

BILL 38: GOVERNMENT OVER-REACH IN THE NAME OF ENHANCED UNIVERSITY GOVERNANCE

MAUT AND MUNASA COMBINED BRIEF TO THE COMMITTEE ON EDUCATION

Introduction

Bill 38 is a matter of utmost concern to the entire Québec academic community. MUNASA*, which represents McGill's non-unionized non-academic staff, and MAUT, which represents McGill's academic staff, have together identified a set of five key principles that Bill 38 fails to respect:

- 1) The University is a free, autonomous community of learning that is not part of the Government of Québec;
- 2) Models of good governance drawn from the corporate sector are not directly relevant to a free community of learning;
- 3) The bodies governing the University must adequately represent and give voice to all the internal academic, non-academic and student constituencies that form its community of learning;
- 4) Each university in Québec has its own vocation, culture and tradition and thus its own distinctive modes of governance; and
- 5) A flourishing university culture of learning, research and community service cannot simply be measured according to standards of efficiency and effectiveness.

Whereas it is a legitimate goal for the government to oversee the responsible financial governance of Québec universities, Bill 38 overshoots the mark by imposing a managerial model for setting university strategy, drawn from the private sector, rather than collegial model of university governance. It limits the role on university boards of internal constituencies – professors, librarians, non-academic staff, students and alumni – without at the same time providing adequate guarantees of their minimum representation. It insists on a government nominee on the board without requiring a recommendation of, or consultation about, who that person would be. It concentrates power in the hands of the board, upending the internal governance balance that has been struck at McGill University between our Board and Senate – a balance that has been a source of our strength. It would subject Québec universities to the regime of performance indicators that has now been discredited in other countries. Readings' analysis of the "university in ruins" applies all too well to this aspect of Bill 38: it "brackets the question of value in favor of measurement,

* In addition to this brief, MUNASA previously submitted a position paper that covered the basic principles raised here.

replaces questions of accountability or responsibility with accounting solutions....”¹ In contrast, we should “hold open” the question as to which university pursuits are of value, and allow universities to thrive on the critical pursuit of knowledge.² The desire to correct weaknesses in the financial decision-making process is important, but universities must be guarded from the potential threats posed by a culture of “new managerialism.”³

For these reasons we believe that Bill 38 is fundamentally flawed. We support the position taken by the FQPPU in opposition to Bill 38 but we also formulate a set of specific recommendations designed to at least minimize the negative impacts of this legislation. We take up each of the five principles announced above in turn and conclude with some observations about how Bill 38 reflects a disturbing and unsuccessful shift in university governance toward market principles.

1. THE UNIVERSITY IS A FREE, AUTONOMOUS COMMUNITY OF LEARNING THAT IS NOT PART OF THE GOVERNMENT OF QUÉBEC

Talcott Parsons, the American sociologist whose work has resonated in Québec thanks to Guy Rocher,⁴ wrote that “[t]he principal grounding of its [the university’s] autonomy must lie in the value of cognitive rationality to which it is committed internally but which is also shared in the wider community....”⁵ Parsons believed this was part of a greater “fiduciary responsibility” that society bore towards the stewardship of knowledge.⁶ In Canada there has also been a shared commitment of universities and the wider community to the idea that “the process by which universities make decisions should be autonomous from the political whims of government.”⁷

Indeed, the autonomy of universities from governments has been confirmed by the Supreme Court of Canada. In *McKinney v. Guelph*, the Supreme Court of Canada rejected the

¹ Bill Readings, *The University in Ruins* (Cambridge: Harvard University Press, 1996) at 119.

² *Ibid* at 120.

³ Terri Kim, “Changing University Governance and Management in the U.K. and elsewhere under Market Conditions: Issues of Quality Assurance and Accountability” (2008) 2(4) *Intellectual Economics* 33 at 37.

⁴ Guy Rocher, *Talcott Parsons et la sociologie américaine* (Paris: Presses Universitaires de France, 1972).

⁵ Talcott Parsons & Gerald Platt, *The American University* (Cambridge, MA: Harvard University Press, 1973) at 53.

