



Senate Operations Review Committee Notice of Motion Senate Meeting of March 23, 2011

Background

In the fall of 2010, SORC began its review of the composition of Senate and its committees by examining the Functions of Senate, last amended November 1982. The Committee met several times to discuss Senate Functions. At SORC's request, two informal sessions took place at Senate (Sept 23, 2010 and Jan 20, 2011) to receive input and feedback. SORC considered the [letter to QUFA from David Mullan](#)¹ dated January 6, 2011. University Legal Counsel prepared an opinion for SORC and Senate's consideration (Appendix G, 60-67, Memo from Diane Kelly to Daniel Woolf and Jean Stairs) on the proposed revisions to the functions of Senate. The proposed "Functions of Senate," (Appendix G, page 72), reflect the counsel, feedback and comments received.

Analysis and Discussion

The following points highlight the reasons for reviewing the Functions of Senate and SORC's analysis and discussion on the Functions of Senate:

- The authority of Senate is enshrined in the Charter and it cannot be diminished;
- The Functions of Senate have not been reviewed since 1982 and some functions no longer reflect the way that Senate operates;
- Senate needs to execute its authority effectively through a defined set of activities that are appropriate to the current context;
- The University has grown in size and become more complex over time;
- Some activities are no longer carried out by Senate, for example, the publication of University calendars, #5);
- Some of the current functions as described are too general (for example, #11 - "to have responsibility for the well-being of students") and some are too narrow (for example, #13, which does not cover the scope of expanded services);
- SORC concluded that it would be valuable to identify categories of activity that will clarify the varying roles of Senate and Senators;
- Some functions required modifications to be in compliance with the Collective Agreement between QUFA and Queen's and external requirements (for example, QUQAPs);

¹ <http://senatefacultycaucus.files.wordpress.com/2011/01/david-mullan-analysis-of-sorc-revisions-to-functions-of-the-senate-6-jan-2011.pdf>

- The reasons for identifying a “Central Function” are self-evident;
- SORC added a function related to the academic plan and the strategic research plan to recognize the importance of integrating these activities within the University environment (New #11);
- SORC separated, for purposes of clarity, activities related to academic and non-academic discipline (Current #11) and the living and learning environment which promotes the well-being of students (New # 3 and #10);
- SORC added a new function to make explicit Senate’s authority for “university-level” policies relating to the academic mission and academic services (New #8);
- SORC also added a function related to equity and diversity, which is essential to any institutional environment (New #4);
- SORC asked University Legal Counsel about the use of the term “approve” (in relation to New #5, 6 and 7) and concurred with the opinion received that it is a more accurate description of Senate’s role in these circumstances.

Recommendation

SORC recommends that Senate approve the “Proposed Functions of Senate”. Once approved, SORC will proceed to consult committees that serve the former Functions and to develop a committee structure appropriate to serve the revised functions.

NOTICE OF MOTION (for discussion and action at the April 28 meeting of Senate):

That Senate approve the revised Functions of Senate as outlined in this report and appended.

Memo



VICE-PRINCIPAL
FINANCE AND ADMINISTRATION)

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TO Principal Daniel Woolf
Senator Jean Stairs
FROM Diane Kelly
Legal Counsel
DATE February 25, 2011

SUBJECT Proposed Revisions to the Functions of Senate

The Senate Operations Review Committee (SORC) recently embarked on a review of the role of Senate, focusing on the Functions of Senate which were originally developed and approved by the Board of Trustees in 1913 and last amended in 1982. After review and consultation, SORC has proposed certain amendments to the Functions. Some Senators have expressed concerns that the proposed changes may in some way diminish the powers and responsibilities of Senate; others have suggested that the current Functions work well and should be left alone. You have asked me to review and render a legal opinion on the effect of the proposed changes and, in particular, to address the questions which SORC presented to Senate at its meeting of January 20, 2011.

In this memo I will advise on the legal significance of the proposed amendments in light of 3 of those questions.

The jurisdiction of the Senate of Queen's University is set out in the Royal Charter of 1841. The Charter provided that the Board of Trustees had the authority to constitute "*a Court to be called 'The College Senate' for the exercise of academical superindendence and discipline over students and all other persons resident within the same, and with such powers for maintaining order and enforcing obedience to the statues, rules and ordinances of the said College as to the Board may seem meet and necessary*".

