

Discussion Paper for Queen's University Faculty Association on Responsibility for Academic Programs

I Background

The Queen's University Faculty Association ("QUFA") has asked me to produce a discussion paper on governance responsibilities at Queen's University as they affect certain aspects of academic offerings: programs, types, concentrations and courses. The precipitating cause was a decision taken by the Faculty of Arts and Science in March 2009 to suspend certain programs for the Spring 2009 registration and, more particularly, year 2 admission to undergraduate degree programs, types and concentrations with fewer than 25 students enrolled over all four years of the particular degree path. This resulted in the suspension of around 60 types, concentrations and programs out of about 75 that came within the identified categories. While the only immediate action was a suspension, in a number of instances, the recommendations were also worded in terms of a phasing out.

The Dean took these decisions following consultations with the Vice-Principal (Academic), Department Heads, Departmental Committees, and Undergraduate Chairs and on the basis of Departmental responses to a request for information. The justification for the actions was not simply a concern about low enrolments but a response to substantial budget shortfalls that confronted the University. The Dean based his authority to act in this way, and without reference to the Senate or the Board of Trustees, on his managerial prerogatives.

II Issues

The principal issue arising from this course of events was whether the Dean and Associate Dean acted appropriately in not involving the Senate (and, in particular, the Senate Committee on Academic Development) in this decision-making process. More generally, the matter raises questions about the allocation of jurisdiction and authority at Queen's on matters in which issues of financial management (particularly in times of budgetary constraint) become merged with questions about the viability and continuation of various elements of the academic program.

III Summary of Conclusions

1. The March 2009 decision of the Faculty of Arts and Science to suspend for one year enrolment in certain academic programs, types and concentrations (with a view to phasing out some of them) should not have been taken without reference to Senate. The Senate's authority in relation to such matters is guaranteed by the 1982 Board of Trustees' Policy, Functions of the Senate.
2. The Principal should, in consultation with and with the approval of Senate (and, if necessary, the Board of Trustees), develop a protocol on how the Senate's rights in matters such as this are to be respected in the future.

3. Given the extent to which this incident has revealed a problem as among the Senate, the Board of Trustees, and the Executive Officers of the University regarding their respective responsibilities over fiscal and academic matters, consideration should also be given to whether this issue and similar issues of potentially overlapping authority need to be dealt with in the Functions of the Senate Policy.

IV Regulatory Background

Royal Charter

The Queen's *Royal Charter* of 1841 (as amended from time to time by the Parliament of Canada) remains the starting point for any evaluation of the respective roles of the Board of Trustees, the Senate, and the Principal (as Chief Executive Officer of the Corporation) with respect to academic matters including the continuation of and enrolment in academic programs and their subsets.

Board of Trustees

Under section 21 of the *Charter*, the Board of Trustees is given authority over the appointment of the Principal, Professors, other academic ranks, and other officers of the Corporation. Section 27 then goes on to provide the Board of Trustees with

...power and authority to frame and make Statutes, Rules and Ordinances touching and concerning the good government of [Queen's], the performance of Divine Service therein, the Studies, Lectures, Exercises, and all matters regarding the same; the number, residence and duties of the Professors thereof, the management of the revenues and property of [Queen's], the Salaries, Stipends, provision and emoluments of, and for the Professors, Officers and Servants thereof, the number and duties of such Officers and Servants, and also touching and concerning any other matter or thing which to them shall be necessary for the well being and advancement of the said College, and also from time to time by any new Statutes, rules or ordinances to revoke, renew, augment or alter, all, every, or any of the said Statutes, rules and ordinances as to them shall seem meet and expedient.

Flowing from the Board of Trustees' authority over the appointment of the Principal, academic staff and Officers of Queen's is section 24. It provides that the Board of Trustees has jurisdiction over complaints respecting the conduct of those listed with the authority to impose various sanctions up to removal on a finding of "impropriety."

Senate

Section 38 of the *Royal Charter* specifies that there shall be "a court" called "The College Senate". Its responsibilities are

...the exercise of academical superintendence and discipline over the Students, and all other persons resident within [Queen's], and with such powers for maintaining order and enforcing obedience to the statutes, Rules and Ordinances of [Queen's], as to the said Board may seem meet and necessary.

