



Canadian Association of University Teachers  
Association canadienne des professeurs et professeurs d'université

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**Via email: [presidents\\_office@carleton.ca](mailto:presidents_office@carleton.ca)**

December 5, 2016

Dr. Roseann O'Reilly Runte  
President and Vice-Chancellor  
Carleton University  
503 Tory Building  
1125 Colonel By Drive  
Ottawa, Ontario  
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Dear President Runte:

At its meeting on Saturday, November 26, the Council of the Canadian Association of University Teachers passed the following motion:

That CAUT Council give notice to the administration of Carleton University that, unless the matter of the governance practices of the Board of Governors is satisfactorily resolved, censure of the administration will be imposed at the Spring 2017 meeting of Council.

As I have indicated previously by letter, Council has for some time now expressed concern about the lack of openness and transparency in governance at Carleton University, and in particular the code of conduct agreement that all governors are required to sign. It is our view that the code goes far beyond what is required by law, and violates the principles of openness and transparency in governance, and the academic freedom of elected faculty representatives.

Carleton's code of conduct demands that governors support all decisions taken by the Board, are not to comment publicly on the matters discussed at meetings, and are not to report to their constituents. This directly violates CAUT's policy on Openness and Transparency in Post-Secondary Education:

Academic staff, support staff and students elected to decision-making bodies are expected to report to their constituents and should not be prevented from doing so by any rules of secrecy that may be enacted by the decision-making body. Any requirement that members of Boards of Governors sign secrecy agreements or abstain from public comment on the affairs of the institution is inimical to openness, transparency, and academic freedom.

Similarly, the CAUT policy on Academic Freedom explicitly recognizes that academic freedom applies in cases when academic staff are in service to the institution:

Academic freedom includes...the freedom to engage in service to the institution and the community...and the freedom to express one's opinion about the institution, its administration, and the system in which one works.

CAUT Council discussed these matters in light of information provided to us that Professor Root Gorelick was declared ineligible for a second term as governor because he refused to sign the code of conduct. It is Council's view that this action, and previous threats against him, violated his academic freedom

As you will note from the motion (consistent with our Procedures Relating to Censure), Council's action is a notice that censure will be imposed if the governance matters are not satisfactorily resolved by our next Council meeting May 4-7, 2017. We continue to hope a resolution can be found that is acceptable to all parties. I would be pleased to meet with you to explore options or take whatever other action we can to assist. Our objective is not to censure your institution but to ensure that an appropriate governance model can be developed, one that respects collegial practices and academic freedom. I look forward to your reply.

Sincerely,



David Robinson  
Executive Director

/mmp

cc: Patrice Smith, President, CUASA  
James Compton, President, CAUT  
Peter McInnis, Chair, Academic Freedom and Tenure Committee



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**Via email: [presidents\\_office@carleton.ca](mailto:presidents_office@carleton.ca)**

January 24, 2017

Dr. Roseann O'Reilly Runte  
President and Vice-Chancellor  
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Ottawa, Ontario  
K1S 5B6

Dear President Runte:

As we discussed over the telephone before the holiday break, I am following up with you with respect to ongoing concerns we have with governance practices at Carleton. These concerns were discussed at length at the November CAUT Council, at which time a notice of motion of censure against your administration was passed.

To summarize, our main concerns relate to the following:

- 1) **The restrictive and secretive nature of board meetings.** The vast majority of universities that we have reviewed require that board meetings be open to the public, with only narrow exceptions when confidential matters are being discussed.
- 2) **Board solidarity requirements.** Carleton University goes further than most other institutions in requiring Governors to support all decisions of the Board, even when they dissent or are in the minority.
- 3) **Removal of Board Members.** At Carleton, the process to remove a member of the Board begins and is completed by way of an ordinary resolution. This contrasts with the standard practice in which an investigation and recommendation to the Board must take place before removal or another sanction is proposed.
- 4) **Broad conflict of interest requirements.** Carleton's requirements imply that a faculty Board member simply advocating for the interests of academic staff would be potentially in a conflict of interest.

