

Obscuring transparency and silencing dissent:

CARLETON UNIVERSITY'S BOARD OF GOVERNORS

Root Gorelick



An account of attacks on openness and deliberation by someone at the centre of the governance controversy.

Un compte rendu des attaques contre l'ouverture et la réflexion, rédigé par une personne qui se trouve au centre du débat sur la gouvernance.

Transparency and accountability have become murkier by the month on Carleton University's Board of Governors. The Board's open sessions are now "open" in only the most Orwellian sense. Academic freedom in university governance has been gutted. Governance is no longer collegial. Tyranny of the majority has been memorialized in the Board's rules. In the three years since I became a duly elected faculty member on Carleton's Board of Governors, the Board has pushed through two new versions of a code of conduct; introduced new bylaws that centralized power and made governance far more opaque; and intimidated internal board members (faculty, staff, and student members).

Upon becoming a board member, it was apparent to me that the Board did many important and relevant things for

the university community. However, the members of that community seldom had any clue about the Board's actions. Therefore, I started a blog about open sessions of the Board (<https://carletonbogblog.wordpress.com/>) with simple ground rules: I only blogged about open sessions; I never blogged about closed sessions nor confidential documents; and I always mentioned that blog posts were my personal perspective and were not a surrogate for official minutes.

At first, my blogging was tolerated by the university administration and chair of the Board. Over time, attacks related to my blog website increased: from threats to remove me from the Board, to threats from human resources regarding my employment, to the shuttering of my teaching and research website in retaliation for my writing. During my tenure as a board member, many open session items have

been moved to closed sessions to restrict public access to deliberations. Blanket gag orders were imposed on all governors. The Board's Executive opted to no longer follow their own bylaws and procedures. People seconding motions from the floor were harassed. Guards were posted throughout the building where board meetings occurred, only allowing in people who had been pre-approved by the Board chair.

In the following, I describe the attacks on transparency, accountability, and collegiality by the Carleton Board of Governors, followed by ideas for fixing these transgressions.

STUDENT PROTEST OVER TUITION

On March 30, 2015, the Board embarked on its annual approval of tuition increases. Seven students were in the audience for this agenda item. When the subject of tuition increases was broached by the Board chair, the seven (later eight) students began a peaceful protest. The open session was successfully disrupted without a vote on tuition.

The Board had previously held an annual "open forum" where anybody could sign-up to give a 10-minute presentation on whatever matter they deemed important. The university president, with approval by the Board chair, opted to cancel such events. The university president can invite people to present matters to the Board, but the university community no longer gets a chance to address the governors on its own volition. Peaceful protest is thus the only means for community members to intervene in Board deliberations without the approval of senior administration.

Despite the peaceful student protest, the Board of Governors still needed to decide on tuition for the upcoming academic year. This was sufficiently important to not simply be delegated to the Board's Executive Committee, a body that contains no internal board members (no faculty, staff, nor students). Board bylaws allowed for a special session to be called so long as six governors concurred. Six governors did call a special session to discuss tuition increases, suggesting that students be invited to make a formal presentation, in addition to the one-sided presentation by the university's Vice-President Finance. Although the six governors followed board procedures perfectly, the special session was never convened. The Board's Executive said that only the university secretary is allowed to send out the agenda for board meetings and would not do so for this special session on tuition fees.

In response to the call for a special session, the Governance Committee chair denounced the student protestors, writing that the peaceful protest:

...has no place in a lawful democratic society—it is the tactics of Brownshirts and Maoists. It has no place in a university—it is the antithesis of free speech.

Calling the protestors Nazis was widely condemned, but the Governance Committee chair refused to apologize.

The Board's Executive doubled-down after the March 30, 2015 student protest by closing open sessions, a decision that was never approved by the full Board. Open sessions in April and June of 2015 were convened without any visitors allowed, other than those invited by the university president. I unsuccessfully tried to bring a reporter from the campus newspaper to the June 2015 open session. Having a reporter present would have been useful because of the dramatic procedural defects at that meeting.