In 1882 by an Act of the Parliament of Canada, the Senate was given authority to pass by-laws concerning the conditions under which degrees might be conferred.

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In 1912, the Parliament of Canada amended the Charter by, among other things, changing the name of Queen's College to Queen's University and revising provisions regarding the composition, election and procedures of the Board. The 1912 Act had the following to say about the Senate: "*the Senate as at present constituted is hereby continued subject to the provisions of this Act, and the Board of Trustees, acting after consultation with the Senate, may pass any enactments in regard to the Senate which the Board thinks proper*".

Granted this new authority, the Board, after consultation with the Senate, approved a list of Senate Functions. I have attached the 1913 Functions for your information. These Functions describe certain activities which Senate will carry out in furtherance of its statutory mandate; they do not give Senate any additional authority or jurisdiction beyond that which is set out in the Charter.

Should Senate have an overall purpose?

SORC initially proposed replacing the current Function 1 which states that the Senate is to "*determine all matters of an academic character which affect the University as a whole, and to be concerned with all matters which affect the welfare of the University*" with the following overarching purpose statement: "*The Senate determines all matters of an academic character that affect the University as a whole and is concerned with all matters that affect the general welfare of the University and its constituents.*" I understand that concerns have been expressed about the implications of replacing this important function with a purpose statement.

I will adopt the analysis which attends the examination and interpretation of legislation in addressing this issue.

All legislation is presumed to have a purpose, whether explicit in the form of a purpose statement or not, and the purpose of a particular piece of legislation is taken into account when

interpreting its provisions. The principles of statutory interpretation direct that one is to construe legislation “*with reasonable regard to its object and purpose and to give it such interpretation as best ensures the attainment of such object and purpose.*” As a result, a purpose statement gives context for the entire Act. For that reason, I think it could be helpful to have a statement which reflects Senate’s broad role as the body responsible for matters of an academic nature.

However, there is a difference between the descriptive or interpretive components of legislation, such as a purpose statement, and its substantive provisions. It is the substantive provisions in legislation which set out specific rights and obligations, for example. It is my opinion that Senate should retain as a Function its mandate to determine all matters of an academic character, or language to that effect. In other words, there could be both a purpose statement and a Function to address this central component of Senate’s role.

Should Senate remain responsible for the “well-being” of students?

SORC has suggested removing reference to Senate’s responsibility for the “well-being” of students, and concerns have been expressed about reducing the scope of Senate’s involvement with students.

I note that there was no reference to the “well-being” of students in the 1913 Functions; this particular language dates back to 1969.

I think it is clear that Senate is responsible for all aspects of a student’s academic progress and discipline (recall that the Charter gives the Senate authority over “*academical superintendence and discipline over students*”); and it certainly has and wishes to retain an interest in other matters affecting our students’ well-being. Senate discharges that responsibility primarily

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though the development of policies and procedures. It is, however, the University administration and the Board which bear the ultimate responsibility and corresponding liability for maintaining a safe, healthy, supportive environment for students in all the varied aspects of campus life which contribute to the well-being of students, what Senator Pierce referred to as their living and learning environment. These are day to day responsibilities that Senate has no capacity to perform. In my opinion, the language proposed earlier by SORC as Function 6 is an accurate reflection of Senate's role.

The proposed language about Senate's responsibilities for students has now been continued under proposed Function 11 and the language suggested by Senator Pierce has been included in a new proposed Function 4 where it is stated that Senate will "*be responsible for a living and learning environment that promotes the well-being of students.*"

If the language in proposed Function 4 remains unchanged, and Senate decides to assume the responsibility for the living and learning environment and the well-being of the students, it should recognize that this is a responsibility shared with the Board and the administration of Queen's.

Do the proposed amendments diminish the authority of Senate?

This question has been raised in several contexts.

Current Function 3 states that it is a function of Senate to "**establish**, subject to the ratification of the Board of Trustees, any faculty, school, institute, department or chair." In the proposed Functions 6., 7. and 8., Senate will "approve", not establish. Does this change signal a reduction in Senate's authority in these areas?

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I remind the reader that the authority of Senate is enshrined in the Charter and cannot be diminished or expanded by any of the Functions. The question might be whether these or any other proposed changes **limit** Senate's ability to carry out its statutory mandate.