⁶ Talcott Parsons, *On Institutions and Social Evolution* (Chicago: The University of Chicago Press, 1982) at 263-264.

⁷ Glen A. Jones, Theresa Shanahan & Paul Goyan, “University Governance in Canadian Higher Education” (2001) 7 *Tertiary Education and Management* 135 at 136.

notion that a university is subject to review under the *Canadian Charter of Rights and Freedoms*, as government institutions are. The Court held that while universities are funded in part by provincial governments, they are not directly controlled by the government. The Court ruled:

The legal autonomy of the universities is fully buttressed by their traditional position in society. Any attempt by government to influence university decisions, especially decisions regarding appointment, tenure and dismissal of academic staff, would be strenuously resisted by the universities on the basis that this could lead to breaches of academic freedom. In a word, these are not government decisions. Though the legislature may determine much of the environment in which universities operate, the reality is that they function as autonomous bodies within that environment.⁸

Whereas it is entirely legitimate for the government of Québec to seek accountability from universities for the spending of public funds, it is another thing altogether for the government, through a board representative, to seek to influence university decisions and indeed to place limits on our internal self-government.⁹ Throughout its successful history, McGill University has maintained high academic standards and accountability without the presence of government appointees on our Board. We can see no rationale for departing from what has worked well.

Nevertheless, it is true that Québec society is an important stakeholder in its universities. Bill 38 represents an improvement over Bill 107 in having made clear that the Government representative on the board is not to be an employee of the Ministère de l'Éducation, du Loisir et du Sport. If, therefore, the idea of having a Government appointee is to ensure that boards fairly represent a broad segment of Québec society, it would make more sense for each university to submit one recommended nomination to the Government for its approval. In this way, the Government could resist appointments that it finds drawn from too narrow a segment of society. At the same time, each university could continue to use the seats on the board to bring representatives who can help it to achieve its strategic objectives, including fundraising. University board seats should not become a place for political patronage. They should be reserved only for people who can truly help the university in accomplishing its goals.

Finally, although we support the principle of promoting gender balance and general representativeness of Québec society on the university boards, gender restrictions can interfere with the democratic process where and when board members are elected. Furthermore, gender is not the only relevant criterion of representativeness – ethnic origin,

⁸ *McKinney v. University of Guelph*, [1990] 3 S.C.R. 229 at 246.

⁹ An Act to amend the Act respecting educational institutions at the university level and the Act respecting the Université du Québec with respect to governance, introduced by Mme Michelle Courchesne, Minister of Education, Recreation and Sports, online: Assemblée Nationale du Québec <<http://www.assnat.qc.ca/eng/39legislature1/Projets-loi/Publics/09-a038.htm>> at Chapter II, Division II, s. 4.0.5 [*Act on Educational Institutions*]. Note that the reference to s. 4.0.26 in this provision is of unclear relevance.

aboriginal origin, and disability also come to mind, for example. It is far better that the principle of representativeness be framed as a general goal rather than as a formal requirement.

Recommendation 1: *Section 4.0.5 should be amended to provide that one member of the board shall be appointed by the Government on recommendation of the board.*

Recommendation 2: *Section 4.0.2 should be amended to state that the composition of the board of directors must tend to reflect the various segments of the community served by the institution, including gender, ethnic origin, aboriginal origin and disability. The requirement of gender equality should be dropped.*

2. MODELS OF GOOD GOVERNANCE DRAWN FROM THE CORPORATE SECTOR ARE NOT DIRECTLY RELEVANT TO A FREE COMMUNITY OF LEARNING

Following the recommendations of the IGOPP Report,¹⁰ s. 4.0.3 of Bill 38 requires that the preponderance of members of university board be “independent.” The use of the term “independent,” derived from the Québec legislation applicable to state-owned enterprises, is less than ideal.¹¹ The key problem faced in the corporate context, including state-owned enterprises, is that the agents of shareholders – senior executives – might not act in the best interests of shareholders. Thus, corporate governance reforms aim at strengthening board independence and separating “internal” members who have potential conflicts of interest from the work of key committees.

