

# **Report of the CAUT Ad Hoc Advisory Committee on Governance**

## **I. Introduction**

In the fall of 2008, the CAUT Executive appointed a task force to examine the issue of governance in Canadian universities. The task force was announced at the November 2008, CAUT Council and it was asked to report in 2009. Members of the Task Force are: Brenda Austin-Smith (Manitoba), Charles Draimin (Concordia), Doug Lorimer (Wilfrid Laurier), Emily Carasco (Windsor), Greg Allain (Moncton), Jane Milton (NSCAD), Jim Sacouman (Acadia), Robert Sutherland (Lethbridge), Tom Friedman (Thompson Rivers – FPSE), Penni Stewart (ex-officio) and James Turk (ex officio).

The Task Force's starting point is the fundamental principle of post-secondary education in Canada and internationally, namely, that academic staff must play a decisive role in making educational decisions and setting educational policy if post-secondary institutions are to fulfill their purposes.

As noted in CAUT's 2004 Discussion Paper on Governance<sup>1</sup>, throughout its history CAUT has sought to achieve that objective through a bicameral system of university governance with a board of governors responsible for financial and administrative matters and a senate<sup>2</sup> (with a strong majority of academic staff) responsible for educational matters. For more than 50 years, CAUT has faced the limitations of senates and attempted to fix the problem by reforming how senates operate.

Our task force has concluded we must finally recognize that university senates have not proven to reliable and consistent vehicles through which academic staff can ensure their proper role in the academic governance of their institutions. We believe that academic staff associations must turn to collective bargaining to ensure their position in academic decision making as part of their terms and conditions of employment.

## **II. How we got to our present position: Duff Berdahl, ISGUG and CAUT 2004 Discussion Paper**

*Duff Berdahl*

The first effort to deal with problems in university governance was in the early 1960s. CAUT

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<sup>1</sup> *CAUT Policy on Governance: Where we have been and where we should go*. Available at <http://www.caut.ca/u/Woads|governacne.pdf>

<sup>2</sup> Although the term "Senate" is used in most institutions, other terms are used, e.g., "General Faculties Council" (at most Alberta universities), "University Council" (Saskatchewan), "Conseil universitaire" (Laval). A few institutions (e.g., University of Toronto) have a unicameral system with a governing council that fulfills the roles of both board of governors and senate.

teamed up with the forerunner of the AUCC<sup>3</sup> to establish the Duff-Berdahl Commission. The Commission was asked to address concerns that are remarkably similar to ones expressed today:

“...the charges that one so often hears today, that universities are becoming so large, so complex, and so dependent upon public funds that scholars no longer form or even influence their own policy, that a new and rapidly growing class of administrators is assuming control, and that a gulf of misunderstanding and misapprehension is widening between the academic staff and the administrative personnel, with grave damage to the functioning of both.”<sup>4</sup>

Their report strongly endorsed bicameral governance – with institutions operating under the general direction of a board of governors only minimally involved in academic planning. The senate, they said, was "to become the central educational forum." While it should have powers "to make recommendations to the Board on any matter of interest to the university", it should "exercise this power with restraint" and "must concentrate on the 'commanding heights' of educational policy and leave the day-to-day administration of the university to the President and his associates."<sup>5</sup>

According to Duff-Berdahl, the senate “should be a deliberative body, not a mass meeting”<sup>6</sup>, be chaired by the president with a majority of members elected by faculty with eligibility limited to tenured full and associate professors. Three additional seats should be reserved for junior faculty - tenured faculty members below the rank of associate professor.

The Report was influential - leading to changes in the operations of boards and senates in most universities across Canada.

### *ISGUG*

Twenty-five years later, it was apparent that the Duff-Berdahl recommendations had not resulted in senates becoming the vehicles through which academic staff set educational policy and made academic decisions. As a result, CAUT undertook a new national review of university governance - setting up the Independent Study Group on University Governance (ISGUG) and appointed three distinguished academics -- Guy Bourgeault, Ken McGovern and Ernst Benjamin -- to be the members of the group.

After a thorough examination of the issues, the ISGUG, like Duff-Berdahl before it, decided that the flaw was not in the model but in the implementation of that model. The ISGUG Report made a number of specific recommendations about how senates could be made to work better. The ISGUG identified problems and challenges that had to be addressed. First noted was "the senate as rubber stamp":

“It was consistently suggested during our hearings that the control of the university had fallen into the hands of an administrative group of senior officials, the Presidents, the vice-presidents, the deans and that this group, in fact, ran the university without any

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<sup>3</sup> The National Conference of Canadian Universities and Colleges became, in 1965, the Association of Universities and Colleges of Canada.

<sup>4</sup> James Duff and Robert O. Berdahl, *University Government in Canada: Report of a Commission sponsored by the Canadian Association of University Teachers and the Association of Universities and Colleges of Canada*. Toronto: University of Toronto Press, 1966, p. 3.

<sup>5</sup> *Ibid.*, p.32.