Section 41 then elaborates on or adds to this authority by constituting the Senate as the body with the power and the authority to confer degrees.

Section 43, a provision added in 1882 (S.C. 1882, c. 123, s. 7), then goes on to provide Senate with the authority

...to pass by-laws touching on any matter or thing pertaining to the conditions on which degrees in the several Arts and Faculties may be conferred, whether the said degrees be such as are gained in course, or such as are honorary, or whether they be conferred on matriculants of [Queen's] or other persons, but any such by-laws shall be reported at the first meeting of the Board of Trustees after being passed, and shall cease to be in force if disapproved by the Board.

Links between the Board of Trustees and the Senate

Aside from the power of disallowance that section 43 confers on the Board of Trustees, there are two other provisions in the *Royal Charter* that are relevant to the relationship between the Board of Trustees and the Senate. These provisions are in fact identical. Section 28, dating in its current form from 1912 (S.C. 1912, c. 138, s. 16), states:

The Senate as at present constituted is hereby continued subject to the provisions of this Act, and the Board of Trustees, acting after consultation with the Senate, may pass any enactments in regard to the Senate which the Board thinks proper.

Section 44, also dating from 1912, then repeats this provision. The explanation for the repetition lies in the fact that the first provision appears in that part of the *Royal Charter* that establishes and confers powers on the Board of Trustees, while section 44 is replicated in the part relating to the Senate.

The Principal

Aside from providing for the appointment of a Principal and the process for making complaints against the Principal, the *Royal Charter* does not speak to the duties and responsibilities of the Principal, save that, in section 22, it authorizes the Board of Trustees to appoint a Vice-Principal to act on behalf of the Principal in her or his absence. However, by virtue of section 18, the Principal is an *ex officio* member of the Board of Trustees, and, by virtue of sections 38 and 40, a member of the Senate, along with all the Professors ("for ever": section 40).

Statutes, Rules and Ordinances

From time to time, the Board of Trustees acting by virtue of the authority conferred on it by sections 27 and particularly 28 and 44 of the *Royal Charter* have defined the functions of Senate. The current version of the Functions of the Senate dates from 1982. Of central importance to this exercise are the following:

1. To determine all matters of an academic character which affect the University as a whole, and to be concerned with all matters which affect the welfare of the University.
2. To participate in planning the development of the University.
3. To establish, subject to the ratification of the Board of Trustees, any faculty, school, institute, department, or chair.
4. To approve, on the recommendations of the respective Faculty Boards and Schools and the Queen's Theological College, all programs of study leading to a degree, diploma, or certificate, together with the conditions for admission thereto and the qualifications and standards required.
- ...
9. To review the main elements of the approved operating budget of the University so as to advise the Principal on its consistency with the general needs and interests of the University and on any considerations for future budgeting.
10. To advise the Board of Trustees through the Principal as to what buildings and other capital facilities are required to meet the needs of the University and in what order of priority.
- ...
15. To appoint such committees as it may deem desirable and to specify, consistently with the functions enumerated above, the terms of reference of any such committees.

Of these, there are equivalents to much the same effect in the Functions of the Senate approved by the Board of Trustees at the pivotal meeting in 1913, that followed from the 1912 amendments to the *Royal Charter*. (The other significant amendments to the role of the Senate occurred in 1968.) At that same 1913 meeting, the Board of Trustees approved the creation of Faculty Boards, of which the Principal was an *ex officio* member. The relevant functions of the original Faculty Boards were as follows:

To recommend to the Senate courses of study leading to a degree, and the conditions of admission;

To decide upon applications for admission and change of course, subject to regulations of Senate;

...

To control registration, and determine the amount of fees and manner of payment, subject to regulations of Senate;

...

To make such recommendations to the Senate as may be deemed expedient for promoting the efficiency of the University;

...

To appoint such sessional assistants, fellows, tutors and demonstrators as shall be needed to give instruction in the subjects taught by the Faculty.

