April 27, 28 and 29, 2010

IN THE MATTER OF AN ARBITRATION
REGARDING SALARY, BENEFITS AND WORKLOAD
BEFORE MARTIN TEPLITSKY, Q.C.

B E T W E E N :

THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO
(the "University")

- and -

THE UNIVERSITY OF TORONTO FACULTY ASSOCIATION
(the "Association")

UNIVERSITY REPLY ARBITRATION BRIEF

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USE BY THE ASSOCIATION OF MEDIATION INFORMATION OR PROPOSALS

1. In a number of sections of its Arbitration Brief the Association refers to University proposals or information that were provided during the mediation phase of the proceedings between the parties (see for example page 70, the Association's proposals regarding librarian research days references made to "the administration's Mediation Brief (Tab 8)"; page 71 at the top: "In its Mediation Brief, …"; and page 99 reference to a University pension proposal made in mediation).

2. It is inappropriate for the Association in the arbitration phase of the proceedings to refer to or rely on University mediation positions or proposals. The mediation phase of the proceedings is a without prejudice process with a view to seeing if a mediated resolution without arbitration can be achieved. Mediation positions, proposals, information, etc. are irrelevant to and inadmissible in the arbitration proceedings and should not be referred to or relied on for any purpose whatsoever in arbitration proceedings. In addition to this general and well understood principle of mediation, the University's Mediation Brief included the following on the cover page:

> This material has been prepared for a mediation only attendance before Martin Teplitsky, Q.C. and is provided without prejudice or precedent to the University's position or any evidence or submissions in respect of any issues touching on the matters in dispute in the event the matter proceeds to arbitration.

3. Further, in a previous arbitration decision under Article 6 of the Memorandum of Agreement between these parties Arbitrator Teplitsky has commented on the without prejudice nature of mediation proceedings:

> December 30, 2002 Arbitration Award of Martin Teplitsky, Q.C.
>
> Generally speaking I have declined to issue extensive reasons with an Award that resulted from a

> mediation/arbitration for fear of revealing the confidential disclosures which are essential to the success of mediation.

4. It was and is inappropriate for the Association to have referred to or relied on the University's mediation positions, proposals, or mediation documents and the arbitrator should have no regard for these sections of the Association's Arbitration Brief.

THE SCOPE OF THE ARBITRATION AND THE ARBITRATOR'S JURISDICTION

5. Pursuant to the March 19, 2010 Agreement between the parties (**Tab 3** of the University's Documents) this is an arbitration pursuant to and under the provisions of Article 6 of the Memorandum of Agreement between the parties concerning salary, benefits and workload – workload having become subject to the Article 6 process and this arbitration by express agreement of the parties.

6. There are a number of proposals or positions of the Association in its Arbitration Brief which are outside the scope of Article 6 and outside the scope of this arbitration. These include the following:

    (a) Association Brief page 60 a proposal that "number of child care spaces at the U of T to be increased".

    (b) Association Brief page 93 Information Sharing – "Outstanding issues from prior negotiation". On page 2 of the Arbitration Brief the Association asserts that: "The parties have agreed to proceed directly to arbitration on all matters subject to the new, amended Article 6 (Salary and Benefits), including workload <u>and information sharing</u>" (emphasis added). Further, on page 93 and following the Association makes submissions on "outstanding issues from prior negotiation" in the context of an August 7, 2007 Memorandum of Agreement between the parties, a copy of which is at Tab 45 of the Association's Book of Documents. The Association is not correct that the parties agreed that the "Information Sharing" issues related to the August 7, 2007 Memorandum of Agreement could or would be subject to the instant arbitration proceedings. In fact, the parties expressly agreed to the contrary. As indicated in an exchange of emails (**Tab 1** of the University Reply Brief) between University counsel and the Association's counsel concerning "Outstanding Issues" that ultimately resulted in the March 19, 2010 Agreement between the parties (**Tab 3** of the University Documents) and the March 19, 2010 UTAC letter (**Tab 4** of the University Documents) the parties expressly agreed that, while Mr. Teplitsky remained seized of the "Information Sharing" issues that were the subject of the August 2007 Memorandum, those issues were not part of and would not be part of the instant arbitration proceedings. In this regard note the specific email exchange between University counsel and Association counsel (Tab 1 of University Reply Brief) as follows:

February 11, 2010 email from Association counsel to University counsel:

I thought it would be helpful before our 3:00 o'clock call to set out our response to the document you circulated on Tuesday.

