

IN THE MATTER OF AN ARBITRATION
(SALARIES, BENEFITS AND PENSIONS FOR 2005/06)

BEFORE THE DISPUTE RESOLUTION PANEL

B E T W E E N:

THE UNIVERSITY OF TORONTO FACULTY ASSOCIATION

– and –

THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO

**REPLY SUBMISSIONS OF THE UNIVERSITY OF TORONTO
FACULTY ASSOCIATION**

December 7, 2005

Reply - Introduction

REPLY SUBMISSIONS OF THE ASSOCIATION

1. Introduction

In its brief, the Administration has stated that the University is the largest and most distinguished research university in Canada, with one of the top four research libraries in North America (at p. 2). In addition, it has acknowledged that the excellence of the University owes much to the quality of its faculty and librarians (at p. 3). While agreeing that faculty and librarians are essential to the mission of the University, the Administration essentially argues that its strategy must be to support its faculty and librarians within the context of its own financial and academic strategic plan, as it defines them (at p. 17). Therefore, the thrust of its brief is to argue that the reasonable increases in faculty compensation and benefits sought by the Association should be denied in order to facilitate other priorities as identified by the Administration.

The Association submits that if the Administration's objective is, as it claims, to maintain the University's position as a leading research university, and make the University of Toronto an "employer of choice" for faculty and librarians, then it must be prepared to compensate them with salary and benefits that are commensurate with its own view of its leading role among G10 universities in Canada. The Association will respond in further detail below to the arguments advanced by the Administration based on its fiscal strategies and policies. However, a few observations about the considerations guiding the Dispute Resolution Panel are necessary at the outset.

The Association accepts that, in achieving replication, comparability and general economic conditions are all relevant factors to be considered by the Dispute Resolution Panel.¹ However, to support its argument that the claims of faculty and librarians must give way to other priorities, the Administration argues that the Dispute Resolution Panel

¹ In this regard, achieving replication does not mean implementation of an employer's policies and objectives as contended by the Administration (at p. 21). Rather, it entails consideration of comparable settlements in comparable sectors, as evidence of how other parties have reconciled their competing goals by free collective bargaining in the prevailing economic environment.

should be guided by “the fiscal context” and “demonstrated need”. The Association submits that these are not relevant considerations, and should be rejected by the Panel.

In this regard, the Administration submits (at p. 23 of its Brief) that Article 6 of the Memorandum of Agreement requires that the Panel attempt to replicate the bargaining result which would have occurred had the parties been able to settle their dispute through strike or lockout. Therefore, the Administration reasons, one of the principles that should guide the Dispute Resolution Panel’s deliberations is what the Administration denominates as the fiscal context.

“...it is impossible to determine what agreement would have resulted from free collective bargaining without due regard to the fiscal context in which that bargaining would have been negotiated .” (at p. 25).

According to the Administration’s submissions, giving “due regard to the fiscal context” requires the Panel to consider the current consequences of past government underfunding and the accountability expectations attached to any current funding, in order to determine what the parties would have arrived at by way of free collective bargaining. However, “the fiscal context” is not a guiding principle that has been adopted by interest arbitration boards in this province. In framing the argument by reference to its fiscal policy, as opposed to general economic conditions, the Administration is essentially trying to import ability to pay as a guiding consideration, an argument which interest arbitrators have consistently rejected in the case of public sector employment.

Indeed, it is a well-established principle of interest arbitration in the broader public sector that ability to pay is not a relevant factor for public sector employees, including university faculty. As Arbitrator Shime stated in *Re McMaster University and McMaster Faculty Association*, a case relied upon by the Administration (at Tab 4 of its Case Book):

I am also in agreement with the faculty that there is little economic rationale for using ability to pay as a criterion in arbitration. In that regard I need only briefly repeat what I have said in another context, that is, public sector employees

should not be required to subsidize the community by accepting substandard wages and working conditions: see, e.g., *General Truck Drivers, etc. v. B. C. Railway Co.* (1973) (Shime); *Re University of Manitoba*, May 16, 1979 (Williams). Thus, for example, if I were faced with data showing that the salary scale for assistant professors at McMaster was less than that of other universities in Ontario, I would have no hesitation in increasing the amount to achieve the same standard for McMaster regardless of the university's fiscal position.

The universities are funded by the provincial government. In recent years the funding has not been as generous as it might be, which no doubt has eroded the salaries of university professors. If arbitrator/selectors were to consider the funding level of universities for the purpose of salary determination, they would in effect become handmaidens of the government. Arbitrator/selectors have always maintained an independence from government policies in public sector wage determinations and have never adopted positions which would in effect make them agents of the government for the purpose of imposing government policy. Their role is to determine the appropriate salary range for public sector employees regardless of government policy, whether it be funding levels or wage controls.

As to the Administration's argument that another principle which should guide the Panel is that salaries and benefits should be changed only if there is demonstrated need, the Association submits that no such principle has been recognized in the area of salary and benefit determination.

The only decision cited in support of this proposition by the Administration (at p. 27) is the award of Arbitrator Kennedy in *Dufferin County Board of Arbitration and District 48 of the Ontario Secondary School Teachers' Federation* (at Tab 6 of the Administration's Case Book). The Association submits that this award does not support the Administration's claim.

In this regard, it is clear from reading the entire award that the excerpt reproduced in the Administration's brief regarding "demonstrated need" pertains solely to a non-monetary proposal. Indeed, the arbitrator did not mention or rely on any consideration of demonstrated need in the part of his award relevant to salary and benefits. On the contrary, with respect to salary and benefits, the arbitrator had regard to comparisons with other school boards, general economic conditions, and settlements of comparable groups outside the teaching sector. However, the exercise in which the arbitrator was engaged was final offer selection, and the employer had put forward a

non-monetary item as part of its final offer that the arbitrator had to consider in choosing between the two offers. This was a proposal to introduce language which would allow the employer to withhold a salary increment in the event that it judged a teacher's performance to unsatisfactory. The union took the view that the available procedures for discipline and performance review were adequate to deal with any problem teachers. The arbitrator noted that there was no significant trend in freely bargained collective agreements to include the type of clause proposed by the employer.

It is clear from the award that it was the absence of any evidence that such clauses were generally included in comparable agreements, coupled with the failure of the employer to demonstrate that its proposal was an appropriate means by which to remedy perceived problems of unsatisfactory performance, that led the arbitrator to select the union's offer in preference to the employer's offer in that case. In other words, the comments about demonstrated need manifestly were restricted to the non-monetary proposals and did not apply to salary and benefits. Accordingly, there is no authority for the Administration's claim that "demonstrated need" replaces or supplements the usual considerations of comparability, replication, and general economic conditions in salary and benefits disputes.

In this regard, the Association submits that interest arbitrators routinely consider factors such as settlements for comparable groups in comparable sectors. In addition, interest arbitrators have recognized the relevance of general economic conditions, as evidenced by a variety of general economic indicators such as the CPI and other relevant measures.²

² Indeed, it is the prevailing economic climate, and not ability to pay, to which Arbitrator Munroe is referring in the excerpt quoted by the Administration at p. 25 of its brief.

2. Salary

Introduction

As noted above, ability to pay is not an appropriate factor to be considered in these proceedings.

