

An analysis of the Senate’s unique power and its role in collegial governance

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Executive Summary: The unique power of McMaster's Senate

This report examines the unique power vested in the McMaster University Senate to “control and regulate the system of education” and argues that this power is broader than the narrowly defined “educational policy” found in the governing statutes of other Ontario universities. This expansive power has implications for financial, governance, and managerial aspects of the university.

Key findings of the report:

- **Textual Analysis:** The wording of the McMaster Act of 1976 (MA 1976) suggests that the Senate's power encompasses all aspects of the university that affect its higher education mission, even those with financial consequences. This interpretation is supported by specific exceptions carved out for the Board, such as exclusive control over student tuition fees.
- **Historical Analysis:**
 - The phrase “system of education” originated in 1881 when the Toronto Baptist College Board of Trustees held this power.
 - In 1885, facing a financial crisis, the Board transferred this power to the newly created Senate with the intention of ceding “vital control” and encouraging broader financial responsibility.
 - The 1957 reorganization as a secular institution aimed to free the Senate from daily management, allowing it to focus on long-term planning and policy-making.
 - Historically, the Senate controlled student tuition fees, highlighting its financial influence. While this specific power was transferred to the Board in 1976, the Senate retains control over enrolment, a significant financial lever.
 - Between 1957 and 1976, the Senate had sole authority to establish programs and departments, demonstrating its power even in areas with financial implications.
- **Comparative Analysis:**
 - McMaster's governance structure, with its emphasis on Senate authority, is unique among Ontario universities.
 - The absence of the caveat “subject to the approval of the board with respect to the expenditure of funds” in McMaster’s legislation, commonly found in other university statutes, reinforces the broad and independent power of the McMaster Senate.
- **Collegial Governance:**
 - McMaster’s model of collegial governance, reinforced by the Duff-Berdahl Report, emphasizes decentralized decision-making with significant representation from faculty and students on the Senate.
 - The report argues that McMaster's high student/faculty ratio, a persistent issue stemming from unmet administrative promises, could be addressed by the Senate reasserting its control over enrolment management.

Conclusion: The report concludes that McMaster's Senate possesses a uniquely broad and impactful authority over the university's "system of education." This power has historical and ideological underpinnings and distinguishes McMaster's governance from other Ontario universities. The report suggests that the Senate can leverage its power to address critical issues such as the high student/faculty ratio.

Introduction

In many Canadian universities, there is a bicameral governing structure composed of a board of governors (or trustees) and a senate. The board of governors is usually in control of financial affairs, while the senate is usually in control of educational policy (Cameron, 1991; Duff & Berdahl, 1966; Eastman et al., 2022). The senate's control over educational policy, however, is not absolute. It is usually constrained by the authority of the board with respect to expenditures. For example, if the senate of a prototypical university decided to exercise its authority over educational policy by creating a new faculty or department, the university's board would have effective veto power over the decision to the degree new expenditures were involved.

McMaster has a bicameral system, but McMaster's Senate differs from that of other Canadian universities in that it is uniquely vested with the power to "control and regulate the system of education". What is a "system of education"? This power comes from provincial legislation (Ontario, 1976), and the phrase is not defined in the statute. The courts are the ultimate interpreters of statutory language, but no Ontario courts have faced any case in which they have been required to interpret the McMaster Senate's power over the "system of education".

When faced with a case in which they must interpret an ambiguous statutory provision, courts typically analyze several lines of evidence. First, they will conduct a *plain text analysis* of the provision. Second, they will often conduct a *historical analysis* of the processes that produced the legislation, including evidence regarding the intentions of those who wrote or approved the legislation. In the case of Ontario universities, structural reorganizations are often initiated by groups or entities within the university (e.g., a board of governors) who then apply to the provincial government to formally ratify those changes (Shanahan, 2019). Of course, the provincial government can make changes that were not requested (Cameron, 1991). For that reason, two sets of intentions are often relevant: (1) those within the university who are responsible for initiating the change; and (2) those of the legislature that formally made the changes. Third, because the province has authorized the governing structures of at least 22 Ontario universities, a *comparative analysis* can reveal differences that speak to legislative intent.

In this paper, I provide textual, historical, and comparative analyses of the powers of McMaster's Senate and Board of Governors. Through these analyses, I also address the degree to which McMaster's Senate is a mechanism of *collegial governance*, which refers to the ability of scholars to govern themselves (Dea, 2021; Shanahan, 2019)

These analyses indicate the Senate's power over the system of education: (1) is older than McMaster and constrains and supersedes the powers of the Board of Governors, except in specific instances; (2) is broader than a narrowly circumscribed power over educational policy; and (3) includes control over those aspects of the educational system that can affect the university's financial affairs, such as enrolment. Furthermore, since McMaster's inception, the statutes affecting McMaster's governance structure have consistently provided faculty with significant representation on the Senate, thereby making it a mechanism of collegial governance.

Plain text analysis

The governing structure of McMaster is determined by provincial legislation, and there have been a number of provincial statutes affecting McMaster's governance (**Table 1**). In 1885, the province of Ontario authorized Toronto Baptist College to create a Senate (TBC 1885). Shortly afterwards in 1887, when the province authorized the creation of McMaster University from the merger of Toronto Baptist College and Woodstock College, the powers of the college's senate were carried over to McMaster's Senate (MA 1887). McMaster's structure underwent a major reorganization in 1957 when it became a secular university, and it was modified slightly in 1963 (MA 1963) and again in 1969 after the publication of a major report on collegial governance (MA 1969). McMaster's current structure is the result of another reorganization in 1976 (MA 1976), with one minor exception. In 2016, Bill 173 eliminated the requirement that members of the Board of Governors had to be Canadian citizens. Bill 173 is not relevant to the present paper.

Table 1. The provincial statutes shaping McMaster University's governing structure.

| Year | Title | Abbreviation |
|------|---|--------------|
| 1881 | An Act to incorporate the Toronto Baptist College | TBC 1881 |
| 1885 | An Act to amend the Act incorporating the Toronto Baptist College | TBC 1885 |
| 1887 | An Act to unite Toronto Baptist College and Woodstock College under the name of McMaster University | MA 1887 |
| 1957 | An Act respecting McMaster University | MA 1957 |
| 1963 | An Act respecting McMaster University | MA 1963 |
| 1969 | An Act respecting McMaster University | MA 1969 |
| 1976 | An Act respecting McMaster University | MA 1976 |
| 2016 | An Act to implement Budget measures and to enact or amend various statutes | Bill 173 |

Section 9 of MA 1976 specifies the scope of authority of the Board of Governors (**Table 2**).

Table 2. The current powers of the Board of Governors and their history.

| Powers of the Board of Governors | History |
|---|--|
| 9. Except in such matters as are assigned by this Act to the Senate, the government, conduct, management and control of the University and of its property, revenues, business and affairs shall be vested in the Board and the Board shall have all powers necessary or convenient to perform its duties and achieve the objects and purposes of the University including, without limiting the generality of the foregoing, power to, | This prefatory statement was added in MA 1957. |
| (a) subject to subsection 3 of section 16, appoint, suspend or remove the President, and whenever there is a vacancy in that office appoint an acting President to hold office during the pleasure of the Board or until a President is appointed; | A similar clause existed in MA 1887 and was modified in MA 1957, MA 1969, and MA 1976. |
| (b) appoint, promote, suspend or remove one or more Vice-Presidents, the Deans, the University Librarian, the University Registrar, and the members of the teaching staff of the University, provided that, (i) all such appointments, excluding therefrom a person to be appointed for a stated period of time, shall be made upon nomination by the Senate and subsequent recommendation by the President, (ii) all such promotions shall be made upon nomination by the Senate and subsequent recommendation by the President, (iii) in the case of the suspension or removal of a member of the teaching staff, the Board shall prior thereto, but without limiting its power, consult the Senate, and appoint, promote, suspend or remove all other officers, agents and employees of the University; | A similar clause existed in MA 1887 and was modified in MA 1957, MA 1969, and MA 1976. |
| (c) fix the number, duties, salaries and other emoluments of the officers, agents and employees of the University; | Added in MA 1957, modified from similar phrase in MA 1887. |
| (d) delegate from time to time such of its powers under clauses b and c as it considers proper to the President or such other officer or employee of the University as may be designated by the President and approved by the Board; | Added in MA 1976. |
| (e) appoint an executive committee and such other committees as it may deem advisable and delegate to any such committee any of its powers; | Added in MA 1957. |
| (f) borrow money for the purposes of the University and give security therefor on such terms and in such amounts as it may deem advisable; | Added in MA 1957. |
| (g) invest all money that comes into its hands and is not required to be expended for any purpose to which it may lawfully be applied, subject always to any express limitations or restrictions on investment powers imposed by the terms of the instrument creating any trust as to the same in such manner as it considers proper and, except where a trust instrument otherwise directs, combine trust moneys belonging to various trusts in its care into a common trust fund; | Added in MA 1976. |
| (h) make by-laws and regulations for the conduct of its affairs; | From MA 1957, modified from a similar phrase in MA 1887. |
| (i) establish and collect fees and charges for tuition and for services of any kind offered by the University and collect fees and charges on behalf of any entity or organization of the University; | Added in MA 1976. |
| (j) on the recommendation of the Senate, (i) establish or terminate any faculty, school, institute or department, and (ii) make agreements with any institution of higher learning to become part of or be affiliated with the University and to provide for the alteration or termination of such agreements; and | A similar phrase existed in MA 1887, which was eliminated in MA 1957. This clause was added back in MA 1976. |
| (k) make recommendations to the Senate as to educational policy. | Added in MA 1969. |

The Senate’s powers are described in section 13 of MA 1976 (**Table 3**).

