

ACADEMIC COUNCIL REPORT

Non-Public:
Public:

Action Required:

Discussion
Decision

DATE: September 19, 2017

TO: Academic Council (AC)

FROM: Cheryl Foy, University Secretary and General Counsel

SUBJECT: By-law Review Project – By-law Number 2

A. Purpose

We are circulating the draft By-law Number 2 for review in advance of the consultation session scheduled for September 12.

B. Background/Context

Why Review the By-law?

The Board's Governance, Nominations and Human Resources Committee (GNHR) established the By-law Review Project Working Group in September 2015 in order to review and update the University's By-law. The purpose of the review includes addressing inconsistencies between the By-law and the Act, identifying and remedying gaps in the By-law and reviewing the provisions relating to the authority of Academic Council (AC).

Working Group:

The members of the By-law Review Project Working Group are **Cheryl Foy** (Chair), **Karyn Brearley** (GNHR Chair), **Glenna Raymond** (former Board Chair), **Robert Bailey** (Acting Provost), **Mike Eklund** (elected by AC), **Hannah Scott** (elected by AC), and **Becky Dinwoodie** (support). The Working Group has met many times since convening in September 2015.

Legal Background:

The **UOIT Act** (“Act”) establishes Academic Council as an advisory body to “make recommendations to the Board with respect to the establishment of academic standards and curricular policies and procedures and ... recommendations on such other matters as may be referred to it by the board”. The effect of the new By-law is to empower AC to be more than an advisory body as it will have specific delegated authority. This delegation of authority could be argued to be in conflict with the AC’s specific and limited advisory role. UOIT sought legal advice and has received a qualified opinion that the delegation of authority is defensible. The delegation is limited by the legal concept *delegata potestas non potest delegari* i.e. that delegated powers cannot be further delegated. For example, the power to approve AC Committees (establishment or amendment of terms of reference) is delegated to the Board and cannot be delegated to AC.

What Guides the Group - Principles and Objectives:

GNHR asked the Group to work consistently with the following principles:

- Be guided by **good governance** principles - consider best practices in post-secondary institutions & outside of the university environment
- **Law** - Keep an eye on the progress of the proposed new Ontario Not For Profit Corporations Act as it progresses into law & ensure UOIT By-law is compliant
- **Efficiency** - Recognize the tools that we already have – many improvements in governance practices can be accomplished within the present framework & do not have to wait for completion of by-law review
- **Focus** on substantive issues - remain cognizant of what can be accomplished through by-law amendment & create a “Parking Lot” of related issues to be dealt with through other means & documents

GNHR approved the following objectives:

- Strengthen bicameral governance of the University
- Support & strengthen UOIT’s collegial processes & atmosphere
- Support & strengthen communications between the Board of Governors & AC
- Increase faculty member engagement by improving the efficacy of AC & its committees
- Improve the By-law’s consistency with the UOIT Act
- Update the By-law to take advantage of new technology & clean up unclear and/or outdated language
- Ensure the By-law is compliant

Overview of By-law Proposed Changes:

Structure: From one by-law to two:

For ease of reference and to support bicameral governance, the Group will be recommending a new by-law structure to be comprised of two separate by-laws:

- **By-law Number 1** – General By-law

- **By-law Number 2** – Academic Council By-law

By-law No. 1 – General By-law

The Group developed a draft of By-law No. 1, which was circulated to AC in May and June as part of the consultation process. Minimal comments were received from AC.

The changes incorporated into By-law No. 1 are generally non-substantive and fall into the following categories:

- Keeping same general structure as much as possible
- Removing duplications of Act provisions from By-law (e.g. Article 3)
- Removing procedural provisions - plan is to rely on existing or develop new policy instruments
- Identify gaps for procedure development (e.g. Articles 4.1, 4.5, 4.8(c))
- Ensure consistency between By-law & Act (e.g. Article 4.11(a))
- Reorganize where it makes sense to group like topics i.e. President to have role on all Committees – move to Committee section
- Ensure language in By-law consistent with that used in related policies and procedures

By-law No. 2:

The composition of AC under the new by-law is a key change to the existing by-law and has been discussed several times, with the current composition being presented and discussed at AC in April, 2017. No changes to the composition were proposed by members of AC. The members of AC were also given an outline of the remainder of By-Law 2.

