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Dr. Cathy Christie,
President,
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Dear Dr. Christie:

Proposed Revisions to Functions of Senate

I. Introduction

On behalf of QUFA, you have asked me to review a Report of the Senate Operations Review Committee ("SORC") presented to the Senate of Queen's University at the meeting of November 25, 2010. That Report recommended a revision of the 1982 functions of Senate as provided for in Appendix A to that Report. In requesting this review, you expressed concern as to whether the proposed revisions were "part of a larger plan to decrease Senate's authority."

More specifically, QUFA has asked me to address the following:

1. Identify any of the proposed changes that could decrease the power and/or authority of Senate granted under the Royal Charter.
2. Provide alternative language for any of the proposed changes that would maintain the power of Senate.
3. Provide answers to questions posed in a document prepared by Mark Jones, QUFA's Political Action and Communications Committee Co-Chair.
4. Identify any other issues not raised by the previous instructions and Mark Jones's document

For these purposes, you provided me with a link to the Jones document, which takes the form of a concordance both comparing the existing 1982 Functions of Senate with the proposed revisions and identifying how in his view these changes might weaken the authority of Senate (Appendix I). This proved extremely helpful in my work.

II Summary of Conclusions and Recommendations

In my view, the proposed revisions, when combined with the creation in April 2010 of the Queen's University Planning Committee ("QUPC"), will result in a significant diminution in the formal powers of Senate. Indeed, to the extent that the proposed revisions contemplate that the QUPC (or possibly some other body) will be the final decision-maker on a wide range of academic matters (with Senate reduced to a subsidiary or recommendatory role), that aspect of the proposed revisions may well be contrary to the provisions of the *Royal Charter*.

Given that SORC in its Report to Senate never provided justification for any of these changes except in the most general way, my primary recommendation is that QUFA endeavour to persuade Senate to remit the matter to SORC for the production of a Supplementary Report in which it identifies the basis for its recommendations both generally and on an item-by-item basis.

Failing this, QUFA may wish to try to secure amendments to the recommended revisions to the Functions of Senate so as to preserve some or all of the existing powers and authorities of Senate. In the body of this report, I identify those portions of the revised Functions that I believe are the most critical, and make recommendations for the kind of amending motions that might be appropriate. However, QUFA should be aware of the possibility that some or all of these motions may well be ruled out of order on the basis that they are not true amendments. That would leave only the possibility of defeating the proposed revisions or parts of them. It is also important to realise that some of the 1982 Functions of Senate may already have been undercut in a practical or operational sense by the terms of reference of the QUPC.

III. Background

For the purposes of this Report, I will not go through the whole history of the powers and functions of the Senate of Queen's University. For this, I refer you to my November 5, 2009, Discussion Paper for Queen's University Faculty Association on Responsibility for Academic Programs. However, it is salutary to recall that section 38 of the original 1841 *Royal Charter* conferred and continues to confer on Senate responsibility for the

...exercise of academical superintendence and discipline over the Students and all other persons resident within

the University. It also is the body with the power and the authority to confer degrees (section 41) and, after 1882, to pass by laws (subject to the approval of the Board of Trustees) as to the conditions on which degrees both earned and honorary may be conferred (section 43, as inserted by S.C. 1882, c. 123, s. 7).

In 2010, the Senate (March 25, 2010) and the Board of Trustees (April 30, 2010) approved the creation of "a joint committee of the University Senate and the Board of

Trustees” named the Queen’s University Planning Committee (Appendix II). This body has two primary roles:

Its first role [I] is to review and comment, including **making recommendations**, on new and proposed plans, including the University Academic Plan, to the Senate and the Board of Trustees [emphasis added].

Its second role [II] is to serve in an advisory capacity for the University’s budget development process. The QUPC will comment on whether the budget recommendations are congruent with the University’s Academic Plan.