Further, as outlined in the Association's main brief, the Burkett award rejected the Administration's assertion at the time that ATB and average merit pay should be combined when comparing salary increases at the University of Toronto with salary increases elsewhere and with changes in the cost of living. In this regard, Arbitrator Burkett's award drew a clear distinction between the ATB increase, which he likened to across-the-board increases on a salary scale, and merit-based PTR, which he likened to promotional increases and movements *through* a given salary scale. That clear distinction has been accepted as a given in negotiations between the Administration and the Association, and has guided the parties and arbitrators ever since. As Arbitrator Shime said in the *McMaster University* case, *supra* at p. 203:

A comparison of the salary schedules, however, would not include consideration of the CP/M increment. In this, as with other merit schemes, I agree with the faculty, that the CP/M scheme is to consider experience or promotional growth related to an individual's improved performance over the course of this or her career. Thus the CP/M increment represents an individual or merit assessment whereas the salary grid or schedule represents a position assessment unrelated to individual performance. In this I agree with the decision of arbitrator Burkett in *University of Toronto and University of Toronto Faculty Assn.*, June 3, 1982, unreported.

In the Administration's brief, these previously discredited arguments have resurfaced as the core of its defence of its proposals.

Ability to Pay

As set out above, the Association submits that it is well-established that ability to pay is not a relevant factor in determining compensation for employees of a public sector employer such as a university. However, even if ability to pay were a

consideration as part of the “fiscal context”, as the Administration contends, the material tabled by the Administration fails to make its own case: it amounts to little more than speculation with respect to the funding policies of the provincial government and circular reasoning with respect to self-imposed restrictions in its own operating budget and policies.

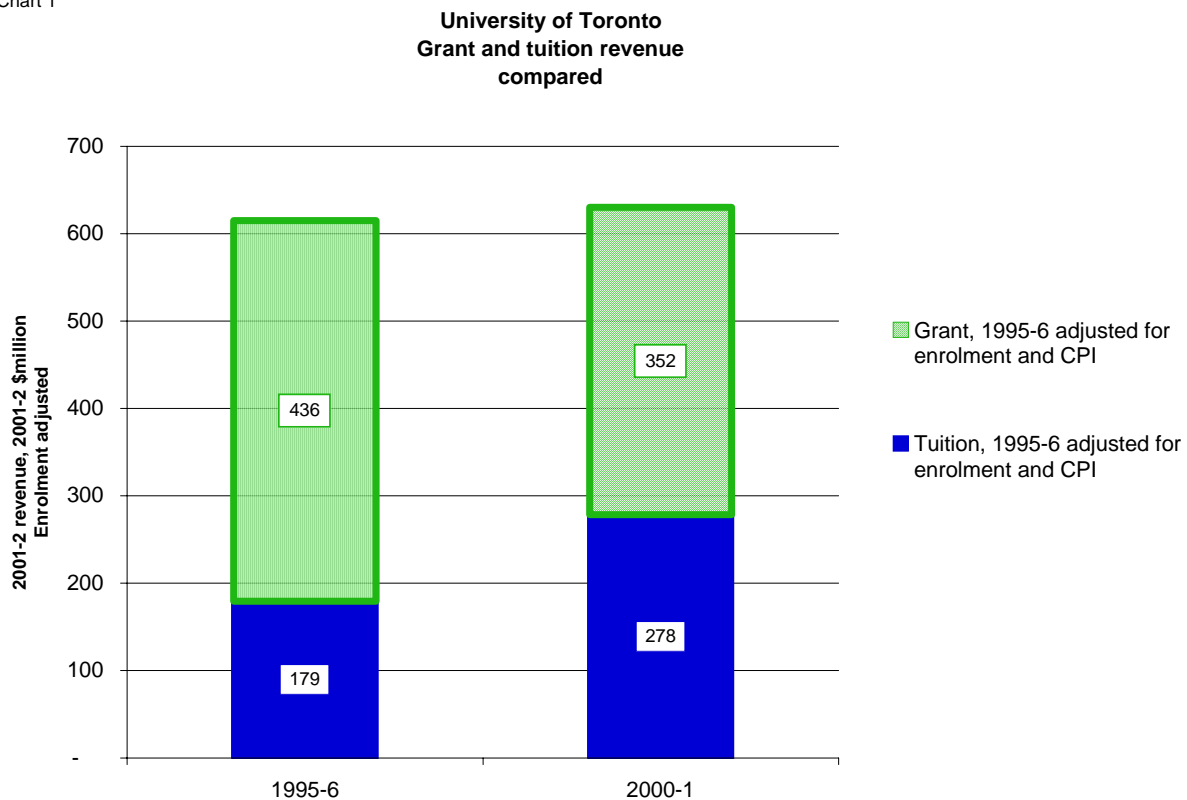
There are two elements to the argument advanced by the Administration with respect to its ability to afford an increase beyond that proposed in its submissions to this Panel. First, the Administration argues that provincial funding declined during the 1990s, and that the additional funding announced by the current provincial Government cannot be used for salaries. Second, the Administration argues that the fact that its own budget is forecast to be in deficit over the next five years at even its proposed salary increase levels should deter the Panel from awarding any increase beyond its offer.

The Administration is correct when it argues that provincial funding for the University of Toronto and for the Ontario university system in general declined substantially during the period from 1993 to 2002. What the Administration does not point out is that over that same period, student tuition and fees increased substantially in absolute dollars, in relation to the cost-of-living and as a share of the University of Toronto’s budget. What the Administration also carefully avoids acknowledging is that over that same period, the University’s endowment funds reached unprecedented levels, as did its income from other sources.

Chart 1 compares the University of Toronto’s provincial operating grants and tuition for 1995-6 and 2001-2, adjusted for changes in the cost of living and enrolment growth.³ The data make it clear that much of the lost grant revenue was made up for by increased tuition revenue.

³ Source: Council of Ontario Universities, compendia of financial reports, 1995-6 and 2000-1. Tuition and fee revenue for 2000-1 is adjusted to reflect the cumulative holdback for student financial assistance

Chart 1



Moreover, while salary increases for faculty and librarians were tightly constrained during the period 1993-2002, funding was somehow found to pay substantially greater increases to its senior administrative staff. As a result of the public sector salary disclosure requirements implemented by the Government beginning in 1997, we are able to measure with some precision the salary progress of senior administrators at the University of Toronto.

Table 2 shows the annual salary increases awarded to senior administrators at the University of Toronto between 1997 and 2004. Senior administrators are defined as the president, vice-presidents, provost, vice-provosts, principals and heads of University of Toronto agencies.

required by provincial funding regulations. Gross tuition and fee revenue for 2000-1 was reported by COU as \$295.1 million.

These data measure salary increases from year-to-year for the same administrator in the same job in each year. To correct for possible distortions, an employee's first year and last year in a job are excluded from the calculation. Excluding the first year in the job avoids the potential problem of artificially low incoming salaries resulting from employees working only part of a year in the job in question. Excluding the last year avoids the part-year problem and also excludes artificially high salaries related to the awarding of severance payments or retiring allowances.⁴

Because the year-to-year increases for administrators capture both the equivalent to ATB increases and promotional or scale increases in one number, the comparator number for faculty in the above Table includes PTR.

