

**THE ROLE OF THE UNIVERSITY - CURRENT CHALLENGES  
AND IMPLICATIONS FOR GOVERNANCE**

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1. **INTRODUCTION: MY UNIVERSITY BACKGROUND AND SCOPE OF MY PAPER**

Before going into my remarks, I thought it would be helpful to briefly describe my involvement with higher education without making it my life story!

I was appointed to the Faculty of Law of the University of Toronto in 1967. I became a full Professor and went on to various administrative positions, including Associate Dean, Vice-President Internal Affairs of the University, Dean of the Faculty of Law, Vice-President and Provost of the University, and then I went off to Ottawa for some twenty years. I returned after my retirement from the Supreme Court to be Interim President of the University of Toronto for an academic year.

While I was at the University in Simcoe Hall as a Vice-President, I was one of the principal negotiators of the Memorandum of Understanding between the University of Toronto Faculty Association and the University Governing Council. That is a story unto itself but it shortly stated it is a hybrid arrangement that is neither a collective agreement under the *Labour Relations Act* of Ontario but it is an agreement that has collective bargaining and some related issues that could be found in a collective agreement between a union and university. I also served for several years on the Governing Council of the University of Toronto.

Presently I serve as Chair of the Higher Education Quality Council of Ontario which is an independent agency that was set up from recommendations of the Rae review on higher education several years ago. The Higher Education Council is mandated to look at accessibility, accountability and quality in higher education and in short through research advise the Minister of Colleges and Universities on ways to improve the higher education sector of Ontario.

All this to say that I have basically been exposed to governance of the University at all levels but I don't want to say that I'm an expert because I find it is a subject that one learns something about virtually every other day that you are involved with the University in some way.

In my remarks, I will briefly deal with the role of the University, the governance of the University in general, what governance is and what it is not, and finally some current challenges which pose governance implications.

## 2. **THE ROLE OF THE UNIVERSITY**

Let me summarize what I believe is the role of the University by quoting from a Report I recently prepared for President Mamdouh Shoukri of York University. I said this.

“The role of the university in our society is of fundamental importance. Education of any kind is a transformative experience. It is both an investment in oneself and, for public institutions, an investment by society in an individual. A commitment to education is a mark of a civilized society and is crucial to an enlightened democracy. More specifically, universities are institutions that enable its students to attain self-fulfillment and at the same time are important institutions for the attainment of social justice and progress. We cherish the core functions of a university, which, traditionally, are conceived to be the discovery and expansion of the boundaries of knowledge, and the dissemination and preservation of knowledge.

Of course, over the centuries there has been much discussion and debate on the proper role of the university, with critics, for example, arguing for more emphasis on research, or alternatively on teaching and undergraduate education, or on the meaning of life, or on the importance of university graduates being made aware of properly taking their place in civic society.”

You will all be aware of these issues.

[Dr. James Downey, formerly the President of the University of Waterloo, the University of New Brunswick, and Carleton University, eloquently puts it this way:

The primary mission of the university is not to train but to educate, not to do research or transfer technology, not to prepare students for jobs but to make them more discerning people, capable of seeing through the political and commercial hucksterisms of their times, of establishing their own values and finding their own meaning in life, of constructing and expressing their own compelling narratives.

Through teaching and research the university must cultivate a spirit of intellectual dissent. Not for its own sake, but in the interests of a free, tolerant, enlightened, and improving society. <sup>1]</sup>

It is interesting to note in this connection the evolution of universities in Western society. In his book *Education's End*, former Dean of the Yale Law School, Professor Anthony Kronman, discusses three basic stages in the development of the university – first, the so-called “age of piety” in which higher education was as much about shaping souls as shaping minds, and instruction “proceeded on the basis of dogmatic assumptions”; second, the “age of secular humanism” in which “a more pluralistic approach” was adopted, and in which a “passion for objective knowledge” took the place of “spiritual concerns”; and third, the era of political correctness. Although writing from the American context, Kronman’s three stages apply (more or less, and on different timelines) to the basic trajectory of university

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<sup>1</sup> Dr. James Downey, *The Consent University and Dissenting Academy*, Association of University and Colleges of Canada, April 9, 2003.

development in other Western countries, including the United Kingdom and Canada.”

### ***The Central Role of Academic Freedom***

As I have written, academic freedom is centrally connected to the role and mission of the university in our society. As discussed by Professors Matthew Finkin and Robert Post in their book *For the Common Good*, it is usually understood as having four distinct components: freedom of research and publication, freedom in the classroom, freedom of intramural speech, and freedom of extramural speech.<sup>2</sup> Although there may be overlap between or among these components, each plays a distinct role in our understanding of what robust academic freedom looks like. It is neither necessary nor possible for me to discuss each of these components in detail in these remarks; I point them out here simply as a reminder that academic freedom is multifaceted and its context and content necessarily variable.

