, and~~
 - ~~(2) for any alleged violation of any rule, resolution or regulation passed by Council or the Society, and~~
 - ~~(3) for any behaviour deemed unbecoming to a Member of the Society.~~
 - ii) over the Society's organizations:
 - ~~(1) for any alleged violation of the Society's Constitution, Bylaws or Code, and~~
 - ~~(2) for any alleged violation of any rule, resolution or regulation passed by Council or the Society, and~~
 - ~~(3) for alleged failure to maintain a proper standard of conduct at any event sponsored or organized by that organization or by the Society or any other organization, and~~~~

~~(4) — for the violation of the constitution or bylaws of any subsidiary organization of the Society.~~

~~(d) — For any violation of Bylaw 21(1)(c)(i), the Court may:~~

- ~~i) — impose fines not in excess of ten dollars (\$10.00) per Member, and~~
- ~~ii) — suspend that individual from all Society privileges for any period less than one School Year.~~

~~(e) — For any violation of Bylaw 21(1)(c)(ii), the Court may:~~

- ~~i) — subject to Bylaw 21(1)(b), order that restitution be made by payment out of the general funds of that organization of such amount as the Court shall see fit in all the circumstances, all such amounts to be applied towards remedying any loss or damage caused;~~
- ~~ii) — in extreme cases, order in addition the suspension of that organization from the Society;~~
- ~~iii) — declare that an action is void and of no effect, and that the organization must take the appropriate steps to remedy the situation.~~

~~2. — The Court shall be constituted by and shall be governed by the following provisions:~~

~~(a) — The Court shall consist of five (5) judges and two (2) alternate judges who are active members and are appointed by Council. Council shall also appoint a Chief Justice from the seven (7) judges.~~

~~(b) — The Chief Justice and at least one alternate judge shall be members of the Law Constituency.~~

~~(c) — The Chief Justice shall be entering or enrolled in third year Law at UBC Vancouver.~~

~~(d) — When appointed by the Chief Justice to sit on a particular hearing, alternate judges shall have the full rank and authority of Judges.~~

~~(e) — A quorum of the Court shall be five (5) judges.~~

~~(f) — Council shall, in the Code, determine the rules of procedure to guide the conduct of all hearings before the Court. These rules shall be consistent with the principles of natural justice which shall likewise govern the conduct of all hearings.~~

~~(g) — Each individual brought before the Court is entitled to be represented by an active member.~~

~~(h) — In any proceeding in which an organization of the Society is proceeded against:~~

- ~~i) — Service upon the President or Chair of that organization of the charge or of any notice required by this Bylaw shall be deemed service upon the organization.~~

- ~~ii) — The President and two (2) members in good standing of the organization proceeded against are to be appointed by resolution of the organization to represent the said organization in the proceedings.~~
- ~~iii) — In addition to the representation provided by (ii) hereof, each organization of the Society proceed against shall be entitled to be represented by one additional active member.~~
- ~~(i) — The Court shall be the final interpreter within the Society of the meaning of the Constitution, Bylaws and Code of the Society and shall deliver a written opinion upon any portions thereof at the request of Council or any active member of the Society. The Court shall, in the case of any ambiguity existing in the meaning of a Bylaw, interpret that Bylaw as written, and in no other way.~~
- ~~(j) — No appeal shall be taken from an acquittal by the Court.~~
- ~~(k) — No judgment of the Court pronounced under the jurisdiction of this Bylaw shall be acted upon or become binding until that judgment has been received by a Resolution of Council.~~
- ~~(l) — Court shall, within one (1) calendar week of Council referring a referendum to Court in accordance with Bylaw 4(2), supply Council with a suitable text for that referendum question.~~
- ~~3. — The Court may be summoned by Resolution of Council, or by any active member who may make an application in writing to the clerk of the Court, as provided in the rules of the procedure of the Court. It shall be a duty of Council to receive and inquire into the complaint of any Member or employee of the Society which is submitted according to the rules of procedure of the Court. Each person against whom, in the opinion of Council or its designated committee, there exists a prima facie case within the jurisdiction of the Court, shall be handed a formal charge, as provided in the Code no later than three (3) clear days before the date set for the hearing of the case.~~
- ~~4. — For any violation pursuant to Bylaw 21(1)(c) brought to the Court, Council shall appoint a Prosecutor who shall be an active member.~~
- ~~5. — A clerk of the Court shall be appointed by Council and the clerk's duties shall be:~~
 - ~~(a) — To publish a notice as provided in the rules of procedure of the Court before each sitting of the Court.~~
 - ~~(b) — To prepare a room suitable for a sitting of the Court for the time, day and place specified in the notice of charge duly received by the accused in that proceeding.~~
 - ~~(c) — To take possession of and be responsible for the production of all exhibits and other materials relevant to a proceeding.~~
 - ~~(d) — To record the judgment of the Court, the course of the proceedings and in particular, the points of evidence adduced by counsel and to keep the same in a secure place.~~
 - ~~(e) — To request of each witness and each accused called to give testimony and undertaking in the terms provided in the rules of procedure of the Court.~~

- ~~(f) — To request of each witness and each accused a statement of his or her faculty and year.~~
- ~~(g) — To publish by notice on the Society's website or other electronic notice board and in the *Ulysses* or other campus publication the decision of the Court.~~