This is not the situation facing universities. Constituency representatives on the board – students, academic staff, non-academic staff and indeed senior administrators – do not have the conflicts of interest facing corporate executives who can enrich themselves at shareholder expense. Furthermore, the corporate goal of setting performance criteria so as to ensure high returns on investment does not apply to the task of fostering excellence in research and pedagogy. Most importantly, we reject the notion that members of the internal community should be excluded from or constrained in their participation in key decision-making at the University. It is not the case that the internal members of the board lack “independence.”

The language of “external” and “internal” board members would be more appropriate to the university setting. External members can bring an important discipline to university finances, can help to situate the university’s goals within a broader social setting and indeed can help to explain the university to the broader community. With the exception of financial oversight, however, there is no good case for the preponderance of external members.

¹⁰ Institute for the Governance of Public and Private Organizations, *Report of the Working Group on University Governance* (September, 2007).

¹¹ *Ibid.* at p. 9, fn. 4.

Recommendation 3: *Bill 38 should adopt the language of “external” directors rather than “independent” directors and define them not solely on the basis of an absence of conflicts of interest but rather on the basis of their representation of the broader outside community within which the university finds itself.*

Recommendation 4: *Section 4.0.3 should be amended to state that at least 50% of members of the board must qualify as external members.*

3. THE BODIES GOVERNING THE UNIVERSITY MUST ADEQUATELY REPRESENT AND GIVE VOICE TO ALL THE INTERNAL ACADEMIC, NON-ACADEMIC AND STUDENT CONSTITUENCIES THAT FORM ITS COMMUNITY OF LEARNING

Bill 38 represents a modest advance over Bill 107 in that it would not require that the existing composition of McGill’s Board of Governors be changed. However, it provides only limited guarantees of the minimum representation of the internal constituencies on university boards: at least 25% must come from them. This means that as board composition is revisited in the future, there will be pressure to diminish the proportion of internal representatives to the 25% threshold. We would urge the Committee to raise the minimum threshold to 33% and ensure that the diminution of the number of internal members on the board require a super-majority vote with 2/3 support of the board.

Furthermore, there is no assured place for internal members on three key board committees: the Governance and Ethics Committee, the audit committee and the human resources committee. Each of these committees is worth discussing in turn.

The Governance and Ethics Committee, were it to be focused solely on the conduct of board affairs, might in its membership give some preponderance to external members, although there should be guaranteed seats for internal members, who are equally affected by these issues, proportional to board membership. However, s. 4.0.36(1) gives the committee a broad mandate to formulate governance rules and a code of ethics for the conduct of the university’s affairs. As drafted, this could, for example, include research ethics and internal governance of the other organs of the university, such as the Senate and Faculties. Such a mandate would require the preponderant participation of internal constituencies. It is simply too broad and should be recast to focus only on governance and code of ethics of the board itself.

The Audit Committee is the one place where a preponderance of external members makes sense. The university’s finances should be reviewed independently. Nevertheless, there should be at least one member of the Committee from among the internal members of the board to ensure that there is a flow of information on financial matters and sensitivity to the internal practices of the university.

The Human Resources Committee deals with matters of critical significance to internal members. At McGill, which is not a unionized setting for academic staff and a significant proportion of non-academic staff, matters relating to those human resources are to be addressed collegially. At other universities, where many of the issues in question are addressed through collective bargaining, the stake for internal members regarding

standards and scales of remuneration and mandates for collective bargaining are obvious. In both the unionized and non-unionized setting, criteria concerning the appointment and performance review of senior administrators are of great concern to the entire university community, which indeed would expect to participate in committees struck for those purposes. If the Human Resources Committee is not to be perceived as detached from and even adversarial to the concerns of the internal community, a significant role for internal members on the Committee should be guaranteed.