Table 3. The current powers of the Senate and their history.

| Powers of the Senate | History |
|---|--|
| 13. The Senate has power to, | Added in MA 1957. |
| (a) appoint the Chancellor; | Added in MA 1957. In MA 1887, the Senate made a recommendation to the Board about appointment of the Chancellor. |
| (b) nominate for appointment by the Board under the procedure established in subsection 3 of section 16, a person for the position of President; | Similar phrase in MA 1887, which was modified in MA 1957 and MA 1976. |
| (c) nominate for appointment by the Board, one or more Vice-Presidents, the Deans, the University Librarian, the University Registrar, and the members of the teaching staff of the University, excluding a person to be appointed for a stated period of time; | Similar phrase in MA 1887, which was modified in MA 1957 and MA 1976. |
| (d) nominate for promotion by the Board, the members of the teaching staff of the University; | Added in MA 1957 and modified in MA 1976. |
| (e) recommended to the Board the suspension or removal of a member of the teaching staff of the University; | Added in MA 1976. |
| (f) control and regulate the system of education pursued in the University and the conduct, activities and discipline, including suspension or expulsion, of the students thereof; | Similar phrase in TBC 1885 and MA 1887, which was modified in MA 1957. |
| (g) determine all courses of study, including standards for admission into the University and qualifications for degrees, diplomas and certificates; | Similar phrase in MA 1887, which was modified in 1957. |
| (h) conduct examinations and appoint examiners; | Similar phrase in MA 1887, which was modified in 1957. |
| (i) deal with matters arising in connection with the award of fellowships, scholarships, medals, prizes and other awards; | Added in MA 1957. |
| (j) authorize the Chancellor and the Vice-Chancellor to confer the degrees of bachelor, master and doctor, including degrees in theology, and to award diplomas and certificates; | Senate had exclusive power to confer degrees in MA 1887 and MA 1957; modified in MA 1976. |
| (k) recommend to the Board the establishment or termination of any faculty, school, institute or department and the terms on which any institution of higher learning may become part of or be affiliated with the University; | Similar phrase in MA 1887, which was eliminated in MA 1957. Added back in MA 1976. |
| (l) appoint an executive committee and such other committees as it may deem advisable and delegate to any such committee any of its powers; | Added in MA 1957. |
| (m) make by-laws and regulations for the conduct of its affairs; and | Similar phrase in MA 1887, modified in MA 1957. |
| (n) make recommendations to the Board on any subject of concern to the University. | Added in MA 1969. |

Section 13(f) of MA 1976 specifies that the Senate has the power to “control and regulate the system of education”. What does “system of education” mean? As noted above, the phrase is not defined in MA 1976 or any of the predecessor statutes.

A common dictionary definition of “system” is “a group of interacting, interrelated, or interdependent elements forming a complex whole.”¹ The McMaster Senate’s power over the “system of education” therefore seems more expansive than a carefully circumscribed power over “educational policy”.

The first sentence of Section 9 states that the Board has broad powers over the control and management of the university, including matters of finance, business, and property, and that it has all powers necessary to achieve its ends and those of the university.

¹ See the online American Heritage dictionary. <https://ahdictionary.com/word/search.html?q=system>

“Except in such matters as are assigned by this Act to the Senate, the government, conduct, management and control of the University and of its property, revenues, business and affairs shall be vested in the Board and the Board shall have all powers necessary or convenient to perform its duties and achieve the objects and purposes of the University....”

But that sentence has a prefatory clause stating that the Board’s powers are limited to the degree such matters are assigned to the Senate. Therefore, a straightforward interpretation of the first sentence of Section 9 is that the powers of the Board over governance and finance, while broad, are limited by the powers of the Senate. In other words, the first sentence of Section 9 indicates that the Senate’s authority can (in some instances) supersede the authority of the Board with respect to governance and finance, which seems to imply a statutory recognition that the Senate’s authority has governance and financial aspects to it.

Presumably, then, the Senate’s authority over the system of education would include all the working pieces of a university that affect the higher education mission of a university, even if they have governance or financial consequences: decisions affecting the quality of teaching and research; the relative importance of undergraduate and graduate education; questions of academic policy; academic governance structures; the number of students served by the university; tuition fees; and so on.

There are a few specific instances in which the Senate and Board have been given joint authority over some aspects of McMaster’s system of education. Section 9(j)(i) gives the Board and the Senate joint control over the establishment and termination of faculties, schools, institutions, and departments, while Section 9(j)(ii) gives them joint control over the affiliation or termination of other institutions with McMaster. According to Section 9(b), the Board and the Senate have joint control over faculty and senior academic administrative appointments, with one caveat involving the President. By cross-referencing Section 9(a) with Section 16(3), only the Board can *suspend or remove* the President. However, Section 16(3) states that the *appointment* of the President requires the input of both the Senate and the Board. Finally, sections 8(1)(a)² and 12(1)(a)³ of MA 1976 authorize the creation of a joint Board-Senate Long-Range Planning Committee, which indicates that the power for long-range planning is under joint control.

There is also one provision, Section 9(i), that assigns to the Board exclusive authority over student tuition fees. This provision is particularly instructive because its existence suggests that control over tuition fees could not be assumed to fall under the Board’s more general authority over finance. Rather, it suggests that tuition fees might otherwise be assumed to fall under the Senate’s control over the system of education, and that a specific exception had to be carved out for the Board to take full control of tuition fees. Indeed, we will see that control over tuition fees appears to have resided with the Senate prior to MA 1976.

² MA 1976, Section 8(1) states: “There shall be a Board of Governors of the University composed of, (a) the Chancellor, the President and the Chairman of the Board-Senate Committee on Long-Range Planning, who shall be ex officio members....”

³ MA 1976, Section 12 (1) states: “There shall be a Senate of the University composed of, (a) the Chancellor, the President, the Vice-Presidents, the senior Dean of each faculty, the Dean of Graduate Studies, the Dean of Adult Education, the Principal of the Divinity College, the head of each college hereafter affiliated with the University, the chairman of the Board-Senate Committee on Long-Range Planning and the Chairman of the Undergraduate Council, who shall be ex officio members....”

In summary, a plain textual analysis of MA 1976 suggests that the Senate’s power over the system of education is expansive (and includes the capacity to affect governance and finance) and largely outside of the control of the Board except in specific limited instances (e.g., student tuition fees, academic appointments). Nevertheless, “system of education” is not explicitly defined, so it is important to cross-reference the textual analysis with the historical and comparative analyses.

Historical analysis

The phrase “system of education” is not defined in MA 1976 or any previous statutes. However, it is clear from an examination of all the previous statutes on the Senate’s powers that the precise wording has changed over time (**Table 4**).

