

BOARD OF GOVERNORS STRUCTURES AT NOVA SCOTIA UNIVERSITIES

Fall 2021 (Revised)



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INTRODUCTION

Recently, faculty and student representatives serving on Boards of Governors in Nova Scotia have encountered a number of problems, and occasionally outright conflict, with various Boards. In response to this, ANSUT has established a committee to examine Board governance and which would work on a province-wide campaign to assess the state of that governance in Nova Scotia universities. The ultimate goal is to improve transparency of processes, to clarify rights and duties of governors, and to increase the effectiveness of faculty and student governors.

The main goals of this project are:

- to affirm collegial governance
- to affirm the representational nature of university Boards (i.e., constituency vs. trustee model)
- to investigate the way representation and process work on Boards
- to ensure Board members are knowledgeable about the educational mission of the university
- to examine and assess the way in which a corporate model of governance is influencing Boards
- to inform, empower, and mobilize faculty and student governors
- to identify practices that Boards should and should not engage in, and to effect positive change through recommendations drawn from evidence-based research.

METHODOLOGY

To understand the composition and practices of university Boards in the province, faculty association representatives from each institution were asked to complete a voluntary survey. The survey included questions about Board membership, Board Executive structures, By-laws, meetings, training for new members, and communication practices (Appendix A).

The survey questions were modelled on the Canadian Association of University Teachers' report on the *Board of Governors Structures at Thirty-One Canadian Universities*. One of the primary intentions with this report is to supplement the CAUT document with more information about Board governance in Nova Scotia.

The survey was developed in Google Forms and released by email in May 2021. A link to the survey was distributed, along with an introductory message describing the goals of the project. The email was sent to the faculty association president of each of the following nine universities in Nova Scotia: Acadia University, Atlantic School of Theology, Cape Breton University, Dalhousie University, Mount Saint Vincent University, NSCAD University, Saint Mary's University, Université Sainte-Anne, and St. Francis Xavier University. By June 2021, responses from all nine had been received, and, in all cases, participants' consent was obtained.

Before the analysis began, the survey data was partially anonymized with the removal of the individual respondents' email addresses so that only the institution name was associated with a response. The survey data was cleaned to allow for statistical analysis. For example, most question fields were either short or long form to allow respondents the opportunity to add contextual information. In the cases where those responses included a numerical aspect (i.e., how many representatives from the faculty association are on the Board), contextual information was removed and added to a comment, leaving only the number in the cell.

Due to the sensitive nature of this project, only the anonymized survey data have been made available to the ANSUT members directly working on the data analysis. While some of the survey data will be published in aggregate (as tables, charts, and graphs), the raw and anonymized survey data will never be disseminated.

Analyses were conducted by members of ANSUT's Nova Scotia Board Campaign Committee. To reduce bias, members did not analyze information collected about their home institution. Given that the survey responses were based on the subjective experiences and knowledge of the individual respondents, care was taken to cross-reference information contained in official Board documentation in the analysis of the survey data. This documentation included government legislation (university Acts and Charters), By-laws, and policies. All the supplementary documentation was publicly available. Some of the information and analysis in what follows was adapted from the *CAUT Report on Board of Governors Structures at Thirty-One Canadian Universities* (May 2018), particularly those for Acadia University, Dalhousie University, and St. Francis Xavier University, which were the only three Nova Scotia universities included in the CAUT report.

In addition to the nine universities mentioned above, an analysis of the Board of Governors of the University of King's College is also included. King's and Dalhousie are unique in Nova Scotia in that they are formally associated and financially and academically integrated to some degree. While King's has an affiliation with Dalhousie University, both institutions have separate Boards which operate independently and are different in composition. The report, therefore, includes an analysis of all ten universities in Nova Scotia.

For a convenient list of most Nova Scotia university board compositions, see the Nova Scotia Government document "Agencies, Boards and Commissions (ABC)": <https://novascotia.ca/apps/abc/DeptABCList.aspx>.

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ACADIA UNIVERSITY

Board composition

The Board of Governors is comprised of 37 members appointed as follows: 6 Order in Council, 9 by the Convention of Atlantic Baptist Churches (now the Canadian Baptists of Atlantic Canada), 12 by Alumni, 2 by the Board, 3 by the faculty, 2 by students, 3 ex-officio (President of the University, President of Acadia Divinity College, and President of the Students' Union). There is a large religious component – nine appointed by the Convention of the Atlantic Baptist Churches, as well as the President of the Acadia Divinity College. There is also a large alumni presence – 12 members. There are unusually long terms for all governors, except for faculty and students – six years with the ability to renew – which means governors could serve for decades. Also, the Board has the authority to appoint only 2 governors.

Board executive

The Chair of the Board, the First and Second Vice-Chair of the Board, the Secretary of the Board, the President of the University, the President of the Students' Union, the President of the Associated Alumni, one governor elected by faculty, the Chairs of the Standing Committees (there are 7), and 2 ex-officio non-voting financial administrators. In the event that none of the above is from those governors elected by the Convention of Atlantic Baptist Churches, one additional governor shall be appointed to the Committee to ensure representation from this constituency.

This is a large Executive Committee – 15 or 16 voting members – but it includes one faculty member and the President of the Students' Union. It generally meets 6 times a year and provides minutes of its meeting to the whole Board.

By-law 15.2 stipulates the composition of the governance committee. The requirement that different constituencies be represented on the committee that oversees governance, Board resources, and nominations further promotes the University Governance Model. This also applies to the Executive Committee.

Number of faculty on board

3/37

Source of faculty on board

Act of Incorporation updated to 1995: Section 10(e) of the *Act Respecting Acadia University* states that the faculty appoint their three members.

Fiduciary duty provisions

By-law 5.1 defines the duty as one of honesty and good faith with a view to the best interests of the University. *By-law* 2.3 states, "The Board of Governors...is responsible for the good governance of the University and has ultimate responsibility for the University's institutional health and well-being."

While this language is consistent with fiduciary duty within the University Governance Model, care should be taken to ensure that it is not used to create a false dichotomy between a member's constituency (such as faculty and students) and the University as a whole, which would interfere with the University Governance Model.

Conflict of interest provisions

From the definition section in the *By-laws*: a "Conflict of Interest" is primarily a financial conflict but also includes undefined "other interests that impair or appear to impair his or her independent, unbiased judgment in the discharge of his or her responsibilities to the University..."

By-law 5.5 states that a Governor with a conflict of interest "shall declare his or her interest and shall not be entitled to participate in the deliberations or vote related thereto."

By-law 5.5 states that "where the matters for discussion involve terms of employment, promotion, or termination, the Member must withdraw from the meeting." There is an exception, however, for student members, who may vote on tuition, although the guidelines seem to exclude, by implication, faculty from any deliberations or votes on contract negotiation. The Board is allowed to review a conflict situation to allow a member to remain for discussions but not vote.

Better language would draw the appropriate distinction between voice and vote by specifically allowing for internal members' participation in the discussions without special dispensation from the Board.

Conduct & communications restrictions / Code of conduct

By-law 6.5 provides that confidentiality applies to the substance of Board deliberations and proceedings. Collective bargaining and personnel matters are presumptively in camera.

A blanket confidentiality rule interferes with the ability of faculty Board members to consult with their constituents in a meaningful way, thus reinforcing the democratic deficit between appointment by faculty and the ability to act as a representative on the Board.

There does not appear to be any specific "Code of Conduct," but other Board documents cover confidentiality and conflict of interest.

Nature of meetings

By-law 6.4 requires that meetings default to closed. Closed meetings as a matter of course are not the norm at most Canadian universities. The effect of closed meetings and the prohibition on reporting the substance of certain discussions hinders the representational model inherent to this university Board. The use of consent agendas is not known. Minutes of meetings and agendas do not seem to be publicly available.

ATLANTIC SCHOOL OF THEOLOGY

Board composition

The Board of Governors consists of twenty (20) members, one (1) of whom is the President of the school, fifteen (15) of whom are appointed by the three Founding Parties (Roman Catholic Episcopal Corporation of Halifax, Anglican Founding Party, and Pine Hill Divinity Hall), two (2) members of faculty appointed by the faculty, and two (2) students appointed by students registered at the school (*AST Act 2.2-2.4*). There are no Governors-in-Council appointed by the province to the AST Board.