Though there have been changes over the years, from those cited, the only dimensions that have disappeared are the setting of fees and the appointment of sessionals, fellows, tutors and demonstrators.

Relying upon the power conferred by current Function 15 of the Functions of the Senate, the Senate created the Senate Committee on Academic Development ("SCAD"). Its current responsibilities include:

To formulate and recommend to the Senate principles, policies, and priorities for the academic development of the University;

...

To advise the Senate on proposals from faculties, schools, centres, institutes, and the Queen's Theological College for changes in the conditions of admission to, or in the standards and qualifications required for completion of, existing programs of study;

...

To advise the Senate on the proposed annual enrolment plan developed by the University Registrar.

The Evolution of Executive Authority: The Powers of the Principal, Vice-Principals, Deans, Department Heads, and Other Officers of the University

Save as constrained by the *Royal Charter* and the various Statutes, Rules and Ordinances outlined above, the University's "executive branch" plays a vital role in not only the day to day functioning of the University but also in the development of policies for consideration by the Board of Trustees and the Senate, including the various subcommittees of those two bodies.

Though it is now in some respects out of date, Lederman and Watts, *The Governance of Queen's University*, A Principal's Discussion Paper (1991) remains an authoritative source as to the evolution and incidents of executive power within Queen's. The following extracts from that Discussion Paper are instructive:

The Principal is the chief academic and executive officer of the University. As such the Principal is accountable to the Board of Trustees for the management of the University and to the Senate for the implementation of academic policies... . [T]he Principal serves as a nexus between the two senior governing bodies... . [11]

The Principal plays a major role in policy-making by forwarding proposals for consideration by the Senate and the Board of Trustees. A particularly important part of this is the formulation on a regular basis of plans for the academic and physical development of the University which are reviewed by the Senate Committee on Academic Development, the Senate itself and then the Board of Trustees. [11]

As the chief executive officer of the University, the Principal is also ultimately responsible for the overall internal administration, including budgeting and staffing within the University. ... But, as the enrolment at Queen's began to expand rapidly in the early 1960s, Principal Corry undertook a radical administrative decentralization, delegating budgeting, staffing and administrative responsibilities for the departments in their Faculties to the Deans. The Deans report to the Principal who continues to be responsible for the overall budgeting and staffing. [12]

In the departmentalized Faculties, the Deans are responsible for...reviewing departmental budget requests and recommending budget allocations to the Principal, and for administering Faculty budgets. ... All the Deans play a prominent role in the formulation of proposals for consideration by their Faculty Boards, and in a departmentalized Faculty, the Dean chairs the Committee of Departments (composed of the Department Heads). [13]

Department Heads are responsible for organizing the teaching program and teaching duties within their departments; ... for administering the departmental budget. [14]

Role of the Queen's University Faculty Association ("QUFA")

In their 1991 report on governance at Queen's, Watts and Lederman make reference (at page 14) to the role of QUFA in representing

...the interests of academic staff and professional librarians in relation to conditions of employment, salaries and benefits.

That, of course, was written prior to the advent of certification and a collective agreement between the University and QUFA. However, albeit within a very different legal framework, "conditions of employment, salaries and benefits" remain the key components of the Collective Agreement and the daily interactions between QUFA and the University. The particular matter that precipitated this discussion paper is not directly the concern of QUFA in the sense that its implementation required the consent of QUFA. It was not directly about "conditions of employment, salaries and benefits."

Nonetheless, it is not too much further down the path of actions such as this that QUFA does acquire rights under the Collective Agreement. Article 38 of the Collective Agreement contains an elaborate process for what is to occur in situations where the University is contemplating layoffs for reasons of financial exigency. Article 39 then deals with the Closure of an Academic Program or Unit for Academic Reasons. For these purposes, Academic Program is defined in Article 2, the definition provision, as

A related set of academic activities, normally leading to a degree, which may be within an academic unit or supported by more than one (1) academic unit.

Thereafter, Unit is defined as

A Faculty, School or Department headed by a Dean, Head or Chair, or the University Library or the University Archives.

In Article 39 itself, academic reasons include issues of enrolment, as well as academic quality and relevance.