Table 4. Descriptions of the Senate’s power and composition in the major statutory acts relating to McMaster University and its predecessor, Toronto Baptist College.

| Statute | Institution | Power of the Senate | Composition of the Senate |
|----------|-------------------------|--|--|
| TBC 1885 | Toronto Baptist College | “The senate so constituted shall have the control and management of the system and course of education pursued in the college” | Members included representatives from the Board of Trustees, faculty representatives of Toronto Baptist College, Acadia College, and Woodstock College, and representatives from the “four Conventions of the Regular Baptists in Canada”. |
| MA 1887 | McMaster University | “The senate shall have the control of the system and course of education pursued in the said university, and of all matters pertaining to the management and discipline thereof” | Members included representatives from the Board of Trustees, faculty representatives of Toronto Baptist College, Acadia College, and Woodstock College, and representatives from two Baptist conventions. |
| MA 1957 | McMaster University | “The Senate shall have power ... to control and regulate the system of education pursued in the University and the conduct, activities and discipline of the students thereof” | Members included representatives of the administration, Board of Governors, alumni, and teaching staff. Teaching staff constituted a minority of Senate seats. |
| MA 1963 | McMaster University | Unaltered from 1957 language. | Minor changes. |
| MA 1969 | McMaster University | Unaltered from 1957 language. | Elected full-time teaching staff were allotted half of the Senate seats. |
| MA 1976 | McMaster University | “The Senate shall have power to ... control and regulate the system of education pursued in the University and the conduct, activities and discipline, including suspension or expulsion, of the students thereof” | 12 Senate seats were created for undergraduate and graduate students (6 each). Elected full-time teaching staff now have 47% of the Senate seats (31 out of 66). |

The intentions of the Board of Trustees of Toronto Baptist College in 1885

Toronto Baptist College and Woodstock College merged in 1887 to form McMaster University, but Toronto Baptist College was formed only a few years previously in 1881. At the time of incorporation, Toronto Baptist College had a Board of Trustees, but no Senate. In relevant part, TBC 1881 describes the powers of the Board of Trustees as follows (Ontario, 1881, p. 511):

“[T]he said trustees and their successors shall have full power to make and establish a constitution and all such and so many rules, orders, by-laws, and regulations, not being

contrary to the laws of this Province or this Act, as they shall deem useful or necessary, as well concerning *the system of education* to be observed and followed in the said college, as for the conduct and government thereof, and for the superintendence, advantage and improvement of all property, real or personal, which may belong to the said incorporation....”

The language is difficult to follow, but it appears that the Board of Trustees had full power to make any rules regarding the “conduct and government” of the “system of education” that they deemed useful or necessary.

Shortly after incorporation, however, Toronto Baptist College faced a significant problem. The college was intended to educate Baptists from all over Canada, but its placement in Toronto made it difficult for Baptists from more distal regions to feel sufficient ownership in the college to contribute to its financial well-being (Johnston, 1976, p. 33-34). In the attempt to solve this problem, the Board of Trustees of Toronto Baptist College decided to create a Senate with significant representation from the “four Conventions of the Regular Baptists in Canada”. Further, the Board of Toronto Baptist College transferred “the vital part of the control of the College” to the Senate (Johnston, 1976, p. 34). The Board felt that the transfer of real power to the Senate, coupled with broad Baptist representation on the Senate, would help Baptists across the country feel they had control and ownership over the college so that they would feel responsible for it and take care of it. As stated by Executive Committee of the Board of Trustees of Toronto Baptist College (cited in Johnston, 1976, p. 34, emphasis added):

“[O]ur ‘Close Corporation’⁴ has voluntarily resigned its *most important functions* to a body at once National and representative in its composition. We cannot doubt that this transfer of Power from the Board ... to an Elective Senate will convince our Churches that the College ... is fully their own property. It is to be hoped that with the joy of ownership and control may come also the deep sense of responsibility which will induce the utmost care and wisdom in the choice of Representatives, and at the same time develop a generosity which will anticipate as well as supply all the wants of the College.”

In response to the Board’s request, the province authorized the creation of a Senate for Toronto Baptist College in 1885 and vested it with “the control and management of the system and course of education pursued in the college” (Ontario, 1885, p. 442).

In summary, the crisis that prompted the Toronto Baptist College Board of Trustees to create a Senate was financial in origin. And their solution was to cede the “vital part of control” and “its most important functions” so that the representatives from the Baptist Conventions who served on the Senate would feel such “ownership and control” and “responsibility” that they would “anticipate as well as supply all the wants” of the institution. *Such language suggests that, in ceding “control and management of the system and course of education” to the Senate, the Board of Trustees may have intended that power to include some degree of financial responsibility and planning for the college.*

⁴ This term refers to the fact that Toronto Baptist College was a private corporation that was controlled by a small number of individuals. In this case, the Board of Trustees.

It is worth noting that faculty also had significant representation on the Senate of Toronto Baptist College (**Table 4**). This was in line with the philosophy of many Canadian Baptists, who distrusted centralized authority (Gilmour, 1939).⁵ Indeed, a preference for democratic/collegial governance structures was a general characteristic of Protestant religions that evolved out of the Protestant Reformation, and they spread it to many countries around the world (Becker et al., 2016; Woodberry, 2012). In any event, collegial governance was written into the original statute creating the Senate at Toronto Baptist College.

The formation of McMaster University in 1887

When McMaster was formed by the union of Toronto Baptist College and Woodstock College in 1887, the power of the Senate was slightly altered (Ontario, 1887, p. 375): “The senate shall have the control of the system and course of education pursued in the said university, and of all matters pertaining to the management and discipline thereof.” These alterations seem to clarify the extent of the Senate’s power over the system of education, rather than fundamentally alter it.

Again, in the original statute incorporating McMaster University, faculty had significant representation on the Senate (**Table 4**), in line with the decentralized, collegial decision-making philosophy of Canadian Baptists.

The reorganization of McMaster under President George Gilmour in 1957

The language changed again when McMaster transitioned to a secular institution. In 1957, the province vested the Senate with the power to “control and regulate the system of education” (Ontario, 1957, p. 890). In other words, while the concept of “control” over the system of education was retained, the concept of “management” was dropped and replaced with the concept of “regulate”.

This was a purposeful change. As part of his efforts to reorganize McMaster as a secular institution, McMaster President George Gilmour also became interested in changing the mandate of the Senate (Johnston, 1981). Gilmour was concerned that the Senate got too easily mired in the routine details of managing the university and not enough time “with questions of high policy and the long range effects of decisions” (cited in Johnston, 1981, p. 259).⁶ In other words, the change in language was not intended to alter the ability of the Senate to control the system of education at McMaster. If anything, it was intended to free the Senate from routine management functions so that it could spend its time setting the direction of the university through long-term planning and strategizing. It was the job of the administration to manage the university according to the goals and directions set by the Senate. The Senate endorsed Gilmour’s proposal, and it was authorized by the provincial government in 1957 (Johnston, 1981, pp. 259-260).

⁵ The article cited here was written by George Gilmour who served as Chancellor of McMaster University from 1941-1949, and served as McMaster’s first President from 1949-1961. Gilmour was a professor of history, and his 1939 paper provides an overview of the philosophy of the Baptist Convention of Ontario and Quebec, which played a role in electing members of the Board of Governors until 1957.

⁶ This evidence further supports the idea that the Trustees of Toronto Baptist College intended for the Senate’s power over the “system and course of education” to include long-range planning.

Again, significant faculty representation on the Senate was retained (**Table 4**). Even though McMaster became a secular institution in 1957, the retention of faculty representation on the Senate reflected a carryover belief in collegial governance.

Other influences on McMaster's Senate

As a result of increasing faculty unrest across Canadian universities over issues of academic freedom and collegial governance, the Canadian Association of University Teachers (CAUT) and the Association of Universities and Colleges of Canada (now known as Universities Canada) jointly commissioned a report to conduct “a dispassionate examination and evaluation of the present structure and practices of the government” of Canadian universities (Duff & Berdahl, 1966, p. 3).⁷ Broadly speaking, the Duff-Berdahl Report recommended greater faculty participation on university senates and boards. One proposal was to ensure that elected faculty had a majority representation on university senates.

The Duff-Berdahl report was very influential in affecting the governance structure of Canadian universities, and it had an impact at McMaster. In December of 1966, the Senate Committee on University Government, chaired by Jack Kirkaldy, delivered a report to the Senate that adopted many of the recommendations of the Duff-Berdahl Report for increasing faculty participation at all levels of governance at McMaster. As reported by historian James Greenlee (2015, p. 192), one proposal of the Kirkaldy report:

“advocated that, henceforth, elected faculty members should form a majority on the senate. Intimately tied to this was the prescription that the senate should have the right to recommend ‘on all matters of interest to the University.’ ... Consciously or not, the committee was appealing to the precept of ancient constitutional vintage: that which touches all should be approved by all. During Canada’s hour of ‘participatory democracy,’ this notion had great purchase, even at tradition-laden McMaster.”

Indeed, as discussed above, participatory democracy was part of McMaster’s tradition, inherited from the Protestant/Baptist preference for decentralized decision-making. In line with this, several recommendations of the Kirkaldy Report were adopted in MA 1969, and elected faculty were given 50% of the seats on McMaster’s Senate (**Table 4**).

