Leading Practices in University Board Governance

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COUNCIL OF ONTARIO
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Contents

Preamble

Ontario universities are committed to good governance and enhancing good governance in the sector, in order to help fulfill the unique purposes of universities and be accountable to their multiple stakeholders. This document articulates leading practices in board governance in the Ontario publicly assisted university sector as it is the board of a university that is primarily accountable to external stakeholders for the financial sustainability and effectiveness of university governance overall. This document speaks only to academic governance insofar as it addresses the role of university boards in fostering effective collegial or shared governance. This wide range of leading practices in governance are not intended to be exhaustive as many universities will have additional practices to meet their unique needs.

Given their unique history and roles in society, universities are complex institutions to govern, with multiple internal and external constituencies and stakeholders and a dispersal of power that differentiates them in critical ways from other corporations and institutions. Nevertheless, leading practices in both the private and broader public sectors inform good governance in universities. This document is grounded in research and policy on good governance in universities and the private sector (see Appendix: Sources Consulted), and reflects and supports the reality of shared governance and the academic mission specific to the university setting. It is important to also note the differentiation within the university sector: size, scale, mission and geography all may factor into the relationships universities have with their communities and the resources available to each institution.

Purpose of this Document

This document has been prepared by the Council of Ontario Universities (COU) with extensive input from its member universities and reviewed by university governance experts from across the country. COU members recognize that it is necessary for its stakeholders to have a high degree of confidence in the soundness and effectiveness of university governance. This document is intended to provide assurance that effective, transparent, and responsible governance is a priority for the boards and presidents (or applicable title) of Ontario's universities. It is also intended to convey to university stakeholders that, while recognizing the unique contexts and obligations of each Ontario university, all universities support the articulation of and adherence to these leading governance practices and fiduciary responsibilities.

The Unique and Complex University Governance Context

While informed by general principles of good governance, leading governance practices are established within the unique and complex context of publicly-funded universities in the Province of Ontario. Universities are created as independent not-for-profit corporate entities in support of their status as autonomous entities, independent from partisan and political influence. This independence allows them to fulfil their unique social mandate. The university mandate includes, first and foremost, their role as centres of free enquiry, which requires a safeguarding of the principle of academic freedom[1] and independence in related areas including hiring decisions, course content, academic programming, and research priorities.[2] Tied to the principle of institutional autonomy is the principle of collegial or shared governance, whereby governance responsibilities are divided between academic councils or senates – which have substantial representation from faculty and set or inform academic policy for the university – and boards of governors or boards of trustees that oversee the operational, financial and business affairs of the university.[3] Shared governance also entails, in most cases, a board membership that includes a balance of members from internal university constituencies (including academic and non-academic staff, students, and administrators), and external members. Combined these board members exercise their fiduciary duties to act in the best interest of the institution as a whole. This shared governance structure is meant to ensure that the core mission of the university (teaching, research, and knowledge dissemination) is informed by members of the academy who have an in-depth understanding of the academic enterprise, while financial, operational and business matters are overseen by those from a broader community, and bring an external and fiduciary lens to discussion and decision-making.

The unique and complex university governance context necessarily informs leading practices within the sector.

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[1] See Universities Canada Statement on Academic Freedom.

[2] Some of the language here is taken from Universities Canada, Institutional Autonomy: Principles

[3] There is inevitably overlap in the responsibilities of Senate and Board that is dealt with differently at different institutions. This article on the Duff-Berdahl report provides some background on the history of shared governance in Canada.

Key Attributes of an Effective University Governance Board

An effective university board understands that it is primarily responsible for the effective governance of the institution. This includes ensuring and supporting the effectiveness of the model of shared governance under which the university operates, effective integration of the work of the university's governing bodies and effective relationships between them as well as ensuring the accountability of those delegated with authority and effective communication and flow of information to support decision-making throughout the governance system.

The board is aligned with the university's vision and mission, and is committed to and embodies principles of fiduciary oversight, open and transparent decision-making, and shared governance. Board members are volunteers who are oriented, educated, and supported by university staff to understand and fulfil their roles in an ethical and effective manner. They are fiduciaries who are independent-minded and able and willing to ask critical questions and ensure that their decisions are based on adequate information and deliberation. The board has the membership and committee structure to ensure that the viewpoints of key university constituencies and diverse groups and communities are considered, and that needed skills and expertise inform decision-making and ensure they are meeting their fiduciary obligations to act in the best interest of the university as a whole. Boards, in carrying out their fiduciary responsibilities, focus on strategic priorities and oversight, including overall strategy, oversight of president, fiscal integrity, risk management and financial sustainability of the university. Boards engage in transparent communications with broader members of the university and external community, and in ongoing reflection and review to ensure continuous improvement in their membership, structure, processes and leading governance practices in order to meet their fiduciary duties.