These terms of reference then go on to elaborate Roles I and II, as well as provide for the membership of the QUPC. It has nine members. Four are *ex officio*: the Provost and Vice-Principal (Academic) (who chairs the Committee), the Principal and Vice-Chancellor, the Chair of the Board of Trustees (or delegate), and the Chair of the Board of Trustees’ Finance Committee (or delegate). There are then five elected members, one elected by student senators and trustees, one by staff senators and trustees,¹ a Dean, a Faculty senator, and a member of the Board of Trustees. The terms of reference go on to provide that the Vice-Principal (Finance and Administration) and the University Registrar, along with others, are invited but non-voting participants in the work of QUPC. The terms of reference identifies neither process nor criteria for others becoming non-voting participants.²

As part of an ongoing reorganization of the University’s governance and administrative structures, Senate also referred the issue of the composition of Senate to SORC. As part of that reference, on September 23, 2010, Senate held an informal session at which the functions of Senate were discussed. Thereafter, SORC, whether by separate direction of the Senate, I am not clear, embarked on developing proposals for revision of the 1982 Functions of Senate. It presented these proposals to Senate at its November 25, 2010 meeting (Appendix III).

The Report of SORC is less than one page long. It states that it is based not only on the informal Senate discussion of September 23, 2010, but also the impact on Senate of the new committees and processes at Queen’s (including QUPC), and

¹ The language of the provisions with respect to the members elected by the student and staff trustees and senators is unclear:

One student, trustee or senator, elected by the student trustees and the student senators.
One staff member, trustee or senator, elected by the staff trustees and the staff senators.

Using the first as an example, it could mean that the student trustees and senators could elect any student (whether or not a senator or a trustee) or any other senator or trustee (whether or not a student). However, that seems implausible and I am assuming that there are silent words in each of these provisions: “One student, **who is either a....**”

² However, I am led to believe that the Provost has refused this status to the President of QUFA.

...other university statements of Senate purposes and functions...as background information.

Otherwise, the recommendations for change are neither explained nor justified. (I will not detail them here but rather elaborate to the extent that they are relevant to the discussion that follows.)

At present, the proposed revisions are part of the Senate Agenda for its meeting of January 20, 2011. In the meantime, Mark Jones, QUFA's Political Action and Communications Committee Co-Chair, prepared the concordance and commentary identified above.

IV. Discussion

(i) General Observations

Before proceeding to the detail of the recommended changes, I have two general observations:

1. To the extent that the new QUPC will now be performing some of the roles previously played by Senate, there is a necessary weakening of the role played by Senate in the affairs of the University. Despite the fact that it is described in formal terms as a joint committee of Senate and the Board of Trustees and was established by those two bodies, the QUPC is a joint committee of a rather different order than many other committees of the Senate and the Board of Trustees. This is reflected principally in its composition (including the non-voting participants), and is exemplified graphically by the requirement of only one faculty member who is not part of the Administration. In reality, this is an executive or management committee operating under the auspices of the Senate and the Board of Trustees. I leave it to others to decide whether this kind of body or structure has become an essential tool in the running of a 21st century, mid-size, research-intensive university.
2. I find it astounding that SORC would bring the recommendations for revision to the 1982 Functions of Senate forward without an extensive report on the nature of those revisions and a clause-by-clause justification of each of them. This seems to me to bespeak an attitude that Senate is a less and less relevant body and becoming more and more in the nature of a ceremonial rubber stamping agency, a matter to which I will return in the detailed comments on the proposed revisions that follow.

As mentioned above, this review owes much to the work of Mark Jones and I will not reengage in a detailed examination of all of the changes on which he comments save in passing, or where I disagree with what he has said or have additional observations. Rather, I will highlight what seem to me to be the critical provisions or groups of provisions in terms of their potential for the diminution of Senate's power.

(ii) Structure and Tone of Revised Functions

Under the 1982 Functions of Senate, its first **function** is

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.

Under the proposed revisions, that will no longer be a **function** but the **Senate Purpose**. As Mark Jones points out, this change is not without significance. He sees it as a subtle weakening of Senate's authority, and focuses on the meaning of "function" as a duty or responsibility and "purpose" as an aspiration. Not only do I agree with that but, from a legal perspective, the relegation of that first function to the status of purpose might also have significance. In legal terms, it could be viewed as being in the nature of a preamble to the body of the document, available for the interpretation of the specific provisions that follow but not the source of any independent powers and responsibilities.

