

Council on Postsecondary Education

POLICY RELATING TO THE DELEGATED AUTHORITY OF MINISTER'S POWERS UNDER SUBSECTION 3(2) OF *THE DEGREE GRANTING ACT* TO COPSE

Reference(s): *The Degree Granting Act* Section 3(2)
Minister's Letter to COPSE, 16 Aug 07 (Attachment 1)

Approval Authority: COPSE

Point of Contact: Manager, Policy Development & Analysis

Original Policy Approved: 08 January 2009

Amended: n/a

I. Statement of Purpose

The purpose of this document is to:

- a. Set out a description of the authority delegated to COPSE by the Minister responsible for the administration of *The Degree Granting Act* under subsection 3(2) of *The Degree Granting Act*;
- b. Set out a description of the process by which COPSE will exercise the authority delegated by the Minister under *The Degree Granting Act*; and,
- c. List the considerations and relevant factors that will guide COPSE in its exercise of this authority.

II. Description of Delegated Authority

A. Scope of Delegated Authority

A1. Under subsection 3(1) of *The Degree Granting Act*, except as authorized by an Act of the Legislature, no person or institution may use the word "university" or "varsity" or any derivation or abbreviation of either word either directly or indirectly,

- a. in the name of any business or undertaking;
- b. in any advertising; or
- c. in the name of any thing, place or building.

without the prior written approval of the minister responsible for *The Degree Granting Act*.

A2. Section 3(2) of *The Degree Granting Act* states that "the minister may delegate to the Council on Post-Secondary Education the power to approve the use of the words "university" and "varsity" or derivation or abbreviation thereof (the "prohibited terms") By letter dated August 16, 2007 to the chairperson of COPSE (see attachment 1), the minister responsible for *The Degree Granting Act*

has formally delegated to COPSE the power to approve the use of the words “university” and “varsity” under subsection 3(1) of the *Act*.

B. Duration of Delegation

The delegation of these powers to COPSE is not limited to a particular time period. As such, the delegation will be effective from the date of the delegation to the date the minister revokes the delegation to COPSE, regardless of whether the government changes or regardless of whether a new minister is appointed.

C. COPSE is Delegate

The Degree Granting Act does not authorize COPSE to sub-delegate its delegated authority. Therefore, COPSE must make the decision delegated to it and cannot sub-delegate its delegated authority to the chairperson, vice-chairperson, or any other individual COPSE member, any sub-committee of COPSE or any officer or staff member of COPSE.

III. Process Involved in the Exercise of Delegated Authority

D. General Direction

D1. The following process will guide COPSE in exercising its delegated authority.

- a. Upon receiving a request from a person or institution to use a prohibited term in one or more of the ways listed in subsection 3(1) of *The Degree Granting Act*, COPSE staff will obtain more information about the person or institution and the proposed use of the work, derivation or abbreviation from sources such as The Companies Office (Manitoba corporations), Corporations Canada (federal corporations), Canadian Intellectual Property Office (trade marks) and any other source. In addition, where another approval is required for the proposed use (for example, from a university), COPSE staff will determine whether the other approval has been granted or conditionally granted.
- b. COPSE staff shall prepare briefing materials for COPSE which will attach any relevant documents relating to the person or institution and the proposed use of a prohibited term. The briefing materials will include an analysis of the proposed use and a recommendation for COPSE, based on this policy.
- c. COPSE staff will send a written notice on behalf of COPSE by registered mail or courier to the person or institution making the request prior to the meeting at which COPSE will consider the matter.
- d. This written notice will contain the following information:
 - i. the date of the meeting at which COPSE will consider whether to approve the proposed use of the prohibited term;
 - ii. a copy of this policy;

- iii. an invitation to provide a written submission in support of the proposed use of the prohibited term, and the deadline for providing it; and,
 - iv. COPSE's mailing address.
- e. COPSE staff will provide to members of COPSE a copy of the briefing materials, including any attachments, and the submission, if any, from the person or institution making the request to use the prohibited term prior to the meeting at which the matter will be considered.
 - f. COPSE will exercise its delegated authority to approve or not approve the use of the prohibited term at a regularly scheduled meeting or other meeting of COPSE, as set out in the written notice. The meeting must be attended by a quorum of members and presided over by the chairperson or vice-chairperson of COPSE. All members of COPSE present at the meeting must vote, and the results of the vote must be recorded in the meeting minutes.
 - g. After the meeting, the decision made by COPSE shall be sent in writing by the Chairperson to the person or institution requesting to use a prohibited term. This written decision shall set out the factors considered by COPSE and the reasons for its decisions. A copy of this letter shall be sent to
 - i. The Companies Office (Manitoba); and,
 - ii. The Minister

E. Process Involved where Use is Ongoing without Approval from COPSE

The following process will guide COPSE in exercising its delegated authority where it has come to the attention of COPSE that a person or institution is using a prohibited term without approval from COPSE.

- a. COPSE staff will send a letter to the person or institution using the prohibited term, advising that under section 3(1) of *The Degree Granting Act*, except as authorized by an act of the Legislature, no person or institution may use a prohibited term either directly or indirectly, a) in the name of a business or undertaking; b) in any advertising; or c) in the name of any thing, place or building, without the prior written approval of the minister responsible for *The Degree Granting Act* (Manitoba), and inviting the person or institution to provide a written submission in support of its continuing use of the prohibited term. The process outlined in section D1 will apply with any necessary modifications.
- b. If on considering the matter, COPSE decides not to approve the continuing use of the prohibited term, and on sending a letter and its decision to the person or institution, the person or institution continues to use the prohibited term, COPSE may seek legal advice as to the appropriate course of action, including referring the matter to court.