We have reviewed governance policies and procedures in other universities across Canada in an effort to present you with specific examples of how Carleton can better align itself with standard practices. Below I outline the concerns we have identified with Carleton's policies and codes, and suggest ways they may be addressed by drawing upon practices elsewhere.

## **1. Secrecy of Board Meetings**

Carleton General Operating By-law No. 1, section 3.07 states:

*The only persons entitled to attend a Members' meeting are the Members, the Governors, the Officers, the Executive Officers, the auditors of the University and others who are entitled or required under any provision of the Act or the By-laws to be present at the meeting. Any other person may be admitted only on invitation of the chair of the meeting or by Ordinary Resolution of the Members.*

It is troubling that, at Carleton, the prohibition on public attendance is repeated at Article 6.04.

The practice of restricting attendance at Board meetings is highly unusual. Most universities require meetings be open by default, without prior permission or invitation.

For example, the *University of Toronto Act* mandates public meetings of its Governing Council. Section 2(18) states:

*The meetings, except meetings of committee of the whole, of the Governing Council, shall be open to the public, prior notice of the meetings shall be given to the members and to the public in such manner as the Governing Council by by-law shall determine, and no person shall be excluded therefrom except for improper conduct, but where intimate financial or personal matters of any person may be disclosed at a meeting the part of the meeting concerning such person shall be held in camera unless such person requests that such part of the meeting be open to the public.*

Western's Board meetings are also required by law to be open to the public, with very narrow exceptions. Section 31 of the Act states:

*(1) Subject to subsection (2), the meetings of the Board and of the Senate shall be open to the public and prior notice of such meetings shall be given to the members and to the public in such manner as the Board and the Senate by by-law shall respectively determine, and no person shall be excluded therefrom except for improper conduct but, where confidential matters of the University are being considered, that part of the meeting may be held in camera.*

*(2) Where matters of a personal nature concerning an individual may be disclosed at a meeting, the part of the meeting concerning such individual shall be held in camera unless such individual requests that such part of the meeting be open to the public.*

At York University, General By-Law 16(i) states:

*Meetings of the Board shall be open to the public, subject to the limitations of space, and except for matters which the Chair or the Board may deem to be confidential including without limiting the generality of the foregoing, matters relating to labour relations, personnel, nominations of Board or Committee members and confidential government policies. Minutes of those meetings of the Board which are open to the*

*public shall be available for inspection by the public, by appointment with the Secretary of the Board, at the office of the Secretary of the Board during regular business hours.*

Contrary to York's requirement that minutes of meetings be made public, Carleton's General Operating By-law No. 1, 6.01 (d) allows only Governors to review the minutes that are kept by the University Secretary.

## **2. Board Solidarity Requirements**

Article I.10 of Carleton's Board of Governor's Code of Conduct requires "cabinet/board solidarity." We note that this language is repeated in Article 11.6. It is our view that this requirement may restrict the communication of differences of opinion and dissent under the guise of collegiality. For faculty members who serve on the Board, this also violates academic freedom, which includes the right to criticize one's institution.

The language in use at Simon Fraser University seems to strike a more appropriate balance between the right of members to dissent from Board decisions, while acknowledging the legitimacy of a Board's majority decision. Rule 3.4 of the Rules of the Board of Governors states:

*A Member expressing dissension in public from a decision which was duly made by the Board shall clarify that the dissenting view is that of the Member and not of the Board, and shall be obliged to qualify the dissenting view by indicating recognition of the Board's majority decision.*

A further concern arises from Article II.7 of Carleton's Code of Conduct. That section requires that Board members "[t]ake no action that interferes with the right of Governors to have the opportunity to speak fully and candidly in front of the Board of Governors in a climate that is respectful and free from intimidation." Most institutions require that debate should be respectful, and that discrimination and harassment will not be tolerated.

Carleton's language, however, goes further than other institutions by requiring governors to "take no action that interferes with" respectful debate. That is an overly broad and ill-defined phrase. Debates can be vigorous, and even heated when contentious issues are being discussed. As long as discriminatory or harassing conduct is not occurring, such debates should not be restricted.