<sup>6</sup> *Ibid.*, pp28-29.

genuine accountability. Many faculty members expressed the concern that in some places these officials had formed an official management group which effectively displaced the senate, and frequently, the board of governors. It was widely suggested during our hearings that the senate was only retained to give greater verisimilitude to decisions already taken elsewhere. As the administrative cadre of the university has increased, many more officials have claimed seats with voting rights ex officio on the senate, thus reducing the relative power of the elected senators. In many places the president acts as both speaker and leader of government business, thereby raising suspicions that procedural decisions from the chair are motivated more by political ends than by the rules of parliamentary procedure. Administrative control is furthered in some institutions by needless and excessive secrecy. It is not surprising, therefore, that faculty and students have come in many institutions to regard service on the senate and particularly on its committees as a waste of time. This in turn stimulates an unfortunate cynicism about governance in general. It is depressing to report that Duff/Berdahl said many of these things in 1966.<sup>7</sup>

ISGUG made nineteen recommendations that they felt would make the senate work. It also made recommendations for modifications to how boards of governors operated.

Unfortunately, the reforms proposed in the ISGUG report, like those proposed almost 30 years before ISGUG by Duff-Berdahl have failed to solve the problems identified with Senates. In one of the few recent studies of senates, Jones notes that, compared to the findings of his research on governing boards,

...senate members indicated less satisfaction with the overall work of the senate and there were indications of discordance between the role that they believed the senate should play and the role that they believe the senate does play within university governance. Less than half of senate members view the senate as an effective decision making body, though 64% indicated that it plays an important role as a forum for discussing issues...<sup>8</sup>

The failure of Senates goes far beyond ineffective decision making and lack of voice for academic staff in determining academic policies. The malaise of Senates weakens the defence and promotion of the academic dimensions of the institution against the competing priorities of administrators and of non-academic campus facilities for students and the university community in general. These elements work together to have detrimental effects on the professional autonomy and role of academic staff and on the academic quality of our post-secondary institutions.

#### *CAUT 2004 Discussion Paper*

In its 2004 discussion paper, CAUT suggested that while renunciation of senates and "shared governance" is neither practical nor desirable, the way forward is to recognize that collective bargaining is, and has proven to be the best and most reliable way to secure the proper academic staff role in academic decision making.<sup>9</sup> Because academic staff are the effective agents for the execution of the research and educational functions of the academy our working environment and our terms and conditions of employment are inseparable from academic policies and objectives. Academic staff have a legal entitlement to engage in the collective bargaining of all their terms and conditions of employment. In the

<sup>7</sup> Independent Study Group on University Governance, *Governance and Accountability*. Ottawa: CAUT, 1993, p.12.

<sup>8</sup> Glen A. Jones, "The Structure of University Governance in Canada: A Policy Network Approach." Pp213-234 in Alberto Amaral, Glen A. Jones and Berit Karseth, *Governing Higher Education: National Perspectives on Institutional Governance*. Dordrecht/Boston/London: Kluwer Academic Publishers, 2002.

<sup>9</sup> CAUT, *op cit*, p.7

course of doing so, academic staff associations protect and advance the academic dimensions of the academy.

As the 2004 CAUT Discussion Paper on Governance noted:

At its heart, collective bargaining is about limiting the unilateral powers of the employer. As we teach in introductory collective bargaining, the employer has all the rights except those that are taken away by statute or by collective agreements. The central problem in post-secondary institutional governance right now is the growing concentration of power and control in the offices of the central administration. Spurred by demands to be more "business-like" in their management style, university administrators are increasingly calling into question the traditional structures of collegial governance.<sup>10</sup>

What is needed now is to be more explicit in considering how we can use the collective bargaining arena to secure governance rights. This means recognizing gains made already and developing a plan for helping associations to build on provisions they have and to make advances in new areas.

### **III. The 2008 Task Force**

Our task force reviewed University Acts, Collective Agreements, Senate By-Laws and CAUT policies. Our review illustrates how the terms and conditions of employment and fundamental academic principles are inseparable:

Consider academic freedom. Arguably the central value underpinning our academic culture and practice, yet in the absence of collective agreement language the precise meaning remains vague and the exercise of academic freedom rights easily curtailed by employers. In the York collective agreement academic freedom is defined in article 10:

10.1 The parties agree to continue their practice of upholding, protecting, and promoting academic freedom as essential to the pursuit of truth and the fulfillment of the University's objectives. Academic freedom includes the freedom of an employee to examine, question, teach, and learn; to disseminate his/her opinion(s) on any questions related to his/her teaching, professional activities, and research both inside and outside the classroom; to pursue without interference or reprisal, and consistent with the time constraints imposed by his/her other University duties, his/her research, creative or professional activities, and to freely publish and make public the results thereof; to criticize the University or society at large; and to be free from institutional censorship. Academic freedom does not require neutrality on the part of the individual, nor does it preclude commitment on the part of the individual. Rather, academic freedom makes such commitment possible.<sup>11</sup>

A second example is found in the relationships between Boards of Governors, Senates and collective agreements. Academic staff at universities and colleges are familiar with the increasing centralization of administrative power and the growth of a managerial culture which marginalizes the role of academic staff in decision making. In the face of centralization, the traditional collegial role of senates has been undermined. At some institutions, Senate is chaired by the President. At many, the composition of senate has been changed, reflecting greater administrative influence and presence. Few Senates play any

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<sup>10</sup> *Ibid.*, p.9

<sup>11</sup> Collective Agreement between The York University Faculty Association and The Board of Governors of York University, 1 May 2006 to 30 April 2009.

meaningful role in terms of finance and budget considerations more and more Senates are left with truncated academic planning and as an audience for Presidential and Board reports.

