

Preliminary Analysis of Bill 34
University Amendment Act, 2008
June 16, 2008

INTRODUCTION

This spring, the Government announced that they would be converting Capilano College, Emily Carr Institute, Malaspina University College, Kwantlen University College, and the University College of the Fraser Valley to universities. The Liberal Government then tabled Bill 34 in order to facilitate these changes. Bill 34, the *University Amendment Act* passed Third reading on May 22, 2008.

Bill 34 does not, in and of itself, create or name any new universities. Rather, the bill amends the existing *University Act* to create a new category of university called special purpose teaching university. Special purpose teaching universities are then designated to either serve a specific region of the province or to provide a specific type of program for the whole province. Emily Carr falls into the latter category, while all the other institutions announced by the Government fall into the former category.

Bill 34 allows post-secondary institutions to be converted into special purpose teaching universities through regulation. To date, no regulations have been made to create any new universities. In other words, PR notwithstanding, none of the five institutions named by the Government has actually become a university yet. With that said, the expectation is that necessary regulations will be made and in force before September 1, 2008 so that the five affected institutions can begin the new academic year as universities.

Special purpose teaching universities will have governance structures that are substantially similar to the governance structures created a few years ago for Thompson Rivers University. However, the new special purpose teaching universities will also have a carefully constrained and restrictive scope of activities that will severely limit their ability to offer anything like the programming of regular universities.

What follows is a brief analysis of the *University Amendment Act*. There is no attempt to analyze the politics of the changes. However, it is obvious that although the Government finally conceded to the constant demands of the five institutions to be granted university status, they did so in a way that effectively limits the new universities to being, in practice, colleges.

The analysis is divided into four sections; Governance, scope of educational programs, other issues and observations.

GOVERNANCE

BOARD OF GOVERNORS

Structure

The Board of Governors of universities and special purpose teaching universities has a somewhat different structure than the Board of Governors of colleges and institutes. The structures are compared below.

College and Institutes Act	University Act
	Chancellor
President	President
1 faculty elected by faculty	2 faculty elected by faculty
8 members appointed by Government	8 members appointed by Government, 2 of whom are appointed upon nomination from the alumni association
2 students elected by students	2 students, elected by students
Chair of Education Council	
1 support staff elected by support staff	1 person elected by and from employees who are not faculty members.
President and Chair of EdCo can't vote	President has a vote
14 members in total	15 members in total

The changes in structure have positives and negatives. The additional faculty member on the board will allow the faculty to make it harder for management to single out the faculty rep. However, other changes in structure, including the fact that the President will have a vote, tend to bias the new structure more towards management.

Powers of the Board

The powers of university boards are generally similar to the powers of college boards. However there are some important differences around the issue of intellectual property. Section 27 of the *University Act* states that a board has the power:

- “(u) to acquire and deal with
 - (i) an invention or any interest in it, or a license to make, use or sell the product of an invention, and
 - (ii) a patent, copyright, trade mark, trade name or other proprietary right or any interest in it;

- (v) to require, as a term of employment or assistance, that a person assign to the board an interest in an invention or an interest in a patent, copyright, trade mark, trade name or other proprietary right resulting from an invention
- (i) made by that person using the facilities, equipment or financial aid provided by the board, or
- (ii) made by that person while acting within the scope of the person's duties or employment, or resulting from or in connection with the person's duties or employment as an officer or employee of the university;”

Although there is no similar provision in the *Colleges and Institutes Act*, the reality is that College Boards have all developed policies around intellectual property. The danger with this provision is that it very clearly articulates that a university board has the right to impose conditions on employees concerning intellectual property rights. With that said, those powers can be fettered through either policy or collective agreement language.

SENATE

Structure

Bill 34 creates a new senate structure for special purpose universities which is identical to the senate structure of TRU but which differs significantly from the senate structure of regular universities. The senates are similar in function the education councils at the college level. The table below compares the three structures.