By-law No. 2 will replace and expand upon Article 8 of the current General By-Law. The same general principles apply:

- Remove duplication with the Act
- Remove procedural provisions
- Identify gaps for procedure development
- Ensure consistency between By-Law and Act
- Reorganize for clarity

The changes of note in By-law No. 2 are:

- Composition
- Clear delegation of authority over Academic Council process and procedures
- Clearer statement about matters on which AC will provide advice to Board and how the advice will be provided
- More clearly reflecting AC's role in quality processes and tying into existing quality processes

C. Overview of Changes to By-law 2:

Definitions:

We have incorporated the definitions from By-law No. 1 by reference. We have also included a definition for “Non-Public” to clarify that AC may hold non-public sessions, where necessary.

ARTICLE 1 – AUTHORITY AND DUTIES

Article 1.1: Sets out the delegated authority from the Board to AC and provides examples thereof.

Article 1.3: Sets out the matters on which the Board will consult with AC.

Article 1.4: Sets out the matters on which AC will make recommendations to the Board.

ARTICLE 2 - COMPOSITION

The proposed amendments to the composition of AC were presented in an update to AC in April 2017. The most significant changes to the composition (Articles 2.1 – 2.3) are:

- Size (overall increase from 38 to 48 – voting members from 36 to 47)
- Increase in number of elected faculty members (16 to 24)
- Increase in number of students (3 to 6)
- Addition of a governor member
- Removal of VP, External Relations
- Removal of staff member
- Addition of AVP responsible for Student Life

Rationale for Composition Changes:

- Broaden perspectives to further strengthen bicameral governance
- Majority of elected faculty members, bringing UOIT in line with many other institutions
- Proportionate allocation of members among faculties (small faculties = 1 representative & large faculties = 3 representatives)
- At-large positions would cover faculty interest from smaller faculties

Article 2.2: Section 1 of the Act defines “teaching staff”¹ very broadly. The intention of this Article is to clarify the definition of teaching staff for the limited purpose of determining quorum. The majority of the working group considered the Act’s definition in the context of the substantive roles and interests of these academic administrator positions and concluded that the most legally consistent and inclusive definition of a

¹ “teaching staff” includes professors, associate professors, assistant professors, lecturers, associates, instructors, tutors and all others engaged in the work of teaching or giving instruction or in research at the university;

member of the University's teaching staff includes these particular members of the academic community.

Specific Matters on which the Working Group requests AC Comments:

The AC is invited to comment generally on the proposed By-Law with particular focus on the matters below:

As noted above, the AC provided minimal comments on the proposed composition last April and the GNHR has indicated support for this composition. However, since the proposed composition changes were initially presented to AC and GNHR in April, the Working Group has debated a few of the changes, namely the voting status of the University Librarian and governor and whether to implement an associated reduction in the number of at-large faculty by two.

Matter 1 – Voting Status of Librarian and Governor

The majority of the working group supports keeping the voting status and composition as it is for the following reasons:

- Although the University Librarian has not been previously categorized as an academic position at UOIT, the University Librarian plays an integral role in the academic mission of the institution – maintaining voting status would also allow for further evolution of the role.
- Maintaining voting status for the governor will ensure equal participation, encourage engagement, and strengthen bicameral governance.

Matter 2 - Quorum

There has also been considerable discussion by the group regarding the quorum provision in Article 2.2, with a minority of the working group expressing concern about the possibility of achieving quorum in situations where few elected faculty members are in attendance at an AC meeting and the effect this might have on engagement.

As a result of the discussion, the working group asked the Secretariat to review the attendance of AC meetings over the last several years and compare the attendance of Deans and elected faculty members. The Secretariat reported that generally there is not a significant difference between the number of elected faculty members absent compared to Deans over the last 4 years except during the month of June, where there is a pattern of a much larger number of elected faculty members not attending over the last several years.

The majority of the working group share the view that engagement of AC members would be better addressed through other means (e.g. a governance advisory group) than through a quorum provision. Further, agendas are circulated in advance so AC members are aware when significant matters will be considered at a particular meeting and to attend that meeting.

In light of the foregoing, the working group welcomes additional comments for its consideration when making its final recommendation to the Board.

Article 2.5: Sets the term of students to 1 year with the option to renew for an additional year.

ARTICLE 3 – LEADERSHIP

Article 3.2: Clarifies AC's authority to select a member to act as temporary Chair of an AC meeting, as well as to determine the manner in which a temporary Chair will be selected.

ARTICLE 4 – MEETINGS

Confirms that meetings of AC and its committees are public, unless they meet the criteria set out in Article 4.3, in which case AC may hold a non-public meeting. Article 4 also sets out the limitations on attendance at meetings, as well as the Rules of Order that will apply and means of participation. Article 4.7 will allow AC to pass written resolutions, which will assist in improving efficiency of Council.