To put Senate's current role in perspective, it may be helpful to recall that even in 1969, a joint committee of administrators, faculty, board of trustee and student members struck to study University government concluded that there had been a "*progressive devolution of powers and functions from Senate upon the major academic units*". It was noted that "*faculty boards in particular had taken over more and more responsibilities for developing the curriculum, for setting and administering standards of admission, revising the calendars, for conducting examinations and for awarding scholarships, medals, prizes and degrees*". The following comments of the committee are particularly relevant, and helpful I hope, given the current discussions:

"Many of the advantages of academic decentralization have been obtained at the sacrifice of the real, though not the formal, power of the Senate through an exercise of self-abnegation on the part of the Senate in the discharge of many of the functions constitutionally assigned to it. With respect to a broad segment of its traditional functions, the Senate, though retaining formal power, acts only on the recommendation of other bodies. In this respect it acts by placing the stamp of final academic approval on decisions which have in fact already been taken elsewhere. To the extent that this is so, the Senate occupies a position somewhat akin to that of a constitutional monarch possessing full de jure, but little real power and discharging functions which in the Senate have become formal rather than substantial in nature. It is not surprising, therefore, that in this process of devolution the Senate has suffered a loss of authority and prestige and perhaps more importantly of vitality. This consequence, of itself, need not give cause for lament; the functions and responsibilities which in the past the Senate may have

addressed itself to more seriously and more intensively are now being discharged we believe with greater success by other bodies upon whom they have devolved. Besides, in the result, attrition may provide a basis for opportunity. For the present state of affairs means, in fact, that the Senate, while preserving a reserved power to deal with respect with its traditional functions, is now freer than it would have been, had devolution not taken place, to undertake additional responsibilities if there are new problems and tasks a world of university wide importance calling for its attention. The Committee is persuaded that there are such tasks, clearly and imperatively at hand and that the Senate ought to take them up”.

The committee went on to state that the principal work of the Senate would be the making of decisions on matters of the highest educational policy, decisions which determine the shape and character of the University and the discharge of its central purposes of teaching, research and community service. It would be for the Senate to define the principal objectives of the University to establish priorities for the attainment of these objectives and to translate those objectives and priorities into university policies. The Senate’s role, in the opinion of that committee was *“properly and essentially a legislative and policy making policy body, and not as an executive or administrative body”*.

This analysis has guided Senate for many decades.

The current language of Function 3 does not correspond to what actually happens when these entities are created. Using centres and institutes as an example, although Senate approval is essential if a new centre or institute is established, the process leading up to the creation or establishment of the centre or institute happens at the level of the relevant academic unit(s) and then proceeds to the relevant committee(s). Only when all details of the proposed new entity have been fully examined and approved at those levels does the proposal come before Senate for final approval. So, although these entities will not come into existence unless Senate gives

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the final approval, it is more accurate to describe Senate's role in these circumstances as that of the approving body. As an example, I refer you to the Senate policy entitled *Procedures Governing the Establishment, Reporting and Review of Research Centres, Institutes and other entities at Queen's University*. It is clear from that policy that a Research Centre or Institute is established/ created by the proponents and receives final approval from Senate. The policy itself recognizes that Senate's function in these circumstances is not to establish, but to approve.

The changes recommended to the language of proposed Functions 6. and 7. simply reflect the devolution of responsibility which has been going on for decades from Senate to others who are in a better position to gauge the feasibility and operational requirements of these proposals. Since Senate must approve, it has not limited its authority to exercise "academical superintendence" over the creation of these entities or positions.

Proposed Functions 6., 7. and 8 expressly require that Senate should approve not only the establishment of an academic unit, position or program, but its closure or discontinuance. In my opinion, Senate's superintendence role should include oversight over both the creation and closure of these academic entities and positions. As you are aware, Senate's role in the closure of an academic program or unit is spelled out in some detail in Article 39 of the collective agreement between Queen's and the Faculty Association, but Senate remains the body responsible for making the final decision, subject to ratification by the Board. I consider the proposed language to accurately reflect Senate's role.

Finally, there is a concern that eliminating the existing Function 9 which gives Senate the authority to "review the main elements of the approved operating budget of the University..." is a diminution in Senate's jurisdiction and reduces the opportunity for dialogue between Senate and the Board of Trustees to those questions of budgetary process, not substance. It is clear that under existing Function 9, Senate has never played any substantive role in the development of the operating budget of the University. Its role has been limited to reviewing the main

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elements of an already approved operating budget with a view to possibly influencing next year's budgetary process. The Charter makes it clear that it is the members of the Board of Trustees who are responsible for “ *the management of the revenues and property of*” the university.

