

Discussion of Possible Amendments to the Governance Provisions of Bill 18
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1.0 Preface

This document does not constitute the official position of CUFA BC, except as noted. Its purpose is to explore various aspects of the governance provisions of Bill 18 – *Advanced Education Statutes Amendment Act, 2011* – and to discuss possible amendments to those provisions to make them more acceptable to the public post-secondary education community. All comments and proposals contained in this document are made on a “without prejudice” basis.

2.0 Disqualification Provisions

As written, the purpose of the disqualification provisions of Bill 18 (i.e. sections 20, 32 and 50) is to exclude from membership on an institutional board of governors those employees who are involved in the leadership or administration of their employee association or union and who:

- a) negotiate terms and conditions of employment between an employee association or union and the institution, or
- b) adjudicate disputes between employees and the institution.

The Government of BC argues that such an exclusion is necessary because those employees who negotiate terms and conditions of employment or who adjudicate disputes between employees and the institution have a role that puts them in a fundamental conflict of interest with membership on an institutional board of governors.

2.1 Disqualification for Negotiators

Discussions with Ministry officials have clarified that the negotiation exclusion is intended to apply to only those individual faculty or staff members who are members of the negotiating team for their employee association or union.

Although this may be the intent of this exclusion, the wording in Bill 18 is flawed in three ways.

First, the wording might be interpreted to include members of employee association executive committees, who have to approve any proposed agreements, or the members of salary and benefits committees, who provide guidance to negotiating teams.

Second, the wording would only exclude those members of negotiating teams who are also voting members of association/union executive committees. It is common to have members of negotiating teams who are not voting members of executive committees.

Third, although the bulk of bargaining takes place with defined negotiating teams during the negotiation of a comprehensive agreement over a set time, ad hoc bargaining can take place at other times and in other contexts. If the language of Bill 18 were meant to include this type of bargaining, then it may well exclude anyone in a leadership position in an employee association or union.

2.2 Disqualification for Adjudicators

Discussion with Ministry officials about what constituted “adjudicating a dispute” resulted in the suggestion that the intention was to exclude from Board membership those employees who advocate on behalf of other employees who have grievances with the institution relating to the terms and conditions of their employment.

Although this “grievance officer” interpretation seemed sensible at the time, subsequent discussion with legal counsel has rendered this interpretation highly problematic for two reasons.

First, such an interpretation could exclude many people from membership on boards of governors—shop stewards, grievance advisors, grievance officers, members of grievance committees, and members of executive committees might all be captured by such an interpretation.

Second, the vast majority of grievances handled by “first contact” grievance officers (shop stewards, etc) are resolved at the administrative level. Grievances that might come to the attention of the board of governors due to legal proceedings would typically be handled by an association or union committee rather than a grievance officer.

Given the problems with the “grievance officer” interpretation, it would appear to make most sense to stay with a more literal interpretation that would exclude only those people who adjudicate disputes between employees and institutions. This would typically be employees who serve on the Labour Relations Board, or who might be named to a specific grievance panel. As in the case with negotiators, the current wording is flawed in that these people are not necessarily voting members of executive committees.

2.3 Disqualification for Senior Administrators

A conflict of interest that is not addressed in the disqualification provisions of Bill 18 are those senior administrators who run for faculty or staff positions on institutional boards of governors or senates (or equivalent bodies). This issue arises from the increasing managerial responsibilities and number of associate vice-presidents, assistant vice-presidents, associate deans and assistant deans.

Historically, associate and assistant vice-presidents were rare, and associate and assistant deans largely helped a dean with administrative responsibilities. These types of positions have proliferated in the last two decades, and have taken on increasing responsibilities for management functions and for representing the interests of the senior administration to the institutional community.

Consequently, where at one time faculty and staff members holding associate and assistant positions might have been free to express their views as professionals, today are practically obliged to represent the interests of the senior administration when they serve on boards of governors or senates. This deprives boards and senates of the knowledge, experience and views of frontline faculty and staff members.