ARTICLE 5 - COMMUNICATIONS

In advancing the objective of strengthening bicameral governance, Article 5.1 provides for the appointment of a member of AC to provide regular reports to AC on the work of the Board and vice versa.

ARTICLE 6 – ACTIONS TAKEN ON BEHALF OF THE BOARD

Article 6 was updated to include the committees of Academic Council. There are no other substantive changes.

D. Consultation and Approval:

Assumptions:

The By-laws are Board documents. They are also technical and legal in nature. As such, the focus of consultation has been on the governing bodies and senior leadership.

Consultation Process:

- SLT – March 27, June 5, Sept. 5
- GNHR – March 29, June 7
- PAC – April 20, May 18, June 15, September
- Board (update) – May 3, June 22
- AC – May 15, June 20, September 12

Approval:

GNHR – September 27 for deliberation & recommendation
Board – October 26 for approval

The drafts of By-law Nos. 1 and 2 have also been reviewed by external legal counsel and his comments have been incorporated.

E. Request:

We are seeking Academic Council's feedback on the draft of By-law No. 2.



Classification	
Framework Category	
Approving Authority	UOIT Board of Governors
Policy Owner	
Approval Date	REVISED DRAFT June XX, 2017
Review Date	
Supersedes	

UOIT BY-LAW 2

[ARTICLE 1 – Authority and Duties](#)

[ARTICLE 2 - Composition](#)

[ARTICLE 3 - Leadership](#)

[ARTICLE 4 - Meetings](#)

[ARTICLE 5 - Communications](#)

[ARTICLE 6 – Actions Taken on Behalf of Board](#)

BY-LAW NUMBER 2 OF THE UNIVERSITY OF ONTARIO INSTITUTE OF TECHNOLOGY

(being a by-law to govern the affairs of the Academic Council)

BE IT ENACTED AND IT IS HEREBY ENACTED as a by-law of the University as follows:

DEFINITIONS

In this By-law:

- a. the definitions set out in By-law Number 1 are incorporated by reference into By-law Number 2.
- b. “Non-Public” means a meeting that includes members of Academic Council or a committee of Academic Council and only those individuals invited by the Chair of Academic Council or the Chair of a committee of the Academic Council to attend.

ARTICLE 1 – AUTHORITY AND DUTIES

1.1 Delegated Authority from the Board

Without limiting or otherwise constraining the statutory powers and duties of the Board and pursuant to section 5 and subsections 9(1)(i) and (n) of the Act, the Board hereby delegates to the Academic Council the authority to establish the academic standards and curricular policies and procedures of the University, and to regulate such standards, policies and procedures, including:

a. any procedures necessary to effect the intent of this By-law, including but not limited to:

- (i) the election of its members, including the establishment of constituencies and voting practices;
- (ii) selection of a Vice-Chair;
- (iii) selection of an acting Chair in the absence of the President; and
- (iv) appointment procedures for its committee members.

~~b. determining the contents and curricula of all programs and courses of study;~~

~~eb. determining academic quality, which includes determining the contents and curricula of all programs and courses of study;~~

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~~cd. governing the academic standards for:~~

- (i) admission of students to the University;
- (ii) academic integrity and professional suitability; and
- (iii) graduation.

~~de. governing matters arising in connection with the award of fellowships, scholarships, medals, prizes, and other awards for academic achievement;~~

~~f. conducting examinations, appointing examiners and deciding all matters relating thereto;~~

Commented [BD1]: Procedures for conducting examinations fall under general academic regulations under (g)

~~eg. establishing and implementing general academic regulations;~~

~~hf. establishing and implementing academic and research policies except those that are organizational in nature and/or those implemented to fulfill legal compliance obligations;~~

~~ig. granting bachelor's degrees, master's degrees, doctoral degrees, honorary degrees and all other degrees, certificates, and diplomas in any and all branches of learning;~~

~~jh. providing for the convening and conduct of convocations;~~

~~ik. establishing a faculty council for each Faculty of the University, which will be responsible for the policies and procedures of the Faculty as set out by the Academic Council;~~

~~jl. appointing committees and working groups to provide investigative, informational or advisory services to Academic Council; and~~

~~km. subject to any limitations imposed by law or contract, such other authority as the Board may, through by-law or resolution, confer on the Academic Council or a committee of the Academic Council to act on the Board's behalf with respect to any matter or class of matters.~~

1.2 The delegation of authority under Article 1.1 subsections (d), (e) and (h) fulfill the Board's duty to consult with the Academic Council set out in subsection 10(5) of the Act with respect to matters referred to in subsections 9(1)(b), (g) and (h) of the Act.