Table 2

	1997	1998	1999	2000	2001	2002	2003	2004
Senior Administrators	5.1%	7.5%	5.3%	6.7%	9.8%	5.8%	9.1%	5.3%
UTFA ATB	0.5%	1.5%	1.5%	2.0%	1.5%	3.0%	3.0%	3.4%
Faculty PTR	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%	1.9%
Faculty Total	2.4%	3.4%	3.4%	3.9%	3.4%	4.9%	4.9%	5.3%
DIFFERENTIAL	2.7%	4.1%	1.9%	2.9%	6.4%	1.0%	4.2%	0.1%

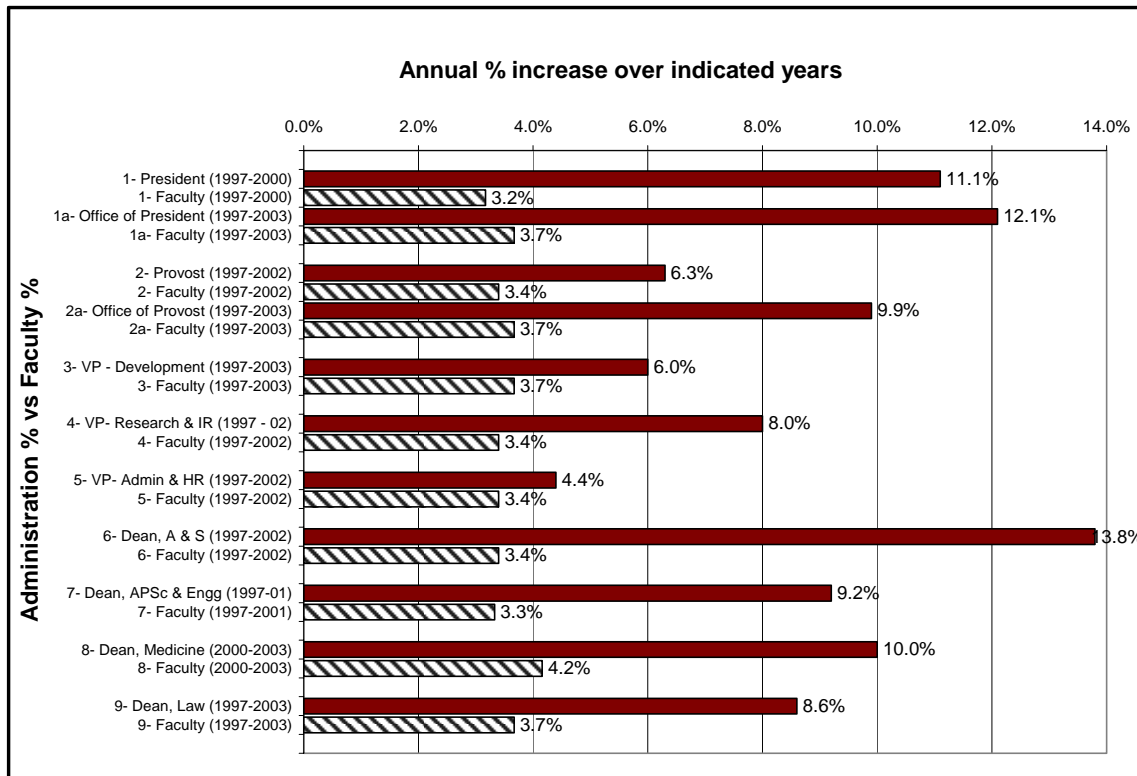
⁴ Ontario Public Sector Salary Disclosure available at: <http://www.gov.on.ca/FIN/english/salarydisclosure>

The data demonstrate clearly that in every year during this period of supposed economic privation, senior administrators at the University of Toronto received substantially greater percentage increases in salary than the percentage represented by ATB and University of Toronto Faculty PTR.

The differences are even greater when one looks at positions, regardless of the incumbent, in the senior administrative category. These differences are greater because senior administrative salaries at the University of Toronto have tended to increase from incumbent to incumbent.

Chart 3

Senior Administration salary data from public salary disclosure list of salaries > \$100,000



To illustrate, the comparison for the President (#1 and #1a data above) are derived from the following numbers from 1997 to 2003 in Chart 4:

Chart 4

Calendar Year	1997	1998	1999	2000	2001	2002	2003	Plus Extra \$
<u>President, UofT</u>								
Prichard, J Robert S	\$201,000							Professor of Law and President of the University of Toronto
Prichard, J Robert S		\$250,000						Professor of Law and President of the University of Toronto
Prichard, J Robert S			\$275,000					Professor of Law and Past President of the University of Toronto
Prichard, J Robert S				\$137,500				Professor of Law and Past President of the University of Toronto
Birgeneau, Robert			\$175,000					President of the University of Toronto
Birgeneau, Robert				\$363,000				President of the University of Toronto
Birgeneau, Robert					\$364,000			President of the University of Toronto
Birgeneau, Robert						\$398,104	\$29,144	President of the University of Toronto

Thus, while the Association rejects the argument that it is incumbent on it to demonstrate need, the fact is that the Administration has already conceded the need for substantial increases for faculty and librarians by granting such increases to members of the Administration.

When it comes to the funding increases that have taken place since the election of the current provincial Government in 2003, the Administration's arguments are on even shakier ground.

The Association welcomes the substantial increase in funding for postsecondary education announced in the 2005 Ontario Budget and detailed in subsequent government announcements. The Administration argues that, while this is good news for the University of Toronto as an institution, it is not good news for faculty negotiations because of its contention that restrictions imposed by the Provincial Government prevent the University of Toronto from using its increased funding allocation for salaries. It bases this contention on quoted passages, one from the Rae Report, released in January 2005 and one from the May 2005 Provincial Budget.

The complete answer to this argument is again provided by Arbitrator Shime in *McMaster University, supra*. However, in any event, the relevant part of the passage extracted from the Rae Report refers to the need “to ensure that new money does not **simply** translate into **much** higher, across-the-board salary increases”. It goes on to say that “pay systems should be sufficiently flexible that real merit and outstanding performance can be appropriately rewarded” [emphasis added].

This statement falls far short of the definitive rejection of salaries as a use of increased funding claimed for it by the Administration. In the first place, the quoted phrase uses the words “simply” and “much higher”. The Association’s request for a 4% ATB increase could hardly be described as “much higher” than the increase of 3.4% in its last agreement with the University. Moreover, Rae’s statement clearly contemplates the use of this increased funding for merit based salary increases – based on precisely the kind of pay system that the University of Toronto uses and for which the Association is requesting increased funding.

The Budget statement from the Provincial Government is even less helpful to the Administration’s contention that it is prevented from using this increased funding to improve the salaries of its academic employees. The phrase on which the Administration places so much weight states that “the government’s expectation is that this historic investment will not **simply** be used to enrich compensation packages within the system” [emphasis added]. “Not simply” differs significantly in meaning from “not at all.”

Furthermore, the government’s budget-time statement must be considered in the context of subsequent events. The budget also included the government’s promulgation of a guideline increase for the current year of 2.5%. Yet the budget was followed almost immediately by an agreement between the Government of Ontario and its community college teachers, represented by OPSEU, which called for an across-the-board increase of 3% and other salary scale improvements.

The funding increases announced by the provincial government are indeed significant. In a backgrounder to the 2005 Ontario Budget, the government commits itself to incremental investments of \$447 million in 2005-6, rising to \$732 million for 2006-7. The share of this funding that will go to the University of Toronto will be substantial.

With respect to the restrictions that have been placed on the use of the increased funding by the University that are the subject of so much speculation in the Administration's submissions, two further points are worthy of consideration.

First, while much of the speculation about restrictions on the use of funding refers to academic years 2006-7 and beyond, the instant arbitration concerns only the academic year 2005-6.

