

# University boards in the spotlight

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The deliberations of university boards seem to have become more rancorous and controversial of late. What's going on?

What's the latest at your university board? There was a time when that question may have been a signal to cue the crickets. While faculty and students busied themselves with the exciting highs and lows of intellectual and scientific pursuits, university boards were the steady hand that quietly and capably guided the ship – so steadily that they were (and still are, at many campuses) easy to ignore.

Governors and regents strive to be the calm hand on the wheel so that the rest of the university can shine. However, in recent years, numerous boards have been put under an unfamiliar and uncomfortable media spotlight – they've been lambasted over aborted presidencies and their handling of executive compensation, and criticized for being overly secretive, exclusive and out of touch with the university community they are supposed to serve.

“When you have 800 faculty members saying they've lost confidence in the board of governors, that's really significant,” Mark MacLean, then president of the University of British Columbia Faculty Association, told the *Globe and Mail* after a no-confidence faculty vote in March 2016. The vote was taken following the resignation of UBC president Arvind Gupta, allegations of secretive backroom dealings and censorship, and the resignation of the board's chair.

In response to the vote, the board said it respected the views of the faculty association and committed to improving its governance, including holding a meeting where university groups could air their concerns. However good their intentions, boards are vulnerable to being labelled opaque and exclusive when people don't know much about them.

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In a nutshell, the board is the highest governing body at a university, overseeing the university's activities, finances and property. But, it doesn't do this alone. Most Canadian universities have bicameral governance, meaning that the board, though still the ultimate authority, shares responsibilities with a senate or similar body, which looks after academic matters.

One of the board's key responsibilities is appointing the university's president and monitoring his or her performance. It's not surprising, therefore, that when boards get into big trouble, the situation has frequently involved the office of the president.

Glen Jones, dean of the Ontario Institute for Studies in Education at the University of Toronto, whose research area includes university governance, says there are “huge variations” in terms

of size, membership, operating procedures and powers of university boards across Canada. Provincial legislation vests authority in the university board and specifies its powers, size and composition, including how many members are appointed directly by government. The university's president and chancellor sit on the board and in some cases a seat is reserved for the local mayor. Operating procedures are commonly left to boards to decide through bylaws, including how open their meetings will be.

It is rare for provincial governments to intervene directly in governance matters. By creating governing boards, they allowed universities to maintain their autonomy while also providing external oversight. The purpose of boards is to govern in the public interest, and for a long time they were made up nearly entirely of non-academics from outside the university.

It wasn't until the 1960s that boards allowed faculty and student representatives, especially after the 1966 Duff-Berdahl report, jointly sponsored by the Canadian Association of University Teachers and Universities Canada (formerly the Association of Universities and Colleges of Canada). The landmark report was commissioned in part as a response to complaints about boards' lack of transparency, and inadequate faculty and student input into policies affecting academic activities.

As recent history shows, the debate has not been settled. Underlying many of the latest uproars are ideological splits over who belongs on a board and who the members are accountable to.

"Our view is that boards are representational bodies, and they're there because there's a recognition that universities are different from a private corporation," says David Robinson, CAUT's executive director. In the view of the faculty association group, boards should represent the voices of those inside the university who have a direct stake in its operations, and they shouldn't be expected to present a united front. "It's a much more open, democratic, transparent governance model, ideally, than what we would see in other institutions in society."

Mr. Robinson says that too many boards have turned to a model favouring board solidarity and related practices that are more common in the private sector, leading to the sort of frustrations that were apparent at UBC. "There is a sense that the board is not listening," he says, and "is not responsive to the community."

Richard Leblanc, an associate professor of law, governance and ethics at York University, argues that, on the contrary, university boards need independent directors from outside the university whose professional skills allow them to ask tough, informed questions about the financial, legal and real estate matters that are the board's focus. "There's nothing compelling that a university is any different than any other organization," says Dr. Leblanc, who wrote *The Handbook of Board Governance*, published in 2016. "You still have financial reporting obligations, you still have risks, you still have strategy."

Between these two views is a middle ground that sees the university's board governance model as different from that of other organizations because of its academic mission, its shared governance structure and board composition. In 2011, a review of Concordia University's

governance asserted this when the authors wrote: “Universities must be governed in ways that respect their unique characteristics.” But, what are the limits? What is best practice for governance at a university?



