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Paper S-18

BARRISTERS AND SOLICITORS, 1614 BURRARD BUILDING, 1030 WEST GEORGIA ST., VANCOUVER 8, B.C.

July 25, 1967

Simon Fraser University
Burnaby 2, B. C.

Attention: D.P. Robertson, Esq., Registrar

Dear Sirs:

You have inquired whether the Faculty Council has the right to keep its agendas, minutes and resolutions confidential in matters relating to student discipline without revealing them to the Senate for review by the Senate. Seen from the other direction, the question is whether the Senate has the power to require the Faculty Council to submit its agendas, minutes and resolutions to the Senate. Our opinion is that the Faculty Council does have the right to keep such information confidential and that the Senate has no power to require such material to be submitted to it by the Faculty Council.

There are no decided cases on this issue so we are left with interpreting the bare language of the Universities Act. Sections 5 (2) and 25 of the Act provide that the Faculty Council is one of the six component parts of the University. The Faculty Council is an independent component, standing on its own. This point is of some significance because the same is not true of other components of the University. Thus, Convocation is one of the components but by section 9 of the Act it is placed in a position subordinate to the Senate. The Senate controls Convocation's procedure and quorum and the time and place of its meetings. In the (admittedly unlikely) event that there should be an equality of votes of the members of Convocation in the election of the Chancellor, the Senate casts the deciding vote. The Senate is not given powers over the Faculty Council which are in any way comparable.

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Another indication of the independence of the Faculty Council is the absence of provisions governing its relationships with other components of the University. In contrast we note that relations between the Board and Senate are set out with some care in section 46 (f), sub-sections (f), (k) and (o) of section 54 and section 55.

The sections of the Universities Act providing the Senate with various powers do not infringe the independence of the Faculty Council. Though section 27 of the Act gives the Senate broad general powers to make and publish necessary rules in respect of nominations, elections and voting within the University, the conduct of elections for members to the Faculty Council is reserved to the Faculty Council itself by section 25. Section 54 (m) which provides the Senate with the power to exercise disciplinary jurisdiction over students by way of appeal from the decisions of the Faculty Council is a limited authority which does not give the Senate any power to investigate on its own initiative matters being considered in the Faculty Council. We interpret this section as requiring a person to appeal from a decision of the Faculty Council before the Senate acquires any interest in the matter.

The sections setting out the powers of the Faculty Council must also be examined. Several sub-sections of section 61 state that the Faculty Council is to exercise its powers subject to the approval of the Senate. However, the approval is restricted to certain defined areas. For example, the sub-section dealing generally with student discipline provides the Faculty Council with the power "subject to the approval of the Senate, to make rules and regulations with respect to student discipline, the establishment or discontinuance of fraternities or sororities among the students, and the general conduct of the members thereof." This sub-section gives the Faculty Council power to make regulations with respect to three separate matters: student discipline, the existence of fraternities and sororities, and the general conduct of members of fraternities and sororities. The Act gives the Senate the power to approve or disapprove the regulations prepared by the Faculty Council; it does not give the Senate a continuing supervisory power over the way in which the Faculty Council administers those regulations once they are approved. The Senate is brought into the administration of the regulations only when some person appeals a decision of

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the Faculty Council to the Senate. Another section of the Act, section 62, goes on to grant a general right of appeal to the Senate from decisions of the Faculty Council but this general right is only granted to persons "aggrieved by a decision" of the Faculty Council. In short the Senate can not look into the affairs of the Faculty Council at its own initiative.

To summarize again, the sections setting out the powers of the Senate and the Faculty Council do not limit the independence of action which is implicit in the manner in which the Faculty Council is established under the Act. We repeat our conclusion that the Senate does not have the power on its own motion to inquire into the proceedings of the Faculty Council and to receive copies of agendas, minutes and resolutions.

Finally, we draw your attention to section 52 of the Universities Act which gives the Board of Governors the final decision over questions about the powers and duties of the various components of the University. Curiously, the Faculty Council is omitted from the list of components whose powers may be settled and determined by the Board. The omission would cause no difficulty in the present situation because the Board could make its decision as an interpretation of the powers of the Senate.

Yours truly,

SHRUM, LIDDLE & HEBENTON

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