I also am inclined to associate this change with the dropping from the proposed revisions of the responsibility of Senate (currently now found in Function 11) for "the well-being of students." What may well be disappearing in these two changes is any sense of the Senate as the repository of corporate responsibility for the academic enterprise in an overall guardianship sense, as reflected in the language of section 38 of the *Royal Charter*: the Senate as a body responsible for the academic superintendence and discipline of the student body and its members. Certainly, we are long past the days of viewing Canadian universities as acting *in loco parentis*, but, at the same time, there is much to be said for maintaining the Senate (as one of the three formal governing bodies of the University) as the organ responsible for the welfare, both academic and general, of its members as reflected in the 1982 Functions.

Linked in a different way with the conversion of existing Function 1 into the Purpose of the Senate is the way in which the proposed revisions frame all seven of the legislative functions of Senate that follow the stipulation of the Purpose of Senate. Each one of them is expressed in terms of Senate "approving" measures.

Of course, the power to "approve" of necessity involves the power to "not approve" or "reject." However, the use of this expression in relation to all seven of the functions does carry with it some sense of Senate simply being a body, like the Canadian Senate, that generally (though not always) will rubber stamp the recommendations of others. Gone is any sense of the Senate as a body that has the power and the authority to take legislative initiatives and to serve as a leader of the academic enterprise.

Whether this particular concern is justified or not will depend in some measure on the next stage of SORC's work: "mapping a committee structure best suited to a revised set of" Senate Functions. What will this new committee structure look like? Will the committees' responsibilities be likewise limited to approving the recommendations of

others? Will they have any independent powers to initiate matters? In this regard, however, the actions that have already been taken with respect to the establishing and the mandate of the QUPC do not augur well. I would also venture to suggest that there may be dangers in separating the two exercises: the recasting of the Functions of Senate and the development of a new Senate Committee structure. (This is one point on which SORC should have been more forthcoming about its current thinking and the intention behind the use of “approve.”)

(iii) Substantive Changes

(a) What the Revised Functions Take Away

Of the substantive changes, the following appear to me to have the most serious implications for the authority of Senate:

1. The removal of Senate from any decision-making role in relation to the creation of Departments, save indirectly through apparently limited participation in the development of the University Academic Plan and other plans: Function 3 (existing), Function 1 (proposed).
2. As already mentioned, the elimination of the Senate’s overall responsibility for the well-being of students: Function 11 (existing), Function 6 (new).
3. The elimination of 1982 Functions 9 and 10 respecting Senate review of the central elements of the approved operating budget of the University and its congruence with the needs and interests of the University and consequences for future budgeting, and provision of advice to the Board of Trustees (through the Principal) as to the University’s capital requirements and the establishing of priorities. This has seemingly been replaced by providing advice to QUPC on the “budget development **process**.”
4. The elimination of the post-collective agreement residue of 1982 Function 12, and Senate participation in the procedures to be followed for the appointment of vice-principals and Deans.
5. As already mentioned, the apparent transfer of primary responsibility for a whole range of academic and budgetary matters to QUPC. Indeed, it seems as though the proposed revisions would give that body even more power than contemplated by its own terms of reference. Under proposed Function 8 a, the Senate’s role is expressed in terms of “review, comment and make recommendations on new and proposed plans, including the University Academic Plan.” Under the QUPC terms of reference, it is expressed in exactly the reverse fashion. It is the QUPC that will “review, comment and make recommendations on” such matters to the Senate and Board of Trustees.

This lack of congruence, along with the scant nature of the SORC Report to Senate on the proposed changes in Senate functions, provides further support for the contention that SORC has acted in haste on a critically important matter. Even more importantly, however, there is a distinct possibility that, if the SORC wording is retained, there has been an unlawful delegation to another body (QUPC) of one of the core responsibilities of Senate conferred by section 38 of the *Royal Charter*. Given the extent of the mandate of SORC (especially if it, not Senate is the final decision-making body) and the reality of the composition of SORC, describing it as a joint committee of Senate and the Board of Trustees, would not salvage what may well be an illegal subdelegation of the Senate's powers over academic matters.