Recommendation 5: *Section 4.0.3 should be amended to provide a minimum of 33% of members from the internal university community and should also provide that changes in the size of or representation on the board should be subject to a two-thirds majority vote of the board.*

Recommendation 6: *Section 4.0.34 should be amended to provide that at least one-third of seats on the Governance and Ethics and Human Resources Committees be reserved for internal members, and that at least one seat on the Audit Committee be reserved for internal members.*

Recommendation 7: *The first paragraph of s. 4.0.36 should be reformulated to make clear that the Governance and Ethics Committee only has a mandate to develop governance rules and a code of ethics for the conduct of the board's affairs.*

4. EACH UNIVERSITY IN QUÉBEC HAS ITS OWN VOCATION, CULTURE AND TRADITION AND THUS ITS OWN DISTINCTIVE MODES OF GOVERNANCE

With the exception of a special provision governing the Université du Québec system, which is in any event governed by its own legislation, the Bill 38 governance model would be imposed equally upon all Québec universities. It is ‘one size fits all.’ Our sister universities have shared concerns with Bill 38 and we support the expressions of opposition to the legislation from the FQPPU and CACPUQ. We emphasize in addition that McGill University, like other universities, has its own governance culture, its own modes of representation for internal constituencies, and its own balance of authority among the governance institutions it has spawned. It is contrary to the specificity of Québec’s universities – which together provide a rich diversity of academic strengths – to imagine that one governance model will fit all of them equally well.

Bill 38 would effect a major change in the governance of McGill University by displacing the role of the McGill Senate, and strengthening the role of the Board. Among other things, it allows the university boards “to determine the institution’s strategic directions,” to formulate “the code of ethics applicable to its members and to the members of the institution's personnel” and “to adopt measures to evaluate the institution’s effectiveness, efficiency and performance.”¹² Currently, under McGill’s own statutes, the Senate, which has broad representation from across the two campuses, exercises “general control and

¹² *Act on Educational Institutions*, supra note 8 at s. 4.0.19, 4.0.22(5 &18) respectively.

supervision over the academic activities of the University.”¹³ Currently at McGill, each of the items just enumerated, which under Bill 38 fall within the Board’s purview, would be discussed and debated first through our Senate. The Senate is our main self-governing body, a guardian of academic freedom at McGill, and one of the key features of the success of McGill’s collegial governance culture. McGill has achieved direct coordination between our Senate and Board of Governors through the presence of three Board representatives on Senate and two Senate representatives on the Board. Representation-at-large from the academic community has been critical to maintaining the responsiveness of the Board not only to its counterpart body the Senate, which has academic representation based on Faculty affiliation, but to representatives whose mandate comes from the entire academic community. In short, Bill 38 should not interfere with the successful balance that has been struck at McGill between the Board and the Senate.

In addition, we can see no reason why successive terms for internal Board members, who are elected at McGill, should be restricted. These are often people with years of accumulated experience who have continued to maintain the confidence of their constituencies. McGill has allowed successive terms both at its Board and Senate, and there is no reason to depart from this successful practice.

It has sometimes been argued that university senates are unwieldy bodies and perhaps it is the goal of Bill 38 to diminish their significance in relation to boards. However, Glen Jones writes the following of university senates in Canada:

While some might argue that the basic problem of many academic senates relates to the size of these deliberative bodies, our findings suggest that there are other possible difficulties, including a limited role in providing the governing board with advice on financial priorities. While it is commonly argued that the senate should play a significant role in academic decision-making, our findings suggest that some university senates do not play a major role in terms of research policy, establishing fundraising and development priorities or long-range institutional planning. Approximately 64% of senate members responding in this study indicated that the senate is an important forum for discussing issues, but less than half of respondents indicated that the senate is an ‘effective’ decision-making body.¹⁴

McGill’s Senate, though facing its own challenges, remains a critical and effective forum for the debate of academic issues. We strongly resist any effort to diminish the role of our Senate as the body having academic oversight at McGill and to transfer power to the Board.

Recommendation 8: *Section 4.0.18 should be amended to state that “subject to governance rules established by the institution’s constituting Act, charter, statutes, by-laws or letters patent,” the board of directors shall exercise the powers there*

¹³ Statutes of McGill University Relating to the Senate, s. 6.3.2. Available at <http://www.mcgill.ca/senate/senaterulesandprocedures/statutes/>. Enacted by the Board of Governors May 1, 1972; Amended as to June 1, 2005.