However, in the mid-1970’s, McMaster students called for greater representation on governing bodies, including the Senate and the Board (Greenlee, 2015, pp. 275-276). As a result of those debates, MA 1976 awarded 12 Senate seats to undergraduate and graduate students (6 each). Elected faculty no longer have a majority on the Senate (**Table 4**). Of the 66 Senate seats, elected faculty control 31 (47%), and they constitute the largest voting category, while the 12 elected graduate and undergraduate students control 18% of Senate seats. In the aggregate, faculty and students constitute a strong majority of Senate seats (65%), in line with the more general principle of decentralized, collegial governance that has guided McMaster since its inception.

⁷ The Duff-Berdahl report is available on the Internet Archive: <https://archive.org/details/universitygovern0000unse>

The Senate's historical authority over student tuition fees

The historical record indicates that the Senate's authority used to include control over student tuition fees. On May 4th of 1976, the Ontario Minister of Colleges and Universities, Harry Parrot, announced a tuition hike for international students in the attempt to limit the influx of immigrants who would seek citizenship (Greenlee, 2015, pp. 314-318). Two weeks after that, the McMaster Senate refused to authorize the visa student tuition hike and voted to postpone the matter until 1978. From Greenlee (2015, p. 319):

The senate's stand on this matter won enthusiastic support from idealistic MSU officials, who backed Bourns'⁸ call for a funding drive on campus. Faculty, staff and students were asked to dig in aid of the cause. A somewhat bemused Parrott simply noted that they were at complete liberty to search for the estimated \$200,000, but that the province had no intention of bailing anyone out. ...

By January 1978, the senate was forced to concede defeat. Dejectedly, Bourns reported that the appeal had failed to fire anything like all-consuming ardour among the McMaster community. Students, in particular, he said had made their views clear. Only 109 of them had contributed to the drive. A student senator interjected to explain that his Canadian peers seemed ready to help fund special bursaries for truly needy international classmates, but were unwilling to subsidize all and sundry, some of whom were far better off than they. Whatever the cause, Bourns contended, the crystalline facts stood out in razor-sharp relief. Pledges fell \$150,000 short of the mark. ... Accordingly, the president advised that McMaster disengage from the fray and levy the full fee on incoming visa students, effective 1 July 1978. The senate concurred, only a few votes dissenting. The board gave its approval, early next month.⁹

From this, it is clear that the Senate had at least partial control over student tuition fees. It could be argued that the Senate shared this power with the Board. However, timing is a significant issue in this matter. Greenlee makes no mention of the Board having authority over tuition fees in 1976 when the Senate refused to authorize the tuition hike, but the Board is explicitly mentioned as approving the hike in 1978.

The precise timing of the passage of MA 1976 may help reconcile this discrepancy. Section 9(i) of MA 1976 explicitly assigns the power over student tuition to the Board, and no previous statute had assigned such a power to the Board. MA 1976 was submitted to the provincial legislature for approval in March of 1976, but it was not authorized until June 7, 1976. So, in May of 1976, when the Senate refused to authorize the hike and voted to delay the issue until 1978, it was operating under MA 1969, which arguably gave the Senate authority over student tuition fees as part of McMaster's system of education.

Why, then, did the Senate vote on the tuition issue in January of 1978, when MA 1976 was in full effect and tuition was exclusively under the authority of the Board? Probably, it was because the Senate had authorized the postponement when it still had authority over tuition fees, and the

⁸ Arthur Bourns was the President of McMaster at the time.

⁹ From Greenlee (2015), p. 319.

Senate's reconsideration of the issue in 1978 was a carryover effect of its 1976 authority. The Senate's vote in January of 1978 may have been the last time it exerted any control over student tuition fees. And it made sense for the Board to authorize the Senate's vote in 1978, because tuition was under Board authority by that time.

The Senate's authority over enrolment

Another example of the expansive power of the Senate is its ability to control and regulate enrolment. As the provincial statutes since 1957 do not require the Senate to "manage" McMaster's system of education, but do give the Senate the power to control and regulate it, the Senate has delegated the management of enrolment to the administration, but it has retained the power over enrolment policy.

The current enrolment management structure was the result of a funding crisis in the mid-1990's. The provincial government had put a cap on funding grants and Ontario universities had to find alternative sources of revenue (Jones, 2004). This effectively meant increasing revenues through tuition, which prompted efforts to increase enrolment. At the same time, so many different aspects of a university are affected by enrolment that it had to be done in a careful and coordinated manner. Put simply, enrolment clearly has financial consequences for universities everywhere.

In 1996, the Senate approved a proposal from McMaster's University Planning Committee (UPC) recommending the creation of an Enrolment Management Team (EMT) whose function was to coordinate input from various sectors and produce enrolment targets.¹⁰ In 2002, the UPC put forward another proposal to the Senate recommending changes to the EMT (**Appendix**). In the covering memo to the 2002 proposal (**Appendix**), the UPC stated, "The mandate of the Enrolment Management Team has not been changed significantly. Its fundamental role is to advise the Provost; matters of policy still require the approval of the Senate." And in the body of the proposal, the UPC stated "The Enrolment Management Team will implement and oversee all enrolment policies approved by Senate and, after consulting with Faculties, Programs and other appropriate University groups, will report to the Provost on enrolment matters."¹¹ The UPC documents acknowledge that enrolment was under the authority of the Senate, and the proposal was to have the Senate delegate that authority to the EMT.

The minutes to the 2002 meeting of the Senate that authorized the revisions to the EMT also reveal that there was wide agreement that the Senate could exercise control over the management of enrolment (**Appendix**). During the Senate deliberations over the UPC proposal to revise the terms of reference for the EMT, Dr. Henry Jacek proposed an amendment to make the EMT's enrolment targets "be subject to the approval of the Senate." Here is the discussion that followed.

Dr. Norrie¹² commented that it would be practically impossible for the Enrolment Management Team to function if its decisions were subject to Senate approval. The

¹⁰ This document is available from the author upon request.

¹¹ The day after the Senate approved the revisions to the EMT, a Daily News announcement advertised to the McMaster community that the EMT is "the group that implements and oversees all enrolment policies approved by Senate."
<https://dailynews.mcmaster.ca/articles/posted-on-oct-11-oct-9-senate-meeting-highlights/>

¹² Dr. Ken Norrie was Provost at the time.

government definitions of students and cohort groups change constantly, and yield rates are affected by sudden decisions made by other universities, especially in Southern Ontario. At certain times of year, the Enrolment Management Team may have to revise its decisions on a daily basis. The President¹³ suggested that the Enrolment Management Team could table its annual enrolment projections at Senate, but that it would contradict the point of having an Enrolment Management Team if Senate attempted to micro-manage its decisions. Dr. Allan commented that micro-management was not the intention of the amendment; instead, she thought there was a general lack of awareness among faculty of how enrolment is managed and believed that a report from the Enrolment Management Team would be very useful for them. Mr. Wiley suggested that the amendment on the floor be revised as follows:

“that enrolment targets set by the Enrolment Management Team be reported to Senate on an annual basis.”

From the minutes to the 2002 Senate meeting, two things are clear. First, it is clear that everyone who participated in the discussion – Dr. Henry Jacek (who proposed the original amendment), Dr. Thomas Matthew Kerr Davison (who seconded the original amendment), Provost Ken Norrie, President Peter George, Dr. Lorraine Allan, Mr. R. Wiley – recognized that the Senate could assert control over enrolment targets if it wanted to. It’s just that everyone thought that doing so would be impractical and subvert the purpose of having the EMT. Second, the Senate in 2002 delegated its authority to approve enrolment targets to the EMT, but it did not intend to give up oversight over the EMT because it required the EMT to produce annual reports to the Senate.¹⁴

To the present day, in December of every academic year, a report on enrolment is provided to the Senate and the Board. The reports to the Board from December 15, 2022 and December 14, 2023 are provided in the **Appendix**. Note that each report to the Board states that it comes from the Senate (i.e., “Report to the Board of Governors *from the Senate*”). Each report contains a summary page and several tables describing graduate and undergraduate enrolment, including an “Enrolment Management Update” table with “Headcounts of Level 1 students”. In other words, student enrolment reports are treated as if they are produced under the authority of the Senate.

Communications from two long-serving faculty members support this narrative. Professor Emerita Betty Ann Levy, who served on the Senate before the EMT was created (1989-1990) and served on the Board for many years, reported the following about the relative roles of the Senate and the Board with respect to enrolment.

“I think Senate always approved enrolment numbers. The BOG got the approved numbers in a Senate report. They could question that report but not change it. There was a lot of debate about how large McMaster should become in those times so enrolment numbers were critical.”

¹³ Dr. Peter George was President of McMaster at the time.

