University of Toronto Faculty Association
720 Spadina Avenue, Suite 419
Toronto, Ontario M5S 2T9

Telephone: (416) 978-3351
Fax: (416) 978-7061
E-mail: faculty@utfa.org
Website: www.utfa.org

In Response Please Quote **IR #236**

July 7, 2011

Professor Cheryl Misak
Provost and Vice-President
Simcoe Hall
27 King's College Circle
Toronto, Ontario

Re: Donations and UofT Governance

Dear Cheryl,

I'm writing to follow-up on your letter dated April 14, 2011, which was a response to UTFA's March 3, 2011 Information Request #236 concerning the Memorandum of Agreement between the Peter and Melanie Munk Foundation and the Governing Council of the University of Toronto (the "Munk Agreement").

First, UTFA supports legitimate efforts and campaigns to solicit and obtain philanthropic contributions for the University of Toronto. It always has. Philanthropic contributions are and will remain critically important, especially as the crisis in public funding of our universities continues. But an ongoing reliance on philanthropic financial support makes it all the more important that academic priorities are safeguarded, and that the integrity of the rules and procedures for decision-making be honoured and be seen to be honoured. It is this issue of internal governance that UTFA questions, not philanthropic giving.

Second, I feel that I must respond to the comment in your letter which implies that I or UTFA was "attacking others who secured a major gift". Legitimate questions and criticisms of important decision-making processes at this great university should not be seen as attacks and rather are our duty as full members of a collegial governance structure. That you choose to represent our questions as attacks is disappointing. Further, UTFA's Information Request was made pursuant to our entitlement to information under the Memorandum of Agreement with Governing Council. Our purpose was to bring transparency to a process which many in the University community feel was unnecessarily opaque. UTFA and its members had (and continue to have) questions as to whether the proper governance and approvals process was followed in this case. If it was not, we owe it to the university community to do our utmost to ensure that this oversight is rectified and is never repeated.

UTFA's Information Request asked for specific information. I repeat the questions here:

(i) What path of approvals, with what chronology, did the memorandum follow?
(ii) What University regulations govern the approval of such agreements?
(iii) Why wasn't it brought to Academic Board or Business Board or Governing Council?

On the first question, your response outlines the governance approvals for "all the academic priorities which were funded pursuant to the Munk Agreement" and states that the Munk Agreement was reviewed in the standard manner for donor agreements of its type, including being reviewed and approved by the relevant academic leadership. I take it from your response that the Munk Agreement was not, itself, approved by any formal governance structures such as Committees or Boards of Governing Council. With respect, the Munk agreement is far more than a mere implementation of the items with prior approval.

Your response to the second question was that Business Board has responsibility to approve receipt of major gifts with "terms and conditions of an unusual nature" and that "nothing in the Munk Agreement was considered unusual in nature". Who decides whether the terms are unusual and therefore need Business Board approval? If it doesn't need Business Board approval, is it the Administration's position it doesn't need any governance approval?

Your response mentioned the *Policy on Naming*. Your response does not mention, however, the *Policy on Approval and Execution of Contracts and Documents* (the "Policy on Contracts"). The Policy on Contracts distinguishes between contracts in the normal course of business and contracts not in the normal course of business. According to the Policy on Contracts "[c]ontracts not in the normal course of business will be referred to the appropriate board or committee of the Governing Council for approval on behalf of the Governing Council or for recommendation to the Governing Council for approval." Section D of the Policy on Contracts, 'Approval and Execution of Specific Classes of Contracts and Documents in the Normal Course of Business', does not list donor agreements among the classes of contracts in the normal course of business. If the absence of donor agreements from section D indicates that they are not considered to be in the normal course of business, the Policy on Contracts provides that they must be referred for governance approval. It is hard to imagine an agreement for the receipt and use of many millions of dollars as being considered to be in the normal course of business.

On the third question, your response states that the items that needed to be brought to governance were brought to governance. One would certainly hope that was the case, however, without clear answers to the preceding questions, we cannot be sure. In a collegial governance structure, it is the right and responsibility of each member of the university community, including UTFA and its members, to question and critique decisions affecting that community, and to ensure appropriate processes were followed and were seen to be followed.

It is fundamental that Governing Council and/or the appropriate Boards and Committees examine and discuss the significant donor agreements and that the proper approval mechanisms be followed. Indeed, the promotion of the Mission of the University of

Toronto depends in no small part on the good governance and transparency of the Governing Council -- features that can only encourage the generous support of our benefactors. UTFA, together with our members, take seriously the responsibility of ensuring proper governance of the University and protection of its academic mission. That you choose to construe our concerns otherwise – accusing us of 'attacking others' -- can only raise alarms in the community about how those principles are regarded by the Administration.

I look forward to your reply and would, of course, be happy to discuss these matters with you at your convenience in the near future.

Sincerely,

George Luste
UTFA President
416-978-4676
luste@utfa.org

cc to the UTFA membership