

28 January 2016

Dear Colleagues,

It has been a while since the Faculty Association last communicated with members about the aftermath of the resignation of Dr. Arvind Gupta. Since the Board of Governors' refusal last fall to provide a full explanation as to how the University came to lose its President, the Faculty Association has engaged in a search for information to attempt to piece together the events that led to Dr. Gupta's departure. Our goal has been to determine if there was due process leading up to the Board accepting Dr. Gupta's resignation. Dr. Gupta has now publicly stated that a formal review was never done.

Information that has come out from freedom of information requests, as well as Wednesday's leak of documents, has justified our concern that the Board of Governors had acted via secret, in camera processes that do not meet the standards of best practices for public bodies in British Columbia. Worse, it is becoming apparent that such a lack of public accountability is the normal mode of operation for the UBC Board of Governors, and we are concerned that the actions of the Board may expose the University to charges of contravention of the University Act and provincial privacy and access to information laws.

Soon after we became aware of Dr. Gupta's resignation, the Faculty Association made a number of freedom of information requests to the University of British Columbia. We sought information about the following matters:

1. the Board Manual that is to be issued to all members of the Board;
2. a list of all committees of the Board, including Standing Committees, Ad Hoc Committees, and Special Committees, from January 1, 2013 to present;
3. the dates these committees were created, including copies of the motions that created them;
4. the mandate, terms of reference, and purpose of these committees;
5. the membership of these committees;
6. the dates of any meetings of these committees, and any motions that arose from the work of these committees;
7. all available minutes of the Executive and Governance Committees since January 1, 2012.

The University gave partial responses to these requests on December 18, 2015, and January 22, 2016, and the Office of the University Counsel continues to work to provide a full response.

We made these particular requests because we were looking for details of the process by which Dr. Gupta had been reviewed by the Board before the Board accepted his resignation on August 7, 2015. We were concerned that there was a significant variance from the usual process followed at UBC for the review of the President. The expected process is outlined in Dr. Gupta's contract, and is broadly in keeping with the guidelines laid down by the Province of British Columbia's Board Resourcing and Development Office. This body lies within the Premier's Office, and has a "mandate to bring professional processes to the area of director appointment and corporate governance in the public sector." The BRDO establishes guidelines for best practices in matters of governance and disclosure. These guidelines allow us to compare UBC practices to best practices, and to the expectations the government sets for public boards.

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The Board is mandated by the Provincial Government to respect these guidelines, and every member of the Board has signed the formal mandate letter that specifies this obligation.

It is now clear from the documents and from Professor Gupta's public statement that no review was ever conducted. Rather, Professor Gupta's performance seems to have been evaluated personally by John Montalbano, together with a few Board members, including Greg Peet, Lindsay Gordon, and Alice Laberge. The formal committees of the Board appear to have been bypassed, and it is not clear whether the Board as a whole was ever apprised of the process, most of which seems to have occurred via undocumented and unreported meetings. Furthermore, it is unclear whether Dr. Gupta himself was aware that the series of meetings to which he was summoned constituted a performance review. According to his own statements, he was never presented with any actual evidence of the claims that were made about his performance. It is perhaps noteworthy that no elected member of the Board appears to have been involved in the process.

Our FOI requests asked for a list of all Board committees, including Ad Hoc and Special Committees, and for the dates of the meetings and membership of these committees. Information we received indicates that neither the Board Executive Committee nor the Governance Committee met in July or August prior to the resignation of Dr. Gupta as President.

We note that the response to our FOI request did not list the May 18<sup>th</sup> meeting of the Executive Committee we know happened by virtue of a leaked letter from Mr. Montalbano to Dr. Gupta. Furthermore, we know from the information supplied by UBC that Special Committees beyond the standard committees were struck in secrecy for the purposes of managing Dr. Gupta's resignation – the existence of such committees was withheld in the response to our request, and apparently even withheld from the University Counsel office, which informed us that they could find no record of such committees.

It is alarming to us that the records supplied in response to a formal request under the Access to Information laws should be incomplete, and that University Counsel should be supplied with incomplete records. As such, this would appear to be a violation of the *Freedom of Information and Protection of Privacy Act* (FIPPA).