The trigger for the process specified in Article 39 is a "non-trivial risk of closure" that will result in the layoff or non-voluntary redeployment of a member or members of the bargaining unit. Pulling that trigger is, in general, the initial responsibility of the Principal by way of a request to Senate (with supporting data), though Senate itself has the ability to start the process. Everything else flows from that, including the possible creation of an Academic Review Committee (including representatives of the Senate, the Board of Trustees, and QUFA), a vote in Senate on a report from that Committee, and, in the event of a Senate decision in favour of closure, a report to the Board of Trustees where QUFA has participatory rights.

There is no need at this time to explore further the details of the provisions of Article 39. However, for present purposes, they do underscore one point in particular: the extent to which the Collective Agreement recognizes and preserves the centrality of the Queen's Senate in significant decisions affecting the academic mission of the University.

V The Contending Points of View

My best sense of the justifications advanced by the University in defence of not taking the relevant decisions to Senate is that they are an amalgam of two not necessarily interdependent claims:

1. That this is a matter over which the Board of Trustees, not the Senate has jurisdiction or authority, and that the decisions were taken properly by the Dean in accordance with delegated authority that flowed to him from the Board of Trustees through his appointment by the Principal as well as the powers conferred on Faculty Boards.
2. That the Dean took these decisions by virtue of his day-to-day executive or administrative authority as the officer of the University responsible for the overall management of the Faculty and did not require the approval or consent of the Board of Trustees or the Senate, irrespective of where the subject matter responsibility vested formally.

In contrast, the various questions raised about the actions of the Dean in suspending enrolment in programs, types, and concentrations are based on a claim that these are matters properly within at least the initial purview of Senate, and, within Senate, of SCAD. In other words, these steps should not have been taken without the approval of Senate, on the basis of a report and recommendations from SCAD.

VI Analysis

General Subject Matter Jurisdiction: Board of Trustees or Senate?

One possible claim is that Senate has no role in all of this on the basis that, as opposed to other bicameral forms of governance in most Ontario universities, the position under the Queen's *Royal Charter* is that the formal, legal powers of Senate are quite limited and do not extend to responsibility for the overall shape and quality of academic programs.

This argument is based in part on section 27 of the original 1841 *Royal Charter* and its broad conferral of power on the Board of Trustees, and, in particular, the Board's authority over "the Studies, Lectures, Exercises, and all matters respecting the same" as well as "any other matter or thing which to them shall seem necessary for the well being and advancement of [Queen's]". It is also based on what in today's terms might seem a very limited conferral of authority on the Senate. It is a "court" charged with the "academical superintendence and discipline over the Students."

Nonetheless, there are strong reasons for rejecting any argument on this basis for the proposition that the Senate lacks general authority over the academic enterprise of the University.

1. It is probably unwise to view the use of the word “court” through the lens of contemporary conceptions of what that word means. While “discipline” evokes court-like processes in the sense of the regular courts of the land, “superintendence” bespeaks a broader jurisdiction over the whole of the academic program as in the manner of visitors to both universities and penitentiaries whose jurisdiction extended beyond hearing individual complaints to a more general supervision of the enterprise.
2. Whatever may have been the position under the original 1841 *Royal Charter*, the provisions of section 43, as inserted in 1882, clearly indicate jurisdictional capacities with respect to Senate authority over the academic components of the operations of the University. The Senate (subject to a power of disallowance exercised by the Board of Trustees) has the authority to pass by-laws “touching on any matter or thing pertaining to the conditions on which degrees may be conferred.”
3. Moreover, even if section 43 is not adequate to clothe the Senate with at least joint jurisdiction over the academic side of the University’s operations, at least from the time of the enactment of sections 28 and 44 of the *Royal Charter* in 1912, the Board of Trustees was given a wide authority to delegate responsibilities to the Senate. On its face, that power of delegation clearly extended to the academic side of the University’s operations. It was also the case that any such delegation continued to have effect until formally revoked; it was not one that was subject to override in the case of particular exercises of the power conferred. This is made clear by the language of section 27, containing the general authority of the Board of Trustees to enact subordinate legislation (Statutes, rules or ordinances). They remain binding until formally revoked, renewed, augmented or altered.

