

Balancing Autonomy and Accountability

**Report of the *ad hoc* Committee of the Board of Regents
at Memorial University of Newfoundland**

November 25, 2008

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“...the university is a special kind of institution whose autonomy has been respected and preserved by western society through some 700 years. The momentary lapses ... have been the exceptions proving the rule that only in freedom from political control have universities been able to exercise the mandate society has set for them. Throughout the whole of western society governments have recognized the importance of universities and have accepted the obligation to provide essential financial support, to arrange for the creation of governing bodies who act as guardians of the public interest, and to encourage the fullest possible autonomy within the academic sphere and within the fiscal sphere, as well, once a general budget has been approved.”

*Dr. Leslie Harris
Former President, Memorial University of Newfoundland,
Letter to Mr. Winston Baker, 1987- January-23*

INTRODUCTION

The importance of the balance of autonomy and accountability is as significant today as it was more than twenty years ago when Dr. Harris penned these words. Newfoundlanders and Labradorians share a profound and perhaps unique pride in Memorial University of Newfoundland and recognize the significant contribution it has made and continues to make to this province and to lands beyond. While autonomy of universities has been a point for respect, understanding, discussion and debate for more than 700 years, Memorial University and the provincial government have been members of this evolving discussion for a relatively short time. And recent events surrounding the appointment of its tenth President have given rise to the need to open these discussions once again.

At a meeting of the Board of Regents held on September 11, 2008, the Board considered a copy of a letter dated September 10, 2008 from the Secretary of Senate advising that in response to the August 6, 2008 statement from the Board of Regents regarding Memorial University’s autonomy, the following motions were approved by Senate on September 9, 2008:

“(1) (a) Senate affirms the principles of autonomy for Memorial University as given below from the “Statement of the Board of Regents regarding Memorial University’s autonomy,” August 6, 2008 (http://today.mun.ca/news.php?news_id=4018):

“Memorial University, like the great majority of Canadian universities, must be free to operate at arm’s length from government, while adhering to provisions that allow for appropriate government oversight and accountability. Autonomy is vital if our university is to fulfill its commitments to the people of Newfoundland and Labrador and beyond.”

(b) Senate strongly supports the Board of Regents’ recommendation to government “that it amend the Memorial University Act to better reflect the autonomy of the university ...”.

(2) Senate requests that the Board of Regents appoint an ad hoc Committee with membership from both the Board of Regents and Senate and with responsibility for recommending amendments to the Act to secure autonomy for the university.

(3) (a) Senate endorses in the strongest possible terms the Board of Regents’ statement that “government’s non-acceptance of the candidates and government’s request that the Search Committee continue with its search before a formal recommendation could be made on the Board’s proposed appointee constitutes inappropriate interference in the normal process”.

(b) Although Senate regrets that unlike earlier presidential searches the current search process did not reach a stage for Senate to be consulted under Section 51 of the Memorial University Act, it wishes to go on record as endorsing as the “preferred candidate” of the Search Committee for President of Memorial University, Dr. Eddy Campbell . (“Statement from the Board of Regents regarding search for the next president,” August 6, 2008: http://today.mun.ca/news.php?news_id=4019)

(4) Senate requests that the Board of Regents use any and all means possible to secure and ensure the autonomy of Memorial University, and then, in the interest of the University’s need for confirmed leadership, it urges the Board of Regents to bring this presidential search process to a prompt and successful conclusion.

At this September 11 meeting, The Board of Regents passed the following resolution:

*“In order to ensure that government is informed about the specific ways in which the Board might wish to recommend amendments to the Memorial University Act to secure and preserve autonomy for the University and to bring clarity to the role of government in the Presidential search process, **IT IS RESOLVED** that the Board of Regents accepts the recommendation of Senate dated September 9, 2008 to appoint an ad hoc Committee with membership from both the Board of Regents and Senate to recommend to the Board amendments to the Act necessary to accomplish these objectives.*

IT IS ALSO RESOLVED to empower the Executive Committee of the Board to approve specific terms of reference and timelines for the ad hoc Committee and to appoint members to the ad hoc Committee. In the case of Senate members, the Executive Committee will request nominations from the Senate.”