The justification for academic freedom is that it is necessary for the university to successfully accomplish its mission. We in society desire that our universities and academics advance knowledge through their research and teaching

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<sup>2</sup> Matthew W. Finkin and Robert C. Post, *For the Common Good* (New Haven: Yale University Press, 2009) at p. 7. See also *Sweezy v. New Hampshire*, 354 U.S. 234 (1957)(U.S.S.C.).

and we do not wish anyone to dictate how that should be done or intrude on the efforts of academics in their pursuits and activities.

Academic freedom has had an interesting history in the Western world and the progress has been the result of efforts of many over a long period of time. As Finkin and Post recount, the concept's late-eighteenth German Enlightenment origins are the result of, and a reaction to, constraints on controversial and heretical ideas as old as recorded history, itself. The movement in Germany, and the subsequent dissemination of the concept across Europe and eventually to North America, was both uneven and marked by controversy. The recognition of academic freedom has been intertwined with a history of struggle, tension and conflict, both on university campuses and in broader society.

### ***The Public University Model of Canada***

As we all know, Canada has chosen the public university model for its university education. This of course raises interesting issues of the role of government in higher education and the role of the institutions themselves. It is well recognized that there is an autonomy of the university that is to be respected, yet at the same time there is role for government in terms of the public policy on such questions as the system designed for higher education as well as principles of financing and support that must be within the domain of the legislature. Embedded

in this issue is the thorny question of tuition levels for the students. On this point let me simply say that a university education is both a public and private good and the challenge is to try to get the proper financial relationship between the two. That is what will the government funding provide and what do the students and their families provide in terms of fees? Easy to state the issue. Difficult to resolve the question.

### 3. **THE GOVERNANCE OF THE UNIVERSITY GENERALLY**

Most universities in Canada operate on the bi-cameral model of a Board of Governors and a Senate. As you no doubt know, the University of Toronto in the 1970's changed to a uni-cameral system through its Governing Council. Interestingly enough I don't know of any other university that emulated the University of Toronto's model. Also interesting is that in many respects there have been modifications to the Governing Council model that has tried to adopt measures that are reminiscent of a Senate which deals with academic matters more effectively than the first uni-cameral model contemplated.

To talk about university governance conceptually or in a vacuum is about as useful as a dog baying at the moon: perhaps interesting to hear and see, but not much else comes from it. But I do believe it is important before one talks about governance to situate the context of university governance before becoming



more specific. I have already mentioned some of this context, namely the mission of the university to discover, disseminate and preserve knowledge. To remember that our universities are public which means that governance has to consider the role of government in the system design and financing of the institution, which also carries with it an accountability to government and the wider public for the funding and activities that take place on the campus. Again the autonomy of the institution comes into play with the freedoms that are central to the functioning of the university. I hasten to add that these freedoms are not without responsibility. That is important to remember.

What is also rather unique about the university is the independence and inter-dependence of the numerous academic units that comprise the university. These can be colleges, faculties, departments, centers, institutes or dry campus. Institutions that are reflected in your respective university structures.

However underlying all of the structures is the important factor to recognize that the substance of the activity of the university, namely its teaching, research and outreach activities, rest on individual effort and autonomy within a collective framework of relationships. At the same time it is important also to recognize that, although the management structure appears to be hierarchal, it is far from that when compared to private sector institutions or to the public sector of

government. The university structure in my view is a hybrid of hierarchy, collegial and individual autonomy which makes governance complex both theoretically and pragmatically.

So these factors of context that I have mentioned briefly, and there may be others, greatly influence the governance model that is appropriate for the university. They obviously require the proper weighing of the various factors in play to ensure that governance from a normative viewpoint can be effective as it can be and here is where I come to what we mean by governance and what we don't mean by governance.

#### 4. **WHAT GOVERNANCE IS AND WHAT IT IS NOT**

Governance obviously is not administration, operating, or management of activities that go on in the institution. Governance properly understood is the supervising or monitoring of management. It is not second guessing those who manage or operate. That is easy to say but it is difficult to keep the distinction in mind.

I say that because in supervising or monitoring the management of a university an equilibrium has to be achieved. By that I mean, governance must have enough knowledge and appreciation of how the university or division functions to enable supervision to be effective but not so much knowledge or

appreciation that blurs the distinction between supervision and operation and tends to supplant the role of the administration or of the individuals who are carrying on the activities of the university. This same equilibrium necessity appears in the private sector and those of you who have served on boards of directors of either for profit and not for profit institutions will know what I mean.

To my mind governance at the university encompasses in turn a number of components or principles. These include:

- (a) Inclusiveness: Reflecting the university as a community and a public institution; governance should include members of the community and public as its governing body as it presently does.
- (b) Transparency: Governance at the university should, as much as appropriately possible, be transparent and open; arguably in some ways this can be quite different from the private sector model of governance and public sector governance as shown by cabinet confidentially, etc.
- (c) Accountability: Although the autonomy of the university must be respected, as I outlined above, this does not mean it should not be accountable for the public funding it receives, for the quality of the programmes and activities that are carried on and for the conduct of

the students, staff and faculty members. The university campus is not an oasis that is immune from the law of the land. Governance is vitally important to ensure that accountability is genuine and complete.