Second, even if the funding were to be subject to an earmarking requirement, such earmarking would have no impact on the University's use of its other revenue sources. Unless and until the province assumes control of the University's entire budget, restrictions applied to only a small part of that budget must be considered in light of the fact that the budget as a whole is fungible. It strains credibility to imagine that the University of Toronto would find itself unable to reallocate budgeted funds so as to comply with the funding restrictions and at the same time take the full benefit of any increased funding. Certainly, the Administration has failed to adduce evidence to support such an inference.

The second leg of the Administration's ability to pay argument is essentially that the request of the Association for an ATB increase and PTR enhancements is beyond the ability to pay of the University as determined by the Administration in its budget forecasts.

In the first place, much of the weight of the Administration's argument with respect to its budget flows from a 5-year budget planning document, not from the single-year budget for 2005-6. Yet the proposal of the Association and the subject of the instant arbitration is for a one-year agreement covering the academic year 2005-6. It is the Association's submission that the University's speculations about its future budgetary situation as reflected in its 5-year planning document are irrelevant to the issues at hand.

Second, the Administration's argument with respect to its ability to provide for an increase in excess of its offer is circular.

Of course, the Administration would have built into its budget for the year the cost of the proposals that it is advancing in this arbitration. To do otherwise would be to telegraph to the university community, and this Dispute Resolution Panel, that its real position differs from and is more generous than that contained in its submissions in these proceedings.

Lest a reader of its submissions miss the circularity of its argument, the Administration underlines the point in an elaborate explanation of what it calls the "relevant base" in the budget from which faculty and librarians' salaries might be paid. In describing the derivation of the "relevant base", the Administration identifies three categories of "untouchable" expenses:

- contractual obligations including "utilities, costs associated with statutory obligations related to safety, hazardous materials etc., contractual obligations with other institutions (colleges, Federated Universities)";
- "costs that are dictated by University Policy"; and
- funding for student aid.

While it would be difficult to quibble with the Administration's commitment to meet its contractual obligations, there is no reason why "University Policy" should be

accepted by the Association or the Panel as a limitation on the Administration's ability to pay for compensation increases for faculty. If that were the case, the Administration could simply pass a policy establishing its position in these proceedings as a University Policy and these proceedings would effectively be terminated. The Administration cannot adopt its own definition of its ability to pay and then argue in an interest arbitration that it cannot pay more because it lacks the ability to pay according to that definition.

Having said that, however, we have some observations with respect to the materials provided to the Panel by the Administration in support of its position.

First, in its submissions (at page 17) the Administration asserts that the "relevant base" for 2004-5 was \$534.9 million and that for 2005-6 the "relevant base" is \$568.2 million. Leaving aside for the moment the Association's objections to the use of that self-serving number as a measure of anything of relevance to these proceedings, this suggests an increase in the "relevant base" of \$33.3 million. Since UTFA compensation, on the Administration's own submission (page 17 again), represents 60% of the "relevant base", it stands to reason that the UTFA share of the increase (assuming that the priority attached to faculty compensation in the "relevant base" does not change) would be 60% of that increase or \$20.0 million – a figure which is higher than the university's inflated costing of its own proposals [see below].

Second, the University's Financial Report for 2004-5 indicates net income (i.e. a surplus) for 2004-5 of \$41.2 million and net income (again, a surplus) for 2003-4 of \$46.6 million.⁵

Indeed, a report by Moody's Investors Service Global Credit Research on the University of Toronto presented at Tab 10 of its Book of Exhibits estimates an adjusted net income of \$51.1 million for 2004-5, rather than the reported amount of \$46.6 million.

⁵ University Book of Exhibits, Tab 6

Furthermore, a summary report by DBRS on the University of Toronto presented at Tab 11 of the Administration's Book of Exhibits sheds an interesting light on the relationship between the Administration's forecasts of its financial position and its end-year results. The report (dated 27 October 2005) points out that for the year 2004-5 the Administration originally forecast a deficit of \$27.4 million. Its actual reported result was a surplus of \$46.2 million, a turn-around of \$76.4 million based on its own reported results for the year. The Association submits that the Administration's forecast of a \$16.7 million deficit for 2005-6 as reported by DBRS can only be appropriately interpreted in light of the relationship between forecast and actual results for 2004-5.

Finally, it is perhaps worth quoting the last paragraph of the DBRS report included in the Administration's materials.

However, U of T's prospects remain sound going forward, supported by the high academic profile of the institution, as well as its sizeable endowment and real estate portfolio. Additionally, new funding announced by the Province of Ontario should help the University cope with the challenges of its significant deferred maintenance, rising salary pressures, and slowing enrolment growth. Nonetheless, these pressures will slow credit improvement over the medium term. [DBRS, Tab 11 p.2]

Total Compensation and the Comparison Methodology of the Administration

The Administration advocates that the costing of the proposals be done on a total compensation basis. However, for the purposes of comparing its proposals for salary increases with CPI (at pp. 47 to 48 of its brief), and salary increases negotiated at other Canadian universities and by other groups in the public sector (at pp. 57-61), the Administration has added together its proposed ATB increases and PTR merit pay amounts. In so doing, the Administration is asking the Panel to follow it in making a fundamental error.

In reporting wage and salary settlements, increases are generally reported with reference to across-the-board increases – increases that affect the entire wage or

salary grid. The only exception to that general rule occurs when there is a structural change negotiated in the grid itself: adding a new classification to the top of the grid; changing the size of the steps along the scales or the relationships among job classifications or titles.⁶

This approach to the comparison of wage and salary increases between bargaining units and in the same bargaining unit over time (i.e. by excluding the cost of promotional and merit increments and movement through the grid in the absence of a structural change to the compensation system) is universally accepted by arbitrators as the appropriate basis for computing and comparing increases and costs associated with a pay grid. The reason for this was summarized by Arbitrator Shime in the *McMaster University* case at p. 203, quoted above.

In this regard, the crucial error in the Administration's data at pp. 57 to 61 of its brief is that, consistent with the universal practices outlined above, the comparator data without exception reports ATB increases, not total compensation costs, including merit promotional and grid increases. Accordingly, the Administration's comparisons are profoundly flawed and cannot be relied upon.

The mixing of ATB increases and PTR amounts occurs throughout the Administration's submissions. For example in a table on page 49 of its submissions, it asserts that, when one takes into account PTR and ATB increases, salaries for the subgroup of faculty who were continuously employed by the University between 1992 to 2004 have increased at a rate above the rate of inflation.

⁶ Indeed, there is a reason why reported settlements reflect only ATB increases. In a typical mature bargaining unit, grid steps, merit or promotional adjustments are essentially self-funding. The additional cost to the employer of paying for scale movements and promotional increases is counterbalanced by the savings associated with the departure of senior employees through resignations or retirements who were paid at higher levels and their replacement by junior employees who are paid at lower levels. The savings from employees who leave pay for the grid, promotional or merit increments for those who remain.

In fact, the Administration's data demonstrate the Association's principal point with respect to ATB: ATB increases over that period fell significantly behind the increase in the CPI for Toronto. According to the Administration's submissions, the CPI for Toronto increased by 27.10% over the relevant period; cumulative ATB increases amounted to 21.8%. The fact that ATB increases did not match inflation does not mean that ATB and PTR increases should be looked at together in measuring salaries against inflation. It simply means that ATB increases fell short of inflation.

Costing of Salary Proposals

See section **7. Costings**, below.

3. Pension Benefits

Pension Augmentation – Affordability and the Surplus Issue.

The Administration argues that the UTFA proposal on pension augmentation for the current retirees should be rejected because the pension plan cannot afford it. UTFA does not accept this contention.