At a meeting of the Executive Committee of the Board of Regents held on October 1, 2008, the following mandate and membership of this *ad hoc* Committee were approved:

Mandate

(a) draft for the consideration of the Board of Regents, in consultation with the Senate, amendments to the Memorial University Act to secure and preserve autonomy for the University and to bring clarity to the role of government in the appointment of the President.

(b) present a report to the Board of Regents on December 11, 2008.

Membership Structure

(a) Three members of the Board of Regents to be chosen by the Executive Committee of the Board with an appropriate balance amongst Board members:

Mary Broderick, Chair
Tony Roche
Darek Moreau, GSU

(b) Three members of the Senate to be appointed by the Executive Committee of the Board following nomination by the Senate. The nominations should reflect in as far as possible the composition of Senate which is comprised of ex-officio members, academic staff members and student members:

Noreen Golfman, Vice-Chair (Dean, School of Graduate Studies)
Paul Wilson, Sir Wilfred Grenfell College
Ryan Marshall, MUNSU

(c) The Secretary of Senate: Glenn W. Collins

The Secretary of the Board of Regents will serve as Secretary and the Office of General Counsel will provide advice and support to the *ad hoc* Committee.

The Committee met on a number of occasions during October and November, consulted with universities across Canada, consulted with the Association of Universities and Colleges of Canada (AUCC), studied sections of the Acts of twenty-six Canadian universities, consulted with the Association of Governing Boards of Universities and Colleges (AGB) and conducted a literature search of university autonomy.

BACKGROUND ON AUTONOMY IN HIGHER EDUCATION

The word “autonomy” comes from the Greek *autos* meaning self and *nomos* for law, so in essence self law or self-governance. From the Oxford Reference Dictionary its definition is:

1. The right of self governance
2. Personal freedom or independence
3. Freedom of the will
4. A self-governing community

Tensions between universities and the governments that support them have long existed, derived, in part, from divergent views on how the degree of autonomy is to be balanced between the two. Acknowledgement of this tension is consistent across time and geography.

“I believe, in all universities around the world, we are all dealing with very important issues of how to strike the proper balance between universities and governments, how to strike the proper balance between the autonomy of universities and the reasonable accountability of universities for the public funds that sustain much of their activity.” (Stevenson¹, 2004)

There is general consensus that this “autonomy tension” is natural and is required.

“The tension of the university and state is essential, for the life of the university, for the health of the society. Those who seek intelligently to re-create this tension, serve university and state, and preserve hope.” (Wallerstein, 1969)

Can a university operate within a state of complete autonomy or extreme autonomy? – No. It is subject to and must abide by legislation at many levels. In the case of Memorial University this includes privacy legislation, public tendering legislation, controlled goods legislation, taxation legislation, occupational health and safety legislation, public works legislation, etc. Memorial must be accountable, yet at the same time have its autonomy grounded in democratic principles and be permitted to operate without political manipulation.

Governments and universities alike need to see autonomy from the perspective of a partnership where the natural tension is maintained in balance.

“We ideally need philosophies and forms of higher education governance and management practice that facilitate long-term ‘institution building’ but are also realistic about the need of effective, shorter-term, ‘negotiating and renegotiating

¹ Michael Stevenson, President of Simon Fraser University, 2000 – present, *Governance and Autonomy: Problems in Managing Access, Quality and Accountability*, 2004.

order' political-cum-cultural capacities and skills and the constant need to strike a pragmatic balance between the two.” (Deem, Hillyard and Reed, 2007)

“The public debate, however, should not be as simplistic as whether to regulate or deregulate, whether to centralize or decentralize. Instead, constructive discussion must first take place about the state’s overriding interest in mission and performance accountability” (Newman, Couturier, Scurry, 2004)

“The only way in which this proper balance of autonomy and governance can be organized is through strong legislation which in effect entrenches university autonomy.” (Stevenson, 2004)

In Canada, this balance of “autonomy tension” is achieved in a number of ways, one of which is the creation of alliances and organizations with focus on advocacy and lobbying. One specific and important organization is the Association of Universities and Colleges in Canada (AUCC), the voice of Canada’s universities in facilitating the development of public policy on higher education and in encouraging cooperation among universities and governments.