College Education Council	Special Purpose University Senate	Regular University Senate
10 faculty elected by faculty	Chancellor	Chancellor
4 students elected by students	President	President
4 administrators appointed by President	Academic VP	Academic VP
2 support staff elected by support staff	Deans	Deans
	Chief Librarian	Chief Librarian
	Registrar	Director of Cont. Ed.
	2 faculty members per faculty, elected by respective faculties	2 faculty members/faculty elected by that faculty plus enough additional faculty members so that there are twice as many faculty members as there are administrators
	4 students elected by student body	a number of students elected by student body so that the number of students equals the number of administrators
	1 alumni appointed by President upon nomination by Alumni Association. Cannot be a faculty member	4 members who are not faculty elected by and from the Convocation
	2 support staff elected by support staff	1 member per affiliated College
Chair elected by & from Ed. Co.	President is Chair	President is Chair

Because the number of faculty on the senate will be dependent on the number of faculties, it is difficult to evaluate whether or not the new structure provides an improvement in faculty representation over the existing education councils.

Powers

The powers of the senate for special purpose universities are very similar to the existing powers of education councils but substantially inferior to the powers of university senates. The new senates will have two significant new powers. They will be able to, “set qualifications for admissions” and, “set residency requirements for awarding credentials for courses and programs”.

The ability to set admissions standards is a power conferred on regular university senates. Universities have always been able to set entrance requirements based on particular criteria. However, historically, colleges have had much more of an open door policy for admissions. Does this addition signal that special purpose universities may move to raise admissions standards in some of their programs and, if so, will that be limited to academic programs or may it also occur in other programs?

Residency requirements refer to the number of credits a student must obtain from that institution to qualify for the awarding of a credential. However, it does exist for the TRU senate.

Special Purpose University senates will have less power than regular university senates in a number of ways. First and foremost, the *University Act* states that the academic governance of regular universities is vested in the senate. The *University Amendment Act* specifically excludes special purpose universities from that statement. Instead, in the case of special purpose universities some of the powers conferred on regular senates are moved to the Board of Governors with a requirement for the Board to consult the senate.

The changes proposed by the legislation appear to effectively limit the powers of senates in special purpose universities to the existing powers of education councils.

CHANCELLOR

The *University Amendment Act* makes several changes to the provisions concerning the selection of chancellors. These changes affect all universities. Chancellors were previously elected by the convocation. They will now be appointed by the Board upon nomination from the alumni association and after consultation with the senate. It is important to note that TRU has the opposite process; Chancellors are nominated by the senate after consultation with the alumni association. There is a possibility that this represents a glaring editing error in Bill 34.

In the case of special purpose teaching universities, the first chancellor will be appointed by the board without nomination from the alumni association or consultation with the senate.

Normally a chancellor is considered the titular head of a university. The role is largely ceremonial. The chancellor is a member of the Board of governors and of the senate.

SCOPE OF EDUCATIONAL PROGRAMS

PROGRAMS

Amendments to section 47 of the *University Act* set out the functions and duties of special purpose teaching universities compared to regular universities.

Regular universities have a very broad mandate in terms of the programs they can offer. They can provide programs in all branches of knowledge. They can also provide programs of continuing education in all academic and cultural fields anywhere in British Columbia. In comparison, teaching colleges will have a far more restricted mandate.

Special purpose teaching universities which serve a specific geographic area (all the new universities except Emily Carr) will be required to provide, “adult basic education, career, technical, trade and academic programs which lead to certificates, diplomas, baccalaureate and masters degrees.”

Special purpose teaching universities which serve the whole province (Emily Carr) will provide, “applied and professional programs leading to baccalaureate and masters degrees.”

The actual scope of programs offered by the special purpose teaching universities will be determined by regulation. Specifically, amendments to Section 71 of the *University Act* will allow the Lieutenant Governor in Council (Cabinet) to make regulations which:

1. Designate post-secondary institutions as special purpose teaching universities
2. Specify the geographic region to be served by a special purpose teaching university
3. Specify which programs the special purpose teaching university must provide.

It is important to note that regular universities, including TRU, have no such conditions imposed on them. However, the *Colleges and Institutes Act* does have similar requirements and restrictions for colleges, university colleges and institutes.

DEGREE GRANTING ABILITY

Special purpose teaching universities will have the ability to grant baccalaureate and masters degrees. However, they will not be able to grant doctoral degrees. Like all universities and colleges, any new degree granting programs will have to be approved by the Minister of Advanced Education.

Currently, university colleges have the ability to grant baccalaureate and applied masters degrees. Colleges can grant applied baccalaureate degrees.