The Administration claims that any additional pension expense “will cause the unfunded status of the Plan to deteriorate further” [Administration submissions p.62]. This is misleading. It suggests that the change in the funded status of the plan is an event over which the Administration has no control. There would not be any *unfunded status* if the actuarial assumptions in the pension plan had not been changed.

To demonstrate this, it is instructive to look at the past three years and the issue of assumed vs. actual investment return on assets in the pension plan.

At the end of 2002-03, the pension plan had a deficit of \$204 million, with assets of about \$1.9 billion and a going forward assumed investment return rate of 7%. In 2003-04, the market return on pension assets was 15.4%, well above the assumed rate. This is 8.4% higher than the return assumption of 7% in 2002-03. With assets of \$2.1 billion, this extra 8.4% translates into an experience gain of about \$176 million for 2003-04.

Similarly in 2004-05 a market return of 10.9% would have generated a gain of 3.9% above an actuarially assumed 7%. The gain on assets of \$2.3 billion provides an additional \$90 million for 2004-05.

One would assume that with extra returns of \$176 million and \$90 million during the two years (total gain of \$266 million), this would eliminate the \$204 million deficit at the end of 2002-03. The plan should show a surplus today. However, this is not the

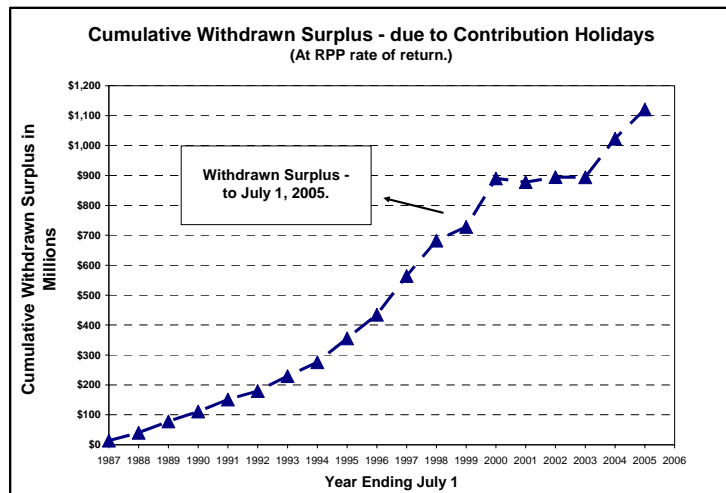
case. By reducing the assumed going-forward interest rate from 7% to 6.5% in 2003-04 the plan created substantial additional liability, which resulted in an actuarial deficit of \$86 million at the end of 2004-05 – and not the surplus that would have resulted without these changes. The change in actuarial assumptions created the current “*unfunded status*”.

In addition, the Administration is not correct in claiming that: “in any event, augmentation has only historically been agreed to when the Plan is in a surplus position, which it is currently not”. [p.62] While it is true that until July 1, 2003 the U of T pension plan had never reported an end of year deficit (our data goes back to 1985). It is also true that on July 1, 2003 the pension plan annual report showed a deficit of \$204 million.

However, three and a half months later, on November 17, 2003, with Kevin Burkett mediating, the Administration agreed to full pension augmentation in the settlements for 2003-04 and 2004-05 -- in spite of the highest pension deficit ever.

Even if one accepts the change in the plan’s financial position flowing from changes in actuarial assumptions, the Association submits that this financial position is attributable to contribution holidays taken by the University which turned out, in hindsight, to have been ill-advised. This is the key part of the Association’s proposal for improved pension benefits today. The Association estimates that the total cumulative value of the Administration’s contribution holidays, in today’s dollars, stands at about \$1,121 million.

Chart 5 illustrates how this sum grew to this large total over the years.



The claims as to cost burden with respect to indexing augmentation in the Administration's Brief pale in comparison to the \$1.1 billion that would be there today if the Administration had not in effect diverted pension contributions to other purposes.

In most of the years that the Administration took contribution holidays, the employees contributed 4.5%/6.0% of salary to the pension plan. The holidays they did receive were negotiated. While we recognize that in to some extent the University was required by tax legislation to restrict its contributions to the pension plan, the contribution reduction exceeded any restriction imposed under the Income Tax Act. Regardless of the reason for the holidays, however, it is clear to the Association that they represent an injustice done to University of Toronto retirees and survivors. Many of the retired faculty never saw a pension contribution holiday throughout their career at the University of Toronto. Their contributions contributed to the excess returns that gave rise to the surplus that, in turn, led to the contribution holidays. Yet they derived no benefit.

Further to the points raised above, the Administration justifies this diversion on the grounds that: "the University was not permitted to make contributions to the Pension Plan as a result of the provisions of the Income Tax Act." [p.69]

While it is true that federal tax law does not allow an excessive surplus to accumulate in a registered pension plan, the Administration's Brief fails to mention the other choices that were available to the Administration of the day:

From 1987 to 2003 the Administration could have improved the pension plan benefits for the active faculty and librarians sooner and more substantially than they did. It could have improved the survivor benefits to the allowed maximum of 66%. It could have raised the payout on the CPP portion -- up to 2%. It could have corrected earlier the inequitable pensions for part-time service and for broken-year service records. It could have provided buy-backs for all past service. It could have raised the \$150K salary cap limit on the SRA. In short it had many options to improve pension benefits.

Most notably, it could have improved the indexing formula in the plan from 75% of CPI to 100% of CPI, thereby making the Associations annual proposal for enhancement unnecessary.

From 1987 to 2003 the Administration could have set aside the excess funds in a separate pension "reserve account" for the day when the markets turned "south" and the other favourable conditions reversed. (Year-to-year 10% swings in asset valuations, due to sharp stock market swings, are not that uncommon.) Had it done so then, we would not be in the situation today in which the Administration is able to use a funding shortfall as an excuse for denying retirees an indexing enhancement.

From 1987 to 2003 the Administration could have used more conservative actuarial assumptions in the plan to reduce the surplus and so given itself more room to contribute its annual service cost. Had it done so then, there would be no deficit today to

serve as an excuse for the Administrations unwillingness to enhance the indexing of the pensions of the University's academic retirees and survivors.

The reader should also bear in mind it was not only the favourable (and temporary) stock market returns that contributed to the pension plan surpluses from 1987 to 2002.

Lower than forecast salary increases also helped generate the surpluses. For example the total ATB salary increases received by faculty and librarians, over the five years, from 93/94 to 97/98 was only 0.5% (four years of 0.0% and one year of 0.5%). Even allowing for escalating starting salaries, market adjustments and increases in PTR relative to turnover-related savings, salary increases were substantially lower than the 7% assumed in those years.

The faculty and librarians saw very minimal salary increases during this extended period. Those retiring during this period received reduced pensions - since pensions are directly related to ones exit salary.

Finally, the gain most directly related to the issue at stake in these proceedings was that related to the difference between the rate of inflation assumed for the purposes of establishing a value for indexing and the actual rate of inflation. In most years, even with the augmentation, the pension plan cost was less than the assumed cost at 75% indexation. That is, even after paying for the augmentation, the cost of indexing was below the assumed cost, generating a net experience gain.

Today we can and should at minimum augment the pensions of retired faculty and librarians to the extent of the lost inflation factor. It is a modest demand relative to the many substantial advantages the Administration has realized from the registered pension plan since 1987.

Other Issues with the Administration's Pension Submissions with Respect to Augmentation.

At page 64 of its submissions, the Administration states as follows:

The Agreement between the University and UTFA on Retirement Matters dated March 14, 2005 introduced an unreduced retirement provision it will increase liabilities (without indexation) by approximately \$76 million ...

