

A NEW UNB ACT?

AUNBT Response to the Board of Governors' Proposal to Revise the UNB Act

11 February 2015

Background

In September 2014, the UNB Act Revision Steering Committee, a committee of the Board of Governors, released a radically revised version of the UNB Act with the statement that its purpose "... is to modernize the Act by decoupling matters that more appropriately belong in by-laws than in legislation. This will allow the university to make necessary changes without requiring action on the part of the provincial legislature."¹ This innocuous statement underlies a number of far-reaching and fundamental changes to the UNB Act. AUNBT is compelled to respond.

Our response includes a) this document—an evaluation of the Board's proposed revisions and a summary of our proposal, and b) a Discussion Draft proposal—a draft of the UNB Act that takes a different, moderate and collegial approach to revising our Act.

Our Discussion Draft proposal for revising the UNB Act is being provided to all AUNBT members and all members of the wider UNB community, posted at <https://aunbtweb.files.wordpress.com/2015/02/apar.pdf>. AUNBT welcomes comments on this draft. Please send comments by email to UNBAct@aunbt.ca by 28 February 2015. Our proposal will be revised in light of the comments received and submitted to the Board Committee by 16 March 2015 for consideration and response.

AUNBT has scheduled two town hall meetings to air our Discussion Draft proposal: **Monday, February 16**, at 3:30 pm, video-linked between the Wu Centre in Fredericton and GHLT in Saint John; and **Thursday, February 19**, at 4:00 pm, video-linked between HHLT in Saint John and the Wu Centre in Fredericton.

What is the UNB Act?

The UNB Act is the provincial legislation that establishes the University of New Brunswick, defines our governance structures, and anchors the relationship that UNB has to the government as a provincial university. The UNB Act is a public act, currently SNB 1984, chapter 40, incorporating UNB as a public, not-for-profit institution. UNB began operating informally in the late 1700s and was granted a provincial charter in 1800 and a royal charter in 1827. The first act of incorporation, turning an Anglican

¹ "University of New Brunswick Act – Discussion Documents," accessed on Feb. 3/15 at <http://www.unb.ca/secretariat/governors/unb-act-review.html>.

college into a secular public university, was passed by the Legislative Assembly in 1859. The watershed modern UNB Act was passed in 1968 and created our bicameral governance structure of both separate and overlapping jurisdictions: the University Council was renamed the Board of Governors and given responsibility for financial matters, and the Senate was formed and accorded responsibility for academic matters, with both separate and overlapping jurisdictions. Since 1968, the Act has been revised several times in response to changing circumstances, most importantly in 1986 to create the Saint John Senate.

By inscribing UNB governance structures in provincial law and requiring a public legislative hearing process for changes, the current UNB Act affords legislative protection for the public interest and for the collegial rights of academic staff and students. It may be desirable to revise parts of the Act to enable changes within the legislative framework, rather than requiring the involvement of the Legislature (as did, for example, a 2003 revision of the title of the Vice-President primarily responsible for research matters). For the most part, however, the current UNB Act should be preserved. It provides legislative protection for collegial rights, ensuring they cannot be weakened or removed unilaterally by the Board without full consultation and public hearings in the Legislative Assembly. Indeed, such processes as these are the primary way in which the general public interest is safeguarded in a democracy.

Problems with the Board Committee's Proposed UNB Act

The Board Committee's proposal for a rewritten UNB Act makes possible radical changes to UNB's governance structures, emulates the top-down governance of for-profit corporations, and, far from modernizing the Act, would in many ways return UNB to a pre-1968 Board-dominated model of governance.

The AUNBT Task Force looking at the Board Committee's revisions has identified numerous problems with the proposed changes to the UNB Act:

- Far too much is removed from legislative protection of the UNB Act into bylaws. Bylaws can be created and changed by the Board arbitrarily, which in the Board Committee's proposal requires a quorum of just *four* members.
- The power of the Board of Governors is significantly increased.
 - The composition of a smaller and less representative Board is relegated to bylaws, and it is rendered more open to manipulation by the reduction of quorum from eight members to four.
 - Parity between the Board and the Senates in the Joint Nominating Committee for Presidential appointments is removed, and all powers in this respect are conferred exclusively on the Board through its bylaws.
 - Joint Committees of the Board and Senate, committees that could be used to resolve conflicts between academic and financial interests, are removed.
 - The Board is given the power to create new Senates. It could, for example, create a Senate dealing with online instruction and specify in bylaws that such a Senate would have a majority consisting of administrative or contract

staff, unlike the current Senates, which have parity between number of elected faculty and the number of all other members. Establishment of such a Senate would have the potential to undermine academic standards and hence UNB's reputation.