Capilano will benefit most from the increased degree granting ability. The former university colleges and Emily Carr will gain the ability to grant masters degrees rather than applied masters degrees. Emily Carr already has two separate masters programs.

RESEARCH

The amendments to Section 47 of the *University Act* impose significant limits on the ability of these new universities to engage in research. The *Act* states that special purpose teaching universities can, “so far as and to the extent that its resources from time to time permit, undertake and maintain applied research and scholarly activities to support the programs of the special purpose, teaching university.”

This is quite different than what the act states for regular universities. Regular universities must, “so far as and to the extent that its resources from time to time permit... ..establish facilities for the pursuit of original research in all branches of knowledge.” and “...encourage proficiency in the subjects taught in the university and original research in all branches of knowledge.” It is also worth noting that TRU is also not limited to applied research.

Clearly, the *Act* intends to significantly limit the ability of the new universities to conduct research particularly in comparison to regular universities. Where universities can conduct original research in any field, special purpose teaching universities will be limited to applied research and scholarly activities which support the programs of the institution.

OTHER ISSUES

PENSIONS

The *Colleges and Institutes Act* requires employers to provide a pension under the *Public Sector Pension Plan Act*. In other words, college employers are required to provide employees with a pension under the College Pension Plan. There is no such requirement under the *University Act*. Furthermore, although institutions under the *Colleges and Institutes Act* are automatically considered eligible employers for the College Pension Plan, the new universities will have to be approved as eligible employers by the College Plan Board of Trustees. There is almost no doubt that the College Plan will approve the new special purpose universities as eligible employers. The same issue occurred with Thompson Rivers University a few years ago.

Public Education Choice and Flexibility Act (Bill 28)

There is one very good piece of news for the five affected institutions. The provisions of Bill 28 apply only to institutions governed by the *Colleges and Institutes Act*. Consequently, once regulations are made to create the five new universities, thereby moving them into the *University Act*, Bill 28 will no longer apply to those institutions. In practice this may mean little because the FPSE has been so effective in preventing institutions from invoking the provisions of Bill 28. However, that sword of Damocles will no longer hang over the heads of those institutions.

BARGAINING AGENCY

Bill 34 amends the *Public Sector Employers Act* so that the new special purpose, teaching universities are recognized as public sector employers. Although there is no direct mention in the

Act, the FPSE understands that, unlike TRU, special purpose teaching universities will remain under the umbrella of PSEA and will, consequently, be subject to all the assorted controls and limitations that that may impose.

OBSERVATIONS

1. Locals will need to analyze their collective agreement language around both pensions and intellectual property rights. Locals will want to ensure that their collective agreements contain strong and clear provisions requiring the employer to contribute to the College Pension Plan and clear language concerning intellectual property.
2. Once an Order in Council changes the status of an institution, the existing Board and Education Council will be deemed to be the new board and senate until members are appointed and elected as required by the *Act*. The legislation makes no mention of a time frame in which the changes to the new structures must occur. Locals should pay attention to any piecemeal changes institutions may try to make in this regard. Locals should engage their employers and encourage them to develop orderly transition plans in collaboration with the locals.
3. The various amendments to the *University Act* mean that special purpose teaching universities will, in practice, have essentially the same powers and be under the same constraints as they were under the *Colleges and Institutes Act*. These new universities will be required to offer specific college programs; they will have little additional degree granting ability; their ability to do research will be severely limited, and; they will be subject to significant ministerial control. None of these conditions applies to other universities.
4. There are significant differences in the general architecture of university collective agreements and college collective agreements particularly in the areas of employment security and salary. Employers are likely to seek concessions in bargaining as a consequence of the change to university status. Locals should carefully consider what approach they will take in bargaining and what kind of collective agreement they will want.
5. TRU is **not** a special purpose teaching university. Although TRU does have a mandate and structure that is somewhat different and more restrictive than that of the big three universities, it is nonetheless a full-fledged university. That is not the case for the five institutions that will be named teaching universities.
6. Notwithstanding the above, special purpose, teaching universities are clearly modeled on the legislation which created Thompson Rivers University. Consequently, locals and the FPSE may find it useful to discuss with TRUFA their experience about moving to university status under this particular model. TRUFA's experience with the senate and board of governors could be particularly informative.