To summarize my comments, it is my opinion that the Functions of Senate are descriptive of the various activities in which Senate engages in furtherance of its statutory jurisdiction over academic matters at the university. The proposed amendments to the Functions do not, in my opinion, limit Senate's authority to carry out that mandate.

I would be pleased to respond to any further enquiries which may arise during Senate's discussion about possible amendments to its Functions

Diane Kelly
Legal Counsel

Draft: Functions of Senate: Current and Proposed (March 15, 2011)

CURRENT FUNCTIONS OF SENATE	PROPOSED FUNCTIONS OF SENATE
	Central Function
<p>Function 1 To determine all matters of an academic character which affect the University as a whole, and to be concerned with all matters which affect the welfare of the University.</p>	<p>1. Under the jurisdiction of the Royal Charter of 1841 Senate determines all matters of an academic character that affect the University as a whole, and is concerned with all matters that affect the general welfare of the University and its constituents. Senate shall serve as a forum for discussion and exchange of ideas among the members of the University community.</p>
	Academic Planning and Educational Environment Functions: Senate will:
<p>Function 2 To participate in planning the development of the University.</p>	<p>2. participate in the strategic planning of the University</p>
<p>Former Function 11</p>	<p>3. assume a shared responsibility along with the Board of Trustees and the Administration of Queen's for a living and learning environment that promotes the well-being of students.</p>
<p>Proposed November 2010</p>	<p>4. commit through policies and programs to an environment at the University that recognizes equity and diversity as being vital to, and in harmony with, its educational purposes and standards of excellence as an institution.</p>
	Legislative Functions: Senate has the authority to:
<p>Function 3 To establish, subject to the ratification of the Board of Trustees, any faculty, school, institute, department:</p>	<p>5. approve {establishment or closure} any academic unit, centre or institute, subject to ratification by the Board of Trustees.</p>
<p>Proposed November 2010</p>	<p>6. approve {establishment or closure} of named and funded chairs and professorships, subject to ratification by the Board of Trustees.</p>
<p>Function 4 To approve, on the recommendation of the respective Faculty Boards and Schools, all programs of study leading to a degree, diploma, or certificate, together with the conditions of admission thereto and the qualifications and standards required</p>	<p>7. approve {establishment or closure}, on the recommendation of Faculty Boards and Schools, all programs of study leading to a degree, diploma, or certificate, and to review programs cyclically.</p>

CURRENT FUNCTIONS OF SENATE	PROPOSED FUNCTIONS OF SENATE
<p>Function 5 On the recommendation of the respective Faculty Boards and Schools, to publish the University calendars.</p>	<p>Removed</p>
<p>Function 6 On the recommendation of the respective Faculty Boards and Schools, to conduct examinations, and to decide finally all matters relating thereto.</p>	<p>Removed</p>
<p>Function 7 To establish the terms of all fellowships, scholarships, medals, and prizes; and to award all fellowships, scholarships, medals and prizes which are offered in open competition throughout the University.</p>	<p>Removed</p>
<p>Proposed January 2011</p>	<p>8. approve university-level policies relating to the academic mission and academic services.</p>
<p>Function 8 To grant all honorary degrees, and to grant on the recommendation of the respective Faculty Boards and Schools, all earned degrees, diplomas, and certificates awarded by the University.</p>	<p>9. grant all honorary degrees and to grant on the recommendation of Faculty Boards and Schools all earned degrees, diplomas, and certificates awarded by the University.</p>
<p>Function 9 To review the main elements of the approved operating budget of the University so as to advise the Principal on its consistency with the general needs and interests of the University and on any considerations for future budgeting.</p>	<p>See proposed function 8</p>
<p>Function 10 To advise the Board of Trustees through the Principal as to what buildings and other capital facilities are required to meet the needs of the University and in what order of priority.</p>	<p>See proposed function 8</p>