Since April 2015, visitors to open sessions have had to request written permission to attend at least a day in advance. The Board chair decides who is admitted. Those allowed in to the open session have their name and photo placed on a list and have to pass through three security checkpoints. Interested community members were therefore treated as potential criminals, rather than participants in an important democratic process.

The Board live-streams some (but not all) open sessions to a remote room on campus. This allows audience members to hear the proceeding, but only to see and hear things from a fixed perspective (one fixed camera and only comments from those whose microphones are on). Campus security has been stationed outside the live-stream room on some occasions, adding to the overall atmosphere of exclusion.

The Board also curtails transparency by mandating that all committee meetings be in camera and the minutes of the Executive Committee are always confidential, even though a Freedom of Information request showed that virtually none of the material therein is really confidential at all.

BOARD VIOLATES ITS OWN BYLAWS IN CHANGING ITS BYLAWS

At the June 25, 2015 open session, the Board tried pushing through bylaw changes to exclude union officers from serving as governors. The rationale given was that union officers had an inherent conflict of interest ratifying their own collective agreements and adjudicating grievances brought by members of their bargaining units. These rationales are specious as only the Board's Executive Committee, which does not include any internal or unionized members, ratifies collective agreements and union members do not adjudicate grievances. It has been this way for decades.

Nevertheless, the exclusionary bylaw change was introduced, seconded, and limited debate and discussion occurred. Then the Board chair announced that there would not be a vote on the bylaw changes at the open session, but voting would be deferred to an email poll over the following four days. Many external governors were absent at this meeting, while all internal governors were present. Bylaw changes require a two-thirds supermajority, so the motion may have failed if voted upon at the open session.

Board bylaws require that for special resolutions, which include bylaw changes, voting only be done by board members physically in attendance and those participating

via teleconference. The bylaws did not allow for electronic voting on bylaw changes. The motion calling for an email vote thus constituted a bylaw change, requiring a two-thirds supermajority and five-day notice requirement, but was tabled anyway. The motion for an email vote passed, but with less than the two-thirds supermajority required for a vote of this type. I raised these points of order at the open session on June 25th, but was dismissed. I raised the points of order again via email on June 26th, but was again dismissed, and the email vote began an hour later. This was so egregious that I extensively blogged about the out-of-order vote over the next two days. On June 29th, after the email voting had been ongoing for three days and was supposed to continue for one more day, the bylaw vote was unilaterally cancelled by the Board Chair. Curiously, the email voting also included a vote on whether to require that board members sign the code of conduct (more on this later - the code was essentially a gag order on sitting and past governors). That vote was also cancelled, meaning that, at least through summer of 2015, the Board still maintained that signing the code of conduct was voluntary.

My blogs at the end of June 2015 regarding the email vote on bylaw changes got me in trouble, eliciting the threats to remove me from the Board, the unspecified disciplinary threats from human resources, and the termination of my research and teaching website on Carleton's server that I mentioned earlier.

Fearing for my job, I punctually issued a written apology to the person who was identified to me as being offended, as well as a public apology that is still posted on my blog. I did not divulge anything confidential nor breach fiduciary duty. I was also accused of defamation, so I retracted the alleged offensive portions of my blog posts. Since my goal was never to offend anybody personally, I immediately and sincerely apologized directly to the individual. What was offensive? I accused members and advisors of the board of using tactics of "Brownshirts and Maoists," without attributing that three-word phrase to the Governance Committee chair.

Ultimately, Carleton wanted me to destroy my personal blog.

The day after I complied with the order to redact statements and to post the public apology, Carleton University locked-down my teaching and research website hosted on a university server, without informing me. Later I learned that this was done by order of the university's chief information officer, with approval of the university president. More than one month later, the university agreed to restore my teaching and research website, but never did so, supposedly due to some unnamed technical problems.

It is one thing to crucify my academic freedom with respect to my actions in service of the university. But it is much more egregious to trample my research and teaching resources in retaliation for this same university service.