¹⁴ The amendment by Mr. Wiley was carried with 7 opposed and 4 abstentions. Given that there were 34 voting members of the Senate present (which constituted a quorum), 23 appear to have voted in favor of the annual reporting requirement.

Professor Levy's recollection is consistent with the idea – articulated in the plain text analysis – that the Senate's authority over the system of education supersedes that of the Board, even if it has financial consequences. Professor Herb Schellhorn, who also served on the Senate and the Board, agreed that student enrolment used to be under Senate control.

“I was on the Board with Betty Ann and I agree. I wrote critical assessments of enrolment ~2007 because it was clear that we were going off the rails....”¹⁵

To summarize, the administration had to apply to the Senate to get the authority to manage enrolment, and the Senate delegated that authority to the Provost and the EMT in 1996, but the Senate retained authority over enrolment policy, and it retained oversight over the EMT. The Senate's control over enrolment is an important power because student tuition is currently the primary source of revenue for the university. The historical and current practice of how enrolment is controlled is an important demonstration of the principle that the Senate's authority over the system of education supersedes the authority of the Board, even when it has financial consequences.

The Senate's transient unilateral authority over the establishment of departments and programs

MA 1887 had assigned to the Board the authority to establish and terminate departments, but this provision was eliminated from MA 1957. However, a similar provision was reinserted under the Board's powers in MA 1976, Section 13(j). During this intervening time period, between 1957 and 1976, it appears that the Senate had sole authority to establish programs and departments, despite the financial implications. There are at least two examples in the historical record.

The rapid growth of the Department of Political Economy in the early 1960's prompted that department to make two recommendations in December of 1963. James Greenlee describes their approval by the Senate (Greenlee, 2015, pp. 106-107):

“One called for commerce to be hived off as an independent department, with Potter¹⁶ in the chair. This new body would oversee the ‘pre-professional’ BComm and, on an interim basis, the MBA. The second proposal was that a graduate school of business be authorized [to] take direction of the latter program, as of July 1965. ... Principal

¹⁵ Professor Schellhorn wrote a report for MUFA in 2007 that was highly critical of the administration's management of enrolment – just a few years after the Senate had delegated that task to the Enrolment Management Team. Prof. Schellhorn's report is published on MUFA's website: <https://macfaculty.mcmaster.ca/app/uploads/2020/07/ReflectionsAcademy.pdf>. Here is a paragraph from page 2 of that report.

In examining more recent administrative statements on future enrolments, the projected acceptance rates and actual acceptance rates amongst entering students, it is clear that the current situation is not the result of any deliberate plan—rather it is a result of successive underestimations coupled with annual unplanned increases in intake of first year students. If the administration actually believed that the stable enrolment for the University should be about 17,000 students, as indicated in the 2005/06 Consolidated Report, attempts would have been made in subsequent years to return to this level. Clearly, no such attempt has been made. Instead, the new increased enrolments, rather than being an admitted error to be corrected in the following year, have simply become the new baseline against which future planned increases are made....

With full-time enrolment (graduate + undergraduate) now exceeding 35,000, it is clear that the problem that Prof. Schellhorn discussed in 2007 has gotten worse.

¹⁶ Calvin Potter was the head of a new bachelor commerce program that was part of the Department of Political Economy.

Salmon¹⁷ expressed some concern about the costs involved, but ultimately conceded that ‘for public relations purposes [the school] might prove incalculable.’ If Salmon, humanist supreme, were for this, who would stand against it? Thus, both requests were granted by the senate, just as the modest venture of 1959 was turning into an enterprise of truly major proportions.”

Even though the expenditure of funds was involved, the approval of the new department and the graduate school of business was the purview of the Senate.

Another example from the historical record involves a Senate proposal to create a school of social work in 1967 (Greenlee, 2015, p. 128):

“When the proposal came before the senate on 14 June 1967, it touched some exposed nerves. McIvor,¹⁸ for one, had no objection to the program, per se, but he deplored the rush and lack of long-term planning involved. The senate, he argued, should make greater effort to relate the costs and harmonization of such plans with commitments already made. Another speaker picked up a theme that was gathering considerable currency in some student and faculty circles of the day: universities should fight shy of educational utilitarianism. More than money was at stake, he argued. Indeed, a university that bowed too readily to rapidly shifting public demand could easily lose sight of its broader academic goals and standards. The senate, he continued, had a duty to act as a buffer against excessive social pressures. More bluntly, the *Silhouette*¹⁹ criticized the program as an example of the university catering to community interests, who saw the academy’s only function as the production of career-oriented specialists suited to stabilizing the established order. Meanwhile, the editor continued, mainstream departments were cancelling classes for want of resources. A few months later, sociology was cited as a case in point.

These objections notwithstanding, the senate approved the new degree, with only one dissenting vote. Harry Penny was appointed director of the school, with Jean Jones and Karl Kinanen as its first faculty. Initially, the school reported to the dean of social science. Market predictions proved correct, and, by 1970, a novel MSW in social work administration was in the works. All in all, the school moved ‘from dream to gleam,’ to borrow Penny’s words, in a scant three years.”

Again, no mention is made of Board involvement in this decision, even though financial considerations were clearly discussed and debated.

The authority to establish departments, schools, and faculties is now shared jointly with the Senate and Board. However, this unique period of time where the authority resided solely in the hands of the Senate, despite the financial consequences of such decisions, helps us understand that the Board’s authority over financial matters has never been absolute.

¹⁷ E. Togo Salmon was Principal of University College at the time.

¹⁸ Craig McIvor was chair of the Department of Economics.

¹⁹ The student-run newspaper at McMaster.

The Senate's authority over long-term planning

As discussed above, statements from the Trustees of Toronto Baptist College suggest that they, in vesting the Senate with the power over the system and course of education, intended for the Senate to be involved in anticipating and supplying the needs of the college. Also, statements made by President Gilmour during the 1957 reorganization of McMaster as a secular institution indicate a frustration that the Senate was not doing enough long-term planning and strategizing. McIvor's statements regarding the school of social work indicate that he thought that the Senate bore some responsibility for long-term planning.

The role of the Senate in long-term planning is also apparent in the reforms to the Senate considered by Arthur Bourns because he became President of McMaster in 1972 (Greenlee, 2015, p. 242):

“Over the first months of his presidency, Bourns sketched a design for trimming, pruning, and streamlining McMaster to meet the ‘considerable stress and uncertainty’ ahead. Everything, he underlined, was up for review, in order that specific priorities might be identified and established strengths maintained. At the head of his list was a hard look at the administrative structure. The divisional system, he suggested, was a clumsy framework within which to coordinate university-wide policy. In its place, Bourns recommended that a single vice-president (academic) be appointed and that the remit of deans be clarified. In the same spirit, he called for a close re-evaluation of the senate’s functioning. The Kirkaldy reforms, he noted, had been necessary, but shortcomings were apparent in the unclear and overlapping terms of reference of several senate bodies. As an example, he pointed to the Committee on Academic Policy (CAP). Theoretically, it was responsible for long-term planning. In practice, as the senate executive, it got bogged down in an ever-growing morass of routine detail. Strategic thinking, however, had never been more vital than at that straightened hour. Accordingly, the president advised that definition, clarity and focus be brought to a more efficient administration and senate. Were this to require a new McMaster Act, so be it. Senators concurred and set to work on the details.”

The relevant committee tasked with doing this work was headed by David Winch (Greenlee, 2015, p. 275):

“Myriad debates that attended lengthy discussion of the committee’s several recommendations could be detailed ad infinitum, ad nauseam, and with little profit. Suffice it to say that, along with Leal’s report, they led to a new McMaster Act, which received royal assent, in June 1976. Most of the central proposal won wide approval, in that they met the obvious need to clear up organizational anomalies left over from 1968. In this regard, a prime example came with the dissolution of the CAP. It was replaced by a day-to-day executive and a separate, board-senate body, the Long-Range Planning Committee (LRPC), which would play a dynamic role in years to come.”

In terms of major changes to the governing structure of McMaster, MA 1976 assigned joint control over the creation and termination of departments, schools, and faculties to the Board and

Senate. It gave students significant representation on the Senate and some representation on the Board. It assigned student tuition fees to the Board. And it authorized the creation of the LRPC as a joint Senate-Board committee. The LRPC is now called the University Planning Committee (UPC).

There is an interestingly reciprocity here. The Board of Trustees of Toronto Baptist College created a Senate and willingly ceded power over the system of education to that body in 1885 to solve a crisis. The reforms in MA 1976 were prompted by the Senate, which was willing to cede (in the case of tuition fees) or share its power (creation of departments and faculties, long-term planning) with the Board to help solve the problems facing the university. Both the 1885 and 1976 reforms highlight the trend – borne from a philosophical perspective that can be traced to McMaster’s Protestant roots – of sharing decision-making authority more broadly in terms of governing structures (Board, Senate, LRPC) and representation on those structures (faculty, students, community members, alumni, academic administrators).