...

9. Finally just to confirm our agreement that Teplitsky's jurisdiction in the arbitration includes the Information Sharing issue.

February 17, 2010 email from counsel for the University to counsel for the Association

I am following up on and responding to your February 11, 2010 "Outstanding Issues" email. ...

Embedded in CAPS below in the text of your February 11, 2010 email is the University's response to the outstanding issues raised by UTFA.

...

9. Finally just to confirm our agreement that Teplitsky's jurisdiction in the arbitration includes the Information Sharing issue.

AS DISCUSSED THE UNIVERSITY ACKNOWLEDGES THAT MR. TEPLITSKY REMAINS SEIZED OF THE ISSUES PURSUANT TO AND IN ACCORDANCE WITH THE AUGUST 7, 2007 MEMORANDUM OF AGREEMENT BETWEEN THE PARTIES AND THESE ISSUES CAN BE DEALT WITH PURSUANT TO THAT MEMORANDUM OF AGREEMENT IF NECESSARY, SEPARATE AND APART FROM AN ARBITRATION ON SALARY AND BENEFITS, AND ARTICLE 8 – WORKLOAD, UNDER ARTICLE 6 OF THE MEMORANDUM OF AGREEMENT.

March 5, 2010 email from counsel for the Association to counsel for the University

Here are our comments on the latest draft.

. . .

Finally, I confirm our agreement that, with respect to the Information Sharing issue, "TEPLITSKY REMAINS SEIZED OF THE ISSUES PURSUANT TO AND IN ACCORDANCE WITH THE AUGUST 7, 2007 MEMORANDUM OF AGREEMENT BETWEEN THE PARTIES AND THESE ISSUES CAN BE DEALT WITH PURSUANT TO THAT MEMORANDUM OF AGREEMENT IF NECESSARY, SEPARATE AND APART FROM AN ARBITRATION ON SALARY AND BENEFITS, AND ARTICLE 8 – WORKLOAD, UNDER ARTICLE 6 OF THE MEMORANDUM OF AGREEMENT.

(c) On page 96 of its Arbitration Brief the Association seeks "Additional Information Issues for 2009-10." The University submits that other than the issue related to Workload, which may be part of the Workload aspect of the arbitration proceedings, the other matters are outside the scope of Article 6 of the Memorandum of Agreement and relate to Article 11 –

Information of the Memorandum of Agreement which is not, by mutual agreement or otherwise, part of the instant arbitration proceedings.

(d) On page 98 of its Arbitration Brief the Association has a proposal concerning Association "Dues Redirection". This issue is outside the scope of Article 6 and outside the scope of the instant arbitration proceedings. As indicated in paragraph 2.1 of the May 28, 1998 Report, Opinion and Recommendation of a Special Designated Panel (**Tab 2** of the University's Reply Brief), the Association dues deduction issue was expressly acknowledged to be "outside of Article 6 – Salary and Benefit Negotiations" and was expressly about "the advisability of amending the Memorandum of Agreement to include a provision making mandatory dues payments to the Association for new faculty members and librarians." As a result of that process and the Report Article 13 of the Memorandum of Agreement was amended to include dues deduction. Issues in Article 13 are outside of Article 6 and outside the scope and jurisdiction of the instant arbitration proceedings.

(e) At page 10 of its Arbitration Brief the Association raises issues described as "Memorandum Issues" in connection with Article 17 of the Memorandum of Agreement. Amendments to the Memorandum of Agreement of this nature are outside the scope of Article 6 and outside the scope of the instant arbitration proceedings.

7. The arbitrator should have no regard for these parts of the Association's Arbitration Brief, should not consider the Association's submissions in the context of the arbitration, and should not issue any award on these issues which are outside the scope of Article 6 and outside the scope of the mutually agreed jurisdiction of the arbitrator in the instant arbitration proceedings.

THE TOTAL COST OF UTFA'S ARBITRATION PROPOSALS

8. Attached to this Reply Brief at **Tab 3** is a copy of the University's costing of the Association's proposals prepared and presented in a manner consistent with previous Article 6 proceedings between the parties.