I am still being silenced on my new teaching and

research website, now on WordPress, by being explicitly prohibited from including any links to the Carleton server. I can only infer that this is because I refused to destroy my personal blog. I believe there are limits to what I can be forced to do by the university administration, and those limits are set by the principle of academic freedom.

CODE OF CONDUCT

The most insidious provision in the new code of conduct passed on January 21, 2016 effectively imposes tyranny of the majority and silences dissent by requiring members to:

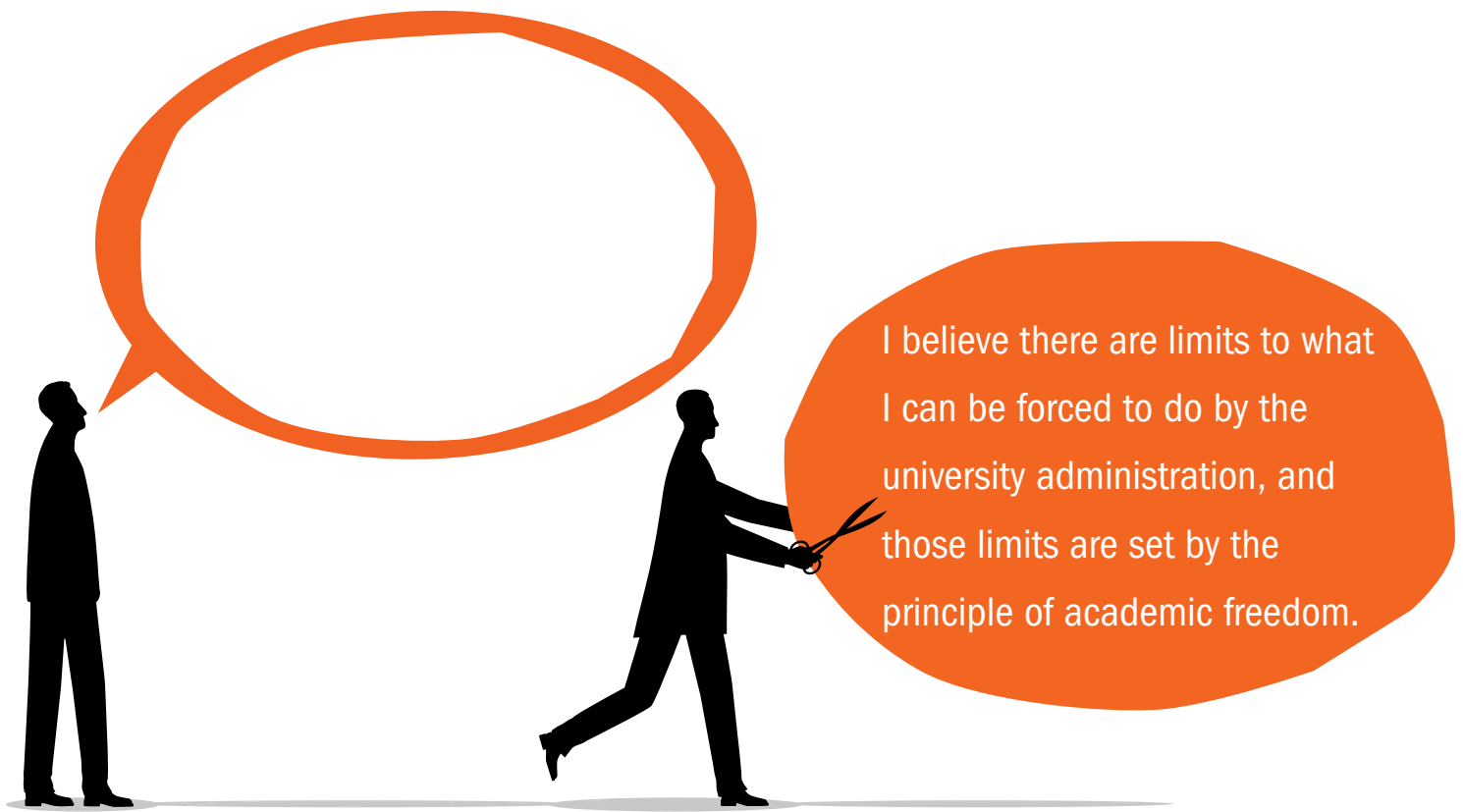
Support all actions taken by the Board of Governors even when in a minority position on such actions. Respect the principle of Board collegiality, meaning an issue may be debated vigorously, but once a decision is made it is the decision of the entire Board, and is to be supported.

