

## **Faculty Perspectives and Recommendations on Governance at UBC**

Over the past eight months, events have brought to the fore problems with governance at UBC that are of great concern to the faculty, who recently passed a resolution that they have no confidence in the UBC Board of Governors. The Board's apparent role in the recent failure of the presidency, the perception that the Board has not been operating in an open and transparent manner, and the Board's management of a string of crises related to issues such as academic freedom have all contributed to the loss of confidence in the Board by the faculty.

The Faculty Association Executive Committee has communicated extensively about the concerns of the faculty in response to events as they happened, and so we feel no need to reiterate these concerns in this document. Instead, we focus on governance matters generally and share some of the perspectives and recommendations from the faculty that we hope will improve governance at the University and help restore the confidence of the faculty in the Board.

We do not present an exhaustive list of recommendations to the Board. Indeed, faculty concerns about governance spill over into the Senates and the Administration, including the administrations of the Faculties. It is likely that there are many conversations about governance to be had across the University.

This document presents 10 areas of concern: (I) board management and operations, (II) procedures and documentation around the Board's Code of Conduct, (III) procedures for Board members' communications, (IV) Board orientation and education, (V) conflict of interest and the Board's Code of Conduct, (VI) the roles of the faculty in the University, (VII) the role of elected members on the Board, (VIII) strengthening bicameral governance, (IX) managing the President, and (X) nominations for membership on the Board of Governors.

### **I. Board Management and Operations.**

UBC's Board of Governors needs to operate, and be seen to operate, under a straightforward set of rules and guidelines that are readily available to members of the University community and the public. Many of the concerns raised by faculty members over the past few months have been connected to the perception that the Board has been operating in a manner that makes public scrutiny of its decisions difficult, if not impossible. Moreover, in spite of some recent documentation added to the Board's website, many of the rules, procedures, and protocols around the Board seem to be established through informal advice from the Board Secretary and the University Counsel. This makes it difficult for anyone to compare UBC's Board practices to provincial guidelines for public boards or to best practices for university boards. Indeed, restricting access to the basic workings of the Board gives the appearance of avoidance of transparency and accountability.

**Overall, we believe that there should be an outside review of the operations of the Board.** It is standard for many organizations that following the sort of events UBC has recently experienced, external assessment and advice is sought. For example, Concordia University, in similar although not identical circumstances back in 2011, struck an External Governance Review Committee.

Absent, or pending, such a review, we make the following recommendations to improve Board management and operations to better meet the standards of transparency and accountability the faculty of the University expect.

1. The Board should have clear, publicly documented procedures for all of its meetings and for the conduct of Board business. These procedures should include: criteria for the Board to decide which business is to be done in open meetings and which business is to be done in closed meetings, and standards for documenting and providing minutes for all meetings.
2. All Board actions are taken by resolutions of the Board. In all cases, including when such resolutions are discussed *in camera* or in closed meetings, the eventual resolutions and decisions should be published, along with the accompanying vote. This allows both for transparency and for necessary confidentiality.
3. All committees of the Board should be publicly identified. This includes publishing the mandates of committees, the membership of committees, powers the Board has granted to these committees, and any time limits for these committees.
4. There should be clear, published protocols for communications by University members/constituencies with the Board and clear standards for responses. Currently, all formal communications go through the Board Secretariat; response rates and character are variable and unpredictable.
5. The Board should set higher standards for its business communications. Communications through the Board Secretariat appear to be conducted in too casual a manner, allowing for the avoidance of response documentation or establishment of commitments through correspondence. This lack of formality risks misunderstandings or even misrepresentations.
6. The Board should engage an external expert to review the operations of the Board Secretariat.

**II. Better procedures and documentation around the Board’s Code of Conduct should be developed, published, and followed.**

The University Counsel is responsible for assisting the Board with management of its Code of Conduct, which includes management of conflict of interest. Problems with the existing provisions abound: written procedures and protocols are inadequate, reliance is placed on the “oral knowledge” of the University Counsel for parties who raise concerns about such matters. There should be standards set for responses from the University Counsel to queries about procedures related to the Board’s Code of Conduct. The Faculty Association has experienced improper handling of questions around conflicts of interest for Board members. Concerns raised are unanswered, with apparently no procedures in place for answers.

### **III. Procedures for Board members' communications need to be established.**

Board members should each be provided with a UBC email address for the conduct of all Board business. Communications need to be properly archived.

### **IV. Board Orientation and Education.**

1. Board members must be provided with a thorough orientation to the governance of the University, University culture and norms, and to the University's academic mission. In particular, Board members should understand the roles of the Board and Senates in the University, understand the relationship between the Board and the Senates and the Administration, and understand Board members' duties and obligations, in relation to academic freedom, for example.
2. **The Board should develop an education program for Board members to provide improved opportunities for Board members to learn about the central roles that faculty members play in the university.** While Board members are not involved in the Senates or in the affairs of individual Faculties or Departments, it would be beneficial for Board members to understand better how governance works in these parts of the University.
3. **The Board's orientation program should include a well-developed section on academic freedom and the role that tenure plays to support this fundamental right of faculty members.** The Board's limited understanding of academic freedom continues to be a significant concern for the Faculty Association.
4. The Board should engage an outside expert to rewrite and expand the Board Manual. The Manual that was supplied to us appears to be a collection of miscellaneous facts and introductory material about the University, and an outline of basic structures, rather than an effective tool for administrative process and governance. Moreover, none of the links in it function.

### **V. Conflict of Interest and the Board's Code of Conduct.**

From our experiences over the past eight months, we believe there is an enormous disparity between the Board's understanding of "conflict of interest" and that of the faculty. While we suspect that Board understands how business dealings of Board members may put them in conflict for some business decisions made by the Board, we do not believe that the Board has properly recognized how conflicts of interest arise when Board members have multiple roles in the University.