The provisions of sections 28 and 44 also have to be seen against the background of contemporary events in the history of Ontario universities. They were enacted in the wake of the 1906 *Report of the Royal Commission on the University of Toronto* (Toronto: Queen’s Printer, 1906), a report that led to the introduction of true bicameralism in Ontario universities. (See the discussion in *Kulchyski v. Trent University* (2001), 204 D.L.R. (4th) 364 (Ont. C.A.) (“*Kulchyski*”).) Sections 28 and 44 of the *Royal Charter* can be seen legitimately as responses to that Report. While not amending the *Royal Charter* to the extent of creating a fully bicameral system that characterizes the statutes of many Ontario universities (including Trent, the subject of the litigation in *Kulchyski*), sections 28 and 44 can clearly be read as conferring authority on the Board of Trustees to take whatever steps in that direction it deemed appropriate or suitable for Queen’s.

Indeed, this view of those provisions is underscored by the fact that, in the very next year, the Board of Trustees took action to confer a wide range of powers over the academic aspects of Queen’s on the Senate. That conferral of power or delegation has never been revoked. Rather, the Board of Trustees has amended it from time to time most commonly

in such a manner as to expand the powers that Senate exercises in this field. The most recent and current operating delegation is the November 1982 Functions of the Senate, relevant extracts from which are set out above.

Accordingly, at the very least, for the Senate to lose the authority conferred by that delegation would require a formal revocation of the delegation. Beyond that, there is also a strong argument that there are certain aspects of Senate's powers in academic matters (derived from sections 38 and 43) that would require legislative amendment by the Parliament of Canada to effect revocation or removal.

In any event, whether derived from the formal delegations or the *Royal Charter* itself, the Senate currently has authority over a range of academic matters. The real question then becomes whether that authority extends to what was at stake here: the suspension of programs, types and concentrations for one year in the Faculty of Arts and Science, a suspension that, in at least some instances, was with a view to the phasing out of some of the affected programs, types and concentrations.

Specific Subject Matter Jurisdiction: The Senate, the Board of Trustees, or the Dean?

For present purposes, I will consider this question simply from the perspective of the 1982 Functions of the Senate. (Should the Board of Trustees choose to formally revoke the authority contained in that delegation, it would then become necessary to consider in greater detail the scope of the authority over academic matters that sections 38 and 43 confer on the Senate.)

In fact, a literal reading of the 1982 Functions of Senate (and, for that matter, its 1913 and 1968 predecessors) makes it clear that the Board of Trustees was delegating very broad authority over academic matters to the Senate. This is nowhere clearer than in the very first function:

To determine all matters of an academic character which affect the University as a whole, and to be concerned with all matters which affect the welfare of the University.

This bespeaks a broad policy making role for Senate in academic matters.

However, the functions go further than that and also address the actual details of the academic life of the University. The Senate's delegated authority extends to "all programs of study", including their admissions requirements and "the qualifications and standards required." There is also a sense in the document that, in so far as issues involving academic programs overlap with the Board of Trustees' responsibilities with respect to the financial operations of the University, the Senate at the very least has a right to be consulted and to make its views known on such matters. This emerges not only from the first very broad function, set out above, but also Functions 2, 3, 9, and 10. Each of these addresses the Senate's role in matters that integrally also implicate the

fiscal operations of, including budgetary constraints on, the University. It is also highly relevant that one of the principal functions of SCAD, a committee established under Function 15, over the years has been responsibility in a very broad sense for recommending enrolments targets and, more generally, the impact of enrolments on the functioning and quality of academic programs. Indeed, as recently as 2000, the *Report of the Enrolment Planning Task Force*, endorsed on March 2, 2000 by Senate, recommended the continuation of Senate (and SCAD's) responsibility for "annual enrolment targets."