9. The Association proposes that the PTR pool be increased by more than 50% from 1.9% to 3% of faculty and librarian salaries. PTR is new base money added to faculty and librarian salaries each year. While the amount each individual receives is based on merit, the total PTR dollars delivered each year is based on a funding formula per member, as discussed in the University's Arbitration Brief. The Association's proposal would in year 1 increase PTR from approximately $6.4 million to $10.3 million. This additional $3.9 million would be added each and every year. That is, it would be 1.1% of the salary base the first year; 1.1% + 1.1% = 2.2% the second year; 1.1% + 1.1% + 1.1% = 3.3% the third year; 1.1% + 1.1% + 1.1% + 1.1% = 4.4% the fourth year; 1.1% + 1.1% + 1.1% + 1.1% + 1.1% = 5.5% the 5^{th} year and so on. The cumulative impact over five years increases the amount spent on compensation by more than $19 million for the entire faculty and librarian PTR scheme.

10. For the purposes of the ATB component of the costings for year 1 and year 2 the University has applied the methodology set out on page 24 of the Association's Arbitration Brief which has two components: (i) a 4% ATB salary increase; and (ii) a minimum flat dollar increase for those below the median, which in total represents an actual increase to salary in both year 1 and year 2 of 4.4%.

11. "Highlights" of the Association's costly proposals include the following:

    (a) A total compensation increase in year 1 of approximately 17.9% - $71.7 million.

    (b) An additional total compensation cost for year 2 of approximately 8.3% - $33 million.

(c) A total compensation increase for both years of approximately 26.2% - $105 million.

(d) The Association's ATB and PTR proposals would increase the average salaries of faculty as follows:

Rank	08/09	10/11	% change	$ Increase
Professor	$161,398	$180,661	11.9%	$19,263
Associate	$127,750	$147,732	15.6%	$19,982
Assistant	$106,022	$126,725	19.5%	$20,703
All Ranks	$137,280	$157,117	14.5%	$19,837

(e) The Association's ATB and PTR proposals would increase the average salary for librarians as follows:

Change in average salaries after applying UTFAs base salary proposals effective July 1 2010

	Librarian			
Rank	08/09	10/11	% change	$ change
4	$116,998	$130,330	11.4%	$13,332
3	$94,221	$109,403	16.1%	$15,182
2	$64,423	$81,606	26.7%	$17,182
1	$58,018	$75,201	29.6%	$17,182
All Ranks	$92,084	$107,322	16.5%	$15,237

(f) The approximately 15 benefit proposal increases on the Association's laundry list of benefit improvements have a total compensation cost of approximately $9.97 million. In addition to this total compensation cost the Association's proposal that any benefit improvements be available equally to active and retired faculty and librarians would increase the April 30, 2009 unfunded liability for retiree benefits of approximately $282 million.

(g) At a time when the pension plan is facing unprecedented deficits and pressures, the Association's pension proposals would increase accrued liability in the pension plans by approximately $243 million and result in a

$5.3 million increase to the current service cost and an additional $25.2 million in special payments for the next 15 years.

PRINCIPLES APPLICABLE TO THE ARBITRATION

12. On pages 2 and 3 of its Arbitration Brief the Association suggests that two general principles form the "key pillars" for an interest arbitration award under Article 6 of the Memorandum of Agreement.

13. The University agrees that the "replication model" is a significant principle applicable to the arbitration on the basis of and for the reasons set out in the University's Arbitration Brief on pages 7 to 10.

14. Perhaps not surprisingly given the magnitude of the total cost of its proposals, the Association makes no mention in its Arbitration Brief of the well established principle of total compensation in collective bargaining generally, and its central role in the replication model of interest arbitration. The University repeats and relies on its submissions on total compensation in its Arbitration Brief on pages 11 and 12 and also notes paragraph 21 of the 2006 Winkler DRP decision (**Tab 7** of the University Documents):

> [21] We accept the University's position that we should have regard to the total compensation package rather than viewing each of its elements in isolation.

15. The Association suggests that an important principle is what it describes as a "commitment to maintain the faculty and librarian status at the top of the market" and refers to an excerpt from the 2006 Winkler DRP decision (**Tab 7** of the University Documents) as follows:

> In essence, the University has staked out a position at the top of the relevant market ... It implicitly admits that maintaining that position depends to large degree on maintaining the quality of its faculty and librarians ... That in turn requires ... insuring that the total

> compensation package … is sufficient to place them at the top of the market …

16. With respect to this "principle" the University notes the following:

(a) "Top of the market" does not necessarily mean in any particular year or round of collective bargaining that faculty and librarian salaries must be the highest or first among Ontario or Canadian Universities.