2.4 Proposals

Given that boards of governors spend a comparatively small portion of their total time in board and committee meetings on employee negotiations and grievances, and given that a precise definition of those faculty and staff association and union activists who might be seen as in a structural conflict of interest appears elusive, a more productive approach would appear to be focus on ensuring appropriate mechanisms are in place to deal with conflicts of interest as they arise.

The proposal in Appendix I would establish a common framework defining conflict of interest and the mechanisms for dealing with it for all public post-secondary institutions. It deals not only with conflicts that might arise for faculty and staff members, but also for students and external appointees. It is derived from the *Members' Conflict of Interest Act* and from policies currently in place at public universities. This proposal would replace the proposed exclusion provisions in sections 20, 32 and 50 of Bill 18.

The proposal in Appendix II would exclude from faculty or staff positions on boards of governors or senates (or equivalent), employees of post-secondary institutions holding senior administrative positions. This proposal also corrects a long-standing problem by including in the definition of faculty member librarians and archivists, who have been members of faculty associations for more than two decades.

If Government is intent on keeping the exclusion provisions in sections 20, 32 and 50 of Bill 18, the proposal in Appendix III simplifies and clarifies the language in keeping with the discussion above. It also expands the definition to include any employee who directly negotiates or adjudicates on behalf of the university administration, thus ensuring a balanced approach to conflict of interest.

3.0 Removal Provisions

The provisions in Bill 18 enabling the removal of elected members of boards of governors (i.e. sections 19, 34 and 49) are highly problematic for six reasons:

First, democratic principles would normally require that an elected member of a governing body be removed by the electorate or by a court, not by the body itself.

Second, the provisions in Bill 18 only apply to elected members of boards of governors. In effect, this creates two classes of board members: one that is accountable to government, and another that is accountable to the government appointees to the board.

Third, there are no criteria in the legislation or in common law for what constitutes cause for removal from a board of governors.

Fourth, there are no provisions for the board member facing removal to know the reasons the removal is being proposed and to offer a defence.

Fifth, the 2/3 vote requirement is unclear as to whether it is a vote of all board members or only those members present at a particular meeting.

Sixth, even if the 2/3 vote requirement is interpreted to mean a vote of all board members, it means that, in effect, the appointed and ex officio members of the board alone have the power to recommend removal of any elected board member (except in the case of UBC).

3.1 Proposals

Democratic principles suggest that elected members of boards of governors should only be removed by their constituency by way of recall, or by the courts for violation of the law.

The proposal in Appendix IV would enact a process for the recall of elected members of boards of governors, thereby replacing sections 19, 34 and 49 of Bill 18.

If government is intent on keeping the removal provisions in sections 19, 34 and 49, the proposal in Appendix V addresses the deficiencies in the current language as follows:

- any member of the board may be subject to a recommendation that they be removed;
- a member of the board may only be removed for persistent neglect or failure in their duties;
- a member of the board alleged to have neglected or failed in their duties must be provided the allegations in writing in advance of the meeting at which the allegations are to be considered by the board of governors;
- a member of the board subject to such allegations, or his or her delegate, has the right to offer a defense to the allegations in writing and/or in person;
- the vote to recommend removal must be conducted by secret ballot;

- ex officio members of the board of governors are excluded from voting on such a resolution; and
- the resolution must have the support of 2/3 of all board members (excluding ex officio members).

In total, these provisions ensure that an resolution to remove a member from a board of governors is not proposed capriciously, is backed by evidence of misbehaviour, is conducted according to principles of natural justice, and ensures that at least one elected member of a board of governors must support the resolution.

4.0 Postscript

As demonstrated in this document, there are multiple ways to achieve Government's goals while respecting the principles and traditions of governance at BC's public post-secondary institutions. CUFA BC looks forward to further discussion to develop a package of proposals for presentation to the Legislature.