Individually, each of these losses of or diminution in jurisdiction is of significance, though in some instances perhaps reflective of current operating realities. However, collectively, they also indicate a very changed conception of the nature of Senate. Gone is any sense of the Senate as a potentially effective voice with the Board of Trustees on budgetary matters, including reconciling issues of academic planning with perceived budgetary imperatives. The opportunities for dialogue between these two organs of governance have either been foreclosed or are henceforth to be conducted purely on questions of budgetary **process**, not **substance**, through an emissary top-heavy with administrators and lacking any significant involvement on the part of regular faculty members not to mention students and staff: the QUPC.

Moreover, even on core issues of academic planning, there appears to have been a surrender of real power to the QUPC and more generally to the administration. This will particularly be so if the tension identified above between the QUPC terms of reference and proposed Function 8 a is resolved in favour of the authority of the QUPC and the merely recommendatory advice giving role of Senate. Indeed, even if the Senate formally retains the decision-making power in such matters, even a brief consideration of the detailed functions of QUPC (Roles 1 a-e) makes it clear that this is intended to become the primary clearing house for all manner of academic matters. When this is combined with QUPC's authority (Role II g) over the

...development of the University budget before it is transmitted to the Board of Trustees' Finance Committee,

there is even greater reason to recognize the potential for the QUPC becoming a super-committee at the expense of any real Senate power or influence on matters that count. This move to a much more private sector, corporate management mode of operation is also underscored by the removal of any Senate role in the appointment procedures for Deans and Vice-Principals.

(b) What the Revised Functions Give

As Mark Jones points out, SORC is recommending at least four accretions to the Functions of Senate.

Of particular interest is proposed Legislative Function 6 to the effect that Senate now has final responsibility for the discipline of students with the ability to delegate disciplinary powers to student organizations. Mark Jones accurately describes this as a compression of the existing 1982 Function 11. However, as he points out, it is noteworthy that gone is any mention of “shared” responsibility with the AMS and the SGPS, possibly a recognition that legally this is not compatible with the conferral of that authority on the Senate and no other body in section 38 of the *Royal Charter*. On the issue of legality, however, I certainly wonder about the blanket conferral of authority to delegate disciplinary powers to student organizations. From a policy perspective and almost certainly from a legal perspective that cannot, despite the generality of this sentence, apply to academic discipline.

Mark Jones also notes proposed Functions 10 (essentially, the development of a commitment to inclusive, diversity encouraging, non-discriminatory policies and programs) and 13:

To serve as a forum for discussion and exchange of ideas among the members of the academic community.

As well, he refers to proposed Function 9, approval of the proposed annual enrolment plan, a provision that reflects existing realities.

Mark Jones regards all of these as welcome additions, and I have no reason to quarrel with that assessment, except for a very real concern that proposed Function 13 might come to reflect the reality of the “new” Senate, one in which any real power has been surrendered in favour of a general forum for discussion of big ideas and current issues with no real consequences.

(c) What the Revised Functions Do Not Address

In my November 2009 Report to QUFA, referenced above, I dealt with the issue of Senate’s role in the 2009 executive decisions suspending enrolments in certain academic programs, types and concentrations, with a view in some cases to phasing them out. In summary, I expressed the opinion that this action impinged on the powers and authority of Senate as provided for in the *Royal Charter* (as amended) and the 1982 Functions of Senate. To the extent that the authority in question was also one that was legally shared among Senate, the Board of Trustees, and the University’s executive officers, I recommended the development of a Protocol to govern how such matters should be dealt with in future. Failing that, the fallback position would be a clarification of the role of Senate in revisions to the 1982 Functions.

I understand that the Principal did not accept my conclusion that the actions of the University’s officers impinged on the powers and authorities of Senate and, as a consequence, no Protocol was developed. It is also the case that the issue is not dealt with directly in the proposed revisions to the functions of Senate. However, it may be that,

deliberately or by inadvertence, the proposed revisions do weaken the case for Senate involvement in any such future exercise. I say this for the following reasons:

1. The rebranding of the Senate's responsibility for "all matters of an academic character" as a Purpose rather than a Function, diminishes one of the textual arguments for Senate's authority over such matters as arose in 2009.
2. The same is true of the removal of Senate's authority over the establishing of Departments, particularly if that also implies the disappearance of any authority over the dis-establishment of Departments.
3. To the extent that matters such as this are part of Academic Planning in a general sense, effective authority may well have been transferred to QUPA, albeit subject to some form of monitoring by Senate.
4. Equally, the weakening of Senate's involvement in the fiscal affairs of the University (identified above) diminishes the strength of any claim to a shared responsibility with the Board of Trustees in such matters at least in so far as they involve a reconciliation of budgetary requirements with academic priorities.