Board executive

The Executive Committee consists of the following (*By-law 4.2.a*): The Officers of the Board (*By-law 2.1*), including the Chair, Vice-Chair, Past Chair, Treasurer, and Secretary) and is chaired by the Board Chair. Between meetings of the Board, the Executive can exercise all powers of the Board. There is no faculty or student representation on the Board Executive, and there should be.

Number of faculty on board

2/20

Source of faculty on board

Statutory: Section 2 (2) of the *Atlantic School of Theology Act* provides for two members appointed by the faculty.

Fiduciary duty provisions

Neither *The Act* nor the *By-Laws* of AST refer to fiduciary duty, but Section 2.3 of *The Board Handbook* states that: "Governors have a fiduciary duty; in other words, a legal obligation to act in the best interest of the institution. Governors must put the interests of AST ahead of any other interest and must avoid conflict with any personal or other interest which may impede their ability to serve AST's interests and [...] fiduciary duty: the duty of care and the duty of loyalty."

This language goes beyond what the fiduciary duty requires by implying a false dichotomy between a member's constituency (such as faculty and students) and the University as a whole, thus interfering with the University Governance Model.

Conflict of interest provisions

By-law 8.1 definition of "Conflict of Interest" is not inconsistent with the University Governance Model, but *By-law 8.2* requires a member who has declared a conflict of interest to withdraw from the meeting during the discussion of a motion concerning the matter.

Better language would be to make a "voice-vote" distinction. This would allow representative members to fulfill their role as representatives by allowing their participation in discussions but requiring them to recuse themselves from the vote.

Conduct and Communications Restrictions / Code of conduct

By-law 7.3 states that all Governors shall keep in strict confidence all confidential and proprietary information acquired in connection with performance of their duties as Governors and will not publish, communicate, divulge, or disclose to any third party any such information except as specified in Board policy. The *Confidentiality Policy* states that confidential matters include but are not limited to personnel matters, contractual negotiations, and privileged information (undefined), and such matters as the Chair or majority of members determines to be sensitive. Further, the decision as to what matters are to be discussed *In Camera* may be made at the sole discretion of the Chair. The *Confidentiality Policy* also states that minutes are private and will not be published. Minutes may be accessed by request to and with permission of the Executive. Confidential information will be recorded in a separate annex to the Minutes and will be released only by a two thirds majority of the Board.

This language is overreaching. A blanket confidentiality rule interferes with the ability of faculty board members to consult with their constituents in a meaningful way, thus reinforcing the democratic deficit between appointment by faculty and the ability to act as a representative on the Board. The private Minutes preclude any person or party from investigating the actions of the Board without the Board's permission. This contravenes the University Governance Model's principles of transparency and accountability.

Nature of meetings

By-law 3.1 states that meetings of the Board and its Committees are normally private, attended only by governors, ex officio members and specifically invited guests. Specific meetings may be opened to the public by resolution of the Board, passed by a simple majority.

Consent agendas are used and constituent reports are normally included in the consent agenda.

Governance meetings should be open to members of the represented constituencies as observers as a principle of openness and transparency in accordance with the University Governance Model.

Other

The Act, section 2.2, says faculty members are appointed by the faculty, but *The Board Handbook*, section 2.2, says that "Appointment of faculty and student Governors is coordinated through the President in consultation with the Academic Dean."

This language in *The Board Handbook* does not conform with *The Act*. By making faculty and student appointments at the pleasure of the administration, this practice reinforces the democratic deficit of constituency representation.

The Board members are listed on the university by name only. This makes it impossible to know what sectors they represent.

CAPE BRETON UNIVERSITY

Board composition

The Board of Governors consists of up to thirty-six (36) members including the President, a senior administrator appointed by the President, twelve (12) Governors-in-Council (eight from Cape Breton), four (4) faculty members, four (4) students, two (2) members appointed by the CB Development Corporation; and up to twelve (12) members appointed by the above members (*CBU Act 6.1 a-g*).

Board executive

The Executive consists of twelve (12) members, including the Officers of the Board (Chair, Vice-Chair, Secretary and Treasurer), the President and Vice-Chancellor, a student member of the Board, and other members of the Board elected by the Board. The Executive has power to deal with any and all matters pertaining to the Board between Board meetings, within the purview of Board policies and directives (*By-law 2.9 a-b*).

There is no mention of faculty representatives serving on the Executive in the Board *By-laws*; however, according to past practice, the CBUFA President does serve. The *By-laws* should be updated to explicitly reflect this beneficial practice of including faculty voices on this body.

Number of faculty on board

4/36

Source of faculty on board

The Act, section 6.1.d, says four persons, as specified in the *By-laws*. *By-law 2.1.a* and *2.1.b* state: one faculty member selected by the Faculty Association, one selected by NSGEU, in a manner determined by the respective unions, and two selected by Senate as per *By-law 11.1 (p)*.

Fiduciary duty provisions

The *By-laws* do not refer to fiduciary duty, but *By-law 2.17.b.1* says the Ethics Committee shall monitor compliance with the *Board's Code of Ethics*. The *Code of Ethics* policy does not specify fiduciary duty provisions, but Section 4.1 states that members must put the University's interests foremost and exclusively in their deliberations. This is in keeping with the University Governance Model, but the language saying this must be done "exclusively" in the interests of the University contravenes the ability of faculty representatives to have opinions that may differ from what is determined to be in the best interests of the University. Better language would be to delete the word "exclusively."

Conflict of interest provisions

By-law 10 says, "All members of the Board are bound by the *Code of Ethics* and are expected to perform their duties as board members to the best of their abilities and in the best interests of the University." The *Code of Ethics* section 5.1 identifies a Conflict of Interest as a situation where a member has or appears to have an interest that is likely to jeopardize their impartiality and objectiveness. Section 5.2 (a) includes

labour relations negotiations as an instance of Conflict of Interest and section 5.4 requires a member to withdraw from deliberations on the matter.

Better language would be to make a "voice-vote" distinction. This would allow representative members to fulfill their role as representatives by allowing their participation in discussions but requiring them to recuse themselves from the vote.

Conduct and communications restrictions / Code of conduct

By-laws do not impose codes of conduct or communications restrictions except for *in camera* meetings (*By-laws* 9.3, 9.4, 9.8, 9.9). These *By-laws* do not impose blanket restrictions on faculty regarding conduct or communications, nor do they require faculty representatives to recuse themselves from discussion, but there is too much leeway to move items to *in camera* discussion, which contravenes the University Governance Model principles of openness and transparency.

The *Code of Ethics*, section 4.5, states that once a decision is made by the Board, after a fair and objective hearing of differing opinions, members are obliged to represent those discussions and outcome fairly and accurately in public and to respect the decision of the majority. This language is in keeping with the University Governance Model, but it is undermined by the *Code of Ethics* section 4.7, which specifies that the Board Chair or delegate may be the only spokesperson to the media. This undermines Academic Freedom by prohibiting faculty members from speaking to the media.

The *Code of Ethics*, section 6.1, has language on procedures to identify or contest any suspected instance of non-compliance of the *Code of Ethics* to the Ethics Committee and all parties concerned. This is excellent language, except that the Ethics Committee reports such findings only to the Executive. Better language would have the Ethics Committee report to the whole Board.

Nature of meetings

Consent agendas are used for reports, but it is not clear who gives reports. *By-law* 9.1 says all meetings are open to the public except for *in camera* discussions. *By-law* 9.5 says "Guests" may be invited to participate, including in camera sessions. *By-law* 9.7 says members of the public may submit written or oral briefs. This degree of openness of Board meetings is unusual and commendable, but the *By-laws* list a wide range of topics deemed to be *in camera* and therefore confidential, and there is much discretion circumscribing what is deemed to be confidential and thus not presented at the open Board meetings (*By-laws* 9.3, 9.4, 9.8, 9.9).

Other

The Board's *Code of Ethics and Professional Conduct for Members of the Board of Governors of Cape Breton University* is not available on the website, so not transparent to the public.

The Board members are listed on the university by name only. This makes it impossible to know who they are and what sectors they represent (e.g., MacDonald is the most common surname in Cape Breton, so it is impossible to tell one from another without bios).

DALHOUSIE UNIVERSITY

Board composition

According to *By-law 3*, the Board of Governors consists of 30 members, including 3 ex officio positions (President, Chancellor, and Chair of Senate) as well as 27 appointments nominated as follows: 3 by the Student Union, 2 by Senate, 4 by the Alumni Association, 3 by the Governance and Human Resource Committee (GHRC), and 15 by the Governor in Council upon recommendation of the Board. All 27 appointments also require the recommendation of the GHRC.

