

# Governance

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CUFA BC Conference  
Neil Gold

Governance is a legal matter

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# Distinctive characteristics of universities

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At all times, a university is

- a community of scholars,
- a learning environment,
- a workplace,
- a living space, and
- a corporation with legal obligations

# Distinctive characteristics of universities

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This leads to a collision of intersecting or parallel processes, including:

- Collegial governance
- Collective bargaining
- Legal regulation
- Corporate management
- University politics

# Distinctive characteristics of universities

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Shared governance through a uni/bi/tricameral system

Faculty members often do not see themselves as “employees” of the University – CAs redefine the relationship to some extent

Faculty unions interest/desire for increased role in governance/management

Faculty members may see themselves and their union as co-governors and/or co-managers of the university

# What is governance?

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“The ultimate role of good governance is to ensure the effectiveness, credibility and viability of the organization.”

Panel on Accountability and Governance in the Voluntary Sector (Broadbent report)

## Governance

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“... the structures and processes by which organizations are directed, controlled and held to account. It encompasses such things as who is in charge, who sets direction, who makes decisions, who monitors progress, and who is accountable for the organization’s performance.”

Board Resourcing and Development Office of the Premier, Province of BC

Goal: An effective, credible and well-run organization

# Principles of Good Governance

Office of the Auditor General of British Columbia

<b>A</b>	<b>Accountability</b>	is the process where organizations and individuals take responsibility for their actions.
<b>L</b>	<b>Leadership</b>	is setting the 'tone at the top' which is critical if an organization is to embrace good governance.
<b>I</b>	<b>Integrity</b>	is acting in a way that is impartial, ethical and not misusing information or resources.
<b>S</b>	<b>Stewardship</b>	is the act of looking after resources on behalf of the public and is demonstrated by maintaining or improving capacity.
<b>T</b>	<b>Transparency</b>	is achieved when decisions and actions are open, meaning stakeholders, the public, and employees have access to full, accurate and clear information on matters.



# What is governance?

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Governance includes:

- the processes and practices to achieve mission
- the structures and procedures for decision-making, accountability, control/oversight and codes of conduct
- due diligence to ensure sustainable operation in accord with mandate, goals and objectives

# Uni/bi/tricameral governance

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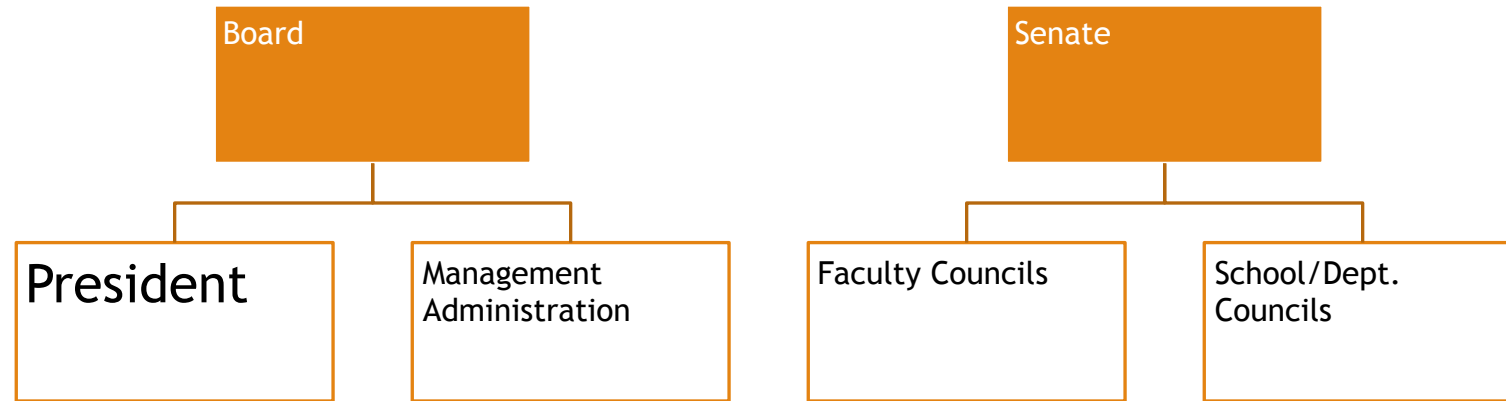
Shared self-governance established by legislation with different roles/authorities for each body or component:

- senate – majority of academic staff who are experts in academic matters
- board – majority of non-academics who have a variety of key capabilities suited to the fiscal and community needs of the university
- council – may replace senate in some jurisdictions

Some differences in some jurisdictions

# Bicameral governance is a form of shared governance

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Enabling Statute (or Charter) – e.g., University Act, RSBC 1996, c 468

University board and senate policies

Other Legislation

- Labour Relations Code, RSBC 1996, c 244
- Employment Standards Act, RSBC, c 113
- Public Sector Employers Act, RSBC 1996, c 384
- Human Rights Code, RSBC 1996, c 210

# Governance requirements are set out in:

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Government Regulation

Case law – courts, labour boards, arbitrations

Requirements of Third Parties – *e.g.*, funders NSERC, SSHRC, CIHR, CFI, etc.