V. Recommendations

1. Given the inadequacy of the SORC Report, my principal recommendation is that QUFA, through its representative on Senate, seek a reference of the Report back to SORC for the preparation of a Supplementary Report in which SORC provides detailed justification for the proposed revisions both in general and on an item-by-item basis. Ideally, that Supplementary Report should also contain SORC's recommendations for the restructuring of Senate Committees. Alternatively, the coming into force of any new set of Senate Functions should be made contingent on approval of a restructured slate of Senate Committees.

2. If Senate refers the Report back to SORC (or, failing that, as part of the debate on the existing Report in Senate), to the extent that QUFA wants to protect or preserve as far as possible the existing powers and responsibilities of Senate, it should take the following positions:

- (i) That the reference to "Senate Purpose" be removed and that the provision currently included under that heading be relocated as the first category in the Legislative Functions of Senate, with the addition of the following language immediately after it:

And without limiting the generality of Legislative Function 1:

(ii) That, in proposed Legislative Functions 1-7, the word “approve” be generally replaced by “have responsibility for.”

(iii) That proposed Legislative Function 1 be reworded as follows:

To **have responsibility for**, subject to ratification by **and the authority of** the Board of Trustees, **the establishment, and continued operation** of any faculty, school, **department**, centre, or institute.

(iv) That, in proposed Academic Planning and Educational Environment Function 8 a, the words “review, comment and make recommendations on” be replaced by “to evaluate and approve”, this reflecting the current terms of reference of QUPC.

(v) That, proposed Academic Planning and Educational Environment Function 8 b be reworded as follows:

To review, comment and make recommendations on the University Budget before it is transmitted to the Board of Trustees.³

(vi) That existing 1982 Functions 9 (Budgetary Advice) and 10 (Capital Projects Advice) be reinstated.

(vii) That the following language be inserted at the beginning of proposed Academic Planning and Educational Environment Function 10:

To have overall responsibility for the well-being of students and [t]o commit...

(viii) That the following function be added to the Appointment/Selection Functions:

To establish and keep under review the procedures to be followed in the appointment of vice-principals and deans.

VI. Conclusions

This is not a report on the appropriateness of the new management structures that are being put in place at Queen’s. It is largely confined to an inquiry on the likely impact on the formal role of Senate on the proposals of SORC for a revision to the Functions of Senate. Those proposals may in some respects simply be reflecting existing reality; in other respects, they may be intended to achieve genuine change. Those closer to the current operations of Senate can make that judgment better than I.

³ Probably an accretion to the Senate’s existing functions!

What is, however, clear is that the recommendations emanating from SORC cannot be evaluated fully without taking account of the role of the newly established QUPC. I also suggest that their impact will also be conditioned by actions still to be taken: the recasting of the Senate Committee system, and, of particular importance, the resolution of the existing tensions between QUPC's terms of reference and the proposed Senate functions with respect to academic matters: Which will be the decision-making body and which the recommending body?

Leaving all of the uncertainties aside, there is no doubt in my mind that the proposals currently before Senate will lead to a significant reduction in its formal power and perhaps even a radical transformation in its very nature from a deliberative body with significant power and influence to a general forum for the exploration of ideas and arguments pertaining to the life of the academic community. There may also be serious legal concerns to the extent that some of the powers of Senate over academic matters have been conferred on the QUPC, especially if the Senate has been reduced to a recommendatory body on such matters as currently provided for in the proposed revised Functions of Senate.

Yours truly,

(David J. Mullan)
Professor *Emeritus*

Appendix I

<http://senatefaculty/caucus.wordpress.com/2010/11/26/functions-of-the-senate-comparison-25-november-2010/>

Appendix II

<http://www.queensu.ca/secretariat/trustees/committe/QUPC.html>

Appendix III

http://www.queensu.ca/secretariat/senate/Nov25_10/Functions.pdf