In any event, taken together, McMaster’s Senate has long borne at least partial responsibility for long-term planning and strategizing – perhaps since its inception. Long-term planning has financial aspects to it, again highlighting the fact that the Board’s authority over finances is not hegemonic.

Comparative analysis

Table 5 provides comparative information of the major features of the governing structures for most universities in Ontario. There are important differences indicating that the province intended that they be governed differently.

Some universities do not have a traditional board/senate structure (e.g., Toronto, Ontario Tech). For those that have the traditional structure, many (but not all) describe the board of governors as having powers not otherwise assigned to the senate, and in this regard they often use language very similar to that of McMaster. However, the senate shows some variability in its powers (e.g., “educational policy” vs. “academic policy” vs. “system of education”) and whether the board has any veto power over senatorial authority (e.g., “with the approval of the Board in so far as the expenditure of funds and the establishment of facilities are concerned”).

York University

York is of particular interest because the 1959 statute originally enacting York University gave their senate the power “to control and regulate the system of education of the University”. It also contained a provision, nearly identical to that of McMaster, stating the scope of the Board’s authority:

“Except as to such matters by this Act specifically assigned to the Senate, the government, conduct, management and control of the University and of its property, revenues, expenditures, business and affairs shall be vested in a board under the name ‘Board of Governors of York University’ and the Board shall have all powers necessary

or convenient to perform its duties and achieve the objects and purposes of the University....”

However, the 1965 statute rewrote the powers of York’s senate and eliminated the “system of education” provision, replacing it with senatorial control over “academic policy”.

This indicates that the province originally decided to vest York’s senate with the same (or similar) authority as McMaster’s senate in 1959, but decided to alter it in 1965. This strongly supports the view that the provincial legislature did not view “system of education” as equivalent to “academic policy”. And the fact that the senates of many other Ontario universities are in control of “educational policy”, while McMaster’s Senate has persistently retained its authority over the “system of education” likewise supports the view that it is not equivalent to “educational policy”.

Table 5. How provincial statutes assign powers to the Senate, Board of Governors/Trustees, or other governing bodies for 22 universities in Ontario.

| University | Board powers | Primary Senate power | Constraints on Senate's power |
|---|--|---|---|
| Algoma | All powers not assigned to the Senate | "educational policy" | "subject to the approval of the board with respect to the expenditure of funds" |
| Brock | All powers not assigned to the Senate | "educational policy" | "with the approval of the Board in so far as the expenditure of funds is concerned" |
| Carleton | All powers involved in governing, managing, controlling the university | List of specific powers | Powers are delegated to the Senate by the Board |
| Guelph | All powers not assigned to the Senate | "educational policy" | "with the approval of the Board in so far as the expenditure of funds and the establishment of facilities are concerned" |
| Lakehead | All powers not assigned to the Senate | "educational policy" | "with the approval of the Board in so far as the expenditure of funds and the establishment of facilities are concerned" |
| Laurentian | All powers not assigned to the Senate or other governing entities | "educational policy" | "with the approval of the Board in so far as the expenditure of funds and establishment of facilities are concerned" |
| McMaster | All powers not assigned to the Senate | "control and regulate the system of education" | Some specific powers are shared with the Board (establishment of faculties and departments, academic appointments, long-range planning) |
| Nipissing | All powers not assigned to the Senate | "educational policy" | Many powers subject to Board approval, and Board is ultimate arbiter of disputes over jurisdiction |
| OCAD | Powers necessary for governing and managing the university | "educational policy" | "subject to the approval of the board with respect to the expenditure of funds" |
| Ontario Tech | Powers necessary for governing and managing the university | Academic Council: Makes recommendations to the Board on academic issues | Board can deny the recommendations of the Academic Council |
| Ottawa | All powers not assigned to the Senate | "educational policy" | "subject to the approval of the Board in so far as the expenditure of funds is concerned" |
| Queen's | All powers except those Board delegates to Senate | Specific powers delegated to it by the Board | The Board exerts oversight of the Senate's decisions |
| Toronto | Governing Council: All powers previously granted to Senate and Board | | |
| Toronto Metropolitan (formerly Ryerson) | All powers not assigned to the Senate | "educational policy" | "subject to the approval of the Board with respect to the expenditure of funds" |
| Trent | All powers not assigned to the Senate | "educational policy" | "with the approval of the Board in so far as the expenditure of funds and the establishment of faculties is concerned" |
| Université de Hearst | Powers of managing and governing | "educational policy" | |
| Université de l'Ontario français | All powers not assigned to the Senate | "educational policy" | "subject to the approval of the board, with respect to the expenditure of funds" |
| Waterloo | All powers not assigned to the Senate | "educational policies" | Some powers subject to Board approval |
| Western Ontario | All powers not assigned to the Senate | "academic policy" | |
| Wilfrid Laurier | All powers not assigned to the Senate | "educational policy" | Some powers subject to Board approval |
| Windsor | All powers not assigned to the Senate or other governing entities | Control and regulate academic programs, and other specific powers | |
| York | All powers not assigned to the Senate | "academic policy" | Some powers subject to Board approval |

Kulchyski v. Trent University

While no court cases have interpreted the division of powers between McMaster's Senate and Board, a couple of cases have interpreted the division at other universities. From those cases, it is clear that courts pay careful attention to the precise language of the governing statutes.

In *Kulchyski v. Trent University*, 2001 CanLII 11691 (ON CA), the issue before the Ontario Court of Appeals was the decision on the part of Trent's Board of Governors to close two colleges. The faculty members who filed the case had argued that the decision required the approval of the Senate as part of its authority over educational policy. There were two sections of the Trent Act of 1963 that were relevant. Section 10 denotes the powers of the Trent Board, and it is nearly identical to Section 9 of the McMaster Act of 1976:

“Except as to such matters specifically assigned by this Act to the Senate or the councils of the faculties, as hereinafter referred to, the government, conduct, management and control of the University and of its property, revenues, expenditures, business and affairs are vested in the Board, and the Board has all powers necessary or convenient to perform its duties and achieve the objects and purposes of the University....”

Section 12 denotes the powers of the Trent Senate, but it differs from the corresponding section of the McMaster Act of 1976:

“The Senate is responsible for the educational policy of the University, and, with the approval of the Board in so far as the expenditure of funds and the establishment of faculties are concerned, may create such faculties, departments, schools or institutes or establish chairs as the Senate may determine....”

The Ontario Court of Appeals found:

I support the conclusion of the Divisional Court that “the Board's specific and residuary powers grant it exclusive jurisdiction over the management and control of the University's property, revenues and expenditures including financial responsibility for provision of facilities”. It follows, in my view that under the Trent Act the Board is the keeper of the University purse and has no obligation to indefinitely provide financial support to any policy, educational or otherwise that is draining the coffers of the University, even if that policy originally was agreed upon by both the Board and the Senate. In saying this, I do not accept that on the record before us, the decision to open the University in downtown Peterborough was ever a considered change in educational policy from that envisioned by the founders of Trent University. It was a pragmatic decision that was not beyond the reach of the Board had it sought to act alone. However, even if it was a decision involving educational policy, and even if it can be said that the Board acted under s. 12 of the Trent Act and approved the “expenditure of funds and the establishment of faculties” to implement such policy, it cannot be argued that by so doing, the Board divested itself of its powers and obligations under s. 10 covering “the

government, conduct, management and control of the University and its property, revenues, expenditures, business and affairs”.

In this paragraph, we see the court arguing that the decision to open a branch of the university in downtown Peterborough was not part of the Senate’s authority over “educational policy” as envisioned in Section 12. And the court’s reasoning appears to be that there is nothing about the phrase “educational policy” that implies control over finances.

The court then went on to address the language in Section 12 describing the role of the Board in approving Senate decisions “in so far as the expenditure of moneys is concerned”.

The language of s. 12 giving limited power to the Senate to initiate and control educational policy is always subject to the overriding provision that the Senate requires the approval of the Board “in so far as the expenditure of moneys is concerned”. There is no language in the Trent Act to support the contention that once financial approval is given by the Board to a particular policy, such support can never be withdrawn by the Board no matter how deleterious the policy venture is to the financial well being of the University as a whole.

From these excerpts, it is clear that the court paid careful attention to the wording in Section 10 of the Trent Act, which denotes the powers of the Board, and the wording in Section 12, which denotes the powers of the Senate. When cross-referenced, Sections 10 and 12 of the Trent Act reinforce the notion that the Board has exclusive authority over the financial affairs of the university. The court also noted that the Board can revoke its approval.