The AUCC’s Statement on Academic Freedom and Institutional Autonomy (See Appendix A for the full statement) says that:

“Institutional autonomy includes, inter-alia, the following powers and duties: to select and appoint faculty and staff; to select and admit and discipline students; to set and control curriculum; to establish organizational arrangements for the carrying out of academic work; to create programs and to direct resources to them; to certify completion of a program of study and grant degrees.” (AUCC, 1988).

The Statement goes on to say that with institutional autonomy the universities have the following major responsibilities to society:

“To conduct scholarship and research according to the highest possible standards of excellence so that society may benefit; within the constraints of the resources available to them, to ensure high quality education to as many academically qualified individuals as possible; to abide by the laws of society; and to account publicly through Boards and audits for their expenditure of funds.” (AUCC, 1988)

FACTORS OF AUTONOMY

There are a number of factors that contribute to the autonomy of a university. The *ad hoc* Committee considered four which relate most directly to its mandate and which are identified in the *Memorial University Act*. These are:

1. Appointment of the President
2. Appointment of Board members/Composition of membership
3. Appointment of the Board Chair
4. Removal of Board members

1. Appointment of the President

The Senate of the University is on record as stating that it regrets that the recent presidential search did not reach a stage for the Senate to be consulted as is required under Section 51. of the *Memorial University Act* and it requested that the Board of Regents use any and all means possible to secure and ensure the autonomy of Memorial University, and urged the Board to bring the presidential search process to a prompt and successful conclusion.

The *ad hoc* Committee's literature search on the factor of the appointment of the university president, found that

"... the ultimate test of a board's effectiveness is its ability to attract and keep strong, competent executive leaders. The board plays a crucial role in providing an environment that attracts top talent to the university or system. No board decision is likely to have greater impact on the institution or system – or be more political, consequential, or a greater test of the board's leadership and vision – than selecting the chief executive. ... the board must perform a delicate balancing act between assuming a difficult and important responsibility and consulting with the many groups that have a stake in the ultimate decision. The board must not abdicate its responsibility to make the final decision (this responsibility is its least ambiguous), but it should consult widely with campus leaders." (Ingram², 2004)

To study this factor further, *the ad hoc* Committee consulted with universities across Canada by posing this question through the listserv of Canadian University Secretaries.

"With regard to the appointment of your university President:

1. Does your provincial government have a role in the appointment of your university President?
2. If yes, (a) please quote the specific sections of the Act which gives government its authority and (b) describe how government exercises its authority in practice."

² from *Effective Trusteeship: A Guide for Board Members of Public Colleges and Universities*, a publication of the Association of Governing Boards of Universities and Colleges.

In total there were fifteen replies with eight of the other provinces represented in the responses. See Appendix B. All but one university replied that its provincial government has no role in the appointment of the university president. The exception, from the responses that were received, is the University of New Brunswick.³ The *ad hoc* Committee's research on university Acts shows that for l'Université du Québec, which is a system of universities, the President of the system is appointed by the government and is the Chair of the system's Assembly of Governors, while the president of each constituent university member is appointed by the Assembly of Governors.

In the province of Newfoundland and Labrador, the role of the government as stated in Article 51. of the *Memorial University Act* is that the Lieutenant-Governor in Council (LGC) approves the appointment which is made by the Board, in consultation with the Senate.