To re-assert the centrality of academic staff in decision making, collective agreements should include language that specifies the relationship between the Board, Senate and Collective agreement. Equally important is protecting our member's collegial role.

At Wilfrid Laurier University, the collective agreement specifies for both the Board and Senate that each shall exercise those rights, powers and responsibilities in a manner "which is fair, reasonable and consistent with the provisions of this Agreement."<sup>12</sup>

A second clause in the WLU language on collegiality sets out language that provides for member involvement in the creation of academic policies and procedures and in the selection of senior academic administrators:

11.2.1 The University acknowledges the rights and responsibilities of Members to participate in the formulation and/or recommendation of academic policies and procedures within the University through duly constituted collegial bodies and committees. The involvement and participation of members in the selection of senior administrators is accepted and supported by the University.

11.2.2 Pursuant to 11.2.1, the composition and procedures of search committees of University officers who are ex-officio members of senate, except for the chair of the Board and the Chancellor, shall be in accordance with the provisions set in...<sup>13</sup>

Other common collective agreement clauses that enshrine academic staff rights with respect to academic matters include:

- non-discrimination
- management rights - to be exercised in an equitable and just manner
- intellectual property
- university governance:
  - relationship of Board and Senate to the collective agreement
  - selection of senior administrators
  - university policies to be subject to the agreement of the Association
- appointments
- employment equity
- tenure and promotion
- workload
- academic staff complement
  
- administration of academic sub-units (e.g., departments)
- teaching and other forms of evaluation
- financial exigency
- grievance and arbitration

Beyond being a contract negotiated by the association as the exclusive bargaining agent for

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<sup>12</sup> Agreement between Wilfrid Laurier University and Wilfrid Laurier University Faculty Association for Full-time Faculty and Professional Librarians, July 1, 2005 to June 30, 2008.

<sup>13</sup> *Ibid.*

academic staff members, the terms of the collective agreement are enforceable and disputes have a clear mechanism for resolution through a grievance and arbitration process, unlike university policies.

If academic staff are to rely upon their collective agreements to protect and advance their professional autonomy and voice on academic matters, then we need the best possible agreements. In particular, there needs to be clarity about the relation of Senate to the collective agreement. The ad hoc committee on governance found that many existing agreements, especially some of those initially contracted in the 1970s and 1980s, need to set out with greater certainty that the agreement itself defines all the terms and conditions of employment of academic staff, and that Senate and the Board are bound to the terms of the agreement.

In a number of the earliest collective agreements, academic staff associations accepted wording that limited the scope of their own agreements. Typically this language specified that collective agreement provisions would not operate so as to infringe the powers of senates, as set out in the relevant university act legislation and, further, if any clause of the agreement were found to infringe the powers of senate as so set out, that clause would be null and void.

Unfortunately, such language remains as an unwanted vestige in many agreements.

#### **IV. Recommendations**

Our task force recommends that all academic staff associations review their collective agreements and make it a priority to eliminate any wording such as the above and to replace it with language like the following from the Collective Agreement at Wilfrid Laurier University:

11.1.2 The Parties acknowledge the rights, powers and responsibilities of the Senate as established by statute, by-law, and practice, except as such rights, powers and responsibilities may have been specifically abridged, delegated, or modified, by the Certification Order or this Agreement. The Senate shall exercise those rights, powers, and responsibilities in a manner which is fair, reasonable and consistent with the provisions of this Agreement.<sup>14</sup>

Furthermore, our task force recommends that CAUT update the examples of best language in the fourteen areas noted on the previous page and send an advisory to all member associations recommending they seek to improve the collective agreement provisions in all areas affecting academic policy and decision making.

#### **V. Conclusion**

Our Task Force believes that there is some urgency to our recommendations. Over the past decade, employers have become more aggressive in centralizing decision making in increasingly hierarchical and managed governance structures. The size of administrations has been correspondingly inflated. The sphere of influence for Senate has narrowed greatly but in many cases the language in collective agreements has not filled the gap. We must reverse this trend. This is not a simple task but one requiring

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<sup>14</sup> *Ibid.*

education and mobilization of members around the importance of governance issues and the increasingly important role of collective agreements in protecting our rights.

Respectfully submitted,

Greg Allain, Chair

November 12, 2009