(b) As set out and demonstrated in the University's Arbitration Brief, although "top of the market" does not require this, University faculty and librarian salaries are in fact the highest in comparison to the other G13 large research intensive universities (see pages 42 to 51 and 57 to 58 of the University's Arbitration Brief).

(c) The University has a responsibility to operate in a fiscally prudent manner having regard to its mission on both a short term and long term basis.

(d) The notion of "top of the market" does not exist in a vacuum and is not disconnected from or uninfluenced by the economic climate and market conditions in effect from time to time. Justice Winkler in the 2006 DRP decision (**Tab 7** of the University Documents) noted that:

> [17] There is a single coherent approach suggested by these authorities which may be stated as follows. The replication principle requires the panel to fashion an adjudicative replication of the bargain that the parties would have struck had free collective bargaining continued. The positions of the parties are relevant to frame the issues and to provide the bargaining matrix. However, it must be remembered that it is the parties' refusal to yield from their respective positions that necessitates third party intervention. Accordingly, the panel must resort to objective criteria, in preference to the subjective self-imposed limitations of the parties, in formulating an award. In other words, to adjudicatively replicate a likely "bargained" result, *the panel must have regard to the market forces and economic realities that would have ultimately driven the parties to a bargain.*

[18] This reasoning brings us full circle to revisit the common ground between the parties regarding the commitment to the pursuit of excellence. As both parties are surely aware, more than mere lip service to the ideal is required for the due administration and execution of a commitment to excellence. In that respect, the University acknowledges that "the excellence of the University owes much to the quality of its faculty and librarians". However, as the Association similarly implicitly acknowledges, *"comparability and general economic conditions" are relevant factors providing a context within which the panel might determine what degree of influence adherence to the principle would exert in bargaining.*

[19] In our view, while the commitment to excellence is clearly a significant factor in the relationship between the University and the Association, assessing its impact on the bargaining requires that it be considered in the context of the "market place" in which it is pursued.

...

[22] The University proposes a 2.5% ATB increase for salaries while the Association proposes 4.0%. The University submits its position is driven by a desire to allocate scarce resources to items other than faculty and librarian salaries, reasoning that since such salaries are at the top of the market now, a more modest increase is sufficient to maintain leadership status. We cannot accept this rationale. Take into its logical conclusion, it effectively amounts to a request to accept the heretofore rejected "ability to pay" principle with a resulting subsidization of the objectives of the University by the Association members. While *it is possible that such an approach could be actually bargained if market forces and general economic conditions dictated, we are not persuaded that those factors are currently of the nature that would permit the University's position to prevail in this round of bargaining.*

[emphasis added]

17. For the reasons set out in the University's Arbitration Brief related to the general economic climate, including the economic climate as it relates to compensation restraints on wages and wage settlements in the private and public sector in which University of Toronto faculty and librarians live and work, in this round of bargaining/interest arbitration the application of the replication model strongly weighs in favour of the University's proposal.

ATB SALARY INCREASE

18. In the introduction to its Arbitration Brief and the section on ATB salary increase the Association suggests that what it describes as the "normative settlement for faculty in the university sector in Ontario and Canada for 2009-10 and 2010-11" is the most important factor to be considered in these proceedings and the most important factor with respect to the ATB salary increase issue. This is a departure by the Association from its traditional and longstanding position articulated in previous arbitration submissions to Dispute Resolution Panels under Article 6 of the Memorandum of Agreement. In the past the Association has focused primarily on CPI as the most important factor to be considered with respect to ATB increases. In this regard excerpts from past Association arbitration briefs include the following:

October 1986 Association Arbitration Brief

> Salary Scales
>
> Each year, the annual across-the-board increase, expressed as a percentage, is applied to the minimum salary for each rank as well as to each individual salary. In the salary model, it is this increase that is meant to keep salaries at least constant relative to inflation.
>
> ...
>
> Association Demands: Summary
>
> ...

1. Salaries

(a) Salary scales be increased to match the increase in the Consumer Price Index for Toronto ...

...

V. Salary Issues

Maintenance of the University of Toronto salary model, described above, requires that salary scales be increased by the cost of living in any year. ... It is thus crucial to the maintenance of the U of T salary model to have the across-the-board increase equal the rise in the cost of living.