In this respect, policies and codes of conduct should also remind Board members of the key values of the university that they should uphold. For example, at the University of Toronto, academic freedom is specifically mentioned in the "Key Principles of Ethical Conduct". It is also one of the key elements identified in "Principles of Good Governance":

### *A. Preamble*

*Subject to applicable laws, University governance must be guided by excellent principles of good governance in relation to stewardship and public accountability, and at the same time recognize the unique nature and characteristics of the academic community or institution, including:*

- *the fundamental autonomy of universities, coupled with the essential responsibility for public accountability;*
- *the need to respect the academic mission of excellence in teaching and research;*

- *the importance of ensuring that academic freedom and responsibility are respected;*
- *the need to be seen to be accountable – through transparency – to all parties interested in and supporting the University;*
- *the desire for meaningful and objective stakeholder participation in governance; and*
- *the diversity and broad representation of governors.*

### **3. Removal of Board Members**

At Carleton, the process to remove a member of the Board begins and is completed by way of an ordinary resolution. CAUT believes that a more fair and transparent process should govern the removal of Board members. Most universities require an investigation and review of the facts by an ad-hoc or standing committee, separate but drawn from the Board membership. Consider the following language from McGill:

#### *9. Ethics Committee*

*Where an allegation of conduct in breach of this Code is reported (by a Member about her/himself or another Member) every effort will be made to resolve the matter informally in collaboration with the Secretary-General. If however there are reasonable grounds to believe that a Member has breached the standard of conduct as set out in this Code and no such informal resolution is possible, an Ad-Hoc Ethics Committee shall be struck as referred to below to inquire into such allegations.*

#### *9.1 Composition and Mandate of the Ethics Committee*

*9.1.1 The Ethics Committee shall be composed of three (3) members, chosen by the Nominating and Governance Committee in consultation with the Chair of the Board, the Chancellor and the Principal. The Secretary-General shall serve as Secretary to the Ethics Committee.*

*9.1.2 The Ethics Committee shall examine in strict confidentiality any case that may be referred to it, and formulate for the use of the Nominating and Governance Committee and the Board any recommendation that it may deem appropriate.*

#### *9.2 Procedure*

*9.2.1 The Secretary-General shall receive the allegation in writing signed by the person who has brought the situation to the attention of the Board, provide a copy to the person complained against and shall forward it to the Chair of the Nominating and Governance Committee, who shall cause the Ethics Committee to be formed.*

*9.2.2 The Ethics Committee shall allow the parties concerned to be heard and to state their case, in accordance with the rules of natural justice. The Ethics Committee may undertake any consultation that it may deem useful for the purpose of examining the issues referred to it, and may request the assistance, on an ad hoc basis, of any Resource Person or consultant whose expertise may, in the Committee's judgment, be required to carry out its mandate.*

*9.2.3 After hearing the parties, the Ethics Committee shall prepare a reasoned written report to the Chair of the Board of Governors, copied to the Nominating and Governance Committee, who shall inform the parties concerned of the content of the report and shall act on the Committee's findings.*

#### *10. Sanctions*

*Should a Member be found to have failed to comply with the duties and obligations stipulated in the present Code, the Chair of the Board of Governors shall have the power to issue a warning, to suspend the said Member for a period of time, or, in serious cases, to ask the Member to resign.*

At McGill, there are key elements of due process in place that are absent in Carleton's procedures. It is also worth noting that the committee and process are independent from the Board's regular business, and from the Chair.

The Université de Montréal also has a process whereby allegations of misconduct by Board members are investigated by a separate committee, with protections in place for the right to respond (see sections 8-9 of the Code d'éthique et de déontologie des membres du conseil de l'université).