As well, the *ad hoc* Committee sought input from the AUCC, in particular its By-laws which set out the AUCC's membership criteria, particularly its expectations concerning the governance and administrative structure appropriate to a university that is a member of AUCC. The membership criteria, stated below, should be read in conjunction with the AUCC's Statement on Academic Freedom and Institutional Autonomy. (Appendix A)

From AUCC by-laws (http://www.aucc.ca/about_us/membership/criteria_e.html)

Criteria for Membership

Subsection 3(1) of the Criteria states:

3(1) Institutional Members

(b) It has governance and an administrative structure appropriate to a university, including:

- Authority vested in academic staff for decisions affecting academic programs including admissions, content, graduation requirements/standards, and related policies and procedures through membership on an elected academic senate or other appropriate elected body representative of academic staff;
- An independent board of governors, or appropriate equivalent, that:
 - is committed to public accountability and functions in an open and transparent manner;
 - has control over the institution's finances, administration and appointments;
 - includes appropriate representation from the institution's external stakeholders (including the general public), from academic staff, from students and from alumni; and
 - uses the institution's resources to advance its mission and goals.

³ “And at UNB, which is governed by legislation similar to MUN's, the provincial government gets to approve the candidate recommended by the search committee, but has never felt the need to actually screen candidates. Nor is that process likely to change anytime soon.

"Such government interference would have an increasingly adverse impact on the university's ability to attract presidential-calibre candidates within what is a limited and well-connected post-secondary sector in Canada," Stephen Strople, university secretary at UNB, told The Telegram." (*Paying the piper*, The Telegram, August 31, 2008)

This statement above clearly reinforces the principle that the board of governors for AUCC member institutions must have control over appointments, including appointment of the President.

2. Appointment of Board members/Composition of membership

The AUCC's by-laws on membership criteria (Subsection 3(1)(b) noted above) state that the governing board must have representation from "the institution's external stakeholders (including the general public), from academic staff, from students and from alumni". Article 22. of the *Memorial University Act* sets out the composition of the Board and states that 6 members are elected by the alumni association of the University, the LGC appoints 17 members (three of whom are to overlap with appointments made under the *College Act*), and the LGC appoints 4 students as recommended by the four student unions represented at Memorial. Memorial's board composition includes membership from all of the categories prescribed by the AUCC, except the category of academic staff.

3. Appointment of Board Chair

Another question posed to the listserv of Canadian University Secretaries was:

"With regard to your Board of Regents/Governors:

2. How is the Chair of your Board selected? Please quote or provide us with the reference to the Act. "

The responses show unanimously that the Chair is elected or appointed by the board members. See Appendix B.

Article 22.(3) of the *Memorial University Act* states that the LGC appoints the Board chair. While Memorial has been fortunate to have been served by very dedicated board chairs, the government appointment of this position, contradicts the practice at the majority of Canadian universities.

"Ideally, board chairs should be elected (or re-elected) annually and serve for more than one year but probably for not more than four or five consecutive years. Selecting a new chair should be a dignified process removed from media scrutiny." (Ingram, 2004)

4. Removal of Board members

The third question posed to the listserv of the Canadian University Secretaries was:

"With regard to your Board of Regents/Governors:

1. How can Board members be removed and under what circumstances?
Please quote or provide us with the reference to your Act.”

Most of the respondents (see Appendix B) have provisions for the removal of appointed members only and that elected members could be removed through a recommendation of the Board to the LGC or by the Board itself. Some even leave the authority for the removal of both elected and appointed members to the Board itself.

Article 28. of the *Memorial University Act* states that “an appointed or elective member of the board may be removed from the office at any time by the Lieutenant-Governor in Council.”

RECOMMENDATIONS REGARDING AUTONOMY FOR MEMORIAL UNIVERSITY

The *ad hoc* Committee acknowledges that both the government of Newfoundland and Labrador and Memorial University have profound interests in preserving and protecting the autonomy of this province’s University, while ensuring it remains accountable. The analysis as outlined in the previous pages demonstrates that compared with universities across Canada and the guidelines of the AUCC, Memorial falls on the high end of accountability. The *ad hoc* Committee believes that in keeping with modernizing the University the balance should shift and that amendments to the *Memorial University Act* would strengthen the University’s autonomy. However, the strengthening can only occur through cooperation and discussion and therefore the *ad hoc* Committee recommends:

That the Board of Regents invite discussion with the government on strengthening Memorial University’s autonomy with a view to amending the Act as follows:

1. Article 51. Appointment of president

Currently reads:

51. There shall be a president of the university who shall be appointed by the board in consultation with the senate and with the approval of the Lieutenant-Governor in Council.