## When Boards Make the News

### February 2011

Concordia University calls for an external review of its board following the mid-term departures of two presidents and complaints of a governance crisis. The review includes calls for a downsized board, term limits and a substantial professional development program for members.



### Early 2013

The University of New Brunswick proposes revisions to its provincial act which, among other things, would create a smaller board of governors. Proposals are on indefinite hold following strong campus resistance.

## **June 2015**

Western University's board announces an external governance review following a controversy involving president Amit Chakma's salary. Recommendations include improving communication and coordination with senate, improving transparency, and providing orientation and on-going education to familiarize board members with board policies and campus activities.

## **Fall 2015**

The University of British Columbia's board of governors becomes mired in controversy following the sudden resignation of president Arvind Gupta in August. Its chairman resigns in October following a related academic freedom complaint and complaints of board secrecy.

## **November 2015**

Nipissing University convenes a special governance commission to look at the university's joint governance structures following a strike in which faculty said they had insufficient input into decisions affecting the university's academic mission.

## **January 2016**

Carleton University biology professor and board member Root Gorelick is effectively disqualified from reappointment after he refuses to sign a new board code of conduct, which he says is effectively a gag order.

## **April 2016**

The Alberta government says it will not renew University of Calgary external board members to another term pending a new, public application process designed to allow for a broader range of candidates for the government's appointments to public boards and agencies.

## **August 2016**

The Université de Montréal administration proposes to reform the university's charter, the provincial act that lays out its governance principles, and a bill is subsequently introduced to the National Assembly.

Among other things, the reform proposes to increase the number of external members to the board of governors. The faculty union has heavily criticized the changes, which to date have not yet been adopted.

## **December 2016**

Student member Brittany Lennox resigns from Memorial University's board of regents, complaining of bullying and intimidation. A subsequent governance review finds the board was in line with best practices but also recommends improvements, including greater transparency.

## **October 2017**

Student member Kati George-Jim accuses the Dalhousie University board of governors of institutionalized racism for her treatment at a June meeting. The board chair apologizes and gives her an opportunity to air her concerns at a subsequent board meeting.

All board members, who typically serve as unpaid volunteers, hold a fiduciary duty. That duty is widely interpreted to mean that they must act in the best interests of the university as a whole. However, faculty and student board members can be in a difficult position if they see a gap

between what is best for the university and what they think is best for the group that chose them to sit on the board. CAUT believes fiduciary duty should be recognized to include an internal member's constituency's interests as well as the university's.

This is where the discussion in Canada is stalled at the moment. Peter MacKinnon, former president of the University of Saskatchewan, does not share the CAUT view, and he's not alone. He believes that internal board members must transcend their narrower concerns when making board decisions.

"Boards are not there for the playing out of constituency interests," says Mr. MacKinnon, who explores university governance and dissent in his forthcoming book, *University Commons Divided*, due out this spring. "They're there to represent the public interest in the governance of the university."

That leads to issues surrounding conflict of interest. Any member can have a conflict if they or their affiliations stand to benefit or to lose, especially financially, from a particular decision. "There's nothing wrong with being in a conflict of interest," says Stuart [Kip] Cobbett, until recently the chair of McGill University's board, where members received training in the concept. However, "if [directors] find themselves in a position where their personal interests conflict with those of the institution, then they have to simply say, 'I'm sorry, I can't vote on this.'"

Another sticky topic at the board table is academic freedom. The controversy is whether academic freedom gives faculty appointees the right to speak out about board business and decisions. Mr. MacKinnon says it doesn't, and that those individuals need to realize that their "academic freedom is to some extent contained by membership on the board of governors." But CAUT notes on its website that academic freedom extends to "freedom to express one's opinion about the institution, its administration, and the system in which one works," as well as "freedom from institutional censorship."

In 2015, the faculty association took up the case of Root Gorelick, a Carleton University biology professor and Carleton board member who clashed with other governors when he blogged about open sessions and again when he refused to sign a revised code of conduct requiring all members to support board decisions once they were adopted – not an uncommon expectation at other boards. Dr. Gorelick said the policy violated principles of academic freedom and transparency. He was eventually disqualified from re-election to the board; Carleton argued that the issue was about improper conduct, not academic freedom.

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Why has the rancour intensified inside and outside the boardroom today? Many reasons have been suggested, including a lack of understanding inside the university community of the board's role and of common governance practices; board members straying from their oversight function into management; and inadequate performance measures – including measures for the board itself. But the most common reason put forward is that ever-shrinking public funding has turned the spotlight on those minding the money.