While the Trent Act of 1963 and the McMaster Act of 1976 both have similar descriptions of the Board’s powers, they differ in important ways in the description of the Senate’s powers. First, McMaster’s Senate has control over the “system of education” rather than “educational policy”. Second, there is no caveat on the McMaster Senate’s authority over the system of education. In contrast, the power of the Trent Senate over educational policy is explicitly conditioned upon the approval of the Board if expenditures are involved. All of this indicates that the court would have had to engage in a different analysis, and possibly arrive at a very different conclusion, if the Trent Senate had unconditional authority over the university’s “system of education”.

There is one final, potentially important thing to mention about the court’s decision in *Kulchyski*. The court noted that Trent University had submitted a list of matters within the domain of “educational policy” to argue that the decision to close the colleges did not interfere with the Senate’s authority over educational policy.

As submitted by the respondent University, the implementation of the Capital Development Strategy and the Board’s resolution will not affect (a) the subject matter or organization of any of the academic courses or programs taught at the University (b) the availability of any academic courses or programs to any of the University’s students (c) the role of faculty in developing or teaching academic courses (d) the number of faculty employed at the University (e) the role of research and scholarship in the University (f) the University’s admission or academic standards (g) the importance of interdisciplinary

study at the University (h) the University’s commitment to small teaching groups in appropriate fields or (i) the continued role of the residential college system at the University.

While the court’s decision did not depend on this list, it does provide an interesting view of the matters that at least one university administration thinks are covered by “educational policy”.

Faculty Association of the University of British Columbia v. University of British Columbia

The *Kulchyski* case is relied upon in the BC Court of Appeal’s decision in *Faculty Association of the University of British Columbia v. University of British Columbia*, 2010 BCCA 189 (CanLII). The BC Court of Appeal confirmed the *Kulchyski* approach to university governance that respected a division of powers between the Senate and the Board, holding as follows:

I agree with the Arbitrator that, while the structure of the Act and the allocation of powers between the Board and the Senate admit of the potential for operational conflict from time-to-time, the Act expressly sets out the areas in which the Board and Senate have separate powers and those where the powers are intersecting or overlapping. As Mr. Justice Sharpe stated in *Kulchyski*, one would expect the Board and Senate to cooperate in all areas of mutual interest but, ultimately, the power over academic governance is in the Senate and the Board is not entitled to interfere with its policy-making role in that regard by the terms of a collective agreement, or otherwise.

The ruling in the BC case ultimately supports the position that the Senate and Board have distinct powers, holding that the application of the collective agreement was not paramount to certain Senate policies. The faculty association could not challenge a Senate decision on the basis that it was contrary to the terms of the collective agreement between the Board and the Association. In short, the BC Court of Appeal found that the Senate’s authority superseded that of the Board with respect to the matter before them.

Discussion

The McMaster Senate’s power to “control and regulate the system of education” is not defined in any of the statutes authorizing McMaster’s governance structure, and it has not been interpreted by any court. Nevertheless, the textual, historical, and comparative analyses provide converging evidence about this unique power.

Summary of the plain text analysis

A plain text reading of Section 13(f) of MA 1976 suggests that “system of education” is broader than “educational policy”, because “system” implies multiple working parts. In this regard, “educational policy” seems more circumscribed and arguably refers to one component (or a subset of components) of a system of education. Moreover, Section 9 of MA 1976 envisions that the Senate’s powers overlap to some degree with the Board’s authority (over governance, management, revenues, business, and property), because it assigns superseding authority to the Senate when they do overlap (**Figure 1**). From this, it is possible to infer that the Senate’s power

over the system of education is broad enough to have financial, governance, and managerial ramifications.

Still, when read in conjunction, Sections 9 and 13(f) clearly envision that there are powers over government, management, revenues, business and property that do not intersect with the system of education, and those residual powers are reserved exclusively to the Board (**Figure 1**). Moreover, some specific aspects of a system of education have been carved out and assigned to the Board exclusively (e.g., student tuition fees) or jointly with the Senate (e.g., academic appointments).

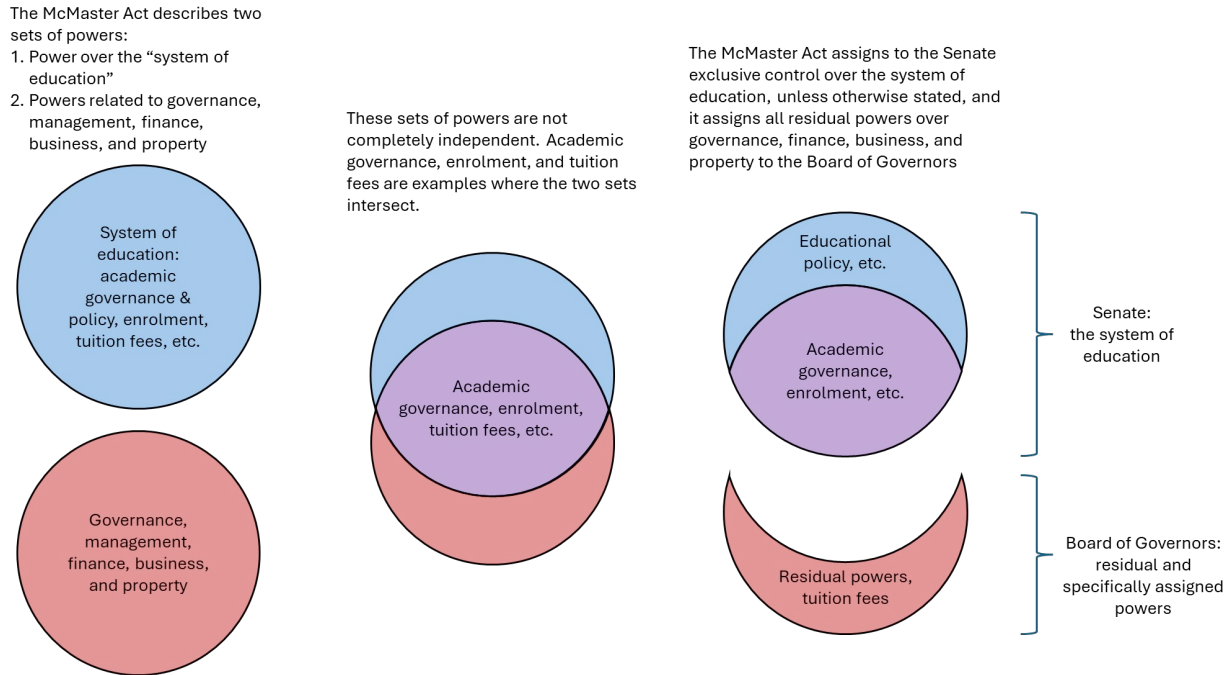


Figure 1. The separation of powers between McMaster’s Senate and Board of Governors. For ease of representation, this figure does not depict the powers that are under joint Senate-Board authority (e.g., academic appointments).

Summary of the historical analysis

The historical analysis supports and clarifies the conclusions of the plain text analysis. The “system of education” language can be traced back to the incorporation of Toronto Baptist College in 1881. At that time, there was no Senate and the power over the system of education was vested in the Board of Trustees. However, in 1885, the Board of Trustees ceded that power to the Senate they created. In doing so, they intended to cede the “most important functions” that had theretofore resided with the Board so that the Senate would have “vital control of the college”. They further intended that the Senate to have such control over the university that the groups who had representatives on the Senate would feel such “ownership” and “responsibility” for the college that they would “anticipate as well as supply” all of its wants and needs. They intended to create a Senate with broad authority. In fact, it suggests that the Board intended to cede so much power that it no longer had de facto control over the college.

Moreover, the crisis that prompted the creation of the Senate was financial in nature, and the idea that the groups with representatives on the Senate were to “anticipate” and “supply” the needs of the college suggests that the Senate’s power included whatever long-term financial planning was needed to support the system of education.

This is further supported by the discussions about McMaster’s Senate that took place around the reorganization as a secular institution in 1957. President Gilmour thought that the Senate was too mired in the day-to-day management of the university and not spending enough time considering questions of high educational policy and long-term planning. Gilmour’s words imply that the Senate already had these responsibilities, but it wasn’t fully exercising its authority. The alteration in the Senate’s power from “control” and “management” of “the system of education” to “control and regulate the system of education” was meant to give the Senate greater freedom to meet its responsibilities. It was the job of the administration to manage the university according to the directions set by the Senate.