Board executive

Act 2A indicates a maximum of 12 members serve on the Board Executive, including the Board Chair, the Vice-Chair, the President, and the Chair of each standing committee, as well as “such other members of the Board as may be appointed from time to time.” (The survey respondent included the Chair of Senate, and said that students and governors in council are also represented on the Exec, though these are not identified in the *Act* or *By-laws*.) The inclusion of a faculty governor and a student governor should be made permanent in the *By-laws* to ensure that these constituencies, which play a significant role at the University, have a voice on the highest level of the Board.

Number of faculty on board

3/30 (2 faculty reps + Senate Chair, as well as an observer from the Dalhousie Faculty Association)

Source of faculty on board

By-law 3.1.c) states, “Two persons appointed by the Board as nominated by the University Senate and recommended by the Governance and Human Resources Committee.” These persons are listed as “faculty representatives” on the official list of Board members. *By-law 3.1.a*) includes “the Chair of Senate,” typically faculty, as an ex officio member. The process for becoming a faculty representative on the Board should be simplified to a democratic election among only faculty senators, rather than involving other levels of recommendation/vetting. (The Terms of Reference for the GHRC state that those nominated by the constituency groups, including Senate, will be presented – rather than recommended – for approval at the Board, suggesting that this level of vetting does not happen in practice. If this is the case, the *By-laws* should be clarified.)

Moreover, it is disconcerting that, as per the Collective Agreement between the Board and the Faculty Association, “Members of the Board of Governors” are excluded from the bargaining unit under the Exclusions listed in Appendix II, L.R.B. No. 2478 (Sec. 22), Appendix “A.” This condition interferes with collegial governance, creates a false opposition between faculty as institutional leaders and as employees, and targets and punishes the faculty constituency of the Board.

It would be good practice to have a member of the Faculty Association serve as an official member of the Board, rather than simply be an observer, given the expansive viewpoint they could bring to discussions and decision-making.

Fiduciary duty provisions

The term "fiduciary" is referred to in the Board's *Code of Conduct*. 1.1 states, "Members are accountable to exercise the powers and discharge the duties of their office diligently, honestly, in good faith and in the best interests of the University rather than in the interests of any other person, entity or constituency." 1.4 goes further: "Members will represent loyalty to the interests of Dalhousie University. This accountability supersedes any loyalty such as that to advocacy or interest groups and membership on other Boards or staffs." This language goes beyond what the fiduciary duty requires by creating a false dichotomy between a member's constituency and the University as a whole, thus interfering with the University Governance Model.

Conflict of interest provisions

The *Code of Conduct* defines a conflict of interest as "a potential or actual divergence between the personal interests of a Member and that Member's obligation to uphold the interests and mission of the university" (1.5.1), where "personal interests" mean "personal, private or financial interests."

Conduct & communications restrictions / Code of conduct

By-law 6.22 suggests that not all matters are confidential, and the Chair or the Board may decide case by case. In camera discussions cannot be communicated without the Board's authorization. *By-law* 7.7 requires that all committees of the Board be in camera. The Board should consider being more open with the workings of its committees, given that Dalhousie is a public institution.

The *Code of Conduct* stipulates that "Members will carry out their duties in such a way as to maintain confidence in the administration of the University" (1.7), and that "Members will make no formal or public evaluations of the President or staff outside of the official process" (1.9.3; see also *Expectations of Board Members*). This conflicts with academic freedom and the ability to critique the University. In addition, it is the Board's role to hold upper management accountable. Part of that may involve public statements about performance.

1.7.4 of the *Code of Conduct* instructs members to do the following: "Members will refer employees to use of appropriate reporting lines within administration and/or policies and procedures to bring their concerns to the Board." This direction when applied to representational members interferes with the University Governance Model. It ignores the fact that these members are on the Board to represent the perspective and concerns of their constituent communities. Other staff at the University should feel comfortable raising concerns with their chosen board representatives. Collegial governance should involve a community of interests, rather than creating hierarchy amongst the University's internal communities.

Code of Conduct 2.1 allows the Board Chair to suspend a member for breaches of the *Code of Conduct*. It is anomalous for the Chair to have this kind of power to act without the intervention of the Board. This kind of power could have a chilling effect on what representational members say or do, since Chairs may be more aligned with the administration. The absence of a formal due process prior to suspension could amount to a denial of natural justice.

Nature of meetings

By-law 6.3 indicates that Board meetings are normally open but subject to room capacity. Minutes of open meetings are publicly available (*By-law 6.21*). *By-law 6.18* permits the use of a consent agenda. Notice of meetings is to be given 10 calendar days prior (*By-law 6.2*) and notice of resolution is to be given 7 calendar days prior (*By-law 6.19*). However, the *By-laws* make no mention of specific rules of order to be followed at meetings. The *By-laws* do not specify when the meeting package should be sent to members. (However, the survey respondent said that meeting materials are provided 10 days in advance of a meeting.) *Code of Conduct 1.3* requires that members “be guarded in their comments and avoid attacks on other people's reputations.” This is excessive language that forces civility onto proceedings that can evoke passionate responses, and it infringes on the academic freedom of faculty on the Board.

Furthermore, the online *Expectations of Board Members* includes: “Be able to subordinate themselves to the Board as a whole and stand behind Board judgments and decisions.” Such an expectation should be removed, as it implies that all governors are required to “leave with one voice,” which is contrary to the principles of collegial governance and academic freedom. Board members can accept the decision of the majority without agreeing with it. Board members representing a constituency as per their university Act and Charter should not be prevented from voicing their stance on decisions made at the Board.

Other

The *University Act* and the Board *By-laws* do not align in all respects. The *By-laws* seem to supersede the *Act* and function as the primary document to regulate the Board.

The *Roles and Responsibilities* for Board members imposes a trustee model of governance, rather than a constituency model as indicated by the *Act* and by the selection of governors from various constituencies (*By-laws*). Such a model ignores collegial governance and implies a false dichotomy between the best interest of student and faculty constituency groups and the university. Students and faculty are key to the university, which has as its core functions teaching/learning and research.

Nominations for membership to the Board are made by the Governance and Human Resources Committee (*By-law 3.2*). There seems to be no official Equity, Diversity, Inclusion, Accessibility (EDIA) policy for Board membership. Given the import of Board membership for a public institution and especially in a time of Truth and Reconciliation, Black Lives Matters, and antiracism advocacy more generally, it would be beneficial to develop an official EDIA framework to guide the committee in appointments made solely by the Board.

The Board website, under *Expectations of Board Members*, lists directives – some seemingly contradictory to one another or to statements made in other documents – which include:

- "Be aggressive in questioning issues and in challenging administrators and Board colleagues"
- "Support the President and be enthusiastically involved in advancing and defending the university"
- "Finally, Board members must have a sense of humour!"

MOUNT SAINT VINCENT UNIVERSITY

Board composition

There are 32-37 Governors, 2 of which are Governor-in-Council appointments. The others are: the Chancellor, the President, the Academic Vice-President, the Administrative Vice-President, 5 appointed by the Congregation (Sisters of Charity), 3 alumni, 3 faculty, 3 students, and no less than 12 or more than 17 selected by the Board from the community at large.

Board executive

Chair of the Board of Governors, Vice-Chair of the Board, Chairs of standing committees (there are 8), 2 members-at-large (from the Board of Governors) may be appointed at the discretion of the Chair. Ex officio (non-voting) Members: President of the University, Vice-President Academic and Provost, and Vice-President Administration. It is possible that faculty or students may be on the Executive if they are appointed as members-at-large or if they are permitted to be chairs of a standing committee (though the survey respondent said this does not happen in practice), but there is no specific requirement for these constituencies.

Number of faculty on board

3/32-37

Source of faculty on board

The Act: Section 6(1) (g) states "selected by and from the faculty."

Fiduciary duty provisions

From *New Member Handbook*: "Board members have a fiduciary responsibility to the University and should act in its best interest. While the Board of Governors is made up of various stakeholders' groups (constituencies), once members enter the meeting and sit at the Board table, they are, in fact, removing their 'constituency hat' and replacing it with a 'Board Member hat'....[A decision] may sometimes conflict with what is in the best interest of an individual or stakeholder group.... however, Board members must act in the best interest of the University."