Arguments against this position, based on the holding of the Ontario Court of Appeal in *Kulchyski*, do not stand up to close scrutiny. There, the Court ruled (over the vigorous dissent of one of its members) that, even though Trent University had a truly bicameral system of governance, the Senate had no jurisdiction over the closure of two of the University's five colleges. According to the majority of the Court, this was a matter involving management and control over university property, revenues and expenditures, and did not relate to educational policy. As a consequence, the approval of the Senate was not required. However, despite the more formally bicameral nature of Trent University, there are three points that distinguish that case from the present situation:

1. While the sale of university residential colleges might not be an issue of educational policy (though see the strong dissent in *Kulchyski* of Sharpe J.A.), it is simply not plausible to assert that the suspension of programs, types and concentrations does not engage educational policy, even if justified on grounds of budgetary constraint.
2. While it may well be that the *Trent University Act*, S.O. 1962-63, c. 192, establishes a much more formal bicameral system of governance than is the case under the actual provisions of the Queen's *Royal Charter*, attention has to be paid in the case of Queen's to not just the primary legislation, the *Royal Charter*, but also the various delegations of authority made by the Board of Trustees under sections 28 and 44.
3. What is apparent from those delegations of authority is that, at least until such time as they are revoked formally, they derogate from any argument that there is a clear division of functions in the governance of Queen's University between matters of university property, revenues and expenditure, on the one hand, and educational policy, on the other. The delegations clearly recognize that these are not airtight compartments, and that, where there is an overlap between the fiscal needs and policies of the University and the educational mission of the University, Senate has a role to play. In some instances, it may not be an approval role but at least consultation is a necessity.

All of this provides support for the contention that matters such as those under consideration are within the jurisdiction of Senate (and SCAD). Thus, if Senate, through SCAD, was responsible initially for the approval of the affected programs, types and concentrations, any termination should also be subject to approval by Senate. It is not a

step that can be taken administratively or executively. However, it is also the case that even if some or all of the programs, types and concentrations did not require the initial approval of Senate before they could be offered, there will also come a point at which decisions about their continued existence engage the jurisdiction of Senate. Thus, where the collective or overall impact of these actions has dimensions that affect significantly the operations and functioning of a Faculty or Department and have potentially major downstream or future effects, this is clearly a matter of an academic character or one that affects the welfare of the University and on which, by virtue of Function 1, the Senate has an entitlement to at least consultation. Similar arguments can be made directly from Function 3 and the Senate's jurisdiction over "all programs of study."

There is, however, one argument that can be made in support of taking the actions without the involvement of Senate or SCAD. This argument is derived from the executive functions of the office of Dean, and the exigencies of a complex, medium size institution of tertiary education that is constantly having to respond to rapidly changing demographic, fiscal and consumer (student) demand imperatives. To require all issues involving programs, types and concentrations to go to Senate (through SCAD) would make day-to-day administration impossible. Operational changes in matters of detail or administration must be permissible under any sensible conception of what executive power involves in the running of a Faculty. In part, it arises out of the accepted responsibilities of Deans (and also Department Heads) for the administration of the Faculty and Departmental budgets. However, it is an administrative imperative that exists independently of budgetary considerations.

In this particular instance, the argument for this administrative imperative was based, at least in part, on a managerial responsibility over the four key components of the operations of a Faculty: numbers, physical plant, finances and infrastructure. It was also linked to the University determination that, faced with the prospect of the double cohort, much more sophisticated measurement and management tools had to be developed on enrolment and associated issues. This new system, dating from 2002, formed the data base on which the Dean's office was able to assess the situation and propose plans for dealing with it. Basically, the claim in crude terms was that it was a management prerogative, indeed responsibility to make enrolment-justified adjustments to programs, types and concentrations to ward off some of the consequences of severe budgetary constraints. Moreover, to the extent that the changes involved only a one-year suspension of certain programs, types and concentrations, the claim was that it was well within those managerial powers. Indeed, in the course of an interview, the Associate Dean drew a contrast between the actions taken last year to suspend certain programs, types and concentrations for one year only and the second stage of this process, the potential phasing out or dismantling of certain degree paths. For matters such as this, the Associate Dean was adamant that Senate and SCAD had to be involved even though the exercise continued to be in large measure fiscally driven.