Leading Practices

Board and Committee Member Recruitment, Selection and Renewal Processes

In order to fulfil its important roles, board recruitment and renewal processes must ensure that the range of stakeholder perspectives required for shared governance is present, that there is sufficient independence amongst board members to fulfil their fiduciary oversight role, including incorporating the diverse voices and experiences of the broader community, that they have the specific expertise and experience needed to support informed decision-making in key areas of responsibility, and that there is ongoing renewal of membership to bring in new voices, perspectives, and expertise, while ensuring a core of experienced board members.

- Board membership includes key internal stakeholders, in particular academic staff, and non-academic staff, students, as well as external members who are all required to exercise their fiduciary duty to act in the best interest of the university.

- The majority of board members are external to the university and are able to exercise independent and impartial judgment (e.g., no personal or financial relationships, continuing conflicts of interest).

- A competencies matrix is maintained to ensure that the board has members with backgrounds in needed areas of expertise such as governance, finance, investments, legal, audit, risk management, senior management, strategic planning, human

resources, information technology/cybersecurity/digital knowledge, real property and capital planning.

- There is a process in place to ensure that diversity, including gender, race, culture, socio-economic background, and other relevant categories that reflect the university and the communities with which it has relationships, are factored into the recruitment process.

- Board members are selected recognizing key qualities necessary for them to perform their fiduciary roles, including excellent listening, communication, and persuasion skills to participate in board discussions and debates, a commitment to devoting the time, effort and energy to serve effectively as a board member, and a commitment to university goals, independence and autonomy.

- The board chair is selected by the board and is external to the university.

- Committee members are assigned based on their related expertise and ability to meaningfully contribute to the committee's mandate, and include members of diverse backgrounds.

- The audit committee comprises external members and include a sufficient number who are financially literate.

- There is a clear approach to succession planning, including a focus on closing skills gaps, ensuring a breadth of diverse individuals and experiences, and balancing experienced and new board and committee members.

Board Member Roles and Expectations

Board members are volunteers who dedicate their time to meet their significant fiduciary responsibilities. Board members need to clearly understand shared governance, the scope and the requirements of their roles, the qualities and characteristics that are expected of them in performing their roles, and expectations in terms of their time, preparation, and participation. Board members:

- Understand their fiduciary duty; that is, to make decisions in the best interest of the university as a whole, and a duty of care that would reasonably be expected of an individual based on their knowledge and experience.

- Are well-informed about the university and its purposes, and the unique nature of a university.

- Consider the impact of decisions on key stakeholders, demonstrate this through asking questions and raising issues, and treat stakeholders fairly and equitably, while acting at all time in the best interests of the university as a whole.

- Understand their relationship to the academic oversight body (senate or academic council) and the different roles for each.

- Ask informed questions of administration that will provide them with an

understanding of how any proposed plan of action aligns with fiscal sustainability and strategic goals, and alternatives to the proposed plan of action.

- Understand how to manage any conflicts of interest in decision-making (when to declare and withdraw from decisions), and level of transparency and confidentiality required in relation to board discussions and fiduciary decision-making.

- Understand the expected time commitments and preparations for board activities including the need to prepare for meetings (including reading all materials in advance), seek clarification on pending issues and seek information to enable informed decision making.

- Understand and adhere to the expectations for board attendance, board member conduct, and when a board member would be removed.

- Understand the importance of relying on the expertise of governance professionals on procedural issues.

- Understand the importance of being able to identify when they need external expertise and of engaging such experts.

Board Education

Being a board member of any organization carries significant responsibilities and liabilities. All board members require orientation and ongoing education in order to understand the specific features of the organization and their fiduciary governance role in relation to it. The university sector in particular is characterized by unique elements with which many board members may not be familiar with initially. Hence university leaders must ensure that a robust system of board education is in place to support members to perform their roles.

- A formal orientation is in place to onboard new board members, with formal onboarding materials and orientation sessions. Orientation topics include:

  o The university act or charter and associated by-laws and policies.

  o Fundamental concepts involved in the university governance structure, including fiduciary responsibility (duty of care, loyalty, good faith, confidentiality, prudence and disclosure), the institutional mission, institutional autonomy, collegial decision-making and processes, shared governance, the academic enterprise, academic freedom, and tenure.

  o The scope of the governance role and key areas of responsibility of the board and the scope of the governance and key areas of responsibility of senate or an academic council.

  o Key internal and external university stakeholders, their characteristics, issues, interests, achievements, and any areas of tension.

  o The committee structure of the board and how it supports decision-making and fiduciary oversight.

- o Responsibilities around regular meeting attendance and principles of effective participation.

- o Financial literacy and university annual budgeting processes including sources of revenues and expenditures.

- o The university's risk associated policies and the top risks of the institution.

- o The role of the university governance professional (university secretary and/or board secretary) as a governance leader within the university ensuring sound governance practices, policies and procedures.

- o The role of legal counsel as a fiduciary and advisory to the university.

- There are ongoing education sessions for governors that are more targeted, such as emerging university and governance issues.

- New board and committee chairs receive an orientation on mandates and procedures.