CURRENT FUNCTIONS OF SENATE	PROPOSED FUNCTIONS OF SENATE
<p>Function 11 To have responsibility for the well-being of students (see proposed function 3) and to have final responsibility for their discipline including the power to dismiss students for cause (reworded). The Alma Mater Society of Queen's University and the Society of Graduate and Professional Students share responsibility for, and have the right to promote, the well-being of their members. In the discharge of its disciplinary power, the Senate shall have regard to the initial responsibility of the Alma Mater Society of Queen's University and the Society of Graduate and Professional Students for the discipline of students in non-academic matters; the Senate may review the decisions of the Alma Mater Society of Queen's University and the Society of Graduate and Professional Students with respect to the discipline of students, and may take such action as it deems appropriate.</p>	<p>10. approve policies and procedures regarding student academic and non-academic matters. The authority to discipline students, including the power to require a student to withdraw from the University, resides with the Senate; responsibility for non-academic discipline of students may be delegated to student organizations.</p>
<p>Function 12 To establish the procedures to be followed in the appointment of members of the academic staff, vice principals, deans, and heads of departments, and to establish policies and procedures concerning the conditions under which, in the case of academic staff, promotions shall be given, tenure granted, appointments terminated and sabbatical or other leave granted.[†]</p>	<p>See proposed function 13</p>
<p>Function 13 To establish university policy governing the central academic services of the University such as the library system and the computer system.</p>	<p>Removed</p>

CURRENT FUNCTIONS OF SENATE	PROPOSED FUNCTIONS OF SENATE
<p>Function 9 To review the main elements of the approved operating budget of the University so as to advise the Principal on its consistency with the general needs and interests of the University and on any considerations for future budgeting.</p> <p>Function 10 To advise the Board of Trustees through the Principal as to what buildings and other capital facilities are required to meet the needs of the University and in what order of priority.</p>	<p>11. approve the Academic Plan and the Strategic Research Plan.</p>
	<p>Appointment/Selection Functions: Senate will:</p>
<p>Function 14 To share with the Board of Trustees the responsibility for the selection of the Principal through a committee composed equally of members of the Senate and the Board and instructed to recommend to the Board a virtually unanimous choice.</p>	<p>12. share with the Board of Trustees the responsibility for the selection of the Principal through a committee composed equally of members of the Senate and the Board.</p>
<p>Former Function 12</p>	<p>13. establish the procedures to be followed in the appointments of Deans and academic Vice-Principals.</p>
<p>Function 15 To appoint such committees as it may deem desirable and to specify, consistent with the functions enumerated above, the terms of reference of any such committees.</p>	<p>14. appoint, establish terms of reference, and have responsibility for committees that fulfill the functions of Senate.</p>

PURPOSE AND FUNCTIONS OF SENATE (PROPOSED REVISIONS) – March 15, 2011

Central Function:

1. Under the jurisdiction of the Royal Charter of 1841 Senate determines all matters of an academic character that affect the University as a whole, and is concerned with all matters that affect the general welfare of the University and its constituents. Senate shall serve as a forum for discussion and exchange of ideas among the members of the University community.

Academic Planning and Educational Environment Functions:

Senate will:

2. participate in strategic planning for the University.
3. assume a shared responsibility along with the Board of Trustees and the Administration of Queen's for a living and learning environment that promotes the well-being of students.
4. commit through policies and programs to an environment at the University that recognizes equity and diversity as being vital to, and in harmony with, its educational purposes and standards of excellence as an institution.

Legislative Functions:

Senate has the authority to:

5. approve {establishment or closure} any academic unit, centre or institute, subject to ratification by the Board of Trustees.
6. approve {establishment or closure} named and funded chairs and professorships, subject to ratification by the Board of Trustees.
7. approve {establishment or closure}, on the recommendation of Faculty Boards and Schools, all programs of study leading to a degree, diploma, or certificate, and to review programs cyclically.
8. approve university-level policies relating to the academic mission and academic services.
9. grant all honorary degrees and to grant on the recommendation of Faculty Boards and Schools all earned degrees, diplomas, and certificates awarded by the University.
10. approve policies and procedures regarding student academic and non-academic matters. The authority to discipline students, including the power to require a student to withdraw from the University, resides with the Senate; responsibility for non-academic discipline of students may be delegated to student organizations.
11. approve the Academic Plan and the Strategic Research Plan.

Appointment/Selection Functions:

Senate will:

12. share with the Board of Trustees the responsibility for the selection of the Principal through a committee composed equally of members of the Senate and the Board.
13. establish the procedures to be followed in the appointments of Deans and academic Vice-Principals.
14. appoint, establish terms of reference, and have responsibility for committees that fulfill the functions of Senate.