¹⁴ Glen Jones et al, *supra* note 7 at 145.

enumerated. This is meant to clarify that since McGill's statutes give general powers over academic activities to our Senate, any board decisions touching academic activities are subject, first, to Senate debate and approval.

Recommendation 9: Section 4.0.14 should be amended to state that external members may be reappointed twice to serve in that capacity, for consecutive or non-consecutive terms, but no such restriction on reappointment applies to internal members.

5. A FLOURISHING UNIVERSITY CULTURE OF LEARNING, RESEARCH AND COMMUNITY SERVICE CANNOT SIMPLY BE MEASURED ACCORDING TO STANDARDS OF EFFICIENCY AND EFFECTIVENESS.

Bill 38 would task the board to adopt “measures to evaluate the institution's effectiveness, efficiency and performance.” This threatens to harm the collective fiduciary responsibility of the university community, and society at large, for its academic direction. Indeed, if the board is given an overarching power to decide what makes the university “efficient and effective,” academic freedom can be rendered fragile. This is true because universities are places where knowledge is sought without gain. If a science lab is unprofitable, if a Faculty of Arts is more expensive to run than a Business School or Law School, are these units inefficient and therefore expendable? Are we in fact to divide the university into two faculties – the faculty of profit and the faculty of loss?

The operation of a university entails more than achieving a balanced budget. University board and senate members have to contemplate a complex set of ethical, pedagogical, and academic objectives. International shifts in university governance have meant that a new form of ethics is appearing, one in which “a particular style of formalised accountability has now become the ruling principle.”¹⁵ The type of performance indicators sought by the Minister emanate from the financial sector. These indicators only made their way into the domains of greater professional and public life during the 1980's and 1990's.¹⁶ While many government officials and university administrators might be comfortable with the language of Bill 38 concerning performance indicators, it is important to note that these types of governance mechanisms have not traditionally been employed in the university domain, and their introduction into public structures is relatively new, and relatively untested.¹⁷ In contrast, we have long experience with assuring high academic standards, for example through the oversight of CREPUQ, CVEP and CEP, which rely on peer review and program evaluation rather than on the mechanical application of performance indicators. If the

¹⁵ Cris Shore & Susan Wright, “Coercive Accountability: The Rise of Audit Culture in Higher Education” in Marilyn Strathern ed., *Audit Cultures: Anthropological Studies in Accountability, Ethics, and the Academy* (New York: Routledge, 2000) 57 at 61.

¹⁶ *Ibid* at 59.

¹⁷ Alan Hudson, “From Power Plays to Market Moves: The Standard in High Education” in Dennis Hayes & Robin Wynyard eds., *The McDonaldization of Higher Education* (Westport, CT: Bergin and Garvey, 2002) 103 at 103.

government wishes independently to assess Québec universities, it is welcome to do so using these existing mechanisms.

The proposed performance indicators will include monitoring of “the utilization of human, physical, financial and information resources,” and also “the results for the year measured against the strategic directions adopted by the board.”¹⁸ This blend of outright marketization of university resources, as well as seemingly broad powers for a small group of individuals and the Minister to be able to decide whether universities are meeting benchmarks, perhaps with financial consequences, is disturbing. It is also disturbing that Bill 38 characterizes universities as purveyors of services.¹⁹ There is a great distinction between offering services, and serving the community. The university is designed to do the latter. Any attempt to commoditize a university experience as a branded product is a mistake.

Recommendation 10: *Section 4.0.18 should be amended to clarify that the mission of the university includes “service to the community” rather than “services to the community.”*

Recommendation 11: *Sections 4.0.22(18) and 4.0.45 should be dropped entirely from the legislation.*

Recommendation 12: *Sections 4.0.22 (11) should be amended to clarify, consistent with 4.0.18, that it is within the board’s power to ensure “the effective and efficient management of the institution’s human, physical, financial and information resources, consistent with the university’s higher purpose of pursuing knowledge, learning and community service.”*

6. WORRISOME TRENDS IN OTHER JURISDICTIONS

Similar pieces of legislation have had mixed effects in similar jurisdictions worldwide. The tendency of over-reacting to problems of university governance should be avoided at all costs in Québec, as such a trend has led to some poor results for European universities:

... the pace and reach of the changes now taking place raise the distinct possibility that policymakers are fixing one problem by creating another. Markets breed ‘market failures’ and economists are quick to point out that universities are fundamentally different from the textbook firms that shape standard theories (Winston, 1999). If Europe is to succeed in its efforts to create both a Higher Education and Research Area that will drive its

¹⁸ *Act on Educational Institutions, supra* note 9 at Chapter IV, Division I, s4.0.45 (1-2).