- Specific education is undertaken for board chairs.

Board and Board Committee Structures and Meetings

Board members have a broad range of responsibilities and a large amount of material to review and consider in order to fulfil their fiduciary oversight role and duty of care. As a result, it is critical that the board and committees have mechanisms in place to assure themselves that their work is appropriately focused and that meeting time is being used effectively. The board and board committees plan their work through the use of work plans or master agendas, agendas ensure that the board/committee is appropriately balanced between strategy and oversight, that materials are prepared and presented in a way that optimizes board member time, and information and analyses provided to members provides a good foundation from which they can make informed and considered decisions. Furthermore, meeting and committee structures and processes should support independence of member decision-making in order for boards to fulfil their fiduciary responsibilities. Staff support and expertise are essential to support these processes.

- The board mandate is clearly anchored in the organization's mission as set out in the respective university acts and other strategic documents, and focuses on bringing value in relation to those purposes.

- There are written role descriptions and mandates for the board and committees. These descriptions and any associated policies include the major areas of board oversight including: strategic plan; risk management; financial sustainability; selection of auditors and oversight over auditor independence; selection of president; performance management of the president; compensation framework for the president; executive succession planning; and good governance.

- Key areas of board responsibility such as progress on strategic plan initiatives and consideration of decisions in terms of fiscal integrity and risk to the university and community are addressed regularly by the board.

- The board and committees have a process for focusing on oversight of strategic priorities.

- Boards have a coherent committee structure that supports effective board oversight and decision-making.

- A framework is in place that guides the board's oversight of risk management.

- Issues are brought before the board throughout the decision-making process to ensure optimal board input.

- Board meeting schedules allocate sufficient time for major decisions to be considered/discussed/reviewed.

- Meeting materials are sufficiently detailed, comprehensive and succinct to support meaningful decisions by members.

- There is a standard format for recommended actions or decisions that includes clear rationale, financial implications, and risk assessment.

- The board chair takes a leadership role in the development of the agenda for approval by the board.

- Meeting materials are provided to the board in a timely fashion to allow members to make considered decisions.

- In cases where there is a board executive committee, members have a clear mandate about when they can meet and what kinds of decisions they can make without the full board, and there is transparency around their work in agendas and reports to the board.

- The board and committees have access to independent expertise as and when required to fulfill their fiduciary responsibilities.

- There is a process for mutual reporting of key information between the senate/academic council and the board to improve transparency, engagement, and understanding of the shared system of governance.

- The Board Secretary or equivalent governance position ensures that the governance processes are carried out legally and that they support independent, informed decision- making by the board.

- The Board Secretary or equivalent governance position reports to and is accountable to the board, is appointed by the board and reports administratively to the President.

Board Transparency

Universities have critical social purposes, and are funded by government, student tuition, donors, and investments. To demonstrate accountability and promote public confidence, boards have an obligation to ensure the transparency of their decision-making processes and decisions to their various university communities and stakeholders about their revenues, expenditures, and how the university is fulfilling its purposes, while still maintaining spaces for confidential discussions where appropriate such as personnel matters, employment-related matters, and information under embargo.

- The board ensures that university decision-making processes are as open and transparent as possible.

- The Chair of the Board is the official spokesperson for the university board, relating to public statements concerning matters coming before the Board, and all decisions of the Board or one of its committees.

- Minutes of board meetings conducted in open session are publicly available in a timely fashion following approval.

- There are published principled guidelines describing the conditions under which *in camera* meetings or closed sessions of the board are appropriate.

Board Evaluation and Continuous Improvement

Governance is a "human-based system"[4] and participants in governance change through membership renewal. External factors affect governance and stakeholder expectations change. As such, university governance requires regular review and evaluation in order to identify any issues that need addressing and opportunities for improvement. Boards should continually strive for excellence in governance practices within the context of their university, in order to support the university in meeting its purposes and strategic goals, demonstrate their accountabilities to internal and external stakeholders, and promote a positive university culture. Leading practice in this area includes ensuring:

- An annual assessment process for board members to confidentially assess themselves, the board chair and board committees and processes.

- A procedure exists to determine how the assessment data will be considered and used to improve governance.

- Standing committees of the board periodically review their terms of reference regarding mandate and membership to ensure that they have appropriate level of delegation from the board.

- A comprehensive governance review is undertaken periodically, which includes a review of by-laws and other board governance documents, governance practices and

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[4] International Organization for Standardization. *Governance of Organizations – Guidance 37000:2021*, p. 1

procedures, governance culture and effectiveness, board committees and board–senate/academic council relations.

- Emergent and time sensitive governance issues are reviewed individually as the need arises.

- The board promotes effective shared governance practices

- Governance standards are compared against standards and practices at comparable universities and leading governance practices relevant to the sector.

Appendix: Sources Consulted

University Governance Reviews

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Policy Documents

Association of Governing Boards of Universities and Colleges (AGB)

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Canadian Coalition for Good Governance, Building High Performance Boards

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