This provision seems designed to prevent governors from representing their constituencies, and goes beyond what the fiduciary duty requires by creating a false dichotomy between a member's constituency and the University as a whole, thus interfering with the University Governance Model.

Conflict of interest provisions

By-law 6.10.1: "A Governor who has a conflict of interest, either in a proposed contract with the University or in some other matter to be considered, shall declare her interest and shall not vote thereon. Such Governor may be asked by the Chair to withdraw from the meeting during the discussion or voting of any motion relating thereto."

The *Conflict of Interest Policy* states that "Board members have a legal responsibility to assure the prudent management of the University's resources" and gives this example: "When the personal or professional concerns of a Board member affect her ability to put the welfare of the University before personal benefit."

Conduct & communications restrictions / Code of conduct

The Board requires that an acknowledgement and agreement document be signed that signifies adherence to the Code of Conduct, Conflict of Interest guidelines, and confidentiality. This document also includes a statement that permits the Board to take "remedial action," including "recommendation ... for removal from the Board of Governors." This power is overreaching in the context of collegial governance. Such remedial action also contravenes the University Act 6(1), which states that constituency groups select their own representatives. A blanket confidentiality rule interferes with the ability of faculty Board members to consult with their constituents in a meaningful way, thus reinforcing the democratic deficit between appointment by faculty and the ability to act as a representative on the Board.

The *New Member Handbook* explicitly describes a "one voice" policy. While members may have different opinions and "it is not expected that a full consensus will be possible in all decisions," once the Board makes a decision all "Board members are expected to respect this decision-making process and leave with one voice, the voice of the Board and not the voice of individual Board members or stakeholder group."

Such an expectation is contrary to the principles of collegial governance and academic freedom. Board members can accept the decision of the majority without agreeing with it. Board members representing a constituency as per their university Act or Charter should not be prevented from voicing their stance on decisions made at the Board. These policies run counter to the University Governance Model, reduce the possibility of genuine collective and collegial governance, and silence dissension. The expectation to "leave with one voice" should be removed.

Nature of meetings

Closed. Universities are public institutions accountable to the public, and so meetings of the MSVU Board of Governors should be open and minutes should be made available, as, for example, at Dalhousie. However, the "Master Agenda" and an outline of meeting outcomes are available to the public via the BoG website. Consent agendas are used.

Other

Despite the encouragement to members to ask questions and to express diverse opinions, there are two disturbing elements in the instructions to governors. The first is the removing their "constituency hat" and replacing it with a "Board Member hat," which would require a governor to abandon the concerns of the people who have chosen them; the second is the "one voice" policy, which asks a governor who disagrees with a decision to feign agreement. And yet the *New Member Handbook* says governors should "Be prepared to question and challenge ideas and concepts presented to you before you participate in a motion to approve or accept them.... Active participation and diversity of thought is key to good governance."

NSCAD UNIVERSITY

Board composition

According to *Act 5.2*, the Board of Governors consists of a minimum of 19 members and a maximum of 23, including the President as well as 4 positions elected as follows: 2 by the Faculty and 2 by the Alumni Association; and 14-18 positions appointed as follows: 2 by the governing body of the Students, 6 by the Governor in Council, and 6-10 by the Board.

Board executive

The Governance and Human Resource Committee (GHRC) seems to function in place of a Board Executive. *By-law V.1.(a)iii* lists the Chair or Vice-Chair, another Officer of the Board, the President, a faculty governor, and three other governors, but no explicit mention of a student is made. The inclusion of a faculty governor on a committee that appears to wield similar power to a Board Executive is welcome and should be followed at other institutions for both Executives and GHRCs. A student governor should also serve on both committees and be named explicitly in the membership.

Number of faculty on board

2/19-23

Source of faculty on board

Act 5.2.a states: "two persons elected by the Faculty of the College who are members of the Faculty."

Fiduciary duty provisions

The term "fiduciary" is referred to in the Board's *Code of Conduct*. 1.1 states, "Members are accountable to exercise the powers and discharge the duties of their office diligently, with impartiality, honestly, in good faith and in the best interests of the University rather than in the interests of any other person, entity or constituency." 1.6 goes further: "Members will represent loyalty to the interests of NSCAD University. This accountability supersedes any loyalty such as that to advocacy or interest groups and membership on other Boards or staffs." This language goes beyond what the fiduciary duty requires by creating a false dichotomy between a member's constituency (such as faculty and students) and the University as a whole, thus interfering with the University Governance Model.

Conflict of interest provisions

The *By-laws* briefly refer to NSCAD's *Conflict of Interest Policy* (V.1.(d).iv and VI.2.(c).v). The *Code of Conduct* defines a conflict of interest as "a potential or actual divergence between the personal interests of a Member and that Member's obligation to uphold the interests and mission of the University" (1.7.1), where "personal interests" mean "personal, private or financial interests."

Conduct & communications restrictions / Code of conduct

The *By-laws* refer to NSCAD's *Code of Conduct* (V.1.(d).iv and VI.2.(c).v). *By-law 2.(i)* suggests that not all matters are confidential, and the Board may decide case by case. *Code of Conduct 1.8* explains that discussions at closed meetings cannot be communicated without authorization of the Board. The *By-laws* require that all deliberations, materials, and information of the 4 standing committees of the Board be

confidential (V.15, VI.5, VII.11, VIII.5). The Board should consider being more open with the workings of its standing committees, given that NSCAD is a public institution. The *Code of Conduct* stipulates that "Members will carry out their functions in such a way as to maintain confidence in the University" (1.7.1), and that "Members will make no formal or public evaluations of the President or staff outside of the official process" (1.9.3). This conflicts with academic freedom and the ability to critique the University. In addition, it is the Board's role to hold upper management accountable. Part of that may involve public statements about performance. In the *Code of Conduct*, there is a requirement to sign a form acknowledging having read the *Code* and a declaration regarding conflict of interest. Failures to comply with the *Code* may lead to sanctions or removal from the Board (2.1). Given the points above, forcing faculty governors to sign this document contravenes academic freedom and collegial governance.

Nature of meetings

Robert's Rules of Order are followed (*By-law* 19). Notice of meetings is to be given 7 clear days prior (*By-law* 13.(c).i), and notice of special meetings is to be given 14 days prior with full info and motions (*By-law* 2.(e)). The *By-laws* do not specify when the meeting package should be sent to members, and they do not mention the use of a consent agenda. (However, the survey respondent said meeting materials are provided 7 days in advance and that a consent agenda is used.) *Code of Conduct* 1.5 requires that members "be guarded in their comments and avoid attacks on other people's reputations." This is excessive language that forces civility onto proceedings that can evoke passionate responses, and it infringes on the academic freedom of faculty on the Board.

Other

By-laws X and XII refer to a separate Nominating Committee, and *By-law* V.1.(a).v suggests that the President is a non-voting member. In addition, there seems to be no official Equity, Diversity, Inclusion, Accessibility (EDIA) policy for Board membership. Given the import of Board membership for a public institution, it would be beneficial to develop an official EDIA framework for Board selections. It would also be beneficial to remove the President as a member of the Nominating Committee given the possible perception of a conflict of interest in recruiting.

By-laws V.4.(a-b) refer to a Board evaluation process. Having such a process is essential for Boards to remain self-reflective and adapt as needed, and should be followed by other university Boards.

By-laws include *By-law* XVI state that the President makes "recommendations to the Board respecting appointment to, promotions in, and removals from the Faculty and the administrative staff of NSCAD." The Board should not have this kind of sweeping oversight over faculty. Indeed, 7(1) of NSCAD's *Act* limits the Board's power to appointments only.

By-law XVII and the Appendix outline the functions of Senate. Senate's *Constitution and By-laws* are jointly approved by the Board, and 3.1.5 states that the Board appoints a Senator. While it is beneficial for the Board to have clarity on the role of Senate, it is vital to collegial governance that Senate has jurisdiction over itself.

SAINT MARY'S UNIVERSITY

Board Composition

The Board of Governors consists of up to 30 members, including three appointed by the Diocese; six alumni members; six faculty members; four student members; one appointed by the Upper Canada Province of the Society of Jesus; eight community members; and two Governors-in-Council. In addition, the Archbishop has official status on the Board as a visitor. Alumni, faculty, and student members are each elected for Board membership by their respective constituencies, while the community members are selected by the Board itself.