¹⁹ *Ibid* at s4.0.18.

economy in the years ahead then striking a balance between these extremes will be crucial.²⁰

Most universities today make forays into the marketplace, by offering services, having controlling shares in business operations, and through tight links to large employers who may be searching for a specific type of graduate. Etkowitz and Leydesdorff write:

The new social contract between the university and the larger society is being negotiated in much more specific terms than the old one. The former contract was based on a linear model of innovation, presuming only long-term contributions of academic knowledge to the economy. Now both long- and short-term contributions are seen to be possible.²¹

These short-term contributions are relatively new pursuits for universities, ones not as tested by time as the obvious long-term contributions universities make to societies globally. [The countries reviewed are: France, the United Kingdom and Australia.] In general, it is hard to gauge the effectiveness of these reforms as they are in their infancy in all three of these jurisdictions. Yet, all of them seem to be part of the same trends of increased managerialism described above.

France

In August of 2007 the French government enacted “*La loi relative aux Libertés et Responsabilités des Universités*” (LRU). The act expanded the power of university board structures, and in particular the governing power of university presidents in France. The passing of the law was sharply rebuked by university students, professors and unions across France.²² French university government structures have become increasingly “executive” in orientation, something that concerns European Commission officials.²³

United Kingdom

Two generations ago, virtually all matters of university governance in the UK were in the hands of university senates.²⁴ However, increasing “managerialist” tendencies over the

²⁰ “The extent and impact of higher education governance reform across Europe” A report of the Directorate-General for Education and Culture of the European Commission, at 10, online: European Commission, Education and Training <http://ec.europa.eu/education/pdf/doc236_en.pdf>.

²¹ Henry Etkowitz & Loet Leydesdorff, “Universities in the Global Knowledge Economy” in Henry Etkowitz & Loet Leydesdorff eds., *Universities and the Global Knowledge Economy* (Washington: Pinter, 1997) 1 at 1.

²² “French students protest reforms” *The Boston Globe* (6 November 2007) online: The Boston Globe <www.boston.com>.

²³ “The extent and impact of higher education governance reform across Europe,” *supra* note 20 at 17.

²⁴ Oliver Fulton, “Higher Education Governance in the UK: Change and Continuity” in Alberto Amaral, Glen A. Jones & Brit Karseth eds., *Governing Higher Education: National Perspectives on Institutional Governance* (Boston: Kluwer Academic Publishers, 2002) 187 at 201.

previous several decades mean that “academic authority has been ... seriously challenged by the changing environment and its implications for university management.”²⁵ In the UK “there has been over the past two decades a sustained movement, particularly driven by government, to assert the primacy in governance of governing boards, and to shift the locus of authority from academics to externally-dominated, and generally smaller, councils.”²⁶ These smaller councils have been unable to provide adequate oversight in UK universities, which have led to “major financial problems,” and “ill-considered ventures.”²⁷ In general, out of touch boards of directors have been unable to be in a position to critically address the policies they implement.²⁸ A solution to this quagmire has been the call for “greater dialogue between governing bodies and the academic community.”²⁹ Yet, a top down approach has been enacted, whereby the British Government created the Quality Assurance Agency for Higher Education in 1997, an oversight body which reviews the progress of universities in Britain.³⁰ Frank Furedi wrote that bureaucratization of the British university system has led to “the erosion of organizational flexibility” needed to provide innovative educational experiences for students.³¹

Australia

In Australia there has been sharp concern over the increasing role universities take in the private sector.³² There has been intense pressure to limit the size of governing boards in that country. While this means decisions are made more quickly, it does not mean that the decisions reached are sounder.³³ The tendency to centralize governing board decision-making powers via the 2007 Australia Department of Education, Science and Technology National Protocols and related changes “are not based on empirical research on the effectiveness of different forms of university governance.”³⁴

²⁵ *Ibid* at 204.