The Administration fails to mention two important and offsetting factors. First, the Agreement replaces an existing early retirement program, called "VEARP". Secondly, those who retire after age 65 take an actuarial loss because their pensions are not increased due to the shorter take-up time. In fact the Administration stated at Governing Council that they did not expect any net cost for the Agreement because the two factors would offset each other. To now suggest that the RPP will experience a new \$76 million net liability, as they do on page 64, is inconsistent with these facts.

On page 68, the Administration asserts that the "Plan Provides a Head Start on Inflation Protection." Perhaps it would be more correct to say the plan provides *continuity* on inflation protection, rather than a *head start*.

Before retirement faculty receive annual inflation adjustments to their salary on July 1 via their ATB. After retirement they receive annual inflation adjustments to their pensions on July 1. If there were no inflation protection on the first day of retirement, on July 1, the retiree would experience a gap in his/her inflation protection in going from salary to pension. Without this increase he/she would have to wait two full years before any inflation protection was provided and be missing any inflation adjustment for one whole year.

Commuted Value at Retirement

On page 74 of its submissions, the Administration states: "The University's position is that it is inconsistent with the definition of "retirement" to allow employees

who have reached the normal retirement date to transfer the commuted value of their pension out of the Plan.”

UTFA does not agree.

Pension compensation is compensation accumulated and deferred during ones working career. To refuse to give the employee direct access to the full value of this deferred compensation is wrong. Not everyone wishes to or should take their commuted lump sum. It depends on many factors including family commitments, the health status of the individual or his or her family, and other personal financial considerations.

One recent example was the situation in which a retiring professor wanted to ensure some estate inheritance for her disabled middle-aged son when she dies. After a few years, the U of T plan fails to provide any estate value. Another example is where both husband and wife are retiring from U of T but for financial reasons only one wishes to receive the monthly pension income. The other spouse seeks the commuted value. Another example is where the retiring faculty member has a second, younger family and wishes to ensure their financial well being beyond the 60% survivor benefit.

As it stands today, any time a faculty member terminates employment with the University, they are entitled to the commuted value lump sum payout. Why should this option be available the day before the official retirement day but not on the day of retirement?

Currently some faculty are entitled to the commuted value option upon retirement. Most are not. Under the current Retirement Agreement and with the new early retirement provision the commuted lump-sum option is available, as it was under the earlier VEARP.

Why not make the commuted value option available to all?

4. Medical Benefits

General Comments

With respect to benefits, the Administration's submission ignores comparability as a criterion in arbitration. The evidence is overwhelming that the University of Toronto's medical and dental benefits system is below the standard set by other universities in Ontario.

The submissions of the Administration address only two substantive points: that "UTFA must show a strong demonstrated need"; and that medical and dental insurance costs are rising faster than inflation. With respect to "strong demonstrated need", the Association notes elsewhere in this reply its objection to the prominence given to "demonstrated need" in its submissions. "Demonstrated need" has not been accepted by arbitrators as an overriding criterion for innovation in arbitration awards.

In the alternative, the Association submits with respect to the optometrist' benefit that the delisting of eye examinations by OHIP itself is evidence of a need for replacement coverage and that in an institution of learning, proper vision care for its employees is in the employer's interest as well as the employees'.

The Association further notes that the Administration has addressed just such a "need" for vision care in its recent agreement with the Steelworkers in the largest bargaining unit in the University.

With respect to orthodontic coverage, the Association submits that the lack of such coverage is the most commonly expressed complaint by Association members concerning the adequacy of benefit coverage at the University of Toronto. Barring the unlikely event that there is a qualitative difference in needs between faculty and librarians at the University of Toronto and those at most universities in the province, the fact that orthodontic coverage is the standard in the university sector in Ontario would

suggest the emergence of a need for the benefit as well as demonstrating the case for inclusion of this benefit on the basis of comparability.

The Administration's submission that "any need can be made by a health care spending account" confirms the concerns of the Association with respect to such accounts, namely that the effect of such accounts is to absolve the employer of any responsibility for the adequacy of its benefits plan.

The Administration's Proposed Health Care Spending Account

This proposal is completely unacceptable to the Association, for a number of reasons.

First and foremost, the Association objects to the proposed diversion of the professional expense allowance to other purposes. As stated in the Association's main brief, the Administration does not provide faculty with new scholarly books, publications or computer related items; and travel/conference budgets have been steadily shrinking while the related costs have steadily increased. In addition, departmental budgets are typically insufficient to cover expenses for out of town conferences. Thus, faculty must often pay for these expenses in after tax dollars.

The point of the expense allowance is to permit faculty to purchase goods and services – equipment, supplies, travel to academic meetings etc. – that support their academic pursuits. The Association believes it should be reserved for that purpose, and that if the Administration believes that its benefits package is not adequate in relation to the needs of faculty – a view with which the Association agrees – the appropriate remedy is to make a proposal for benefit plan improvements. It is not appropriate for the Administration to put faculty members who need better benefits coverage in a position of having to choose between benefits coverage and his or her ability to cover expenses necessary for the furtherance of an academic career.

The Administration has argued that some faculty receive all the support they need for research grants, and therefore do not need the expense allowance. This point merely underlines the Association's concern. It is one thing for academics who, by virtue of their specialties, are able to cover expenses through research grants. However, many are not, particularly outside the sciences. Moreover, it is quite another matter to create a system in which those academics get better health benefits coverage. The Administration should not be permitted through an arbitration to use the weaknesses in the design of the expenses system as a Trojan horse in which to carry the beginnings of a change in the benefits system which the Administration knows is not acceptable to the Association.

In terms of the benefits side of the equation, this proposal is an attempt by the Administration to introduce a "flexible" or "cafeteria" benefits system by the back door when it found itself unable to do so via the front door.

The issue of flexible or cafeteria benefits was reviewed in depth in a Joint Working Group of the Association and the Administration. No consensus was reached. Indeed, from the Association's perspective, the Administration was unable to come up with any compelling reason why the Association would wish to consider the proposal.

While cafeteria benefits appear to offer the promise of lower costs and better targeted use of benefits, those advantages are illusory.

Benefit plans are, in essence, vehicles for risk sharing. In any given year, plan members whose health status requires the use of goods and services covered by the plans are subsidized by those whose health status does not require those goods and services. In addition, provisions for coordination of benefits – normally, dependents are covered by the plan of the parent whose birthday comes first in the calendar year – lower the cost of the plan for everyone in the plan.

These risk and cost sharing features are common to all benefit plan systems. It is particularly clear in systems like that of the University of Toronto, in which the highest-cost benefits are provided on a self-insured basis, administered by an insurance company on an Administrative Services Only basis.

What happens with cafeteria benefits is that the risk sharing system is fundamentally altered. Employees will select benefits they think they are going to use heavily and de-select benefits they think they are going to use less heavily. Employees whose partners also have coverage will coordinate their selections so that they avoid duplication of benefit coverage.

The result is that the cost of providing each individual benefit goes up, and the savings evaporate.

More important, the introduction of cafeteria benefits breaks the link between what the employer pays and the package of benefits that its employees receive. There ceases to be any external pressure on the employer to increase its contribution to the plans in order to keep up with costs. As a result, the prices of the items offered in the benefits cafeteria tend to go up more quickly than the value of the benefits provided to each employee.

In the context of the University of Toronto system, this carries with it the risk that U of T could use this health care spending account approach as a safety valve against pressure to keep its main benefits plans up to standard.