Norms, Practices and Culture

Strategic Plan (Board)

Academic Plan (Senate)

# *University Act BC RSBC 1996*

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“The management, administration and control of the property, revenue, business and affairs of the university are vested in the board.”

c 468, s 27(1)

“The members of the board of a university must act in the best interests of the university.”

c 468, s 19.1

# *University Act BC* RSBC 1996

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“The academic governance of the university is vested in the senate.”

c 468, s 37(1)

# *University Act BC* RSBC 1996

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Some matters are for both senate and board

c 468, ss. 27 and 37



# *University Act BC* RSBC 1996

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The president

c 468, s. 59

# *University Act BC* RSBC 1996

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The board membership is set out in s.19 (2) and includes 21 persons:

chancellor,

president,

3 faculty members,

3 students and 2 employees and

11 appointees of the LG-in-C

# Conflict of interest

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Circumstances where a person's impartiality may be or is likely to be undermined due to a clash between self-interest and. professional or public interest. <http://www.businessdictionary.com>

“A conflict between the private interests and the official or professional responsibility of a person in a position of trust.” <http://www.merriam-webster.com>

A conflict of interest arises when a person exercises an power, duty or function that provides an opportunity to *further his or her private interests* or those of his or her relatives or friends or to improperly further another person's private interests. Based on s. 4 *Conflict of Interest Act*, Canada

# *University Act* -- ineligible

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23 (1) The following persons are not eligible to be or to remain members of the board:

(g) a person who is an employee of the university and who is a voting member of the executive body of, or an officer of, an academic or non-academic staff association of the university who has the responsibility, or joint responsibility with others, to

(i) negotiate with the board, on behalf of the academic or non-academic staff association of that university, the terms and conditions of service of members of that association, or

(ii) adjudicate disputes regarding members of the academic or non-academic staff association of that university.

# *University Act BC* RSBC 1996

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The Vancouver senate membership is set out in s. 35.1 2) and includes :

- chancellor,
- president,
- deans,
- chief librarian,
- director continuing education,
- faculty members equal to 2x above list
- students equal to above list
- affiliated colleges one rep and
- others as determined by senate so long as ratio of students:faculty maintained

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Definitions, *Labour Relations Code*, RSBC 1996, c 244, s 1

"employee" means a person employed by an employer, and includes a dependent contractor, but does not include a person who, in the board's opinion, performs the functions of a manager or superintendent, or is employed in a confidential capacity in matters relating to labour relations or personnel

"employer" means a person who employs one or more employees or uses the services of one or more dependent contractors and includes an employers' organization

## *Labour Relations Code* RSBC 1996, c 244, s 1

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1 (1) In this Code:

"trade union" means a local or Provincial organization or association of employees, or a local or Provincial branch of a national or international organization or association of employees in British Columbia, that has as one of its purposes the regulation in British Columbia of relations between employers and employees through collective bargaining, and includes an association or council of trade unions, but not an organization or association of employees that is dominated or influenced by an employer;

# *Labour Relations Code*

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1 (1) In this Code:

"collective agreement" means a written agreement between an employer, or an employers' organization authorized by the employer, and a trade union, providing for rates of pay, hours of work or other conditions of employment, which may include compensation to a dependent contractor for furnishing his or her own tools, vehicles, equipment, machinery, material or any other thing.



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“Management rights or initiatives which existed prior to the advent of a collective agreement remain unfettered except to the extent that the collective agreement provided otherwise.”

Brown & Beatty, Canadian Labour Arbitration (4th ed), at 1:2000

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The rule must:

1. not be inconsistent with the collective agreement
2. not be unreasonable
3. be clear and unequivocal
4. be brought to the attention of the employee affected before the employer can act on it
5. Be brought to the attention of an employee that a breach of the rule could result in discharge
6. be consistently enforced by the employer from the time it is introduced

KVP Co. Ltd. and Lumber & Sawmill Workers' Union, Local 2537 (1965), 16 LAC 73

# Cases on governance

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*Kulchyski v Trent University* (2001), 204 DLR (4<sup>th</sup>) 364

Role of Board and Senate

*UBCFA v UBC* 2007 BCCA 201 (“Rucker”)

Role of President

*UBCFA v UBC* 2010 BCCA 189 (“McPhillips”)

Role of Board and Senate

# CAUT

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“The way ahead is to [...] see collective bargaining as the principal way to ensure “collegial governance” – to concentrate efforts on using collective bargaining as creatively and aggressively as possible to secure the proper academic staff role in academic decision making.”

CAUT, 2004



# General Duties of Governors

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Each member of a governance body owes a duty of utmost good faith; s/he is a fiduciary

Members do not act on behalf of appointing or electing body

Every member must exercise own independent judgment of what is in the best interests of the institution

In doing so s/he must inform his/herself to the best of her own ability, not necessarily as an expert, unless s/he is an expert

Must avoid conflicts of interest

Should avoid conflicts of commitment – take on what's manageable

Must act in the best interests of the institution

# Individuals as Governors and Governance

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“Directors are dilemma management specialists...

[they] must inquire, without judgment, into the facts of matters, as well as the emotions, perceptions and politics.

[they] must take advice, explore with peers and use thinking tools and frameworks to assess the situation from all angles...”

Andrew Donovan

“Governors/Senators” have no power or authority individually

# Standard of Care of Members

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The subjective-personal standard:

Exercise degree of skill and prudence that may reasonably be expected from a person with your knowledge and experience

Devote sufficient time and skill to exercise informed judgment



# How do the Board and Senate and operate?

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As a full body

Through the work of committees whose terms of reference are set by the body to whom they are responsible

By delegating certain responsibilities that it may delegate

Decisions are occasionally delegable

In accordance with authority granted by legislation

# Governance is a legal matter

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BCCUFA Conference  
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