²⁶ Peter Coaldrake, Lawrence Stedman & Peter Little, “Issues in Australian University Governance” (2003) A report of the Queensland University of Technology Office of the Chancellery, online: <www.chancellery.qut.edu.au/vc/governancefinal.pdf> at 12.

²⁷ *Ibid* at 13.

²⁸ *Ibid*.

²⁹ *Ibid*. at 14.

³⁰ For more information, consult the QAA website at <<http://www.qaa.ac.uk/>>.

³¹ Frank Furedi, “The Bureaucratization of the British University” in Dennis Hayes & Robin Wynyard eds., *The MacDonalidization of Higher Education* (Westport, CT: Bergin and Garvey, 2002) 33 at 33.

³² *Supra* note 26 at 14.

³³ *Ibid* at 18.

³⁴ *Ibid* at 20.

CONCLUSION

The introduction of Bill 38 should come as no surprise to the astute observer of international university governance trends. Yet, there can be no mistake that increased managerialism in universities goes against the traditional notion of university governance. Collegial governance, and not a top-down, market-driven system of governance, has successfully characterized universities since the Middle Ages. As Paul Gibbs points out, “the mantra of efficiency in managerialism has found a receptive home in those who wish to control the development of institutions under the ... notion of focus, cost advantage and differentiation.”³⁵ However, this phenomenon “does nothing to hide the essential desire to shift the project of higher education to the production of measurable knowledge. This ... is nothing more than an enframement of higher education.”³⁶ In the Canadian context, Paul Axelrod points to the “most serious threat to liberal education: recent government policies that privilege certain academic ventures over others, namely, applied sciences, high technology, business, selected professions, and mission-oriented research, all at the expense of the social sciences and humanities, the fine arts, and basic scholarly inquiry.”³⁷ Derek Bok describes how commercialization of higher education “threatens... educational principle[s], because the profit motive shifts the focus from providing the best learning experience that available resources allow toward raising prices and cutting costs as much as possible without losing customers.”³⁸ All of these criticisms describe the common trend of equating higher education with a consumer good, one that has a dollar value for the public and private sector.

Alain Dupuis has revealed the absence of evidence to support the notion that smaller, ‘managerially’ focused boards are more able to run universities than are the collegial processes that have governed them for centuries.³⁹ In fact, recent efforts to minimize the number of decision-makers on university boards are arguably connected to the record of poor financial decisions. Rather, the Government of Québec should seek to widen the range of stakeholder input in creating a strategic direction for universities. Unfortunately, Bill 38 threatens to dilute the role of university senates in Québec, which in turn compromises the academic integrity of our entire provincial educational system. An expeditious and “efficient” board will not necessarily yield sound academic decisions.

³⁵ Paul T. Gibbs, *Trusting in the University: The Contribution of Temporality and Trust to a Praxis of Higher Learning* (Boston: Kluwer Academic Publishers, 2004) at 41.

³⁶ *Ibid.*

³⁷ Paul Axelrod, *Values on Conflict: The University, the Marketplace, and the Trials of Liberal Education* (Montreal: McGill-Queen’s University Press, 2002) at 86.

³⁸ Derek Bok, *Universities in the Marketplace: The Commercialization of Higher Education* (Princeton, Princeton University Press, 2003) at 108.

³⁹ Alain Dupuis, “Managérialisme ou collégialisme dans la gouvernance des universités ? Le cas des projets immobiliers de l’UQAM” (2008) 3 Cahier de recherche du Cergo at 31-35 & 41-46.

Bill 38 represents a shot in the dark that over-reacts to the narrow problem that prompted the review of university governance in the first place: rendering Québec's universities financially accountable to Québec society. We support that specific and important goal. But we cannot fathom the purpose of restricting the role of internal constituencies in university governance, dramatically expanding the oversight of the board with respect to university academic planning, and introducing the increasingly discredited benchmarking and performance indicator approach when peer review and external evaluation have worked well.