The historical analysis also indicates that the Senate’s power over the system of education is broad enough to affect the finances of the university. Historically, the Senate controlled student tuition fees, though that specific power was reassigned to the Board in 1976. But enrolment is still under the control of the Senate and the Enrolment Management Team operates under the oversight and authority of the Senate.

Summary of the comparative analysis

The comparative analysis highlights the fact that there are important differences in the governance structures of Ontario universities as laid out in their enacting statutes. No other Ontario university has a governance structure precisely like that of McMaster. At York, the province explicitly authorized and then revoked a governance structure that was very similar to that of McMaster, which further supports the uniquely broad powers of McMaster’s Senate.

McMaster Senate’s authority over the system of education does not include the phrase “subject to the approval of the board with respect to the expenditure of funds”, which is commonly included as a caveat to senatorial power in the enacting statutes of many other universities. This further supports the idea that the provincial legislature did not intend for the authority of McMaster’s Senate over the system of education to be limited by the authority of the Board. Rather, the Board’s authority is explicitly limited by the power of the Senate, except in certain specifically assigned matters (e.g., student tuition fees).

McMaster’s Senate as a model of collegial governance

In a 2022 conference on the erosion of collegial governance hosted by OCUFA, Professor Glen Jones (University of Toronto) pointed out that collegial governance is written into the statutes of many Canadian universities by having faculty representation on their senates.²⁰ He noted that

²⁰ Glen A. Jones (May 6, 2022). “Strengths, challenges and possibilities: Academic self-governance and Canadian universities”, OCUFA virtual workshop: “The erosion of collegial governance: Reclaiming lost ground”. <https://ocufa.on.ca/blog-posts/ocufa-holds-first-university-governance-workshop/>

this is different from most universities in the United States where ultimate authority usually resides in a board of governors and the creation of an academic senate is at the discretion of the board. The fact that collegial governance is written into the governing statutes of most Canadian universities is one of the lasting effects of the Duff-Berdahl report (Cameron, 1991).

Nevertheless, the origins of collegial governance at McMaster are much older than the Duff-Berdahl report and can be traced back to Baptist ideology that helped guide Toronto Baptist College and McMaster for much of its history. The Baptist-Protestant distrust of centralized authority, with its corresponding preference for democratic decision-making, was an outgrowth of the Protestant Reformation (Becker et al., 2016; Gilmour, 1939; Woodberry, 2012). With its emphasis on decision-making by a community of scholars (the collegium), collegial governance is a form of decentralized, democratic decision-making (Dea, 2021; Shanahan, 2019).

Faced with a financial crisis in the mid-1880's, the Board of Trustees of Toronto Baptist College broadened the pool of decision-makers by creating a Senate "at once both national and representative in its composition." Yes, teaching faculty were included on the Senate of Toronto Baptist College, and that can be viewed as the origins of collegial governance at McMaster. But the act of including Baptist representatives from all over Canada, and investing the Senate with controlling authority, embodied the essence of decentralized decision-making.

Of course, the 1957 reorganization of McMaster as a secular university put an end to representatives from the Baptist conventions on the Senate and Board, but it wasn't long before faculty representation increased. In MA 1969, pursuant to the recommendations of the Duff-Berdahl and Kirkaldy reports, the province approved a 50% majority of faculty on the Senate. While faculty representation was dialed down slightly to 47% in MA 1976, student representation was dramatically increased to 18%.

Overall, McMaster has a long tradition of democratic, distributed, collegial representation on the Senate.

An ongoing problem that could be solved by McMaster's Senate

According to Mclean's Education Ranking system, McMaster has the highest student/faculty ratio of all universities in Canada.²¹ McMaster's high student/faculty ratio increases faculty workload,²² reduces teaching quality,²³ affects national and international rankings,²⁴ and makes it more difficult for faculty to participate in collegial governance.

McMaster's high student/faculty ratio is a long-standing problem. The administration and MUFA use a mutually agreed upon set of principles to negotiate remuneration and working conditions. The "Principles of Negotiation",²⁵ last ratified in 2001 and unaltered since, noted how an increase in student enrollment had resulted in a deterioration of faculty working conditions because it was not accompanied by a compensating increase in the faculty complement. "The

²¹ <https://education.macleans.ca/feature/canadas-best-universities-by-student-faculty-ratio-rankings-2024/>

²² <https://macfaculty.mcmaster.ca/app/uploads/2023/01/20230126-ad-hoc-Committee-on-Working-Conditions-Report.pdf>

²³ <https://macfaculty.mcmaster.ca/app/uploads/2021/12/FacultyAssociationRemunerationBrief-15-Dec-2016.pdf>

²⁴ <https://www.timeshighereducation.com/world-university-rankings-2024-table-information>

²⁵ <https://macfaculty.mcmaster.ca/app/uploads/2020/06/Principles-of-Negotiations.pdf>

increased number of students, without a compensating increase in faculty appointments has resulted in a significant increase in student/faculty ratio during the past ten years.” At that time, the student/faculty ratio was about 17.²⁶ The Principles of Negotiation also states, “The University’s operating budget should enable the appointment of new faculty, both to replace those who have retired (or resigned) and to compensate for an increased number of students.” Since 2001, full-time undergraduate enrollment has more than doubled, while the faculty complement has largely remained static, and the student/faculty ratio is now about 34.²⁷ McMaster’s high student/faculty ratio is the result of an ongoing promise that the administration has failed to keep for over 20 years.

The student/faculty ratio could be lowered if the Senate reasserted control over enrolment management and reduced the number of Level 1 students that are admitted.

The comments made by the *Kulchyski* court *in obiter*²⁸ suggest that the senate in a prototypical university – with authority over educational policy – could potentially resolve this problem. Again, in that case the Trent administration argued that the number of students and the number of faculty both fell under the scope of the Trent senate’s authority over “educational policy”. If that interpretation of educational policy were to be widely adopted by courts and arbitrators, university senates could directly manipulate student enrolment or the faculty complement to solve faculty workload issues or affect teaching quality. Of course, the Trent senate’s authority over educational policy – like many other Ontario universities – is restricted by the Board’s authority over expenditures, which suggests that the Trent senate would not be able to unilaterally affect enrolment or the faculty complement. However, for some Ontario universities, senatorial control over educational policy may be unconstrained by the board (possible examples include Hearst, Waterloo, Western, and Wilfrid Laurier²⁹). To the degree that is true, senates at those universities might have unilateral authority to affect faculty complement or student enrolment.

Conclusion

The traditional division of labor that exists at many universities – wherein there is a Senate that controls educational policy and a Board that controls financial affairs – does not apply to McMaster. The McMaster Senate can dramatically affect the financial affairs of the university through control over the system of education. This expansive power comes with a significant responsibility for caretaking the university.

The Senate’s power originates from the 1885 creation of the Toronto Baptist College Senate. Faced with a financial crisis, the Board of Trustees transferred “the vital part of the control” to the Senate, hoping that by fostering a sense of ownership and responsibility, they could secure

²⁶ Calculated as the number of full-time undergraduate students divided by the number of full-time teaching faculty.

²⁷ Mclean’s Education Rankings reports a higher student/faculty ratio for McMaster. It presumably calculates this ratio differently. For instance, it could also include graduate students and part-time students.

²⁸ *In obiter* is Latin for “in passing”. Comments made *in obiter* are not formally part of a court’s decision and therefore not precedent. But other courts may still pay attention to such comments and rely on them if they find them compelling.

²⁹ This is just a first approximation. More detailed analyses of the precise division of powers at other universities are outside the scope of this paper.

the college's future. This implies that the Senate's power was intended to encompass financial planning and long-term strategizing for the institution.

While specific responsibilities have shifted over time, the Senate's authority has consistently included control over elements vital to the university's educational mission. The Senate's historical control over student tuition fees, its current authority over enrolment management, and its past unilateral power to establish departments all demonstrate its capacity to influence university finances.

McMaster's Senate embodies the principle of collegial governance, a legacy of its Baptist-Protestant roots which emphasized decentralized decision-making. With its diverse representation of faculty, students, and other stakeholders, the Senate ensures broad participation in shaping the university's direction and future.

The Senate's responsibility for caretaking extends to addressing ongoing challenges like McMaster's high student/faculty ratio, which negatively impacts faculty workload, teaching quality, and the university's standing. By leveraging its control over enrolment management, the Senate can take concrete steps to rectify this issue and improve the university's long-term health and success.

In conclusion, the McMaster Senate's unique authority over the "system of education" comes with a profound responsibility for safeguarding the university's educational mission, its financial well-being, and its commitment to collegial governance. Through prudent action, the Senate can ensure McMaster's continued success as a leading institution of higher learning.

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