1.3 Consultation by the Board

In accordance with section 10(5) of the Act, the Academic Council will be consulted by the Board on the following matters:

- a. the mission, vision and values of the University;
- b. the establishment of service and institutional policies and plans, and academic and research policies and plans that are organizational in nature or those implemented to fulfill legal compliance obligations and the manner in which they are implemented; and
- c. the appointment and removal of the Chancellor.

1.4 Recommendations to the Board

Academic Council will make recommendations to the Board on matters including:

- a. the establishment or termination of degree programs;
- b. the establishment of faculties, schools, institutes and departments;
- c. the establishment of chairs and councils in any faculty, school, institute or department;
- d. the establishment and terms of reference of committees to exercise the Academic Council's delegated authority under this Article; and
- e. such other matters as may be referred to it by the Board.

1.5 The duty of the Academic Council to make recommendations under Article 1.4 (b) and (c) fulfills the Board's duty to consult with the Academic Council set out in subsection 10(5) of the Act with respect to matters referred to in subsection 9(1)(f) of the Act.

1.6 All recommendations made by the Academic Council pursuant to Article 1.4 will be made by resolution and reported to the Board by the President. The Board will consider the recommendation(s) of the Academic Council during its deliberations on the matter. If the Board does not adopt a recommendation of Academic Council, the Board will communicate its reasons for the decision to the Academic Council through a report by the President.

ARTICLE 2 - COMPOSITION

2.1 *Ex-officio* Members

In accordance with section 10 of the Act, the Academic Council will be composed of the following *ex-officio* members:

- a. the Chancellor;
- b. the President;

- c. the Provost and Vice-President, Academic;
- d. the Dean of each Faculty and School of the University;
- ~~e. the Dean of Graduate Studies;~~
- ~~f.e.~~ the Registrar;
- ~~g.f.~~ the University Librarian;
- ~~h.g.~~ the ~~Assistant Vice President~~ senior administrator responsible for Student Life;
- ~~h.~~ ~~one Associate Provost, or successor~~ the senior administrator responsible for Quality Enhancement;
- ~~j.i.~~ ~~the Vice President~~ the senior administrator responsible for Research;
- ~~k.i.~~ a Governor; and
- ~~l.k.~~ the Council of Ontario Universities Academic Colleague (non-voting).

Commented [BD2]: Includes Dean of School of Graduate & Postdoctoral Studies & more general to allow for expansion

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Commented [BD3]: for discussion at Academic Council consultation

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2.2 For the purpose of determining quorum, the following *ex-officio* members will be counted as Teaching Staff:

- a. the Provost and Vice-President, Academic;
- b. the Dean of each Faculty and School of the University;
- ~~c.~~ ~~the Dean of Graduate Studies;~~
- ~~d.c.~~ the Associate Provost; and
- ~~e.d.~~ the ~~Vice President~~ senior administrator responsible for Research.

2.3 Elected Members

a. Faculty, elected from among full-time continuing Associate Deans, tenured and tenure-track faculty and teaching faculty, in the following numbers:

- (i) Faculty of Business and Information Technology – three (3)
- (ii) Faculty of Education – one (1)
- (iii) Faculty of Energy Systems and Nuclear Science – one (1)
- (iv) Faculty of Engineering and Applied Science – three (3)
- (v) Faculty of Health Sciences – three (3)
- (vi) Faculty of Science – three (3)
- (vii) Faculty of Social Science and Humanities – three (3)
- (viii) Faculty At-Large – seven (7)

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b. Students, elected from among their respective constituencies, in the following numbers:

- (i) undergraduate – four (4)

(ii) graduate – two (2)

2.4 Elections

The Academic Council will establish the rules and regulations governing the election of its members pursuant to Article 1.1(a)(i).

2.5 Terms

Elected faculty members will serve for three-year terms. Elected student members will serve for a one-year term, which is renewable for an additional year. The Academic Council will establish the eligibility requirements and procedures for the renewal of the student members pursuant to Article 1.1(a)(i).

ARTICLE 3 – LEADERSHIP

3.1 Chair

In accordance with subsection 10(3) of the Act, the President is the Chair of the Academic Council.