#### **4. Overbroad Conflict of Interest Language**

Conflict of interest policies should take into account the unique situations of faculty members who serve on the Board. Article III.8 of the Carleton Code of Conduct provides an example of a conflict of interest as a Board member "[r]epresenting the interests of a group of employees or contractors as a voting member of the executive body or as an officer of a staff or faculty association or union." This would seem to imply that a faculty Board member simply advocating for the interests of academic staff would be in a potential conflict of interest. Better language would simply require faculty Board members to refrain from voting on a matter that affects them, but allow them to comment in general terms. Contrast Carleton's language with that in place at Bishop's. Division 2, Section 5.4 of the Statutes of Bishop's University states:

*...a Board member who is also employed by the University must withdraw from a meeting for the duration of a discussion or vote on any matter concerning negotiations relating to a collective agreement or a collective labour contract that governs the member or other members of the University's personnel. Notwithstanding the foregoing, a member may participate in a Board discussion about general measures relating to condition of employment within the institution that would also apply to the Board member.*

Bishop's language mandates that internal members acknowledge their conflict of interest, and refrain from voting. However, it leaves room for the fact that they may participate in general debates as their status at the university may provide useful information to the Board. This language is a good compromise – it acknowledges the potential conflict of interest of Board members employed by the university, while recognizing that the best interests of the university can be better informed by the experiences of those working there. There is a similar exception to the conflict of interest rules at the University of Toronto. By-law No. 2, Section 27(c) states:

*A member of the Council or of a committee of the Council who is an employee of the University, or a member of whose immediate family is an employee of the University, may take part in discussions and vote on all matters relating to the operation of the University, except for matters in which the interest of the member, or of any member of the immediate family of the member, is not the same or substantially the same as that of other employees of the University, and except as provided in clause (d) of this section.*

Section 27(d) of the By-law prohibits an employee Board member from moving, seconding, or voting on any matters related to remuneration, benefits, terms of employment, collective agreements, right or privileges available to employees of the university. Thus, employee Board members at the University of Toronto may still contribute to the discussions on these matters.

The language in McGill's Code of Conduct for Board members is also worth considering. The "Code of Ethics and Conduct for Members of the Board of Governors of McGill University" respects the special role that faculty, students, and staff play within the collegial governance of the university. Section 2.5 provides that Board members, "...will not be precluded, as employees or students of the University and elected to the Board by due process in accordance with the Statutes of the University, from activities appropriately associated with their roles."

The examples of conflicts of interest provided in the Code of Ethics and Conduct from the Université de Montréal make no mention of involvement in a union or association. Instead, they focus on a Board member having, or potentially having, a personal interest or involvement in a decision that the board may make. Note that the language is phrased generally – such that any board member who may benefit from a board decision, or is in a leadership position of an organization that may have a concurrent or competing interest is found to be in a conflict of interest. The language, however, avoids specific mention of unions or associations, which would be unfairly targeting faculty and staff Board members:

*7. b) Conflict of interest situations*

*Without limiting the general definition of conflict of interest, for illustrative purposes only, the following shall constitute a conflict of interest:*

- i) a situation whereby a member of the Board has a personal and distinct interest, either directly or indirectly, in a deliberation of the Board;*
- ii) a situation whereby a member of the Board has an interest, either directly or indirectly, in a company doing business with or about to do business with the University;*
- iii) a situation whereby a member of the Board has an interest, either directly or indirectly, in a contract or transaction, or a proposed contract or transaction, with the University;*
- iv) a situation whereby a member of the Board holds a management position in a company or an organization whose interests compete or conflict with those of the University. **[Translation]***

Further in their Code of Ethics and Conduct, there is express permission granted to allow employee Board members to comment on working conditions or collective agreements, as they apply to a group to which he or she may belong:

*7. e) Interest of a Board member during deliberations on working conditions, collective agreements or memorandums of understanding.*

*The Board member shall have an obligation to withdraw from the meeting should a deliberation pertain to a working condition in which he or she has a personal and distinct interest. This rule shall not prevent him or her from expressing an opinion on any working condition, collective agreement or memorandum of understanding applicable to the group of staff to which he or she belongs. **[Translation]***

## **5. Conclusion**

As our review of governance practices and codes of conduct at other institutions has shown, there are models that Carleton can emulate to deal with the matters under concern. I would be very pleased to provide more examples and to discuss ways that we can best address these governance issues to our mutual satisfaction.