- The reach and membership of the Board of Deans are expanded; indeed, both its powers and membership are undefined and open-ended.
- The Board Committee's proposal disenfranchises Senates, faculty, students, and the public.
 - According to the minutes of the 23 January 2013 meeting of the Fredericton Nominating Committee, as accepted by UNBF Senate on 29 January 2013, with regard to the formation of the UNB Act Review Steering Committee "[t]he President clarified that *the University will not be seeking to make any changes with respect to the powers, authority or mandates of the Senates*" [emphasis added]. This has not turned out to be the case. Radical changes to the Senates' powers are introduced:
 - The Board is given the power to abolish one or both of the Senates.
 - Powers of Senates in determining and maintaining academic standards for students are diminished or removed to bylaws, where they can be unilaterally changed by the Board.
 - Faculty Councils and General Faculty are entirely removed from legislative protection and could easily disappear; they are excluded from the university's governance structures in the Board's revision.
 - Rights of faculty members to representation on the Board are removed to bylaws, where they can be altered or eliminated at the prerogative of the Board.
 - Rights of students and graduates to representation on the Board, and of students to representation on the Senates, are removed into bylaws, where they can be altered or eliminated at the prerogative of the Board.
 - Rights of students to due process in disciplinary matters are diminished.
 - The current Act's provisions on collegial rights are weakened, and the Board is given the power to effect unilateral change in matters more properly governed by Collective Agreements and decided through the collective bargaining process. (For example, Article 5 in both Collective Agreements provides union members with Collegial Rights as set out in the UNB Act).
 - The role of the Lieutenant-Governor in Council is reduced.

The Proposal of the AUNBT Task Force on the UNB Act

The Process

In October 2014, AUNBT formed an ad hoc Task Force of volunteers from amongst current and retired academic staff of UNB in Fredericton and Saint John to evaluate the

Board Committee's proposal and formulate a response.² This group worked intensively since its inception and examined the Board Committee's proposal thoroughly. It concluded that due to the radical nature of the changes introduced, the Board Committee's proposal could not be fixed, and therefore the most fruitful way forward was to draft an alternative proposal for discussion. The AUNBT Task Force offers its proposal as a constructive response in the belief that solutions arrived at after serious discussion among all interested parties are the solutions with the best prospects for strengthening our University.

AUNBT will hold town hall meetings on February 16 (3:30 pm) and February 19 (4:00 pm), both video-conferenced between Fredericton and Saint John campuses and open to all, at which the Task Force will present its findings for discussion. Feedback from those meetings and others that may be held will be incorporated into the Task Force's alternative proposal for revisions to the UNB Act. The AUNBT executive will then submit a revised proposal to the Board Act Revision Steering Committee by their March 16 deadline. The Task force would have preferred more time; revising the Act is time-consuming work. Indeed, the Board Committee had 18 months, with unlimited legal assistance from a specialist lawyer. Nevertheless, we are compelled by the Board Committee's deadline to act quickly. In the event that the final proposal of the Board's Act Revision Committee does not address our concerns, AUNBT will submit its final proposal to the Senates, the provincial government and members of the Legislative Assembly for consideration.

Principles

The AUNBT Task Force took a moderate approach: while the Board Committee's proposal would shorten the Act radically, we have left much of the Act unrevised because the powers and processes that are defined by the sections of the Act that have been eviscerated by the Board Committee are important to preserve. Those changes that the AUNBT Task Force has introduced provide flexibility where warranted. We resist the Board's expressed interest in efficiency as reason for the radical changes. We do so because some principles are worth what the managerialist mind-set regards as "inconvenience," principles such as academic freedom, collegial governance, democracy, fairness, transparency, and representation. Oversight and accountability must be balanced against ease and efficiency, and if a trade-off needs to be made, it must surely favour the core principles fundamental to a public university.

The Proposal of the AUNBT Task Force

The Discussion Draft Proposal produced by the AUNBT Task Force strives to

² Members are David Bell, Miriam Jones, Brian Lowry, Charlene Mayes, Elizabeth McGahan, Erik Moore, Allan Reid (chair), Edie Snook, Hugh Thomas, Jon Thompson, and Lloyd Waugh.

