

4.1

Board of Governors

Introduction

Canadian post-secondary institutions are typically governed under bicameral structures.¹ There is a senate responsible for governing academic affairs and a board of governors² with the final authority for administrative and financial matters. Board functions normally include:

- overseeing campus planning and the management of the institution's land, buildings and tangible assets;
- monitoring the institution's financial health;
- approving budgets;
- liaising with governments (for example, concerning operating and capital funding, land use, etc.);
- approving non-academic policy; and
- together with the senate, holding the senior administration accountable for the proper management of university operations.³

Boards are responsible for ensuring that operations are sustainably resourced and that risks within its remit are appropriately managed.⁴ Under no circumstances should boards assume academic decision-making authority, impose an academic mandate for the institution, or allow outside interests to exert undue influence on academic activity at the institution. To the contrary, boards must actively safeguard against these eventualities.

Although board composition varies by institution, given differences of institutional charter and legislative context, sound collegial governance of a public institution requires a board composed of members of both its external and internal communities. All members should be appointed through open and transparent processes, with every effort made to ensure that membership reflects the diversity of the campus community and of the community in which the institution is located.

Although members of the academic staff do not normally constitute a majority on a board (unlike a senate), robust academic staff representation on the board is essential. This mix in board membership helps to ensure that the board serves as a link between the institution and its many publics, with a responsibility to mediate

between them while protecting the integrity of the institution's academic mission, institutional autonomy, and academic freedom.

For more information, see other resources in the boards section of the governance library, including the comparison of boards across the country and the legal advisory on the fiduciary duties of university board members.

The academic staff association can support their members in understanding, participating in, and improving board-level governance of their institution, as indicated in the following checklists.

Checklist

The board of governors should operate under written, publicly available rules and procedures consistent with legislation and the collective agreement, and its practices should be consistent with the principles of academic freedom, equity, and collegial governance. Below is a series of checklists associations can apply to ensure that board-level governance protects and strengthens the collegial governance of the institution.

Board Composition and Role

- The institution's founding document (charter, statute, etc.) specifies the role of the board, its composition, and its duties, powers and functions. This role is appropriately described and is distinct from that of the senate.
- The board is not so large as to be hindered in its functioning but is not so small as to exclude necessary constituencies.
- Academic staff have a meaningful presence on the board, both in terms of the required numbers as articulated in the founding document and in terms of the actual board composition.⁵
- The nomination and selection process for board members is open and transparent. Members of representational groups are elected by the members of each group following an open nomination period.
- Board and committee membership is broadly representative of the institution's internal and external communities. Proactive policies and practices help to ensure that board membership reflects the diversity of the institution's community, including by appointment category (e.g., librarians, contract academic staff) and including representatives of significant external communities (e.g., Francophone, Indigenous).

- ❑ Academic staff members who sit on the board maintain their membership in the bargaining unit.
- ❑ The board has the necessary expertise, but this is not interpreted narrowly. Appeals to “expertise” are not used to narrow public membership on the board primarily to business owners, executive-level managers, and individuals who serve on boards of private-sector organizations.
- ❑ All board members are provided with training that enables them to participate fully and competently in board and committee activity. This includes orientation on the nature and mandate of post-secondary institutions and the central importance of collegial governance and academic freedom. Training is developed and delivered by an appropriate party.

Bylaws and the Delegation of Authority

- ❑ The board has clear bylaws that align with the board’s legislative powers, duties, and functions.
- ❑ Where the board has delegated its authority (for example, to the president or other administrators), clear terms and accountability measures have been explicitly articulated.

Committees of the Board

- ❑ The board has an appropriate set of committees with clearly described terms of reference and mandates.⁶
- ❑ Committee membership is open to all board members regardless of their status as internal or external members and of their employment category.
- ❑ Wherever committees are open to membership by non-governors, there is a sound rationale, and the selection process is transparent.
- ❑ Committee memberships are posted on the board website.

Board Policies

- ❑ The board has a clear conflict of interest policy that recognizes academic freedom and that safeguards against donor influence of board decisions. Members of academic staff constituencies are not singled out, including because of association membership. Conflicts of interest policies should not preclude a member of the board who is also a member of the academic staff from taking part in discussing and voting on issues concerning general conditions of employment for the institution’s employees, unless the discussion and voting

deals with the circumstances of the particular employee as an isolated issue, separate and apart from consideration of other employees.⁷

- ❑ If the board has a code of conduct, it does not force civility or board solidarity upon board members.
- ❑ The board has clear confidentiality or communications policies that afford board members the freedom to discuss institutional issues with colleagues, including with members of the constituent groups from which the board members were selected. If board members are required to sign non-disclosure agreements, the language is not overbroad.
- ❑ Academic staff who serve as board representatives are free to report to and receive input from their constituents.
- ❑ Academic staff who serve as board representatives maintain their academic freedom, including the ability to critique board decisions with which they disagree.
- ❑ The fiduciary responsibility language used in board bylaws and policies is consistent with the collegial governance model.
- ❑ The board has a clear risk management policy that covers, among other things, emergency situations, campus security and cybersecurity, etc. This policy aligns with the collective agreement and safeguards academic freedom.
- ❑ The board has policies and procedures in place sufficient to allow it to properly monitor institutional pension funds and their solvency.
- ❑ The board maintains appropriate evaluation and self-evaluation mechanisms.