Amend to permit the Board of Regents complete authority to appoint the President in consultation with the Senate, which would be in keeping with most other applicable legislation across Canada and which would adhere to the membership criteria of the AUCC.

2. Article 22. Constitution of board

Currently reads:

(b) 17 members appointed by the Lieutenant-Governor in Council of whom 3 shall be the same persons who are appointed under subsection 10(2.1) of the *College Act, 1996*; and

(c) 4 members appointed by the Lieutenant-Governor in Council being full-time students of the university who...

Amend to permit the appointment of academic staff, criteria for which would be developed in consultation with the Senate.

3. Article 22. Constitution of board

Currently reads:

(3) The chairperson of the board shall be appointed by the LGC and the board shall elect 1 of its members to be vice-chairperson.

Amend to permit the Board to elect both its Chair and its Vice-Chair, according to by-laws to be developed by the Board.

4. Article 28. Removal

Currently reads:

28. An appointed or elective member of the board may be removed from office at any time by the Lieutenant-Governor in Council.

Amend to permit the LGC to remove only Board members who are appointed and only upon recommendation of the Board with the proviso that the Board develops protocols and criteria (such as lack of participation, etc.) for removing elected members and for recommending the removal of appointed members.

In closing it is worth recalling part of the reaction statement from the President and CEO of the AUCC, Claire M. Morris, earlier this year:

Preserving institutional autonomy while ensuring appropriate government stewardship of public investments in universities is a constant, delicate balancing act that requires respectful leadership both in universities and government, as well as effective checks and balances within the universities themselves. The latter are at the heart of the university governance models that have evolved in this country."

*Claire M. Morris
President and CEO of the AUCC
August 2008*

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Appendix A

Statement on Academic Freedom and Institutional Autonomy Association of Universities and Colleges of Canada

ASSOCIATION OF UNIVERSITIES AND COLLEGES OF CANADA

STATEMENT ON ACADEMIC FREEDOM AND INSTITUTIONAL AUTONOMY

Introduction

It is the essence of a university freely to pursue knowledge and understanding and to search for the reasons for things. This search implies that some of the reasons are unknown or uncertain and that opinions about them must be questioned. The right and the responsibility to raise such questions is the justification for academic freedom.

Constraints on academic freedom may arise both from inside and from outside universities. It is a major responsibility of university governing bodies and senior officers of universities to maintain an environment in which academic freedom is realized.

Threats to freedom of inquiry, independent judgement and free expression may come from administrators, students or faculty members, sometimes in groups, who attempt to require all members of a department or faculty to adhere to a particular version of orthodoxy. The reliance of universities on government financing and private donations may create pressures on the institutions and on their members to conform to short-sighted or ill-advised political, corporate or personal interpretations of what should be studied and how it should be studied. It is the obligation of faculty members in particular, supported by their administrations, senate and boards, to ensure that these pressures do not unduly influence the intellectual work of the university. When conflicts arise because of such pressures, it is essential that a full airing and consideration of a broad range of viewpoints be possible.

It is essential that universities have the freedom to set their research and educational priorities. How the members of universities will teach and impart skills, conduct research and the pursuit of knowledge, and engage in fundamental criticism is best determined within the universities themselves. It is here that academic freedom, in its collective form of institutional autonomy, can ensure freedom of inquiry for individual faculty members and students. Historically there has been a struggle for university autonomy, arising from the conviction that a university can best serve the needs of society when it is free to do so according to the dictates of the intellectual enterprise itself.

Freedom of inquiry must have as its corollary a high degree of respect for evidence, impartial reasoning and honesty in reporting. It should include a willingness to make known the underlying assumptions and the results of the inquiry. All research and scholarship must be conducted ethically, with full consideration of the implications and in ways that respect fully human rights as defined in law.

Appendix B

**Survey of the Canadian University Secretaries listserv
November 2008**