Appendix I

Suggested Legislative Amendment Addressing Conflicts of Interests for Members of Boards of Governors

Conflict of interest

- XX (1) A member of the board has a conflict of interest when the member of the board participates in any discussion or votes on any proposal that may further the private interests of
- (i) the member of the board,
 - (ii) a person related to the member of the board, or
 - (iii) any society, association, union, proprietorship, partnership or corporation that the member of the board owns, holds voting shares of, or in which he/she occupies the position of principal, officer or director.
- (2) A member of the board has an apparent conflict of interest if a reasonably well-informed person would conclude that the member of the board's judgment has been affected by a private interest as set out in XX(1).
- (3) A member of the board must not participate in any discussion or vote on any proposal that would result in a conflict of interest or an apparent conflict of interest. The member of the board must declare such a conflict of interest or apparent conflict of interest to the board chair and
- (i) if such a discussion or vote takes place in a closed meeting of the board or a committee of the board, the member of the board must leave the meeting for the duration of that discussion or vote; or
 - (ii) if such a discussion or vote takes place in an open meeting of the board or a committee of the board, the member of the board may remain in the meeting for the duration of that discussion or vote but may not participate in the discussion or vote.
- (4) A member of the board who is an employee of the university does not have a conflict of interest with respect to negotiations of terms and conditions of employment of the employees of the university if the member of the board is not an officer or director of, or negotiates on behalf of, an employee association or union.
- (5) A member of the board who is a student at the university does not have a conflict of interest with respect to the determination of fees charged to students by the university.
- (6) If members of the board may reasonably conclude that a member of the board has a conflict of interest or apparent conflict of interest as per XX(1) or XX(2) and the member of the board refuses

to take those actions set out in XX(3), the board may by a 2/3 majority vote of the members of the board present at a meeting of the board or a committee of the board exclude the member of the board from the relevant discussion or vote.

Appendix II

Suggested Legislative Amendment Consequential to Disqualifying Senior Administrators from Running for Faculty Positions on Boards of Governors or Senates

College and Institute Act

1. Amend the definitions of “educational administrator” and “faculty member” in section 1 of the College and Institute Act by adding the words in bold:

"educational administrator" means a dean, **associate dean, assistant dean**, vice president, **associate vice president, assistant vice president, chief librarian** or similar employee of the institution whose primary responsibility is to provide administrative services in support of education or training offered by the institution, and does not include the president;

"faculty member" includes an instructor, librarian, tutor, counsellor, research associate, program co-ordinator or other employee of the institution that a collective agreement between the bargaining agents, as defined in section 1 of the Labour Relations Code, for the institution and faculty members specifies to be a faculty member, **and does not include the president or an educational administrator**;

University Act

1. Amend Section 1 of the *University Act* by adding the following definitions:

"senior administrator" means a dean, associate dean, assistant dean, vice president, associate vice president, assistant vice president, chief librarian or similar employee of the university, and does not include the president;

"staff member" means the employees of the university who are not the president, educational administrators or faculty members;

2. Amend the definition of “faculty member” in Section 1 of the *University Act* by adding the words in bold:

"faculty member" means a person employed by a university as an instructor, lecturer, assistant professor, associate professor, professor, **librarian, archivist** or in an equivalent position designated by the senate, **and does not include the president or a senior administrator**;

3. Amend Section 19 of the *University Act* by replacing subsections 19(1)(f), 19(2)(h) and 19(2)(i) with the following wording:

19(1)(f) one person elected by and from the staff members.

19(2)(h) one person who must work through a part specified under section 3.1, elected by and from the staff members who work through any part specified under section 3.1;

19(2)(i) one person who must work through a part not specified under section 3.1, elected by and from the staff members who work through any part not specified under section 3.1.