Sincerely,



David Robinson  
Executive Director

/mmp

cc: Patrice Smith, President, CUASA  
Peter Ricketts, Provost and Vice-President, Academic, Carleton University  
James Compton, President, CAUT  
Peter McInnis, Chair, Academic Freedom and Tenure Committee



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February 2, 2017

Mr. David Robinson  
Executive Director  
Canadian Association of University Teachers  
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Dear Mr. Robinson,

Thank you for your letter concerning the By-laws of the Board at Carleton University. I will, as discussed during our telephone conversation, bring this to the attention of the Governance Committee and get back to you this Spring.

I appreciate your analysis and thoughtful comments.

Sincerely yours,

Roseann O'Reilly Runte  
President and Vice-Chancellor



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April 10, 2017

Mr. David Robinson  
Executive Director  
Canadian Association of University Teachers  
Ottawa, ON K2B 8K2

Dear Mr. Robinson:

We welcome the opportunity to address the suggestions raised in your letter of January 24, 2017 as well as to provide necessary context and clarification. While we can respond to your suggestions, changes to the By-laws of the University and the Board's Code of Conduct remain the responsibility of the Board of Governors.

### **Board Meetings**

Carleton University is committed to openness and transparency and to fulsome discussion. Contrary to the suggestion in your letter, Board of Governor meetings are not secretive; nor is there a prohibition on public attendance at Board meetings.

The confusion seems to stem in part from your reference to an inapplicable section of the By-law, S.3.07, which applies to meetings of the Members of the Corporation and not to meetings of the Board of Governors. Under Ontario law, not-for-profit corporations are required to hold an annual Members of the Corporation meeting to receive the financial statements (which are considered and approved by the Board in open session), confirm the nomination of Governors and the appointment of the auditor (also considered and approved by the Board in open session). Section 3 of the By-law addresses only the statutory requirements related to Members of the Corporation meetings.

The applicable By-law provisions for Board of Governor meetings are found in section 6 of the By-law. The relevant provisions in section 6 provide that meetings of the Board are open (see for example s.6.04, 6.06 and appendix A) and that the public is welcome to attend meetings. The Bylaw does reflect that, due to fire and safety restrictions, there is a physical limit to the number of individuals and seats in the boardroom. Accordingly such seating is reserved to members of the public on a first-come first-served basis (subject to ensuring a diversity of access by students, staff, faculty and media). In the event that the number of requests to attend exceeds the number of available seats, the Board has further implemented a live video stream of the meeting to a second room on campus for members of the public who wish to observe the proceedings but cannot be fitted into the actual Boardroom. In addition, all the agendas, supporting materials and minutes of the Board's open sessions are posted on the Board's website and fully available to any member of the public as is required by s.6.06. They are also made available to the Senate of the University with their minutes.

## **The Board's Code of Conduct**

In reviewing the Code of Conduct ("the Code"), it is important to recognize that provisions should not be read in isolation. Rather, the Code needs to be read as a whole and in conjunction with Bylaws, the *Carleton University Act*, the *Ontario Corporations Act* and the common law. Further, as CAUT agreed in our exchange of correspondence last year, Board members have statutorily and common law imposed fiduciary duties. The Code reflects those fiduciary duties.

In terms of Article I.10, the purpose of the provision is to not restrict the communication of differences of opinion. Governors are entitled and expected to discuss issues with others. In fact, the provision explicitly states that the issues may be debated vigorously. Rather, the aim of the provision is to ensure that dissenting views are to be expressed at meetings (debate is always encouraged and the norm at the Board), and once a decision is duly made by the Board, Governors should abide by the decision. We understand from your suggestion that CAUT has an interpretation of the Article that was not intended and we appreciate your having pointed this out. As all governance documents are periodically reviewed, we will request that the Governance Committee of the Board consider the wording of the provision.

As for your comment regarding Article II.7, the wording in the Code has the same effect as those referenced at other universities. Under the current wording, vigorous and even heated debate is permissible, but if a Board member engages in conduct that is disrespectful or interferes with another's right to be heard, then those actions are contrary to the Code (and fiduciary duty). The current wording, focusing on actions and conduct of a Governor that interfere with respectful debate, is more specific than simply stating that harassment and discrimination will not be tolerated. Furthermore, as noted elsewhere, vigorous debate is permitted and encouraged. Consequently, we see no reason to suggest a change to the wording of Article II.7 and we have reviewed the bylaws of numerous universities in Ontario and across Canada and believe that the current wording is in line with standard Board practice at Canadian universities.