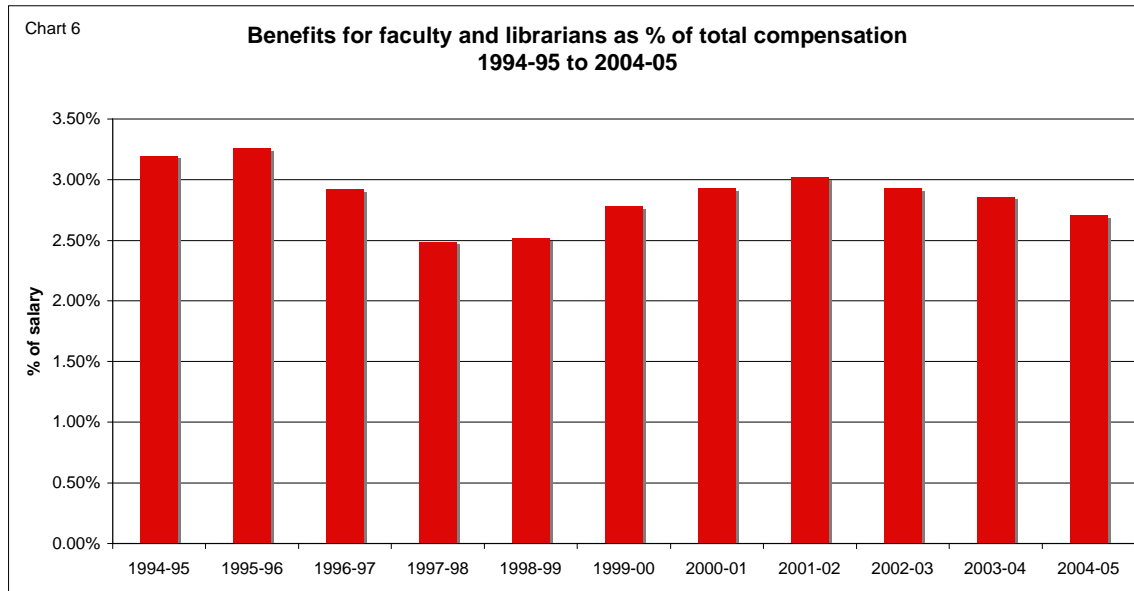
The University of Toronto already has a cost-of-benefits sharing system with its employees that is more favourable to the Administration than that of any other major university in Ontario. None of the 16 major universities in Ontario has a cafeteria benefits system.

Third, there may be a technical issue that renders the Administration's proposal profoundly detrimental to participating employees. . Under the Income Tax Act, reasonable allowances for employment-related expenses are considered tax exempt, as are employer contributions to health and dental plans. Employee purchases of benefit plans are not tax deductible. The use of the professional expense allowance for a purpose other than employment-related expenses may jeopardize its tax-exempt status, while the contributions the employee makes to a voluntary additional benefit plan would likely not be tax deductible.

Further, the proposed health care spending account is flawed in its conception, since it amounts to a suggestion that improved benefit coverage should be available only to employees who do not need to use their PER allowances for legitimate academic purposes.

The Allegations of Escalating Benefit Costs

The Administration's submissions claiming that escalating benefits costs are a significant problem for the University are not consistent with the University's own data. Chart 6 is derived from the annual report "Summary of Total Compensation – Faculty and Librarians" for the years 1994-5 to 2004-5. For reference, the current version of this report appears at page 33 of the Administration's submissions.



The chart demonstrates that benefits costs have not been escalating relative to other components of total compensation and indeed have been in decline as a percentage of salary since 2000-01. In particular, there is no evidence in the overall data for the rapid escalation in costs about which the Administration complains at page 82 of its submissions.

Indeed, the total cost of the benefits improvements proposed by the Association, would result in an increase in the percentage of total compensation accounted for by benefits of less than 0.3%, resulting an increase in the ratio of benefits to compensation of 3.0% -- its 2000-1 level.

5. Professional Expense Reimbursement

As noted in the introduction to this reply brief, the Association rejects the Administration's contention that "demonstrated need" is a relevant criterion by which to judge the Association's proposal for PERA increases.

In any event, the Association submits that the data on PER programs at other universities in Ontario speak for themselves. The support provided by the University of Toronto in support of the professional expense needs of its faculty and librarians is inadequate and well below the standard of other institutions. There is a demonstrated need for improvements.

The Administration's submissions essentially claim that other sources of funding fully address the professional expense needs of University of Toronto Faculty, and that therefore even the current level of PER funding is excessive and unnecessary.

In support of this argument, it relies on the facts: special allowances are paid to new faculty and to faculty appointed to chairs; many faculty are able to have their professional expenses covered through research grants; and many faculty members' PER funds are accumulating in their accounts.

The Administration's submissions completely miss the point. It is true that some faculty are able to get their professional expenses covered from other sources. Why would they not, when the ordinary professional expense allowance is so inadequate?

With respect to the accumulation of funds in PER accounts, given the uses to which PER funds are put, it is hardly surprising that the limited amount of PER offered annually would be accumulated by faculty members until it could actually pay for something of professional value. At \$775 a year, PER funds must accumulate for several years to cover a substantial expense such as attendance at an out-of-town academic conference or the purchase of new computer equipment. The fact that PER

funds accumulate is not an indication that the funds are not needed for all faculty and librarians. In those cases where faculty are not in a position to tap other sources of funding, accumulation may simply reflect the program's inadequacy, a problem which is precisely what the Association's proposal is intended to address. In addition, information about PERA entitlement is not uniformly and regularly conveyed to new hires.

In opposing the Association's proposal for a modest PER increase, the Administration is penalizing faculty who, by virtue of their specialty, are unable to find other sources of funds against which to charge their professional expenses. It should not be doing so. Furthermore, the Administration should not be using the phenomenon as a Trojan horse – and a profoundly inequitable one at that – within which to hide a benefits proposal for health spending accounts to which the Administration knows the Association is opposed. The Administration requires a high standard of research as a condition of granting tenure. It relies on the research output of its faculty to maintain its position as the leading research university in Canada. Simply put, faculty should not be required to choose between health care benefits and their research, which is what the Administration is proposing.

For the Association's full response to the proposal for health care spending accounts, see **4. Medical Benefits**, above.

6. Librarian Research and Study Days

As noted throughout this reply brief, the Association disputes the contention that its proposal can be awarded only in the event of demonstrated need.

In any event, and without prejudice to that position, the Association submits that its main brief demonstrated that there is ample need for the proposed increase to the current entitlement:

- Generally, faculty are free from teaching assignments between May and September or an equivalent term, and faculty workloads are specifically calculated to include research. Librarians, whom the Administration acknowledges in its brief are responsible for one of the largest research libraries in North America, have no equivalent opportunity to perform research of their own initiation during their regular workday or year, aside from the five days currently permitted.
- Given that librarians are the employees responsible for the creation and maintenance of the research library which is integral to the mission of Canada's most distinguished research university, there is ample justification for affording librarians greater opportunities to conduct research, and for reducing the significant disparity between faculty and librarians.
- The Administration has already conceded the need for librarians to do research by agreeing to grant them sabbatical leave and some research and study days. However, under the current allowance of five days, after an individual has utilized a few days for attendance at conferences, there is simply insufficient time to initiate any meaningful research on a regular basis. The only opportunities are sabbatical leave, an event which occurs every six years, or approved study leave in a formal program of study, a very rare event.
- The Administration's main justification for resisting the proposal is its estimate of the cost. However, the Administration's costing assumes 100% utilization of full entitlement to research and study days, and 100% replacement of absent librarians on those days. As set out in the Association's main brief, 100% "take-up" is unlikely. In any event, the norm to date has been that librarians absent on sabbaticals and vacations, as well as research and study days, are not replaced; instead, there workload is redistributed. Indeed, this appears to be how the matter is

dealt with at York University. which already grants librarians 20 days of study leave. Accordingly, even if there were a high rate of utilization, the cost may be minimal, and is within the ability of the Administration to control.

