



<b>SUBJECT</b>	<b>POLICY 93 (OPEN, CLOSED AND <i>IN CAMERA</i> MEETINGS OF THE BOARD OF GOVERNORS)</b>
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<b>MEETING DATE</b>	<b>FEBRUARY 12, 2019</b>
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Forwarded on the Recommendation of the President

**APPROVED FOR SUBMISSION**

Santa J. Ono, President and Vice-Chancellor

<b>DECISION REQUESTED</b>	<b>IT IS HEREBY REQUESTED that <i>approval be granted for proposed amendments to Policy 93 (Open, Closed and In Camera Meetings of the Board of Governors).</i></b>
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<b>Report Date</b>	January 15, 2019
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**Presented By** Hubert Lai, Q.C., University Counsel

<i>If this item was previously presented to the Board, please provide a brief description of any major changes since that time.</i>	<p>The proposed amendments to Policy 93 were presented to UBC’s Board of Governors for information and input at the Board’s meeting in September 2018.</p> <p>The only change to the proposed Policy 93 from the version that was provided to the Board in September 2018 is the addition of new language in section 3.4 of this Policy which confirms that section 3.4 is intended to be applied in a manner consistent with and in a way that upholds the Policy’s commitments to the principles of transparency and accountability.</p>
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**EXECUTIVE SUMMARY**

The proposed amendments to Policy 93 are intended to provide a comprehensive and clear set of principles, criteria and processes to be applied in the conduct of open, closed and *in-camera* sessions of meetings of the Board and Board Committees in a manner that allows for effective governance and balances the Board’s commitment to transparency and accountability, the need to treat certain matters with respect and confidentiality, as well as the statutory duty of Governors to always act in the best interest of the University.

**Attachments**

1. A blacklined copy of proposed Policy 93 showing the difference between the proposed version presented to the Board in September 2018 and the version now being presented for approval
2. Table summarizing community consultation

A copy of the current Policy 93 is available at: <https://universitycounsel.ubc.ca/files/2010/08/policy93.pdf>

**STRATEGIC CORE AREAS SUPPORTED**

- People and Places**
- Research Excellence**
- Transformative Learning**
- Local / Global Engagement**

**DESCRIPTION & RATIONALE**

Policy 93 was initially approved by the Board in November 2008 and has not been updated since then. In April of 2016, the Board’s Governance Committee requested a comprehensive review of the Policy and the development of proposed amendments for the consideration of the Board.

The purpose for the review of Policy 93 was to identify gaps or matters requiring clarification within the Policy in order to ensure that the Policy provides a comprehensive, clear set of criteria and guidelines to assist the Board and Board Committees in governing meetings in accordance with principles of transparency and accountability to faculty, staff, students and alumni, while balancing the need to treat sensitive matters with appropriate levels of respect and confidentiality.

During the course of this work, two additional key documents were developed: Board Meeting Rules and Practices (“**Board Meeting Rules**”) and Committee Meeting Rules and Practices (“**Committee Meeting Rules**”). These documents, together with the new Policy proposal, articulate comprehensive rules and practices for meetings of the Board and Board Committees. The new Policy proposal is central to the overall framework. It clearly articulates the Board’s commitment to conduct its business in open session, and importantly, the Policy now sets out guiding principles, criteria and a transparent process for determining open, closed and *in-camera* matters for Board and Board Committee meetings. The Policy proposal also introduces process and accountability mechanisms not previously in place, and the Board Meeting Rules and Committee Meeting Rules articulate comprehensive meeting rules, which were not previously set out in a Board or UBC policy.