- (d) Effectiveness: Governance at the university must be effective to ensure that proper monitoring and supervision of university management is taking place.
- (e) Governance must be Multi-dimensional: By that I mean governance exists not only at the university-wide level, but also at the departmental, faculty, college, or other academic unit level, which must be properly integrated into the university-wide structure.
- (f) Facilitative: Governance should not be viewed or practiced as a barrier to the accomplishment of the goals of the university; it can often be facilitative in a supportive or encouraging way, through commentary, advice, and encouragement of initiatives.
- (g) Compatibility: Governance should strive to be compatible with the basic mission of the university, but ensure that the means chosen to achieve the goals are appropriate. For example, to a large extent,

governance in as complex a university as the U of T has to be decentralized because of the very nature of the institution.

- (h) Non-Duplicative: Governance should strive to be non-duplicative and non-repetitive or wasteful of time, money and effort.
- (i) Policy not Administration: Governance is ultimately about good policy development, not about a manual of behaviour for administrative decision-making at the micro level.
- (j) Planning: Governance should encourage strategy development and sound planning for both the short and longer term, as well as encourage complementary effective management techniques for budgeting, financial controls, human resources policies and the like.

## 5. CURRENT CHALLENGES

For the sake of time I have listed a number of challenges that will test the governance model of a university. I will discuss these only briefly.

### *Academic Freedom*

The first I mention is academic freedom because there have been a number of universities that have had serious issues arise on their campus relating to the role of academic freedom when dealing with either invited speakers or

conferences or programs that surround hotly contested issues of either ethnic or religious differences. My point here is that if the university does not have the proper academic freedom policies in place, and I include the various procedures and infrastructure policies that are also necessary to have, the institution will not be able to face those issues with the proper response that is required.

### ***Funding Challenges***

A second series of challenges surround financial challenges. These are obvious in light of the economic pressures that governments are under and the similar challenges that are in the private sector, and not just in our country but internationally. I still am of the view that higher education should be viewed as an investment rather than a consumption expenditure. Without being silly, healthcare can be viewed more as a consumption expenditure than an investment expenditure recognizing that important as it is, by itself it doesn't make our country or our society more competitive or more enlightened. Of course it makes us healthier and to that extent it is of great importance.

### ***Global Competition: e.g. China and India***

A third challenge for governance looking ahead is global competition in higher education. One need not dwell on China and India and the incredible expansion of higher education in those countries, particularly China. However, we

have somewhat of an advantage as the President of Yale recently pointed out in a commentary that higher education in China is not based on critical analytical thinking which of course is a great part of our university educational and research efforts. But it is just a matter of time before these Asian countries will be making a greater impact in the market for highly educated people. Universities in Canada have to respond and the question is what will be the shape of that response and what implications does it have for governance. Will there be more joint ventures or partnerships among institutions and if that takes place what will be the models of governance that will reflect those relationships.

***Need for Research on Fundamental Issues of Accessibility, Quality and Accountability***

A fourth area is one that relates to my role at the Higher Education Quality Council of Ontario. It has also been surprising to me that for universities that carry on vast amounts of research there has not been relatively speaking much research into the ways in which universities teach and carry on research and measurements for effective teaching and research. The need for that research and to have policies based on that research implemented by government or by institutions or by both is I believe a challenge that is extremely important in the coming years. The fact is that our publicly funded universities will need to improve their teaching and research. Measuring quality of programs, whether it be

teaching or research, is not easy and there is much debate going on and much research is also being conducted to get a better appreciation of the quality of teaching and research that goes on at universities. Research is also needed on models for accountability and accessibility of students especially under represented groups. All this in turn may have governance ramifications and consequences.

### ***Role of Governments in Canada***

The next challenge is also an issue that has been around for some time. Here I'm speaking of the fact that education, constitutionally speaking, is a provincial matter, but there has been an increased presence of the federal government, especially in the area of research. That involvement has been quite remarkable and of fundamental importance. However, there is not a coherent federal approach to education and I don't believe the constitution should be a barrier for that federal presence. We have solved a lack of federal presence in healthcare by the *Canada Health Act* and other efforts. Canada is among the relatively few industrialized countries of the world that doesn't have a national presence in education. Granted most of those countries are unitary state models but look at the United States and Australia, which are both federal countries, which have a very strong federal or national presence in higher education. I believe and hope that ways can be found to have the federal government more involved in a



coordinated, constructive, coherent way so that our universities will become stronger institutions in the coming years. I acknowledge that the political challenges in this respect are quite daunting but I do also underline that without that presence we will not be able to achieve what our country deserves in terms of its higher education goals.