“Twenty years ago, a lot of [faculty] didn’t care ... they didn’t really need to know what was going on above the level of their chair or their dean,” says Julia Wright, a Dalhousie University English professor who studies how governing bodies can get out of step with society. But today, with systemic problems leading to things like heavier faculty workloads, “people are paying a lot more attention to the decision-makers at the top of the tree.”

Also, external board members may come in with different experiences and expectations of how a board should function, especially since the 2009 financial crisis put greater emphasis on effective governance practices in the private sector. In the world of industry, board meetings are usually closed, the chair is the only member who speaks publicly, employees don’t get a seat and board members are rarely criticized for their decisions by those inside the organization.

This can put the university president in a difficult situation, says Dr. Jones of OISE. “If you are coming from a sector where you are expecting the president to move very quickly and to make certain kinds of strategic decisions on their own, and you [transfer that expectation to] an environment where there is an academic senate, where there are unions, where there are other structures that are intentionally designed to kind of limit the authority of the president in certain areas – that just means that the president is in a no-win situation.”

While the critiques continue, some boards are making changes. Julie Cafley, who wrote her doctoral thesis on failed university presidencies, says she has seen “lots of progress,” with many university boards taking a harder look at their practices in the wake of situations like the leadership crisis at UBC. “Everybody is much more concerned” about following good governance practices, says Dr. Cafley, a senior vice-president with the Ottawa-based think-tank Public Policy Forum. “Nobody wants to be in the news on these sorts of issues.”

Some boards have contracted significantly in response to criticism that they are well beyond governance norms of 12 to 15 members, leading to inefficiency and a risk of creating a board within a board. Concordia, for one, reduced the size of its board from 42 to 27 members following its governance review.

Orientation and regular training about university operations, policies and governance procedures have become a regular part of board functions. Many boards keep a skills matrix to ensure they have all the bases covered by their members, and some boards use regular self-evaluations to ensure their governance practices stay on track.

Encouraging external board members to get to know their campuses is important, too, says Larry Stordy, chair of Dalhousie’s board. He visits the campus regularly as part of the roughly 200 hours a year he spends on board business. “If the first time you understand an issue is at the board table, it’s hard to process it,” he says.

Even so, boards are “not as open and transparent as they should be,” says Dr. Jones, and too much business unnecessarily takes place in closed sessions. But here, too, some boards are trying to respond. McGill’s board offers town-hall sessions with students and, twice a year, a chance for anyone from the university to ask questions at board meetings. Some boards,

including those at U of T and Thompson Rivers University, are broadcasting and live-streaming their board meetings.

While critics may suspect otherwise, “everybody who is on the board is there because they care deeply about the institution,” says Mr. Cobbett. Calling his own experience one of “the most rewarding of my life,” he nonetheless looks forward to taking a vacation this winter after chairing McGill’s board from 2010 until last summer.

“Nobody is there because of a hidden agenda,” he notes. “The more transparency there can be, the more exchange between the board and other members of the university, the better. Trust comes from communication.”

## Every Board is Different

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The University of Toronto has a unicameral form of governance – a relative rarity. Its governing council oversees the university’s academic, business and student affairs. Half of its 50 members are internal, half are external (including 16 government appointees). There are at least five meetings a year. Meetings have an open portion that is live-streamed. Agendas are published online in advance and minutes are posted.

A bicameral system is by far the most common at universities. Two examples are Brandon University and York University. Brandon’s board of governors has 17 members, including 10 government appointees (two must be students), as well as university senate and alumni representatives. There are six meetings per year, each with an open portion. Minutes are posted online, but agendas are not. York’s board of governors, meanwhile, has 30 members, 24 of which are external. There are no government appointees. It meets five times per year. Meetings have a portion open to members of the university community, but they are asked to reserve their seating in advance. Agendas and minutes are available online.

The University of Saskatchewan is tricameral, with a board of governors, a university council overseeing academic matters, and a senate providing an additional forum for students, administrators, alumni and external professional association representatives. Its board has 11 members, including student, faculty and senate representatives; five are provincially appointed. The board meets at least five times a year. Meetings are not open. No official minutes or advance agendas are published but highlights of meeting activities and a digest containing a summary of agenda items and motions passed are available online.