Board Executive

The Board's Executive Committee consists of 12 members. These are the Chair and Vice-Chair of the Board, the President, the Chairs of the other Board Standing committees (six members), and one member each representing students, faculty, and alumni. According to the *SMU Board of Governors Executive Committee Terms of Reference*, this committee has the discretion to act with the full power of the Board itself, between regular meetings of the Board.

Source of faculty on board

Section 7(1)(d) of the *Saint Mary's University Act* states that the academic staff appoint their 6 members.

Fiduciary duty provisions

Information about the fiduciary responsibilities of governors is not included in the *By-laws* or the *Saint Mary's University Act*, but rather in a separate policy document known as the *Board of Governors Charter*. According to the *Charter*, "governors must act honestly and in good faith ... exercise independent judgment and may not act as agent of any particular person or organization." While governors are encouraged to express their opinions through discussion and disagreement, "in the end, Board members must unite behind the majority decision of the Board as a whole," so that the Board can speak with "one voice." Additional fiduciary duties are outlined in another policy document, the *Board of Governors Code of Conduct*. Notably, this document states that governors must demonstrate a "duty of loyalty towards the University," as well as a "duty to act honestly and in good faith in the best interests of the University as a whole."

The expectation that governors act independently is a subtle way of asserting that they must not speak on behalf of their constituency, going beyond what fiduciary duty requires by creating a false dichotomy between a member's constituency (such as faculty and students) and the University as a whole, thus interfering with the University Governance Model. In addition, encouraging governors to express their opinions and exercise independent judgement while at the same time requiring complete loyalty towards the University is a contradiction in terms. The *Code of Conduct* (described below) requires absolute confidentiality, which suggests that disagreement or dissent will be tolerated only in private.

Conflict of interest provisions

Section 8, Article 3 of the *By-laws* describes a conflict of interest as when "the member has, or would appear to have, a pecuniary or other personal interest or a conflicting duty owed to a third party in a matter under consideration by the Board, or a committee of the Board, such that the member would not be perceived to be able to consider the matter in an impartial and objective manner." There are exceptions for students and employees of the university (and their partners or relatives) in that they may participate in discussions and vote on "all matters relating generally to the financial operations of the University," with the exception of matters "in which the member's interest or the interests of the member's partner or relative is not the same or substantially the same as that of other [employees or students] of the University." The *Code of Conduct Policy* has more information about the Board's conflict of interest policy. The policy includes perceived, actual, or potential conflicts, stating that the "interests of the University shall always prevail where a Governor is in a situation of conflict of interest or perceived conflict of interest." Perceived conflicts are addressed case by case and voted on by the Board.

Conduct & communications restrictions / Code of conduct

The *By-laws* and the *Code of Conduct Policy* contain information about the conduct expected of Board members. The Board has a strict code of conduct. All information regarding matters of the Board must be kept confidential. Section 10, Article 2 of the *By-laws* states, "All minutes and records of meetings and proceedings of the Board or its Committees, including past meetings and proceedings, and any summary of the substance of such meetings and proceedings shall be confidential and not open for inspection by the public and shall be disclosed only to persons authorized by the Board to receive such information." This policy, which governors are required to sign, has the potential to put governors in a difficult position, given that they are prohibited from discussing (even in generalities) what has occurred at a Board meeting. For example, if a student governor knew that the Board was planning to increase tuition, the student would be violating the *Code of Conduct* by saying anything about it, regardless of their individual sense of responsibility towards their constituency. According to Article 3 of the *Code of Conduct Policy*, they are expected to act with "honesty, trust, fairness, respect and personal responsibility," yet they are required to remain silent and loyal to the university.

Nature of meetings

Articles 12 and 13 of the *Code of Conduct Policy* ask governors to "foster a collegial working environment," while conducting themselves "in a manner that demonstrates respect for different perspectives, builds on the contribution of others and constructively puts forward alternative considerations." Neither the Board meetings nor their minutes are accessible to the public.

Members are to receive meeting documents and materials at least 7 days in advance of the regular meeting. Members are permitted to introduce motions, to be submitted at least 10 days in advance of the meeting. It has been reported that consent agendas are permitted, with their use being primarily, but not exclusively, for committee reports.

Other

There is a notable lack of focus on issues of Equity, Diversity, Inclusion, and Accessibility (EDIA) in any Board documentation, which is surprising given the recency of the 2 policies discussed in this section.

ST. FRANCIS XAVIER UNIVERSITY

Board composition

The Board of Governors consists of up to forty-five (45) members (*The Act* 7.1 a-m). These include the Bishop, President, Chancellor, Secretary of the University, Academic VP/Provost, Finance VP, Directory of Coady Institute, two (2) members appointed by the Bishop, two (2) alumni members elected by the Alumni Association, four (4) faculty members elected by the faculty, six (6) members elected by the priests of the Diocese, three (3) students elected by the students, and one (1) to twenty-one (21) members elected by the Board.

Board executive

The Executive Committee consists of the following members of the Board: the Chair, the Vice-Chair, the President, the Secretary (non-voting), the Bishop, the President of the Student Union, the President of the Alumni Association, the Chairs of each Standing Committee, and 1 other member elected by the Board (*By-law* IX [a]). This *By-law* does not correspond to *The Act*, which specifies that student and alumni associations elect their own members (7.1 [i] and [l]). The Executive has the power to deal with any and all matters pertaining to the Board that may arise between meetings of the Board and shall report regularly to the Board (*By-law* IX [b]).

It is good practice for the Executive Committee to include student and alumni representatives, but it should also include a faculty representative.

Number of faculty on board

4/34

The survey respondent said the number of Board members is currently thirty-four (34), but it could be as high as forty-five (45) according to *The Act*. This means that faculty representation on the Board can diminish greatly in proportion to the total number of Board members.

Source of faculty on board

Statutory: Section 7(1)(j) of Bill 50, *An Act to Amend and Consolidate the Acts Relating to St. Francis Xavier University*, requires four members be elected by the faculty.

Fiduciary duty provisions

Not indicated in the *Act* or *By-laws*. CAUT did not find any provisions that are inconsistent with the University Governance model.

Conflict of interest provisions

By-Law Section 1, Article 1 defines a conflict of interest as an existing or reasonably foreseeable financial or other interest that impairs or appears to impair independence and judgement in favour of the University. *By-Law* Section 2, Article VII (p) requires that a conflicted member refrain from participating in the vote or deliberations.

Although this language seems reasonable in that it does not specifically mention faculty or staff as being in a form of conflict, the term "other interest" could be interpreted to cover things like a health and safety complaint against the University. In such situations, it could benefit the Board's decision-making abilities to hear from that member. Appropriate language would create a voice-vote distinction for representational members.

In the *Conflict of Interest Policy* (general – not specific to the Board), a conflict of interest is defined in terms more related to a personal interest. Appendix A lists examples of conflicts. These are mostly financial or about misuse of University resources or information.

It is good that there are no specific examples of conflicts that target representational members — as is the case with language at other institutions.

Conduct and communications restrictions / Code of conduct

Not indicated in *The Act* or *By-laws*. CAUT did not find any provisions that are inconsistent with the University Governance Model. There is no Code of Conduct policy listed on the website pertaining to Governors.

Nature of meetings

Survey respondent says consent agendas are used for committee reports. *By-Law* Section VII (a) says there must be a minimum of three meetings per year. *By-Law* Section VII (l) says a member can put something on the agenda by sending it to the Secretary 14 days in advance. *By-Law* Section VII (e) says notice of meetings are to be given 5 days in advance. Neither the *Act* nor the *By-laws* require open meetings.

Other

St. Francis Xavier University has some of the shortest governance structures examined in the CAUT report. Their provisions are silent on confidentiality or whether meetings should be open or closed.

St. Francis Xavier University has one of the potentially biggest Boards among Nova Scotia universities (45 members), including up to 21 members chosen/elected by the Board itself (not by constituency groups). The proportional representation of faculty (4) and student (3) shrinks accordingly.

There are notable discrepancies between what *The Act* says about the election of student and alumni members to the Board and what the *By-law* says about who those representatives should be (i.e., Presidents of their associations). The *By-laws* must accord with *The Act*.

Although St. Francis Xavier is not a denominated institution, it has a history of religious affiliation, not uncommon among Nova Scotia Universities. The role of the Bishop as automatic Chancellor has been removed, and the university operates within the sphere of secular and public accountability.