Board Meetings, Agenda Packages and Minutes

- ❑ Board members are provided sufficiently detailed agenda packages,⁸ in advance.
- ❑ For bilingual institutions, packages are available in both languages.
- ❑ Board and committee meetings are open to the full extent possible, with agenda packages and minutes that are freely available (including but not limited to being available to members of the senate). In-camera discussions are exceptional, and there are clear guidelines for their use.
- ❑ Sufficient meeting time is allowed for meaningful deliberation of significant issues, with equal opportunity for all members to participate in discussions and make informed decisions.

The board devotes necessary meeting time to considering the following:

- The institution's policy framework and key institutional policies
- The institution's approach to planning and budgeting, as well as to the details of long-term plans and the progress of their implementation
- Budgets and financial reports
- The overall health of collegial governance, including the board's relationship with the senate
- Matters of equity, Indigenization, and health and safety
- Grievances
- The board's obligations and how to respond when critical incidents arise or at critical junctures for the university
- Consultants do not guide the board's policy and planning work.
- Board administrative staff do not control meeting agenda or otherwise limiting academic staff input.

Relationship between the Board and the Senate

- The board explicitly recognizes the senate as a governance partner and liaises with it on a regular basis.
- The senate has sufficient access to information about matters within the board's purview.
- The board solicits or welcomes recommendations from the senate about matters within the board's purview.
- Periodic meetings are held between the board and senate executive committees to discuss the overall health of institutional governance.
- Notwithstanding that the power to appoint senior administrators vests in the board, the board ensures that the senate is involved in senior academic administrator search, (re)appointment and evaluation processes

Relationship between the Board and the Provincial Government

- The board is not dominated by public board members who are provincial government insiders selected to help further government policy objectives.

- The board does not merely implement ministry guidelines instead of critically deliberating the university's best interest and considering alternative courses of action.
- The board safeguards institutional autonomy in the face of threats?⁹

For the Academic Staff Association

The association has bargained collective agreement language strengthening the rights of and supports for academic staff serving on the board.¹⁰ Provisions include:

- Rights of full participation on the board and its committees
- Obligation of the employer to provide, and the right of the academic staff member to pursue, training, resources, and other supports that help members carry out their duties as board members
- The right to timely access to agenda packages
- Robust academic freedom protections that include intramural and extramural speech, that safeguard against the overuse of confidentiality provisions, and that protect the right to consult with and report to the constituencies from which members were selected
- The right to consult the union
- The right to recourse to the grievance process
- The association monitors board and committee composition, practices, meeting agendas and decisions.
- The association communicates with members about board activities and decisions affecting the academic work of the institution.
- The association fosters opportunities for dialogue between academic staff and the academic staff who have been elected to serve on the board.
- The association develops educational initiatives and resources about board-level governance, including for members serving on the board or who are considering standing for a board position.
- The association develops submissions to the board on important matters about which board members should be aware.
- Where necessary, the association advocates for improvements to board structures and practices.

Endnotes

¹ The University of Toronto is a noticeable exception to bicameralism.

² There are some slight differences in the titles of boards.

³ Although the responsibility for managing institutional operations will typically vest in the board, a board will normally delegate responsibility for overseeing and directing operations to the president and vice-presidents and indirectly to other members of the administration.

⁴ To be appropriate, risk management must not, in an effort to manage institutional reputation, extend to undermining the extramural academic freedom rights of academic staff members.

⁵ Readers should consider the absolute and relative numbers on their board and whether these are appropriate, as well as how they compare to boards at other institutions in the province and nationally.

⁶ Typical committees include executive, finance, audit and risk, human resources, etc.

⁷ See, e.g., O. Reg. 152/22: GENERAL, under *Northern Ontario School of Medicine University Act, 2021, S.O. 2021, c. 25, Sched. 16*, s. 13(2)

⁸ For example, including documents such as financial reports and detailed budgets that contain details of operations, capital spending, reserve funds, solvency, indebtedness, etc.

⁹ For example, the imposition of performance-based funding, the shift to targeted funding, or attempts to steer the types of research performed by members of the academic staff.

¹⁰ Academic staff serving on the board of governors should retain their bargaining unit status. CAUT advises that associations include a clause in their collective agreements that ensures members temporarily excluded from the bargaining unit because of their membership on the board retain all rights and privileges provided by the agreement, including academic freedom, as if they were members, and that any dispute involving an excluded member's terms and conditions of employment will be resolved using the process outlined in the grievance/arbitration clause of the agreement.