February 1993 Association Arbitration Brief

II. Association Demands: Summary

In accordance with Article 6 of the Memorandum of Agreement, the University of Toronto Faculty Association proposes that all salary schemes and benefit programs for faculty members and librarians be calculated in conformance with past practice, with the following modifications, to be implemented July 1, 1993.

Salaries

(a) Salary scales to be increased to match the increase in the Consumer Price Index for Toronto from July 1, 1992 to July 1, 1993.

...

Salary Scales

Each year, the annual across-the-board increase, expressed as a percentage, is applied to the minimum salary for each rank as well as to each individual salary. In the salary model, it is this increase that is meant to keep salaries at least constant relative to inflation.

...

Inflationary Increase

> While the CPI is not a perfect measure of the increased costs of living for faculty members and librarians at the University, it has been used by the parties over many years as the main measure used to establish the rise in inflation and the cost of living for faculty members and librarians.

January 1997 Association Arbitration Brief

> Salary Scales
>
> Each year, the annual across-the-board increase, expressed as a percentage, is applied to the minimum salary for each rank as well as to each individual salary. In the salary model, it is this increase that is meant to keep salaries at least constant relative to inflation.

19. The University has never agreed with or accepted the Association's position that ATB increases have or should be based exclusively or primarily on the CPI increase and for the reasons set out in the University's Arbitration Brief, including the economic climate, it is the University's position that there should be no ATB increase for July 1, 2009 or July 1, 2010 in the context of the replication model of interest arbitration. However, as noted above, in the past it has been the Association's position that ATB increases should be based exclusively or primarily on CPI. Now at a time when CPI is relatively low the Association seeks to link ATB increases for faculty and librarians who are already among the highest paid in Ontario and Canada to wage settlements at other universities, all of which have lower salaries and in some cases significantly lower salaries. For the reasons set out in the University's Arbitration Brief, in the context of the replication model, other university faculty settlements would have been of little or no relevance as a factor "which likely would have influenced the negotiating behaviour of the particular parties in the actual circumstances at hand" (1986 Munroe DRP decision, **Tab 5**, University Documents).

20. The economic climate, including among other things relatively low CPI, would have been a much more significant factor in collective bargaining. CPI January 2010 for Toronto was 1.8% and for March was 1.3% (**Tab 4** of the University's Reply Brief).

21. At page 13 of its Brief the Association submits that Laval, Montreal and McGill should be removed from the G13 group of research-intensive universities when looking at existing salaries for faculty and librarians at other universities. The University does not agree with the Association's rationale. These institutions are in fact large research intensive universities as are the other universities in the G13.

22. Further, it is noteworthy that McGill, which the Association describes as having a long term objective to "pay its faculty at a rate consistent with the three best-paid university faculties in Canada and as an interim measure to pay the median of the major research intensive universities" had an increase of only 0.5% for 09/10, with implementation delayed by 6 months until June 2010 as a cost saving measure (see page 76, para. 117 of the University's Arbitration Brief).

23. At page 14 of its Brief the Association includes salary information for the University of Toronto and nine of the other G13 research intensive universities for 07/08. The University's salary data for these institutions at pages 42 to 51 of the University's Brief is more recent for 08/09.

24. At pages 17 and 18 of its Arbitration Brief the Association suggests that the economic recession from September 2008 onward has "by all accounts, been milder in Canada than in the U.S. and many other countries" and suggests that in Ontario the impact "was highly concentrated" in certain sectors of the economy and somehow had little effect on broader public sector employees and university employees. For the reasons set out in the University's Arbitration Brief the University does not agree with the rosy picture of the post-September 2008 landscape in Ontario generally, in the broader public sector or the university sector. Information from BMO Capital Markets Economics and RBC Economics Research indicates the following with respect to the recession through calendar 2009:

(a) Real GDP Growth Ontario (Percentage Change)

BMO - 2007 2.3; 2008 -0.5; 2009 -3.5

RBC - 2008 -0.05; 2009 -3.2

(b) Employment Growth (Percentage Change)

BMO – 2007 1.6; 2008 1.4; 2009 -0.24

RBC – 2008 1.4; 2009 -2.4

(c) Unemployment Rate (Percent)

BMO – 2007 6.4; 2008 6.5; 2009 9.0

RBC – 2008 6.5; 2009 9.0

(d) Housing Starts (Thousands)

BMO – 2007 68.0; 2008 75.5; 2009 50.1

RBC – 2008 75.6; 2009 50.1

(e) CPI (Percentage Change)

BMO – 2007 1.8; 2008 2.3; 2009 0.4

RBC – 2008 2.3; 2009 0.4

25. On pages 17 and 18 of its Arbitration Brief the Association does not mention any change or improvement in the unemployment rate and in fact both BMO Capital Markets Economics and RBC Economics Research forecast no decrease in the 9% unemployment rate in Ontario in 2010.