UNIVERSITÉ SAINTE-ANNE

Board composition

The Board is described as “normally” consisting of 20 members plus a Chair. Its membership structure is highly specified: besides the Chair, Chancellor and Vice-Chancellor, there are 2 governor-in-council appointees, 2 students, 2 faculty members, the President of the Associated Alumni, 5 representatives from the Francophone/Acadian community, 1 representative of the “Conseil Scolaire Acadien Provincial,” the Warden of the Municipality of Claire (or a Counselor), and 4 additional members chosen by the Board.

Board executive

The University *By-Laws* (“Règlement n° 1 – Régie interne”) make no provision for an Executive Committee.

Number of faculty on board

2/21

Source of faculty on board

Faculty membership is specified by the "Université Sainte-Anne, Collège de l'Acadie" Act (2002, amended 2005), section 6.2(e): "One representative from and elected by the faculty of the Université and one representative from and elected by the academic staff of the Collège." The membership list on the website does not distinguish between University and College representatives.

Fiduciary duty provisions

The *By-Laws* of the Board are publicly available, but no link to them is available via the Board website itself. There is an online "Governance Manual," but it is password protected. However, the questionnaire respondent seems doubtful that direction on fiduciary duty has been provided to members of the Board. If there is indeed no documented material on the matter of fiduciary duty, this is a serious omission; if there is such material, it should be made publicly available on the Board website.

Conflict of interest provisions

Information on this matter is not publicly available on the website. But the questionnaire respondent indicates that direction on conflict of interest has been provided to Board members; this should be made publicly available.

Conduct & communications restrictions / Code of conduct

Again, information on this matter is not publicly available. The questionnaire respondent indicates that direction on confidentiality has been provided to Board members, but that a clear code of conduct does not seem readily accessible.

Providing direction on the issue of confidentiality, but not providing a code of conduct or direction on fiduciary duty, may indicate a somewhat greater focus on establishing protections for the Board than on improving the performance of members of the Board.

Nature of meetings

The only publicly available information on the meetings is a list of upcoming meeting dates for the coming academic year. The questionnaire respondent indicates that items so basic as minutes and contact addresses for governors are not available; it seems that no other information regarding the nature of the meetings is publicly available either (other than meeting dates).

Other

The Board website provides very easy access to financial statements for the last 4 fiscal years. This is a very useful inclusion on the site, and other universities, whose financial statements are more hidden, would do well to emulate this practice.

UNIVERSITY OF KING'S COLLEGE

Board composition

Chancellor, President of King's, Vice-President of King's, Treasurer, Secretary, Bishop of the Diocese of Nova Scotia, Bishop of the Diocese of Fredericton, four governors elected by the Diocesan Synods of Nova Scotia and Fredericton, President of the Alumni Association, three governors elected by the Alumni Association, four faculty members elected by the Faculty, President of the Student Union, two students elected by the Student Union, up to eight governors elected by the Board. There are no Governors-in-Council.

Board executive

Chair, Vice Chair, President of King's, Vice-President of King's, Treasurer, Secretary, President of the Alumni Association, President of the Student Union, one Diocesan representative, one Faculty representative, two appointed by the Board.

Number of faculty on Board

4/30

Source of faculty on Board

The King's College Act of 1998. The Faculty Governors are elected by those in attendance at the first faculty meeting of each academic session.

Fiduciary duty provisions

"The Board of Governors is responsible to provide strategic leadership, effective stewardship and to advance the best interests of the University as a whole. The Board, whose members represent the interests of all constituencies that are vital to the University's mission, is the place where the University governs itself" (Board of Governors – Terms of Reference). This is notable for recognizing that all constituencies are necessary for the University's mission and must be part of the governing process.

"Individual Governors owe a fiduciary duty to the University. They are expected to act reasonably, prudently and in good faith in the best interests of the University as a whole. They are also expected to avoid conflicts of interest, to maintain the confidentiality of Board business and to support decisions made collectively by the Board..." (Board of Governors – Terms of Reference).

The Code of Conduct (below) says "respects" the decision of the board, the above says "support." This requirement should be clarified. The concept of "one voice" should be avoided.

Conflict of interest provisions

Governors must "declare any real or apparent or potential conflict of interest as soon as possible; refrain from assisting any person firm or organization in its dealings with the University when such intervention

may result in real or apparent preferential treatment to that person, firm or organization; [and] not use any information acquired in the course of service to the University that is not generally known to the public for personal benefit or advantage or to the benefit of any family member or organization” (Code of Conduct).

Conduct & communication restrictions/Code of conduct

The Board should “Approve a communications policy and monitor the quality and effectiveness of the University’s relationships with key stakeholders [and] [d]emonstrate accountability to the University community and monitor the University’s compliance with legal reporting requirements” (Terms of Reference – Communications and Stakeholder Relations).

Governors should “respect the confidentiality of information received in the performance of duties which the Board on reasonable grounds determines to be confidential” (Code of Conduct).

“Each Governor will sign the Board’s Code of Conduct prior to commencing to serve as a Governor” (Board of Governors – Terms of Reference).

The Code of Conduct is notable, as are the fiduciary responsibilities (above), in its lack of any language which requires constituent representatives to leave their constituency “hat” at the door and put on a governor’s “hat”. The tone is generally one of advice, guidance, and information rather than rigidly prescriptive. The Code of Conduct modifies confidentiality on the basis of “reasonable grounds” but this is absent in the Terms of Reference. Care should be taken to avoid rigid confidentiality rules that interfere with the ability of faculty Board members to consult with their constituents in a meaningful way, thus reinforcing the democratic deficit between appointment by faculty and the ability to act as a representative on the Board.

Nature of meetings

Board meetings are closed. Consent agendas and in camera sessions are used. Board minutes (and separate highlights for some meetings), executive committee minutes, schedules, and agendas are available on the Board website. Attendees are identified in the minutes of meetings by their position and constituent affiliation. Audited financial reports and operating budgets are provided on the university website (under Administration – Public Documents).

Other

Guidelines for Board appointments stipulate that they must: “encourage the best possible governance for the University of King’s College by promoting the recruitment of a board that is diverse in skills, perspectives and experience” (see Appendix A of the Governance Documents). The guidelines refer to a 2011 report from the Institute of Corporate Directors (ICD), *Diversity in the Boardroom*, which says, “Diversity enables boards to deliberate with greater perspective and insight, which results in better decision making, i.e., helps avoid ‘group think’” and that, “a more diverse board may also help us establish strong recruitment relationships in communities that do not have historic ties with King’s.”

The Board Appointment Guidelines state that the Board “should at all times include governors with experience in: Post-secondary education, [and] ...Diverse industries, including creative industries such as journalism, film production and fine art, as well as technology industries and science-based industries.” Further, the Board should ensure there is generational diversity, a balance of genders, and “should recognize the multicultural reality of Canada, with an emphasis on representation from Indigenous and African-Canadian communities in Nova Scotia.”

King’s monitors its diversity commitment. The Governance Committee evaluates and reports results annually to the full Board. There is also a Board Equity Committee with broad representation, including faculty, student, staff, the Equity Officer, the Accessibility Officer, and the Vice-President.

Other universities should emulate King’s expansive vision of diversity and commitment to creating and monitoring Board diversity.

APPENDIX A: SURVEY ON BOARDS OF GOVERNORS

Email invitation (also posted on the first page of the survey)

ANSUT Council has approved a joint initiative with the Canadian Federation of Students (CFS), and under CAUT's guidance, on Board Governance. Given some of the problems that faculty associations and student unions have faced with the Boards of Governors at their institutions recently, we have begun work on a province-wide campaign to assess the corporatization of Boards in higher education institutions across Nova Scotia.

The main goals are:

- to affirm collegial governance
- to investigate the way representation and process work on Boards
- to challenge the corporatization of Boards
- to inform and empower faculty and student governors and help them mobilize

The immediate next steps of our campaign are to research the composition and practices of university boards in the province, analyze this data, and write a report supplementing the CAUT Report on Board of Governors Structures (2018) – the section on Nova Scotia is not substantial – and develop a toolkit for faculty and student governors.

We would appreciate it if you could take some time to fill out a survey to help us gather the raw data for our report. Can you as FA President and/or as your FA's ANSUT rep fill out this survey by May 21? If not, can you please suggest someone else from your FA who is familiar with your Board and its By-laws who would be able to complete this survey?

Thank you.

In solidarity,

Nova Scotia Board Campaign Committee

Survey Questions:

* Required

1. Email *

Board Membership

How many representatives from the following groups are represented on your Board?