7. Costing

The Association has a number of concerns with respect to the Administration's submissions on cost as presented at pages 31 to 61 of its brief and at Tab 14 of its Book of Documents.

The Salary Base for Costs

The figure provided by the Administration for estimated base salaries for faculty and librarians as of June 30, 2005 is substantially higher than the amount that would be suggested by the data on individual salaries of faculty and librarians represented by UTFA provided by the University. This discrepancy is reflected in the Administration's cost data for both ATB and PTR.

Those data are summarized in Table 7:

Table 7

2004-5

	Salary	PTR		FTE
Lecturer	19,622,825	453,631	2.31%	244
Librarian	10,882,179	260,125	2.39%	142
Professor	201,360,554	3,790,723	1.88%	1,751
Total	231,865,558	4,504,479	1.94%	2,136

The salary data for 2004-5 are drawn directly from the tables provided to the Association by the Administration pursuant to annual information requests.

Some of the discrepancy between the \$277.7 million figure used by the Administration in its cost base is explained by the fact that the Administration's figure includes teaching stipends (paid to faculty for teaching extra courses) whereas the Association's figure of \$231.9 million does not. It can be inferred from the Administration's figure of \$6.7 million for the cost of a 2.5% increase that the underlying salary total in its numbers is \$268 million. Similarly, one may infer from the figure of \$1.171 million for the cost of a one-time-only increase of \$500 per capita increase in the PTR pool that the number of employees reflected in the Administration's figures is 2,342 as compared with the 2,136 in the data for those represented by the Association. The difference reflects employees of the University who are paid in accordance with the same system as faculty and librarians, but are not represented by UTFA. The Association submits that the appropriate base for costs is the group it represents, not the broader group of University employees paid in accordance with the same system.

The estimated costs for ATB changes would be adjusted accordingly.

The Association agrees that the increased costs for 2005-6 resulting from **changes** in the PTR scheme proposed by both the Association (as opposed to continuation of the current system – see below) and the Administration are appropriately included as cost increments, subject to adjustments on the same basis as suggested above for the ATB costs.

Librarian and Lecturer Salary Costs and Per-Course Payment Costs

Calculating directly from the data provided by the Administration for librarians for 2004-5, the cost of raising the minimum for Librarian III would be \$53,000, not \$67,000 as stated by the Administration in its costing of its proposals.

In its costing of the Association's proposals, this same cost is cited, whereas in the Association's proposals, the incremental cost of the Librarian III minimum would be

Reply – Librarian Research & Study Days

\$45,000. It appears that the discrepancy reflects the Administration having double-counted the 2.5% and 4% ATB increases respectively. Indeed, if you calculate the cost of the Librarian III minimum increase assuming no ATB increase, you get the \$67,000 cost estimated by the Administration.

A similar problem arises with respect to the costing of the Lecturer minimum. If you evaluate the cost of the Lecturer minimum assuming no ATB increase, the result is the Administration's estimate of \$129,000. Assuming a 2.5% increase as per the Administration's ATB proposal produces an estimated cost of \$90,000. Assuming a 4% increase as per the UTFA proposal produces an estimated cost of \$72,000.

The Administration has evaluated the cost of raising the minimum payment for a full course from \$10,338 to \$12,500 as if every course payment is at the minimum. That is not the case. The Association has requested the data on individual per-course payments that would be required to calculate an accurate cost. To date, the Administration has been unable to provide the data. While the Association is unable as a result to calculate a precise alternative cost figure, it is clear that the figure used by the Administration is a substantial overstatement of the actual cost.

Inclusion of PTR Amounts in Costing Model

As noted above, the Administration's cost model includes costs associated with employees of the University who are not represented by UTFA and therefore are not subject to these proceedings. Based on the faculty cohort as it existed in 2004-5, the Association estimates current PTR payments at \$4.5 million.

More important, the Association takes the position that continuing PTR costs should not be counted as costs associated with this agreement, because to do so is to fail to take into account the savings that result from employee turnover through retirement and resignation of faculty and librarians each year.

Indeed, the salary data suggest that the PTR system at the University of Toronto is largely self-funding. Using faculty salary data provided by the Administration for 2004-5, the Association calculated starting salaries for all new hires, separately for arts and science faculty and for professional faculty. The Association also calculated average salaries broken down in the same way for all faculty who would be age 65 or older in the next academic year as a proxy for those who would actually retire. The next step was to multiply the starting salary to retiring salary differential for each group by the number of faculty expected to retire to the salary savings resulting from the replacement of retiring faculty with new hires.

Using this methodology, the Association estimates the salary savings available to offset PTR increases for the faculty alone at \$2.5 million. It should be pointed out that this analysis assumes that retiring faculty will all be replaced by new hires paid average new hire salaries. The experience over the past few years has been, however, that a substantial proportion of retiring faculty are replaced by lecturers earning far less than the average starting salaries for new faculty. In any event, to the extent that the PTR system is not entirely self-funding, that is the result not of any term of the agreement between the Association and the University, but of changes in hiring salaries and ages and changes in the demographic composition of the workforce, none of which are linked to the PTR agreement itself in any way.

Thus, even if PTR costs attributable to the continuation of the current system were to be included in the total compensation cost (which would be contrary to practice and arbitral authority), the amount recognized should not be the gross cost, as claimed by the Administration, but the net cost, after accounting for total salary reductions resulting from the replacement of departing senior employees with new employees at lower salary costs. As noted above, the Association estimates that these offsetting savings for professorial faculty alone amount to at least \$2.5 million.

Impact Cost of Salary Increases Related to Benefits

The Administration's cost estimates suggest an impact cost related to salary increases of approximately 17% of the increase in salary. The only non-salary costs that are salary related are the Employer Health Tax (1.95% of salary) and the University's share of disability insurance and life insurance premiums. These three items total 3.4% of salary.

The cost increase attributed to the impact of salary increases on benefits costs is significantly overstated.

Pension Costs

The Association agrees with the cost estimates for the indexing augmentation provided by the Administration. However, the Association submits that these costs are manageable within the funding structure of the University of Toronto's retirement income system as a whole.

The Association objects to the Administration's claim that the agreement to end mandatory retirement between the Association and the Administration imposes additional costs. It was clearly understood between the parties that the package of changes associated with the end of mandatory retirement would be cost neutral. Indeed, advice to that effect was communicated by the Administration to Governing Council at the time of Council ratification of the agreement.

Benefits Costs

The costs provided by the Administration with respect to orthodontic coverage – an 8% increase in the premium – appear reasonable, subject to the concern expressed above regarding the size of the group whose costs are attributed to these proceedings.

The estimate of an increase of 13.5% in the Extended Health premium for an improvement in what is actually a relatively minor provision of the extended health plan appears to be somewhat inflated.

The Association accepts the Administration's evaluation of the cost of correcting the grave injustice done to pre-1981 retirees and their survivors by excluding them from the original retiree benefits system, but submits that this improvement should not be considered a current cost associated with this agreement.

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