F. Considerations Guiding COPSE in Exercising its Delegated Authority

F1. In exercising its delegated authority, COPSE will consider, among other things:

- a. Whether a reasonable person is likely to confuse the new business or operation with an existing educational institution or academic organization.

Guidance: If the use of the word "university" or "varsity" or a derivation or abbreviation may imply a connection with one of Manitoba's existing universities and the university is agreeable to the proposed use, generally, COPSE will approve the use of the word, or derivation or abbreviation.

If the use of the word "university" or "varsity" or a derivation or abbreviation may imply a connection with a university located

- i. outside Canada, generally, COPSE will approve the use of the word, or derivation or abbreviation;*
- ii. in another province or territory of Canada and the university is agreeable to the use, generally, COPSE will approve the use of the word, or derivation or abbreviation.*

- b. Whether a reasonable person is likely to think that a new-degree granting institution is being created in Manitoba that is sanctioned by the Government of Manitoba.

Guidance: If the prohibited term is being used in a way that implies a new institution of higher learning is being established in Manitoba that is sanctioned by the Government of Manitoba, generally, COPSE will not approve the use of the prohibited term unless the person or institution meets the highest standards of COPSE.

If the use of the prohibited term seems to be merely fanciful or distinctive, rather than implying an institution of higher learning or any connection to one, generally COPSE will approve the use of the prohibited term.

- c. Whether a reasonable person is likely to think highly of Manitoba's post-secondary system, or an existing post-secondary institution in Manitoba, or graduates of an existing post-secondary system in Manitoba.

Guidance: If the use of the prohibited term is likely to make a reasonable person think less highly of Manitoba's post-secondary system or an existing post-secondary institution in Manitoba or graduates of an existing post-secondary institution, generally, COPSE will not approve the use of the prohibited term.

F2. The following factors may be relevant to COPSE's decision:

- a. whether an institution requesting the use of a prohibited term is established in legislation in Manitoba or elsewhere in Canada or a jurisdiction outside Canada;

- b. whether the person or institution is the owner of a trade-mark containing the prohibited term registered in the Canadian Intellectual Property Office under *The Trademarks Act* (Canada);
- c. whether the person or institution has incorporated a federal corporation containing a prohibited term in the Corporations Canada office under *The Canada Business Corporations Act* (Canada) and *Regulations*;
- d. whether or not the person or institution has received conditional approval from the Companies Office;
- e. whether the person or institution proposes to use the prohibited term to advertise itself as an educational institution;
- f. whether or not the purpose of the requesting corporation/entity is to deliver post-secondary programming with or without degree-granting powers;
- g. whether the person or institution proposes to use a prohibited term in a way that shows a connection or partnership with an existing university, and if so, whether the university has allowed its use;
- h. the potential for confusion with existing educational institutions or academic organizations among current and potential students;
- i. whether the person or institution operates in Manitoba;
- j. The potential for the use of a prohibited term to cause a reasonable person to think that a new degree-granting institution is being created in Manitoba in a manner not contemplated by *The Degree Granting Act*;
- k. whether or not the application advances post-secondary education in Manitoba, elsewhere in Canada, or in a jurisdiction outside Canada;
- l. the impact that the use of the prohibited term could have on the credibility or the prestige of Manitoba's post-secondary system, any one institution, or on graduates from an existing post-secondary institution in Manitoba;
- m. the potential for the approval of the use of the term "university" to be interpreted as provincial recognition and sanction of the institution in question and the desirability of that interpretation;
- n. any other information that COPSE may request or considers to be relevant.

F3. The above list of considerations is not limiting.

F4. The Companies Office in Manitoba Finance must also approve the use of the term “university” in any business name. The role of the Companies Office is to ensure that the applicant is not using a business name that is the same as an existing business name, or could be confused with an existing business. It is the responsibility of the applicant to apply to both the Companies Office and to COPSE.

IV. History

Prior to the enactment of *The Degree Granting Act* on 07 December 2006, the control of the use of the term “university” and “varsity” rested with the University of Manitoba.

Attachments

Attachment 1: Letter of Delegation, 16 Aug 07

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August 16, 2007

Mr. James Allum
Chairperson
Council on Post-Secondary Education
410-330 Portage Avenue
Winnipeg MB R3C 0C4

Dear Mr. Allum:

In December, 2006 the Legislative Assembly of Manitoba passed *The Degree Granting Act*, putting in place important safeguards for the integrity of the post-secondary system in Manitoba. Part of this legislation addresses the use of the terms “university” and “varsity” in the name of a business undertaking, advertising, or in the name of any thing, place or building.

Section 3(2) of *The Degree Granting Act* states that “the minister may delegate to the Council on Post-Secondary Education the power to approve the use of the words “university” and “varsity” under subsection (1).

In accordance with Section 3(2) of *The Degree Granting Act*, I hereby delegate the powers, duties and functions imposed by Section 3(1) to the Council on Post-Secondary Education. The Council is the provincial agency responsible for coordinating post-secondary education in this province and it is therefore appropriate that the Council exercise this duty on behalf of the Government of Manitoba.

Sincerely,

<<Original Signed by>>

Diane McGifford, Ph.D.
Minister

- c. The Honourable Lloyd Axworthy
Dr. Emőke Szathmáry
Dr. Louis Visentin
Mrs. Raymonde Gagné
Dr. Denise Henning
Mr. Jeff Zabudsky
Mr. Joel Ward
Mr. Sid Rogers, COPSE
Mr. Myron Pawlowsky, Companies Office
Mr. Shane Lasker, Companies Office