For example, a Board member may wish to support the Faculty from which they graduated and so make donations to that Faculty, sit on that Faculty's Advisory Board, and engage directly with its Dean. All of these activities, while well intentioned, mean such a Board member, and the Board itself, may be faced with managing this conflict of interest when the Board is making decisions about this Faculty. We have seen no records in which such conflicts are declared in Board

meetings. Moreover, such a relationship between a Board member and a Dean has the potential to disrupt the natural organizational structure of the University – a Dean gets to directly discuss issues with a Board member when the natural structure of the University would have the Dean work through the President and Provost to have such discussions with the Board, and vice versa.

Currently, the Board’s Code of Conduct does not discuss explicitly such conflicts of interest and provides no guidance on how the Board, and the Board members, should manage them. One is left with the impression that the Board does not view these intra-university relationships as problematic. We would suggest that this has contributed to the current crisis.

We make the following recommendations to the Board to improve its management of conflict of interest and the Code of Conduct of Board members.

1. **The Code of Conduct should be updated to explicitly deal with conflict of interest situations that arise when Board members are engaged with the University through multiple roles.** The Board should consider whether there are some conflicts that would be so difficult to manage that they should be prohibited. We would suggest that Board members should not sit on Faculty advisory boards, for example. The updated Code should include requirements for the Board members to declare a conflict at Board meetings in which that conflict has potential to be of concern.
  
2. **The Board should establish enforcement and complaint mechanisms for the Code of Conduct.** Currently there are no procedures for a party to bring forward a complaint about a Board member and invoke a process involving natural justice around conflict or conduct issues. Indeed, the Conflict of Interest Administrator established by this Code has explained to the Faculty Association that he does not have any power to investigate such complaints.

## **VI. The Roles of the Faculty in the University.**

UBC’s faculty members participate in the governance of the University in three formal ways: (1) faculty members in the Senates provide core guidance and input into the academic governance of UBC, (2) faculty members on the Board of Governors bring a faculty perspective to the management of the University’s business affairs, and (3) through the traditional collegial governance model used in our Faculties to make core decisions related to the academic mission and business of the Faculties. All of these roles are encoded in the *University Act* and reinforced by our Collective Agreement.

It is important that Board members appreciate the distinctive role faculty members play in the University. Unlike most corporations, governance is a shared responsibility. Faculty have a role in governance quite unlike that of employees inside a business corporation.

The Board should demonstrate a willingness to engage more with faculty to learn about the academic activities of the university, and to better understand matters of concern for faculty.

## VII. Role of Elected Members.

The Board needs to clarify its own understanding of the role of elected members on the Board. Section 3.2 of the Code of Conduct states:

A Governor elected or appointed due to position or familiarity with related or stakeholder interests and concerns is not a delegate or democratic representative of any interest or group. While such a Governor may express and take into account those interests and concerns, nothing in this Code, or in the circumstances of a Governor’s election or appointment, relieves any Governor from the duty to act in the best interests of the University and with a view to advancing its welfare.

This is inconsistent with the Board’s public statements that the elected faculty members on the Board have, simply put, a “representative role”.

## VIII. Strengthening Bicameral Governance.

While the Board of Governors and the Senates have their own domains of responsibility, they must also work in concert to ensure that the University is able to carry out its academic mission to the fullest. The interactions between the Board and the Senates could be strengthened.

As well, given the extensive non-academic operations of the University, including its property development activities, it is easy for the academic mission of the University to lose its primary place as the key responsibility of the Board.

1. **The Board should establish with the Senates a joint committee to ensure the strongest possible communications between the Board and the Senates on the governance of the University.** This committee should meet no less than twice per year. The President should chair this committee.
2. The Board’s reviews of all senior academic administrators should include extensive consultation with the Senates. All members of the senior administration play roles in support of the academic mission of the University, and so any assessment of their performance and effectiveness, particularly with respect to their responsibilities relative to the academic mission, needs to include input from the Senates, who are the competent bodies to make such assessments.
3. The Board should not initiate any process that could lead to the removal or resignation of the President of the University without consulting with the Senates.

## IX. Managing the President.

The faculty recognize that there will be confidential matters related to the Board’s management of the President. However, we also believe that it is in the best interests of the University for the Board to recognize that the entire University community has a significant stake in the success of the presidency, and so the Board’s responsibility with respect to the presidency is a great one.

1. Any actions taken by the Board with respect to a presidential resignation should be done through resolutions of the Board. Whether or not such resolutions are passed in closed meetings, the records of the resolutions and the votes on them should be a matter of public record. The Board should provide these to the University community. We see no breach of confidentiality in making such resolutions public.
2. The Board should establish clear procedures for the management and review of the President. Currently oversight of the President is one of the responsibilities of the Executive Committee, but the President is an integral member of the Executive Committee. The Board should reconsider this arrangement since there should be no appearance of confusion or conflict of interest connected to the management of the President.
3. **The Board should respect the organizational structure of the University and insist that the members of the University Administration do likewise. In particular, individual contacts between Board members and administrators other than the President should be limited to those directly sanctioned by the President.**

**X. Nominations for Membership on the Board of Governors.**

While the composition of the Board is in the purview of the Provincial Government, the Board is able to nominate individuals to the Provincial Board Resourcing and Development Office (SRDO) for consideration for appointment to the Board

The Board should initiate a process that engages the University community to identify potential nominees for membership on the Board of Governors.

Respectfully submitted to the UBC Board of Governors on 12 April 2016.



Mark Mac Lean, President  
On behalf of the UBC Faculty Association Executive Committee