2. Faculty
3. Students
4. Alumni
5. Community
6. Governor-in-Council
7. Other (please specify)

8. Are individual representatives encouraged to share the perspective of their constituency? (For example, are students encouraged to share information about the student experience on campus, faculty about teaching conditions, etc.?)

Yes / No

9. Are individual representatives encouraged to vote as representatives from their constituency?

Yes / No

10. If individual representatives not encouraged to vote as representatives from their constituency, are they actively discouraged from doing so?

Yes / No

11. Are these representatives: (select all that apply)

Appointed by the association/union

Elected by the association/union

Appointed by the administration

Appointed by another group

12. Does the Board select any governors?

Yes / No

13. If so, how many governors are appointed by the Board?

14. Does the Board have a nominating committee?

15. If so, is the nomination process open and transparent? (Please explain.)

16. What is the professional background of the members appointed by the Governor in Council (e.g., lawyer, accountant, insurance broker, banker, etc.)?

17. What is the professional background of members representing the community (e.g., lawyer, accountant, insurance broker, banker, etc.)?

18. Does your Board have an Equity, Diversity, and Inclusion (EDI) Policy?
Yes / No

19. If so, does the Board composition uphold this policy in practice? (If not, please explain.)

20. How many years do governors serve in a term?

21. Is it renewable?
Yes / No

Board Executive Membership

22. How many members sit on the Board Executive?

23. What constituency groups are represented on the Board Executive? (select all that apply)

Faculty

Students

Alumni

Community

Governor-in-Council

Other:

By-laws

24. How many days in advance of a meeting should governors receive meeting materials / documents?

25. Can members introduce motions onto the agenda of the Board?
Yes / No

26. What is the notice of motion period?
Yes / No

27. Is it consistently adhered to?

Yes / No

28. Are Consent Agendas used? If so, for what?

29. Are there avenues to amending Board composition outside of University Acts/Charters? (e.g., EDI policies)

30. Are all governors expected to sit on Board subcommittees?

Yes / No

Meetings

31. Who is invited to give a report from constituency groups? (select all that apply)

Faculty

Students

Alumni

Community

Governor-in-Council appointees

Other:

32. Who may give a report even if not expressly invited?

33. Are there restrictions on these reports (e.g., limited only to activities rather than assessment of state of affairs)?

34. Are meetings open? If so, to whom?

Training/Guidelines for New Governors

35. Who provides the guidelines listing responsibilities of governors (e.g., manual)?

36. In your opinion, how would you describe this document?

Neutral / Biased

37. If biased, please explain.

38. Is a training session provided? If so, who leads this session?

39. In your opinion, how would you describe this session?

Neutral / Biased

40. If biased, please explain.

How are the following terms defined according to your by-laws or in other Board venues? Please list the by-law number if possible.

41. Fiduciary duty

42. Conflict of interest

43. Confidentiality

44. Code of conduct

45. Are governors required to sign confidentiality or non-disclosure agreements?

Yes / No

University Presidents

46. Which other (especially corporate) boards does the President of your institution sit on?

Communications

47. Are the minutes of Board meetings publicly available? If so, where are they posted?

48. Are the email addresses of all members of the Board of Governors publicly available?

Yes / No

Final Thoughts

49. Please tell us about any additional aspects of the Board of Governors at your institution that you think are important to note.

APPENDIX B: REPORT ON NOVA SCOTIA UNIVERSITY BOARD WEBSITES

At this present time, when the business of universities has increasingly been conducted online, especially during the COVID-19 lockdown year, it is appropriate to consider how University Boards present themselves to the public in this medium. Boards are sometimes viewed as performing their operations under the cover of secrecy, and as having little on-going interaction with members of their broader University community. An active web presence is an effective way of presenting a very different image, and achieving the public transparency that is an important element of effective governance.

A comparison of Nova Scotia University Board websites reveals a marked variety of approaches to presenting information in this medium. The rating for all universities was done based on information provided on governance websites. Different sites do very well in providing certain kinds of information, and there are some definite best practices in evidence. But no site exhibits all of the best practices, and so each one could be improved in some respects. Some could be improved in many respects. For instance, some sites could expand the information included, while others do include certain information, but it is either awkward to find, not identified clearly, or placed on another section of the university site other than the governance site and so not very easy to find. The fact that certain key information can appear on one site is an argument for the appropriateness of its appearing on all sites; after all, if one Board has decided that providing a certain kind of information to the public is appropriate, we may infer it to be a kind of information that can be supplied by other Boards with equal appropriateness.

Achieving a good degree of transparency before the public eye is a desirable feature of an institution's form of governance. Expanding the information available on its website is an inexpensive and highly effective way of making important progress in this area. All Boards are encouraged to observe these best practices and to achieve *all* of them in its own web presence.

To that end, here are examples of best practices in self-reporting among the Nova Scotia Boards:

- Cape Breton University, Mount Saint Vincent University, and the University of King's College provide agendas and minutes for meetings going back several years. This is an effective way of informing the public about the kind of work the Board is doing, and has done, on behalf of the institution it serves; this in turn is a way of instilling public confidence in the quality of its leadership.
- The Nova Scotia College of Art and Design has an excellent membership list, which gives biographical information for most of the governors, indicating the constituency they represent on the Board and their various committee assignments. The advantages of making the public aware of the varieties of expertise informing Board deliberations is obvious. This website also provides meeting schedules for each of the Board's standing committees.
- Université Sainte-Anne posts annual financial statements ("États financiers"); these may be available on the sites of other universities, but putting them on the governance page makes them very easy to find.

- Acadia University, Cape Breton University, Dalhousie University, Nova Scotia College of Art and Design, and Mount Saint Vincent University post the Board By-Laws. Mount Saint Vincent additionally posts information regarding Board policies and parts of the Board Manual provided to members. Acadia, Dalhousie, and Mount Saint Vincent post the statutory documents on the basis of which their universities were founded. All of this material helps provide insight into the duties and practices of Boards.
- Most, but not all, Nova Scotia University Boards post their schedule of upcoming meetings. This makes it possible for someone from a constituency group to contact their corresponding Board representative on an issue in a timely manner. Especially noteworthy in this regard is the scheduling of information about standing committee meetings provided by the Board site for the Nova Scotia College of Art and Design.

Here are certain basic features of Board structure that should be communicated on all Board websites in a direct and easily accessible way:

- Size of Board
- Names of Board members
- Brief biographies of Board members (to convey to the public what kind of expertise is present on the Board)
- Indication of the constituency group from which each Board member is appointed
- Officers of the Board – all officers, not just the Chair
- A secretariat email address to allow inquiries to be directed to the Chair

- Names of Board standing committees
- Brief description of each committee's responsibility and/or a link to the terms of reference
- Names of committee chairs
- Names of committee members

- List of future meeting dates for Board
- List of future meeting dates for Executive
- List of future meeting dates for standing committees
- Meeting agendas for upcoming and past meetings of the Board
- Minutes for past meetings of the Board

- Indication of which rules of order the Board employs
- Board By-laws
- Board policies
- Act of incorporation (or Charter)

Below are tables summarizing the success of the different websites in providing this basic information in a direct and easily accessible way.

- "Y" = yes, the information is present
- "P" = the information is partially present
- "N" = no, the information is not present

Information on members and officers; contact information

	Members	Groups	Bios	Officers	Contact email
Acadia	Y	N	P	N	Y
AST	Y	Y	N	Y	N
CBU	Y	Y	N	Y	N
Dal	Y	Y	P	P	Y
King's	Y	Y	Y	Y	Y
MSVU	Y	Y	P	Y	Y
NSCAD	Y	Y	Y	N	Y
SMU	Y	N	Y	N	N
St. Anne	Y	Y	N	N	N
St. FX	Y	N	N	Y	N

Committees

	Names	Description	Chairs
Acadia	Y	Y	N
AST	N	N	N
CBU	N	N	N
Dal	Y	Y	N
King's	P	N	P
MSVU	Y	Y	Y
NSCAD	Y	Y	N
SMU	Y	Y	N
St. Anne	N	N	N
St. FX	N	N	N

Meeting dates for Board, meeting dates for executive, online agendas, online minutes

	Dates for Board	Dates for Executive	Agendas	Minutes
Acadia	Y	Y	N	N
AST	N	N	N	N
CBU	Y	N	Y	Y
Dal	Y	N	P	Y
King's	Y	Y	Y	Y
MSVU	Y	N	Y	Y
NSCAD	Y	N	N	N
SMU	Y	N	N	Y
St. Anne	Y	N	N	N
St. FX	N	N	N	N

Documents

	Rules of order	By-laws	Policies	Act of incorporation
Acadia	Y	Y	P	Y
AST	N	N	N	N
CBU	N	Y	N	N
Dal	N	Y	Y	Y
King's	N	N	N	N
MSVU	N	Y	Y	Y
NSCAD	N	Y	N	N
SMU	N	Y	Y	N
St. Anne	N	N	N	N
St. FX	Y	Y	N	Y

Other comments

Acadia University

A nice feature of this site is that it contains a group picture of the members of the Board. The "Policies" section really only mentions one policy. The "Committees" section mentions a committee (Pension) that no longer exists.