<p><b>BENEFITS</b> Learning, Research, Financial, Sustainability &amp; Reputational</p>	<p>The proposed amendments to Policy 93, together with the Board Meeting Rules and Committee Meeting Rules will strengthen the confidence and trust of the UBC community in the Board’s decision-making processes and will help to foster further good governance.</p>
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<p><b>CONSULTATION</b> Relevant Units, Internal &amp; External Constituencies</p>	<p>The Policy 93 Committee composition at all times has included members drawn from faculty, staff, and students from the Vancouver and Okanagan Campuses, as well as members from the Board. Since it was initially formed in 2016, there have been some changes in the Policy 93 Committee membership. Below is an overview of Policy 93 Committee membership from 2016 to present.</p>
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Original Policy 93 Committee Membership:

1. Mr. Hubert Lai, Q.C., University Counsel (Committee Chair)
2. Ms. Karen Chang (Secretary to the Committee)
3. Dr. Keith Culver, Professor, UBC Okanagan Faculty of Management
4. Dr. Ralph Winter, Professor, Strategy and Business Economics Division
5. Ms. Nicole Udzenija, Director, Campus Initiatives, Office of the UBC Okanagan Deputy Vice-Chancellor and Principal
6. Mr. Greg Martyn, Director, Office of the Vice-President Research & International
7. Ms. Celeste Haldane, Chair, Board of Governors Governance Committee
8. Mr. Michael L. Lee, Past President of the UBC Vancouver AMS and Past Chair of the Board of Directors, UBC Alumni Association
9. Mr. Blake Edwards, President, UBC Okanagan Students’ Union
10. Ms. Ava Nasiri, President, Alma Mater Society

Current Policy 93 Committee Membership:

1. Mr. Hubert Lai, Q.C., University Counsel (Committee Chair)
2. Ms. Natasha Himer (Secretary to the Committee)
3. Dr. Keith Culver, Professor, UBC Okanagan Faculty of Management
4. Dr. Kai Li, Professor, UBC Sauder School of Business

5. Ms. Nicole Udzenija, Director, Campus Initiatives, Office of the UBC Okanagan Deputy Vice-Chancellor and Principal
6. Mr. Greg Martyn, Director, Campus Initiatives, Office of the Vice President Research & Innovation
7. Mr. Michael Korenberg, Chair, Board of Governors
8. Ms. Shola Fashanu, UBC Okanagan student and Governor
9. Mr. Alan Ehrenholz, UBC Vancouver student and past President, Alma Mater Society

Note: Mr. Alan Shuster and Mr. Terry Zhang, former Governors, were also members of the Policy 93 Committee for a time over the course of 2017/2018.

Over the course of the review process, the Policy 93 Committee considered comments received from the community consultation process; comments provided by the Governance Committee; input from the Board Secretariat and UBC Executive; practices on open and closed sessions of meetings governing bodies at other institutions; the Provincial Government's document titled "Orientation of B.C. Public Post-Secondary Institution Board Members (June 2016)"; and input from the Board's governance consultants, WATSON Advisors.

The new Policy proposal was published on the website of the Office of the University Counsel under a call for comments on October 3, 2018 with a comment period running until November 5, 2018. A special outreach was also made by email to CUPE 2278, CUPE 116, the Association of Administrative and Professional Staff, the Student Union of UBC Okanagan, the Graduate Student Society, the Alma Mater Society, and the Faculty Association, inviting comments on the proposed amendments to Policy 93.

Three comments were received, all of which were in support of the new Policy proposal. Two of these comments did not suggest any changes and did not include any additional feedback. The third comment provided further feedback indicating concern that there may be situations where section 3.4 of the new Policy proposal, which allows for the Board or Board Committees to move into a closed or *in-camera* session to discuss the classification of an item itself, to be applied in a manner that would run contrary to the stated principles of the Policy, and that this section potentially allows the Board or Board Committees to avoid accountability and transparency in regards to the application of the Policy itself. The feedback recognizes that this will ultimately depend on how the Board or Board Committees choose to apply the Policy.