- define explicitly the objects and purposes of UNB as a national comprehensive university;
- modernize the UNB Act by introducing gender neutral language, in concurrence with the Board Committee’s proposal;
- use language that reflects current usage at UNB;
 - We have maintained, for instance, the current Act’s reference to faculty members and included academic librarians and archivists in this category, while resisting the Board Committee’s proposal to define those who teach and are engaged in research as “teaching staff” exclusively. Our definition of academic staff includes chairs and deans.
- preserve the legislative protection for the presence of the key stakeholder groups, including the government, the faculty, and students, while agreeing that reducing the size of the Board of Governors is desirable;
- reject the relegation to bylaws of the representation rights of key stakeholder groups, including faculty. Not only are the Board’s proposed bylaws merely drafts at this point but, even if established, it is the sole prerogative of the Board to change them;
 - The Task Force’s proposal ensures legislative protection for the representation of students on Senate and the Board of Governors.
 - It introduces representation for contract academic employees on the Senates.
- keep intact the current distribution of powers between the Senates and Board of Governors and makes explicit the recognition of UNB’s bi-cameral structure;
- preserve legislative protection for the existence and powers of both Senates;
- preserve the legislative protection of the parity of the Board and Senates in presidential review and search committees;
- extend the use of term limits for membership in the Board of Governors and retain or increase the size of the quorum necessary for the Board, Senates, and the Board of Deans. For the Board and Senates, the proposal requires the inclusion of faculty members in the quorum;
- provide that an elected faculty member of Senate be selected as chair and another as vice-chair of Senate, following the recommendation of the Senior Administration Responsibility Review report;
- preserve the definition of the regular academic year and the Senates’ powers to regulate and determine the dates for the beginning and ending of courses, terms, and semesters and sessions;
- preserve the legislative requirement of the approval and consent of the appropriate Senate for the establishment of faculties, schools, and departments;
- preserve in the Act the election processes for the Board of Governors and Senates, rather than moving them to bylaws, to ensure legislative protection for these processes;
- maintain the current Act’s requirement of the Lieutenant-Governor in Council’s approval for a small number of actions important to the public interest, including appointment of the Chancellor and of the President, and certain property

- transactions. (In the public interest, UNB was granted extensive land and public oversight of its stewardship is reasonably required.) The government is minimally involved in the management of UNB, but there are circumstances where protecting the public interest merits such involvement. If the Board Committee's proposal were to be enacted, these important safeguards would disappear;
- preserve the role of Joint Committees of the Board and Senates for problem resolution;
 - preserve the legislative protection for the existence and powers of Faculty Councils;
 - preserve legislative protection for the existence and function of the General Faculty as a means of resolving institutional problems;
 - clarify that it is the role of Collective Bargaining to determine the standards for promotion and tenure, rather than of the Senates. (This brings the Act in line with current practice;)
 - ensure that non-academic matters for which a student can be disciplined are those defined by the *Student Disciplinary Code*;
 - preserve the limits on the powers of the President in student disciplinary matters.

Problems with the Board Committee's Process

The Board Committee's radically revised UNB Act was introduced with no prior consultation on the scope and direction of the revisions with Senates, students, faculty, or AUNBT. There was no opportunity for input during the process. A faculty member who was a member of the Board committee stated publicly in a Senate report that "[...] this committee (at least the faculty on it) are not involved in generating the documents. These have come from the Secretary's office in collaboration with legal counsel. We are tasked with offering comments/criticisms and sometimes suggesting where clarity is needed."³

There was initially an extremely short timeline available for consultation, with an extension granted only after the fact, despite the very long timeline for the development of the Board Committee's proposal through a secretive process. The town hall meetings currently being scheduled and held by the chair of the Board Committee appear not to respect the understanding of the Senates about the revised timelines.

Finally, it is important to note that the Board committee's obligation to engage in consultation on its draft flows from the Province's insistence that the UNB Act is a public Act of New Brunswick and not a private Act. This serves to emphasize the special status and significance of UNB in this province and the importance of protecting the public interest through insistence on open and transparent processes.

³ https://aunbtweb.files.wordpress.com/2014/08/unb_act1.pdf, Appendix.