## **Removal of Board Members**

The process to remove a Governor is not completed by an ordinary resolution of the Board. Under Ontario law, a Governor can only be removed by resolution of the Members of the Corporation following a fair procedure that provides a Governor with due process. That detailed process, as set out in s. 4.07 of the By-law, complies with both the existing *Corporations Act* and the incoming Not-for-Profit statute (the examples cited in your letter are non – Ontario universities and subject to different legal regimes). Secondly, the statutory right of Members of the Corporation to remove Governors is a statutory power reserved to them.

Furthermore, the Bylaw expressly states the process shall be conducted in good faith and in a fair and reasonable manner. The process includes the Governor being given at least fifteen (15) days written notice of not only the proposed removal but the reasons thereof. The Governor is then entitled to a hearing and has an opportunity to make submissions directly to the full Board (at a closed meeting) regarding the proposed removal (rather than to a committee of selected Governors, which could be open to accusations of bias in terms of membership). Following the Board meeting (and any decision), the Governor is then provided a further opportunity to make written submissions on their removal within ten (10) days. Following receipt of written submissions, a special meeting of the Members of the Corporation must be called providing notice of the proposal to remove the Governor, the reasons for the proposed removal, and providing the members with the written submissions of the Governor. Effectively the process provides the Governor with two opportunities and a fulsome process to contest their removal.

### **Conflict of Interest**

The Board of Governors includes faculty and staff members who fully participate in discussions, vote on matters, and raise various interests regarding the operation of the university. The Code does not restrict the participation of faculty or staff members from discussing or voting on matters pertaining to the operation of the university. Nor does the Code imply that faculty or staff would be in a conflict for simply raising any such interests.

The Article III.8 cited in your letter is part of a list of examples of situations that may give rise to a real or apparent/perceived Conflict of Interest or Conflict of Commitment. The article is clear in its application to Governors who hold a voting executive or officer position in a faculty or staff association (there is no implication that it applies to staff or faculty generally, only to those holding bargaining unit officer positions). This specific situation arose a few years ago when a Governor became President of a union and proceeded to abstain on almost every vote all year, claiming conflict of interest. The issue was reviewed and, the Board discussed the possibility of excluding bargaining unit officers from being a Governor (which is the case at some universities such as Queens). After much debate, the Board decided to continue to allow bargaining unit executives to be a Governor and instead identified the issue as a potential or real conflict of interest. Furthermore, the Board currently has a Governor who is a union president. The Governor complies with the conflict of interest article, and recognizes that there may be times when their position in the union will require them to recuse themselves from a discussion and/or a vote on a matter before the Board.

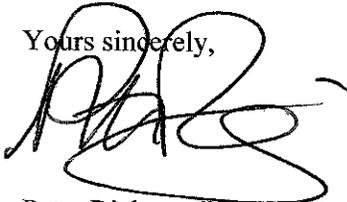
Given the Board's recent experience with conflicts of interest pertaining to bargaining unit executives, the inclusion of the example as real or apparent/perceived conflict of interest is appropriate and a good compromise. The alternative would be excluding individuals who are executives of faculty or staff associations from the Board as is the case at some other universities. Therefore, we see no reason for a change to be made to the Article.

### **Conclusion**

As with all operating and governance documents, the By-laws and the Code are reviewed periodically by the Governance Committee of the Board of Governors. Your comments and suggestions regarding Article I.10 will be taken under consideration. If the Governance Committee following their review determines that the article requires clarification, revised language further clarifying the intent of the provision will be introduced for Board approval.

We are trust the provided clarifications have satisfactorily addressed the concerns you raised. We would also be pleased to meet with you to discuss the matter further at your earliest convenience.

Yours sincerely,



Peter Ricketts, BA (Hons), PhD  
Provost and Vice-President (Academic)

c.c.                   Roseann O'Reilly Runte, President and Vice-Chancellor  
                          Christopher Carruthers, Chair of the Board of Governors  
                          Ken Evans, Chair of the Governance Committee of the Board of Governors