The Policy 93 Committee reviewed the comments received and approved a revision to section 3.4 of the new Policy proposal to incorporate language that addresses the feedback received by clarifying that the spirit and intent is for section 3.4 of the proposed Policy to be applied in a manner consistent with the commitment to the principles of accountability and transparency underpinning Policy 93. The Policy 93 Committee unanimously recommends the revised Policy 93.

**Previous Report Date** **September 2018:** The University Counsel presented the new Policy 93 proposal to the Board for information and input, following which community consultation was undertaken.

**Previous Report Date** **February 2018:** The University Counsel provided an oral report to the Governance Committee on the status of the work on Policy 93.

**Previous Report Date** **June 2017:** The University Counsel and WATSON provided an oral report to the Governance Committee and recommended the development of the Board Meeting Rules and Committee Meeting Rules. The Governance Committee endorsed this recommendation.

<b>Previous Report Date</b>	<b>February 2017:</b> The University Counsel presented a proposal to amend Policy 93 to the Board. The Board requested that WATSON provide additional input to the Policy 93 Committee for consideration prior to the Policy 93 Committee finalizing its Policy proposal.
<b>Previous Report Date</b>	<b>September 2016:</b> The University Counsel presented a draft Policy proposal to the Board. There was a high level of interest and engagement. Changes recommended by the Governance Committee were adopted and incorporated into the proposal that was then published for community consultation.
<b>Previous Report Date</b>	<b>June 2016:</b> The University Counsel provided a report to the Board on the status of the work on Policy 93, including the Terms of Reference for the Policy 93 Committee, its membership, due diligence review of best practices, and the key questions to be considered by the Policy 93 Committee.
<b>Previous Report Date</b>	<b>April 2016:</b> The Governance Committee requested that the University Counsel initiate a comprehensive review of Policy 93 and treat it as a high priority.

 <p>The University of British Columbia</p> <p>Board of Governors</p>	<b>Policy No.:</b>  <b>93</b>	<b>Approval Date:</b> 4 <del>—</del> [x] <u>November 2008</u>
	<b>Responsible Executive:</b> President	<b>Last Revision:</b> <del>—</del> [none] <u>February 2019</u>
<b>Title:</b> <b>Open, Closed and <i>In Camera</i> Meetings of the Board of Governors</b>		

**1. Scope**

- 1.1 This Policy applies to all meetings of the Board of Governors (the "Board") and Board committees (Committees).

**2. Guiding Principles**

- 2.1 The Board is committed to the principles of accountability and transparency to the students, faculty, staff, and alumni of the University and to the public which is served by the University. It is the intent of the Board to demonstrate this commitment by conducting its business at Board and Committee meetings, as much as possible, in open sessions.
- 2.2 Board decisions will only be made in accordance with official Board decision-making procedures at properly convened Board or Committee meetings or by means of electronic approval.

**3. Process – Agenda Setting and Determination of Open/Closed**

- 3.1 In developing agendas for Board or Committee meetings, as the case may be, the Chair of the Board, or Committee chair, as the case may be, will determine the designation of items for consideration in open, closed, or *in camera* session, at first instance and through consultation with Vice Chair(s), as applicable, and responsible member(s) of the Executive and the Board Secretary.
- 3.2 Decisions about which items of business are to be considered in open, closed, or *in camera* session will be made in accordance with the criteria set out below in section 4.
- 3.3 Meeting agendas will clearly indicate items for consideration in open, closed or *in camera* session. For closed sessions, the basis for closed designation of each agenda item will be indicated with reference to the excepted criteria and categories in section 4.
- 3.4 Notwithstanding the designation on the agenda for an item to be held in an open, closed, or *in camera* session, a Governor who wishes to discuss the classification of an item may raise the issue with the Board or Committee Chair, as applicable, in advance of a meeting. In addition, at any time and on the motion of any Governor entitled to attend the meeting,

the Board or Committee may move into a closed or *in camera* session, as applicable, to discuss the classification of an item, following which the Board or Committee Chair may re-classify the item. This provision is intended to be applied in a manner consistent with and in a way that upholds this Policy's commitments to the principles of transparency and accountability.