26. As recently as its March 24, 2010 Budget the Ontario government, with a record $21.3 billion deficit for the year ending March 31, 2010, and a projected $19.7

billion deficit for the following year, had the following views on the recession and its impact on Ontario:

> Section C: Ontario's Economic Outlook
>
> Overview
>
> Ontario's families and businesses are still feeling the effects of the global, financial and economic crisis. Despite the rebound of 91,700 jobs since May, Ontario employment is still down by 158,000 jobs from the pre-recession level. Over the five year period before the global recession, Ontario employment had increased by almost 490,000 net new jobs. The global economy remains fragile, which is a threat to Ontario's continuing recovery.
>
> ...
>
> Due to the sharp decline in GDP resulting from the global recession, Ontario real GDP is expected to remain below its pre-recession level until the first quarter of 2011. Since employment growth tends to lag real GDP growth, it is expected to take somewhat longer to see the same level of employment as before the global recession.
>
> ...
>
> Ontario was hard hit by the global recession.
>
> Ontario's real GDP posted a larger decline in 2009 than that of Canada or the United States, but not as severe as in many G7 countries... Ontario's real GDP fell more than that of any other province, except Newfoundland and Labrador.
>
> Similarly, employment in Ontario posted a steeper decline in 2009 than in G7 countries, with the exception of the United States (negative 4.3%).

FACULTY COMPENSATION <u>IS NOT</u> A DIMINISHING COST AT THE UNIVERSITY

27. At pages 18 to 20 of the Arbitration Brief is a section that the Association titled "Faculty Compensation as a Diminishing Cost at the University". Any notion that

faculty compensation at the University is a diminishing cost to the University is simply wrong and inconsistent even with the information that the Association provides in the table on page 19. That information shows consistent and significant increases in faculty total compensation cost and faculty salary cost for the period of time indicated in the table (an <u>increase</u> from $274 million to $395 million in total compensation and an <u>increase</u> from $235 million to $315.9 million in total salary).

28. The table provided by the Association on page 19 of its Arbitration Brief does not paint an accurate picture.

(a) The table starts with the budget year 97/98. A review of the faculty total compensation (column B) indicates that there was a very significant decline from approximately $263.8 million to $240.8 million between 99-00 and 00-01. The main reason for this drop was that approximately 180 clinical faculty connected to Sunnybrook were removed from the University payroll. This removed more than $20 million from the faculty total compensation line. If one factors this out, faculty total compensation as a proportion of the University's operating budget from 2000-2001 onward has remained relatively consistent at around, just above, or just below 30%.

(b) Further, faculty compensation as a percentage of the total operating budget has remained relatively consistent in terms of a percentage of the University's total operating budget, notwithstanding factors that have significantly increased within the University's operating budget, including extraordinary increases in utilities, maintenance and operations and student aid.

From 1997/98 to 2008/09 based on the Budget Bluebooks

Utilities increased from 22.9 M to 53.5 M (134%)

Maintenance and operations increased from 36.1 M to 70.2 M (94%)

Student Aid increased from 23.6 M to 139.6 M (492%)

29. Faculty compensation is <u>not</u> "a diminishing cost at the University" and faculty compensation as a proportion of the operating budget has remained a very significant and a relatively consistent percentage of the operating budget even as the operating budget has grown, and grown significantly ahead of inflation or any other factors for certain costs such as utilities, maintenance and operations and student aid.

Salary Increases For Faculty Relative to Increases For a Few Senior Administrative Positions

30. On pages 20 to 22 of its Arbitration Brief the Association has a section on salary increases for some senior administrative positions. There are a number of significant flaws in the Association's approach and methodology with this information including the following:

- The same individuals were not in the positions over the period of time 1996 to 2009 thereby ignoring discipline and related market changes over time with respect to the positions.
- It uses T4 compensation which includes administrative stipends and housing allowances.
- It uses only ATB increases in faculty compensation rather than all increases in faculty compensation which increase faculty salaries including, PTR/Merit.