Royal Roads University Act

1. Amend Section 1 of the *Royal Roads University Act* by adding the following definitions:

"senior administrator" means a dean, associate dean, assistant dean, vice president, associate vice president, assistant vice president, chief librarian or similar employee of the university, and does not include the president;

"staff member" means the employees of the university who are not the president, educational administrators or professors;

2. Amend the definition of "professor" in Section 1 of the *Royal Roads University Act* by adding the words in bold:

"professor" means an instructor or researcher employed at the university and recognized by the board as a professor for the purposes of this Act, **and does not include the president or a senior administrator** ;

3. Amend Section 5(f) of the *Royal Roads University Act* by replacing it with the following wording:

5(f) a staff member, and

4. Amend Sections 15(1) and 15(2) of the *Royal Roads University Act*, by replacing the words "other employees of the university" with "staff members".

Thompson Rivers University Act

1. Amend Section 1 of the *Thompson Rivers University Act* by adding the following definitions:

"senior administrator" means a dean, associate dean, assistant dean, vice president, associate vice president, assistant vice president, chief librarian or similar employee of the university, and does not include the president;

"staff member" means the employees of the university who are not the president, educational administrators or faculty members;

2. Amend the definition of "faculty member" in Section 1 of the *Thompson Rivers University Act* by adding the words in bold:

"faculty member" means a person employed by a university as an instructor, lecturer, assistant professor, associate professor, professor, **librarian, archivist** or in an equivalent position designated by the senate, **and does not include the president or a senior administrator;**

3. Repeal Section 8(4) of the *Thompson Rivers University Act*.

Appendix III

Suggested Legislative Amendments Regarding Disqualifying Certain Persons from Serving on the Board of Governors

Current Wording

XX A person is not eligible to be or to remain a member of the board if the person is

- (a) an employee of the institution, and
- (b) a voting member of the executive body of, or an officer of, an instructional, administrative or other staff association of the institution who has the responsibility, or joint responsibility with others, to
 - (i) negotiate with the board, on behalf of the instructional, administrative or other staff association of that institution, the terms and conditions of service of members of that association, or
 - (ii) adjudicate disputes regarding members of the instructional, administrative or other staff association of that institution.

Suggested Replacement Wording

XX A person is not eligible to be or remain a member of the board if the person is an employee of the institution, who is not the president, and who, individually or as a member of a body,

- (a) directly negotiates the terms and conditions of employment of employees of the institution on behalf the institution, an employee association, or an employee union, or
- (b) adjudicates disputes between the institution and an employee association, employee union or individual employees of the institution.

Appendix IV

Suggested Legislative Amendment Enabling the Recall of Elected Members of Boards of Governors

WW A member of the board of governors elected under section XX may be removed from office by a recall petition signed by not less than 20% of those people eligible to vote in an election under section XX.

- (1) Each page of a recall petition must state the name of the member of the board and the reasons why their recall is being sought.
- (2) In addition to a signature, a recall petition must include the printed name, address, and phone number or email address of the signatory, the signatory's student number or employee number, and the date the petition was signed.
- (3) Upon receipt of a recall petition, the secretary of the board shall ensure the signatures on the petition are valid and that a person has not signed the petition more than once.
- (4) If the secretary of the board determines that the recall petition meets the requirements of this section, then the secretary shall declare the named member of the board's position vacant as per section YY.
- (5) A vacancy on the board as a result of this section shall be filled as per section ZZ.

Appendix V

Suggested Legislative Amendment Enabling the Removal of Members of Boards of Governors

YY Despite section XX, the Lieutenant Governor in Council may, on a resolution passed by the vote of at least a 2/3 majority of all the elected and appointed members of the board, remove from office a member of the board if:

- (i) the member of the board is alleged to have persistently neglected or failed in their duties; and
- (ii) the details of the allegations are provided in writing to the member of the board no less than 14 days in advance of the meeting at which the board will consider the allegations; and
- (iii) the member of the board, or his or her delegate, has the opportunity to respond to the allegations in writing and in person at the meeting of the board; and
- (iv) the vote on the resolution to recommend removal of the member of the board is conducted by a secret ballot.