This provision may be typical of corporate governance in the private sector, but has no place in academic governance, where academic freedom should be a guiding value. To be clear, the Carleton University Board of Governors operated effectively for decades without curtailing the academic freedom of its members.

Compelled support for a majority position is the antithesis of collegiality. Collegial means that all governors should have equal power and freedom, even those who disagree with the majority position. In order to respect the principle of collegiality, one must enshrine space for dissent. There is nothing collegial about the hierarchical, authoritarian, corporate style of governance now at Carleton. Only external governors are allowed on the Board's Executive Committee or allowed to chair any committees. This gives them extraordinary power to shape the Board agenda and its ultimate decisions. By banning dissent and minority positions, the code of conduct further empowers external governors on the Executive Committee.

The new code of conduct also requires all members to maintain confidentiality in perpetuity. In effect, no one can ever know who disagreed with the Board's decisions or why they disagreed.

The code also requires that, "Governors must...refrain from taking any action that is damaging to the reputation of the University." Given the numerous critiques of the new code of conduct by the Ontario Confederation of University Faculty Associations (OCUFA), the Canadian Association of University Teachers (CAUT), Carleton unions and associations, and several journalists, the Board has damaged Carleton's reputation by passing this new code of conduct. They are now in violation of the very code they introduced, by dint of their attack on transparency that is repellent to observers both outside and inside the university.



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NEW BYLAWS

On March 21, 2016, the Board passed embarrassing new bylaws that codify the code of conduct and officially refer to the university president as the “Chief Executive Officer.” Two weeks after the bylaws passed, the Board Chair rationalized the bylaw changes in the name of, “the integration of essential components of the previously separate Bylaws and Board Procedures document into one document”, followed by, “the creation of...new Rules of Procedures for the Board and its committees”. If the purpose of the new bylaws were really to integrate bylaws and procedures, then why were the Rules of Procedure not provided to the full board until the day of the vote? This implies the Board once again violated its own bylaws in passing bylaw changes because the five-day notice requirement was not met for the Rules of Procedure.

The Board also violated reasonable standards of process while considering amendments to the new bylaw. I proposed 33 amendments, one of the first of which was to reduce the number of external at-large governors from 18 to eight. To the best of my recollection, the following dialogue ensued:

- Board Chair: *Is there a seconder?*
 Secunder: *[raises their hand]*
 Board Chair: *Are you serious? Do you understand what you seconded?*
 Secunder: *Yes.*
 Board Chair: *Let me make sure you understand what you just seconded. Do you understand the amendment?*
 Secunder: *Yes.*
 Board Chair: *Then could you please repeat the amendment?*
 Secunder: *The proposal is to reduce the number of at-large community governors from 18 to 8.*

I could understand the Board Chair’s incredulity had the seconder been an at-large external governor, who may have been jeopardizing their own position, but the seconder was a student governor. The above exchange was interrupted by an external at-large governor on the phone, who said that the amendment “violated democratic principles.” After being lambasted by the Board Chair and board member on the phone, the seconder reluctantly withdrew their second of the motion. There was thus no further discussion and no vote. No parliamentary procedures allow for such harassment of seconders.

The new bylaws now allow for email votes on bylaw changes. This removes incentive for debating motions, as it severs the link between discussion and decision, putting the latter at a remove from the former. I proposed an amendment stipulating that only board members who heard the discussion and debates could participate in subsequent electronic votes, but that amendment was defeated. Thus, the Board will never have to listen to dissent, or respond to reasonable concerns of governors with opposing views.