31. At page 22 of its Brief the Association states that: "If UTFA members could be provided with similar percentage increases ..., retroactively, we would now be quite willing to join the senior administration in a salary freeze for a year or two." The range of total increases over 13 years ranges depending on the position from 97% to 149% with an average of approximately 120%.

32. Below is a summary table for tenure stream faculty who were employed by the University in March 1992 and were still employed by the University in 2008/09. The summary table for tenure stream faculty who were employed in 1992 indicates that average salaries for these tenure stream faculty have increased by more than 117%.

Summary Table for Tenure Stream Faculty who were employed by UofT in March 1992
(includes faculty with Senior Administrative Duties, excludes current PVP)

		91/92		08/09		% Increase	% increase above CPI
	Count	Avg Sal	Avg Age	Avg Sal	Avg Age		Toronto
All	**639**	**$ 73,603**	**43**	**$ 159,826**	**60**	**117.1%**	**77.8%**
Humanities	125	$ 64,914	44	$ 144,419	61	122.5%	83.2%
Social Science	175	$ 76,532	43	$ 168,985	60	120.8%	81.5%
Life Science	169	$ 74,570	42	$ 154,768	59	107.5%	68.2%
Physical Science	170	$ 76,016	42	$ 166,756	59	119.4%	80.1%

CPI	July-91	July-08	% Increase
Toronto	99.5	138.6	39.3%
ATB	100	134	34.0%

note: Faculty groupings as per School of Graduate Studies
CPI was calculated using 1992 as 100% base.
This time period includes the Social Contract years where increases were restricted
excludes those on LTD or other non paid leave

33. Set out below is information related to tenure stream faculty. The first table shows the average salary increase for the 25 faculty with the greatest increases who were employed in 94/95 and continuing to be employed at the University in 08/09. The second table shows the change in average T4 income based on the salary disclosure lists for the 25 people who were on both the 1996 and 2009 lists and received the greatest increase.

Top 25 by % increase in base salary from 94/95 to 08/09

	08/09	94/95	% increase	Min % increase	Max % Increase
Average Salary	$206,695	$64,766	219%	187%	302%

Top 25 by % increase in T4 income from1996 to 2009

	T4 2009	T41996	% increase	Min % increase	Max % Increase
Average T4 Income	$256,434	$109,984	133%	80%	282%

34. With respect to the magnitude of compensation increases for tenure stream faculty summarized above the University acknowledges the Association's willingness "to join the senior administration in a salary freeze for a year or two."

Capital Projects

35. On page 23 of its Arbitration Brief the Association has included information on Capital Projects. Firstly, government funding for capital projects is envelope funding provided for the particular projects in issue and not available for any other purpose. Further, the major projects to which the Association points, being the Rotman School of Management expansion, the Medical Academy Building, and the Robarts Library expansion were all started in 2007 or 2008 and were approved before 2009.

Minimum Dollar Increase

36. On page 24 the Association has a section on minimum dollar increase for "lower end salaries". The University's position is that there should be no ATB increase for July 1, 2009 or July 1, 2010 and accordingly this is not an issue in these proceedings. Further, the University notes that while the Association Brief suggests ATB increases in each of two years based on faculty settlements at

Ontario and Canadian universities of between 3% and 4%, the example it uses in its Brief is based on 4% ATB, with minimum flat dollar increases for an actual total cost of 4.4%.

37. No Dispute Resolution Panel or arbitrator has awarded minimum dollar increases. Further, on the one occasion where the parties jointly agreed to do so as part of a settlement the methodology set the line for minimum dollar increases at a much lower level (25% or lower) than the methodology set out in the Association's Arbitration Brief. The methodology set out in the Association's Arbitration Brief creates a significant additional cost to any ATB increase and creates a situation where some faculty below the median could see salary increases in excess of 7%.

38. On pages 25 and 26 the Association has developed charts setting out the tenth percentile salary vs. the median. The University submits that this is not a meaningful comparison for faculty salary or total compensation purposes. In any event the actual salaries in dollar terms of faculty at the University in the tenth percentile vs. the median indicates that the University actual salaries are still high compared to the other universities.