#### **4. Criteria for Open, Closed, and *In Camera* Sessions**

- 4.1 In determining which matters are to be considered in open, closed, or *in camera* sessions of Board or Committee meetings, as the case may be, overall consideration will be given to the principle that Board and Committee meetings should be open to the public, except where discussion or materials may include personal, competitive or commercial information or where discussion in open would be contrary to the best interests of the University.
- 4.2 Without limiting the full scope of such matters, the following will normally be considered in closed session:
- Confidentiality: matters which the Board of the University are required by contract or law to keep confidential;
  - Privacy/Personal Information: personal information about University employees, students or volunteers, including the content of their conflict of interest declarations, as well as information about labour relations, human resources issues or management performance;
  - Competitive or Commercially Sensitive Information: financial, contractual, or other information which, if disclosed, would put the University at a competitive disadvantage, or be prejudicial to a third party or otherwise not in the best interests of the University, including, for example, a proposed acquisition of property by the University;
  - Legal/Litigation: information that is subject to legal privilege or that is about law enforcement, civil or criminal or administrative tribunal proceedings, or the security of the University's property or systems; and
  - Other: other limited exceptions, including where discussion in open would be contrary to the best interests of the University.
- 4.3 Without limiting the full scope of such matters, the following will normally be considered in an *in camera* session:
- President and Executive appointment(s), performance and compensation matters;
  - matters affecting the quality and effectiveness of a Board or Committee meeting; or
  - internal governance matters, such as Board evaluations and Board attendance matters.

## Proposed Policy 93 (Open, Closed and in camera Meetings of the Board of Governors) – Community Consultation Summary

(As at Nov 15/18)

No.	Comment	Applicable Section(s)	Category	Committee Recommendation
1.	<p><b>Comment in Support of Proposed Amendments</b></p> <ul style="list-style-type: none"> <li>The comment indicates the individual’s appreciation of the way that the Board has considered issues of the past and this individual supports the proposed amendments to Policy 93 to clarify the conditions under which Board meetings may be closed rather than open.</li> </ul>	N/A	Overall policy amendments	<b>No Changes Required</b>
2.	<p><b>Comment in Support of Proposed Amendments</b></p> <ul style="list-style-type: none"> <li>The comment provides support of the proposed amendments to Policy #93 and indicates that the GSS believes instituting the proposed changes will increase the Board’s transparency and accountability.</li> </ul>	N/A	Overall policy amendments	<b>No Changes Required</b>
3.	<p><b>Potential for misapplication of Section 3.4</b></p> <ul style="list-style-type: none"> <li>CUPE 116 strongly supports the stated commitment to the principles of accountability and transparency to the University community and public but is concerned that there may be situations where Article 3.4, which allows for the Board or Committees to move into a closed or in-camera session to discuss the classification of an item itself, to be applied in a manner that would run contrary to the stated principles. Article 3.4 potentially allows the Board or Committees to avoid accountability and transparency in regards to the application of the policy itself.</li> <li>The letter recognizes that this will ultimately depend on how the Board or Committee chooses to apply the policy.</li> <li>CUPE 116 views transparency and accountability as matters that cannot be addressed fully through policy and which must be recognized as core values that inform the conduct of all University business.</li> </ul>	3.4	Process – Agenda Setting and Determination of Open/Closed	<p>The purpose of section 3.4 is to expressly provide that a Governor can raise the classification of an agenda item for discussion (open and closed items alike) and that the Board (or Committee) may move into a closed or <i>in camera</i> session to hold such discussion. The Committee appreciates the sentiment conveyed in the letter from CUPE 116 and in response there is an addition to 3.4: to clarify that the spirit and intent is for 3.4 be applied in a manner consistent with the commitment to the principles of accountability and transparency underpinning Policy #93.</p>