3.2 Temporary Chair

In the absence of the President, the Academic Council may select one of its members to act as temporary Chair of the meeting. The Academic Council will determine the manner in which the temporary Chair will be selected pursuant to Article 1.1(a)(iii).

ARTICLE 4 - MEETINGS

4.1 Subject to subsections 4.2, 4.3 and 4.4 of this Article, meetings of the Academic Council and its committees will be Public.

4.2 The Academic Council and its committees may conduct two (2) types of meetings as part of their regular administration:

- Public; and
- Non-Public.

4.3 Where the Academic Council or a committee of the Academic Council considers matters confidential to the University or of a personal nature concerning an individual, that part of the meeting concerning such matters will be Non-Public.

4.4 Attendance at Public meetings will be subject to space limitations and the provisions of the related procedures. No person will be removed from a meeting except for improper conduct as determined by the chair.

4.5 Meetings of the Academic Council and its committees will be conducted respectfully, efficiently and with a view to reaching consensus in accordance with the values of the University. In case of controversy, meetings of the Academic Council and its Committees will be conducted in accordance with *Democratic Rules of Order* by Francis and Francis (9th edition), as amended or replaced, or such other rules of order most recently adopted by the Academic Council and its committees.

4.6 **Participation by Electronic Means**

If the University chooses to make available a telephone, electronic or other communication facility that permits all participants to communicate adequately with each other during a meeting of the Academic Council or its committees, any person entitled to attend such meeting may participate in the meeting by means of such telephonic, electronic or other communication facility in the manner provided. A person participating in a meeting by such means is deemed to be present at the meeting. Notwithstanding any other provision of the By-laws, any person participating in a meeting of the Academic Council or a committee of the Academic Council pursuant to this Article who is entitled to vote at that meeting may vote by means of any telephonic, electronic or other communication facility that the University has made available for that purpose. No member of the Academic Council or its committees will be represented by proxy.

4.7 **Written Resolutions**

A resolution signed (electronically or otherwise) by all members of the Academic Council or a committee of the Academic Council entitled to vote is as valid and effective as if passed at a meeting duly called, constituted and held for the purpose. Written resolutions may be signed in counterparts and such resolutions signed by one or more members entitled to vote and transmitted by facsimile, electronic mail, or other electronic means to the Secretary will be deemed to be duly signed by such members.

ARTICLE 5 - COMMUNICATIONS

5.1 Effective communications between the Academic Council and the Board are an integral aspect of collegial governance. Accordingly, the Academic Council will appoint one of its members who will deliver a report at every public meeting of the Board and Academic Council.

ARTICLE 6 – ACTIONS TAKEN ON BEHALF OF BOARD

6.1 **Report of Action Taken**

Subject to Article 6.2, action taken by the Academic Council or one of its committees under delegated authority will:

- a. be reported to the Board for information;
- b. have the same effect as a resolution passed by the Board; and
- c. have effect from the end of the meeting at which it was approved.

6.2 Review of Action Taken

- a. Where the Board, with respect to any matter or class of matters, has conferred on the Academic Council or a committee of the Academic Council (the “decision-making body”) the authority to act on behalf of the Board, and where, prior to the adoption by the decision-making body of a resolution to determine the matter, the Chair of the Board, the President (or the relevant presidential representative appointed pursuant to Article 7.6 of By-Law 1), the Chair of the decision-making body, or the decision-making body itself is of the opinion that the matter is major in significance with respect to the public or fiduciary responsibilities of the Board, the relevant individual or decision-making body may require that the matter be submitted to the Board for confirmation.
- b. Where a matter is referred to the Board pursuant to paragraph (a) of this section, the action taken by the decision-making body will not have effect unless confirmed by the Board. If so confirmed, such action will have the same effect as a resolution passed by the Board and will have effect from the end of the Board meeting at which the matter was determined.
- c. Subsections (a) and (b) of this section do not apply to the actions taken by any committee established to make decisions on academic appeals or to cases of alleged academic or non-academic misconduct.

6.3 Reconsideration

No matter decided by the Academic Council, or by a committee of the Academic Council, or referred to the Board and confirmed by it under the provisions of Article 6.2, may be considered again by the Academic Council, the committee or the Board within 12 months of the meeting at which the matter was decided, or of the Board meeting at which the action was confirmed, unless a motion for reconsideration is carried by a two-thirds majority of the members of the Academic Council, the committee, or the Board, as the case may be.

ENACTED by the Board of Governors on the day of 2017.

President -

Secretary -