This appeal to managerial imperatives does, of course, have intuitive appeal. Queen's' tradition of collegiality (as reflected in a significant role for Senate in matters of academic programs) has only so much purchase in the face of the realities of running a

modern university. However, in this particular instance, at least under the University's current statutes, rules and ordinances, there are reasons to be sceptical about the legitimacy (though not, I should add, on the evidence available to me, the good faith) of this assertion of managerial capacity. Certainly, suspension of programs, types, and concentrations should not necessarily in every instance engage the attention of Senate (and SCAD). Nonetheless, if one adds to the mixture the sheer number of (albeit under-populated) programs, types, and concentrations affected, the impact on the academic ambitions of students, the reality that the Dean had sufficient time to engage in widespread internal (or administrative) consultation, and perhaps, most importantly, the fact that the recommendations were, in some instances, with a view not just to suspension but also phasing out (without at that stage any apparent consideration to the involvement of Senate), it is my view that the actions taken were contrary to the assignment to Senate of responsibility over the academic enterprise of the University.

It is also my view that there is no formal or legal grounding for the assertion of Decanal managerial capacities to be found in the claim that the Dean was acting as the delegate of Faculty Board, a creature of the Board of Trustees and, in such matters, answerable to the Board of Trustees and the Principal. While Faculty Boards undoubtedly owe their existence to a grant of power from the Board of Trustees, the responsibilities or functions of Faculty Boards as specified in the formal instrument of delegation are, in relation to matters affecting the academic dimensions of the University, including admissions and the efficiency of the university, exercised through the Senate.

VII Conclusions

Irrespective of the merits of the particular decisions and, in particular, the issue of responsibility or jurisdiction, what this whole affair demonstrates is the lack of any real consensus as to the respective roles of the Board of Trustees, the Senate, and the Academic Officers of the University with respect to certain matters at the intersections between both fiscal and academic responsibilities, and managerial powers and Senate jurisdiction over certain governance issues.

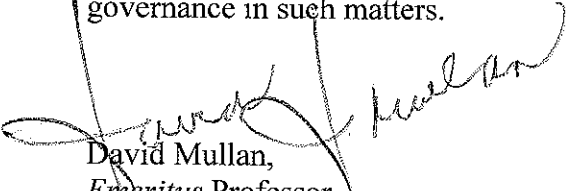
In their 1991 Discussion Paper, The Governance of Queen's University, at page 16, Professor Lederman and former Principal Watts presciently predicted this kind of standoff, and I quote at length:

The system of governance that has served Queen's well in the past may need a conscious and thorough review to adapt it to the changing external and internal conditions and to meet future needs. Moreover, the increasing complexity of the decision-making processes may undermine the confidence of the members of the Queen's community in those processes if the lines of accountability and the opportunities for meaningful participation in important decisions are not reviewed and clarified. Over the years the structure of governance at Queen's has evolved to meet changing circumstances, and the future effectiveness of Queen's will depend upon a continued evolution which ensures a combination of vigorous

academic leadership with collegial processes and professional management directed at achieving common objectives.

These sentiments continue to resonate in today's even more complex world of governance at Queen's, particularly if one takes into account the unionization of faculty, the large growth in the university's managerial complement, and the ever-changing world of the university's relationship with and dependencies on both government and the private sector (both domestic and international).

This is not the occasion, however, to suggest or advocate the creation of a Task Force to review again governance structures at Queen's. However, it is appropriate to recommend that all affected parties work together to develop a protocol with respect to the issues covered by this discussion paper, and, in particular, the processes to be followed in the suspension of academic programs, types and concentrations, especially where they are a potential prelude to discontinuation of certain degree paths (and the potential application of Articles 38 and 39 of the Collective Agreement). At present, these are matters that are within the purview of Senate under the 1982 Functions of the Senate, and it is important, given the prospects for a recurrence of this species of decision, that this be emphasised or underscored by a working protocol that properly respects the role of Senate (and SCAD). Should agreement on a Protocol not be possible without clarification of the respective roles of the Board of Trustees, the Senate, and the Academic or Executive Officers of the University in relation to fiscal and academic matters, it may also be necessary to revisit the 1982 Functions of Senate to clarify the relationship among these three instruments of governance in such matters.



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