The new bylaws severely restrict eligibility of internal board members in two new ways. First, they require candidates running for election to the board to first sign the code of conduct. Second, the bylaws now include a provision that the university secretary will run elections and have full non-appealable power to decide on candidate qualifications. Recently the university secretary wrote that a candidate for the Board could not campaign on any issues, such as tuition freezes and increased funding for mental health, because these would constitute ignoring discussion and debate in favour of a pre-formed decision. Note that this is exactly the sort of pre-judging required of any board member voting electronically without hearing discussion and debate. The university secretary threatened to disqualify candidates



unless they redacted all platform issues from their campaign materials. Censoring of candidates before they are even elected is deeply worrying.

REVIVING TRANSPARENCY, ACCOUNTABILITY, AND COLLEGIAL GOVERNANCE

A first step to reviving transparency, accountability, and collegial governance at Carleton is to rescind the new code of conduct and bylaws. The bylaws could be declared null and void because the Board's Executive failed to provide five-day notice of an integral part of the new bylaws before voting on them, namely only providing the new 'Rules of Procedure' on the day of the bylaw vote. The new code of conduct is self-contradictory insofar as passing it severely damaged the university's reputation. The new bylaws and code of conduct could also be declared null and void because they were approved by an improperly constituted Board. The old bylaws specified that approval of new board members was strictly under the purview of the full Board. Yet all new board members for 2015/2016 were only approved by the Board's Executive Committee. This also implies that any changes to the "Statement of Duties" (the predecessor of the code of conduct) or requirements to sign it passed during the 2015/2016 Board term should be declared invalid. Carleton's Board thus has a simple procedural remedy for clearing the decks of all the damaging changes approved

during their 2015/2016 term, a solution that requires no more than a ruling from the Chair.

The procedural and administrative blunders of the past year point to the biggest threat to collegiality on Carleton's Board: it's deeply unbalanced composition. The Board is currently composed of the Chancellor, Vice-Chancellor (or CEO), 20 external members (18 at-large community members plus two alumni) and 10 internal members (two faculty, two senate representatives, two non-academic staff, two undergraduates, and two graduate students). The two-to-one overrepresentation of external-to-internal members induces power imbalances, most evident in the fact that the Board chairs, the Board vice-chairs, and all committee chairs and vice-chairs are external governors. The Board's Executive Committee has never had any representation from internal governors, thereby excluding the voices of the campus community. Tyranny of the external governor majority would be eliminated if there were equal numbers of external and internal governors, which would still leave the administration with a slight voting advantage because the chancellor and vice-chancellor can vote.

Nothing in the Carleton University Act precludes equal numbers of external and internal board members, but only specifies 30 governors plus the chancellor and vice-chancellor. I therefore propose that there be 15 external governors (12 at-large community members plus three alumni) plus 15 internal governors. Each constituency could be given full authority to choose their own representatives to the Board, without censoring of candidates by the Board Secretary or Executive.

With today's technology, all open sessions of the Carleton's board could be digitally recorded and a public web-link provided. Let the public see what the Board does.

All board committee meetings should be open to the public unless there is a well-elucidated reason for moving to closed session. Minutes of all committee meetings, including the Executive Committee, should be open-session documents, posted on a public website immediately following the meeting and not several months later.

These are but a few of the possible solutions available to the Carleton University Board of Governors. The point is that the slide into closed-door, autocratic governance is not only stoppable; it can be reversed. Collegial governance can be restored. The success of Carleton as a university—and its reputation among peers—depends on our ability to create an open, transparent, and accountable Board of Governors. **AM**

Root Gorelick is a Professor of Biology at Carleton University, and (for now) member of the Board of Governors.

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Assistant Editor:

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Editorial Board:

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National Advertising Sales:

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30 East Beaver Creek Road, Ste. 202
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Sales Manager:

Beth Kukkonen, bkukkonen@dvetail.com
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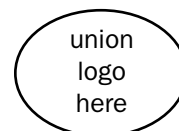
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