Atlantic School of Theology

This is the least detailed site of the ten considered here, consisting of a single page of material only.

Cape Breton University

This site could be improved with links to biographical material on Board members.

Dalhousie University

Board meeting agendas are posted on the Board website one week in advance of a meeting, though no archive of agendas is provided. Board meeting minutes are archived and publicly available online going as far back as 1820. A photo for some Board members is also posted. Links for standing committees (information and terms of reference) and for the Presidential Appointment and process are also available on this website. Dalhousie does not mention its Executive Committee or fully identify the Officers of the Board. The University Act appears as *Statutory Provisions* on the website (with a PDF of the unofficial consolidation of the University statute provided).

University of King's College

This site is very successful in providing information about Board members. A brief biographical sketch provided for each is supplemented by a photograph and a very clear indication of the constituency group that the member serves. On the other hand, no information at all is supplied about Board Committees with the exception of the Executive Committee (names of members and the Chair are provided); at a minimum, the website should list these and provide terms of reference, if not details about their leadership and membership. The site also does not identify any documents above and beyond minutes and agendas (although access to these for recent years is quite good), as well as Board and Executive

meeting dates for the last few years. Documents such as the Act, Board By-laws, and Board policies are accessible, but only by clicking the “University Policies” and “Public Documents” tabs at the very bottom of the website, tabs which are part of the entire King’s website, rather than being specific to the Board website and so quite easy to miss.

Mount Saint Vincent University

The Board website has a very extensive description of its activities, committees and their members, procedures, meetings, policies, etcetera. It offers access to audited financial statements and even has information on the FOIPOP process. There is an elaborate description of Board records and their retention. There is also information for those interested in becoming a Board member.

NSCAD

The “Board of Governors News” link is an interesting feature of this site. Information on the standing committees is included, including links to the terms of reference, but not a list of members currently serving. The site also includes a link to information on the Presidential Search Committee and process. No links to Board minutes or policies are provided. However, a Google search leads to the NSCAD Navigator’s Board of Governors Meeting Minutes, going back to 2016, and to the Board’s Code of Conduct policy, as well as a document outlining the Board’s “recruitment” and “structure” and providing links including the Code of Conduct and meeting minutes. Providing clear access to these items on the Board’s site would be beneficial.

Saint Mary’s University

A unique feature of this site is its use of an organizational diagram to convey the overall structure of the Board as regards its standing committees.

Université Sainte-Anne

While this is a fairly brief site, the easy access it provides to recent reports on university finances is an outstanding feature.

Saint Francis Xavier University

Under the heading “Summary of Board Proceedings,” this site offers one report of a meeting in February 2019. This precedent would be an excellent one to follow, but no further reports have been made available since that time.

APPENDIX C: REPORT ON EDUCATIONAL EXPERTISE ON NOVA SCOTIA UNIVERSITY BOARDS

The laudable tradition of bicameral governance in universities is intended to separate oversight of academic policy from oversight of the financially related aspects of operations. The purpose of this separation is to protect academic policy from the influence of financial pressures. To take a simplified case, an institution facing financial difficulties could be motivated to lower standards for entrance, program completion, and graduation in order to attract a larger student body and thereby increase revenue; placing these standards under the final authority of a Senate creates a barrier to such an action. This is the sense in which the tradition of bicameral governance in universities is laudable.

On the other hand, bicameral governance can often create something of an informational vacuum on Boards as regards the academic workings of the university. The standing committees of Boards are typically directed to issues of budget, audit, investment, fundraising, and institutional infrastructure; Board members are often chosen specifically to have personal expertise corresponding to these areas of concern. It is not a usual part of Board recruitment practices to target those with experience in the field of education – particularly post-secondary – for inclusion into Board membership.

University Board meetings will virtually always include a report from the academic sector – typically presented by the Vice-President Academic – but this will often be dominated by enrollment statistics and other quantitative measures. As a result, Board members are usually not in a position to have a deep understanding of the day-to-day, educational life of the institution, or the challenges currently faced in this central area of university life. Board members, for example, are often not in a position to understand the value of running programs with permanent/tenured academic staff as opposed to temporary/contingent ones, or offering lightly enrolled programs as well as heavily enrolled ones, or even offering small-sized classes as well as large-sized ones.

One common remedy is to include **faculty and student representatives** among the membership of the Board. All ten Nova Scotia universities included in this report apparently do this (although it is not made clear on the Board websites of St. Francis Xavier University and Saint Mary's University). Cape Breton University actually has four students and four faculty members; King's has three and four, and Mount Saint Vincent University has three and three. This is a feature of Board structure much to be praised. But a few limitations on the effectiveness of this arrangement should be noted, however. Faculty and student members often feel under some pressure from the Board to appear congenial, and making mention of negative features of the situation in the academic sector is often interpreted by many on the Board as querulous and divisive behaviour – in other words, uncongenial. Significantly, the word “congenial” is often confused with “collegial” so that some board members understand “collegial governance” to mean having “pleasant” or “agreeable” interactions in carrying out the work of the board, rather than its true meaning of shared or joint governance, as the etymology of “collegial” derives from “partnership.” While Board members expect to get quite a bit of detail about budgetary, infrastructure, and other operational problems, they do not generally expect this as regards problems in delivering academic programs. It is

therefore difficult for faculty members and students to register their concerns before a Board (a problem intensified for students because their terms are so short, and they have so little time to acclimatize). Another issue is the inclusion of faculty and students on key committees, especially the Executive committee; this is a measure not equally taken by all Boards.

Another remedy, which unfortunately does not seem common among Nova Scotia Boards, is **devoting a Board committee specifically to academic matters**. Dalhousie University, for example, lists as one of its standing committees the “Academic and Student Affairs Committee,” which is described as supporting “the University in achieving its strategic priorities in the areas of teaching, learning and research, to the extent that these are board-related areas.” Acadia University likewise lists, as an *ad hoc* committee, the “Academic Resources Committee,” whose mandate is to “monitor and report to the Board on all academic resource matters and such other academic matters as are within the authority of the Board.” Committees of this kind must, of course, step carefully to ensure that the division of responsibility inherent in a bicameral system is fully observed. But doing so is consistent with serving as a conduit of information to the Board regarding the academic needs of the institution. Note that part of the purpose of a Board is to maintain public confidence in the health of the institution it oversees. A Board does this better by being seen to be informing itself about its institution’s needs in *all* respects. Committees of this sort have significant potential for addressing the deficit of information at issue here.

A third possible remedy is available as well, via the **in-council appointments** made through the Nova Scotia Department of Advanced Education (formerly, the Department of Labour and Advanced Education). Most Nova Scotia university Boards have a number of positions which are designated to be filled by the Department. In practice this process has often been a matter of the Department’s providing a *pro forma* approval of candidates selected by the Board nominating committees. But, more latterly, it would seem that the Department has played a more proactive role in selection. As the process now stands, a potential applicant fills out an online application with the Online Applications to Agencies, Boards and Commissions System; the application is then assessed by a screening panel. While it is expected that this process would help to diversify appointments to agencies, Boards, and commissions on an EDI basis, it could *also* work to diversify post-secondary Board appointments with respect to professional background. A screening panel could proactively work to select individuals who have a professional background in education, and place these individuals on Boards alongside others with the kinds of expertise more traditionally selected for membership. With such individuals in place, Boards would find that issues relating to academic policy could then be expected to receive a more informed hearing and to be discussed from a diverse perspective informed by professional experience acquired outside the institution.

The three remedies discussed here could, if jointly pursued, go a long way to addressing the informational problems raised above.