Further, we now know from the FOI document release this past Monday, that there was a secret, in camera, meeting of the entire Board of Governors held on the morning of August 7, 2015, at the law offices of Harris and Co. LLP in downtown Vancouver. It is extraordinary for such a meeting to have taken place at the law offices of one of the University's external legal counsels rather than at some appropriate place on the Vancouver campus. This meeting is not recorded on the Board website (as of this writing).

We also know, from Dr. Gupta's emails, that Mr. Montalbano arranged a meeting with Dr. Gupta and Mr. Greg Peet, another member of the Board of Governors, for a "confidential discussion, not captured on email." The meeting appears to have taken place on July 29<sup>th</sup>, and it was the last meeting recorded in Dr. Gupta's schedule before his resignation on August 7<sup>th</sup>. The exact nature and content of this meeting is not in the records released, even in redacted form. It seems certain to us that this meeting precipitated Dr. Gupta's resignation, and yet there appears to be no record of it and it is not at all clear how it was reported to the Board. We are concerned that any such meeting with such a strong outcome could

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happen without any record – indeed, this appears to have been the intention of Messrs. Montalbano and Peet. This illustrates a concern about how much UBC business is conducted in such a manner and hence not captured by FOI requests.

What remains unknown about Board procedures is, we think, significant in the matter of Dr. Gupta's resignation. Board procedures, more generally, appear not to be documented. Instead, they appear to be maintained as some form of "oral knowledge" managed by either the Board Secretary or the University Counsel, depending on the matter. This is at variance with best practices, and certainly inconsistent with a notion of open and transparent university governance.

Our request for a copy of the Board Manual is a case in point. Our request was made on September 27, 2015 and a copy of the Manual was sent to us on December 18, 2015. No public copy of this Manual exists. According to provincial "best practices" guidelines, the Manual "should include the board charter; committee terms of reference; the directors' Charter of Expectations; the Code of Conduct and Ethics; and the organization's bylaws, operational policies and relevant legislation."

However, the document we received as the Board Manual is incomplete. Much of the document simply references the Board website by way of a number of (non-functioning) hyperlinks. The Manual has no details about Board practices or governance procedures, which, judging from the documents, appear to be run at the whim of the Chair and Board Secretary, with little or no oversight.

Faculty members (and the public) expect the Board of Governors to operate in the best interests of the university, *and to be seen to be doing so*. The requirement for transparency and accountability is a formal one, spelled out explicitly in the Letter of Mandate.

We will refrain from comment regarding the substance of the material that was leaked by the University Administration, since most of it is of a personal nature. However, we will say this much: It is clear from the comments made by Mr Montalbano in his emails, and from Dr Gupta's response, that a key point of strategic disagreement was Dr. Gupta's plan to refocus the University on the core functions of research and teaching, and the disappointment of some "key stakeholders," notably the Deans and senior executives, with this plan. We are deeply concerned by the evidence that a culture exists in UBC whereby the Chair of the Board is personally involved with managing university personnel and their concerns, and whereby back-channels exist between the Board and the University which bypass formal governance structures. In conclusion, we raise the following questions.

Are the Board and the Board Secretary in violation of their obligations under FIPPA and their mandate letter in their response to our requests, and in their general practices regarding accountability and transparency and record-keeping?

Are the general operating practices of the Board consistent with Provincial guidelines and any applicable laws?

Were the practices employed in the evaluation of Dr. Arvind Gupta and the so-called leadership transition consistent with Board obligations under their obligations for accountability, respect, integrity, and best practices as specified in their mandate, and any applicable laws?

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Should the present search for a new President continue under the leadership of the current Board of Governors given the questions we have raised? This and the other questions we have raised deserve close attention and response from the University Administration and the government.

Given the events that have unfolded thus far and the information that has been revealed, we believe it is time for an external review of the UBC Board and its practices. Such a review should be an open process that engages fully the faculty, students, staff, and alumni of the University of British Columbia.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Mac Lean', with a long horizontal flourish extending to the right.

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