Lower paid faculty relative to median, University of Toronto in the group of 10 page 26

10th percentile salary vs median - All Ranks

	10th percentile as % of median	Rank	2008-09 Tenure Strm Salaries $ Average	Rank	10th percentile salary	Rank
Dalhousie	75%	4	$102,383	10	$76,787.25	9
McMaster	63%	10	$119,066	4	$75,011.58	10
Ottawa	75%	3	$105,357	9	$79,017.75	8
Queen's	76%	2	$118,598	5	$90,134.48	3
Toronto	**67%**	**9**	**$136,313**	**1**	$91,329.71	**2**
Waterloo	68%	8	$119,688	2	$81,387.84	7
Western	72%	6	$115,789	8	$83,368.08	5
Alberta	71%	7	$115,837	7	$82,244.27	6
Calgary	74%	5	$117,182	6	$86,714.68	4
UBC	80%	1	$119,287	3	$95,429.60	1

10th percentile salary vs median - Assistant Profs

	10th percentile as % of median	Rank	2008-09 Tenure Strm Salaries $ Average	Rank	10th percentile salary	Rank
Dalhousie	83%	2	$81,176	10	$67,376.08	9
McMaster	77%	7	$94,713	4	$72,929.01	4
Ottawa	83%	3	$84,334	9	$69,997.22	8
Queen's	81%	5	$102,576	2	$83,086.56	1
Toronto	**75%**	**9**	**$105,553**	**1**	$79,164.75	**3**
Waterloo	77%	8	$93,310	5	$71,848.70	6
Western	80%	6	$89,364	6	$71,491.20	7
Alberta	74%	10	$85,454	8	$63,235.96	10
Calgary	81%	4	$89,229	7	$72,275.49	5
UBC	83%	1	$97,568	3	$80,981.44	2

Associate Professor Salaries

39. On pages 27 and 28 of its Arbitration Brief the Association has proposals concerning salary scale. The first proposal is that: "each Associate Professor's salary shall exceed each Assistant Professor's salary, within the same unit." This proposal is an inappropriate and indirect attempt to establish a minimum salary for Associate Professors by unit rather than the existing longstanding structure that minimum salaries for all ranks, including Associate Professor, are by rank irrespective of unit. On this basis alone it should be rejected. Further, such an approach ignores market conditions and changes in hiring salaries over time and the reasons why a particular Associate Professor may have a lower salary relative to the salary of other Associate Professors or Assistant Professors.

Librarian Salary Floor Working Group

40. The Association proposes a librarian salary floor working group and on page 28 provides a table of librarian salaries, the source for which is identified as "CAUT Report for 2007-08, Data From Statistics Canada."

41. It is the University's understanding that Canadian universities do not collect or provide librarian salary data to Statistics Canada – certainly the University of Toronto does not and so the University does not understand how the source of the data could be "from Statistics Canada". The University's information at pages 57 and 58 of its Arbitration Brief is more recent, for 2008-2009, and indicates that the University librarians have the highest average salaries of librarians at the G13 universities.

42. The Association's table on page 28 leaves the mistaken impression that across all G13 university libraries, level 1, level 2, level 3 and level 4 for each of the libraries are comparable, when it is evident that they are not. For example, level 3 for the University of Alberta indicates an average salary of $125, 708 and Alberta has no level 4. The same is true for Calgary. It is unlikely that level 3 librarians at other universities are the same in terms of duties, level of responsibility and the like as level 3 (the top level) at Alberta and Calgary. Further, the significant majority of librarians at the University of Toronto, 111 of 143 librarians, make up the permanent librarian ranks and are at levels 3 and 4 at the University of Toronto.

43. Also, one cannot tell from the data provided by the Association how many individuals at the other universities are at the identified level. Without knowing the number of people in each category it is difficult to determine if these data are statistically significant. This is in contrast to the information provided by the University on page 57 of its Brief where one can see that the number of librarians for each of the universities.

PTR/MERIT

44. In its Arbitration Brief the Association proposes an increase in the PTR compensation pool funds from the current pool equivalent to approximately 1.9% to 3%. For the first year of the settlement this would represent an additional compensation increase of approximately 1.1% or more than $4 million. However,

the effect of an increase of this nature to the PTR scheme has a significantly more profound effect than that.

45. The Association proposes that the PTR pool be increased by more than 50% from 1.9% to 3% of faculty and librarian salaries. PTR is new base money added to faculty and librarian salaries each year. While the amount each individual receives is based on merit, the total PTR dollars delivered each year is based on a funding formula per member, as discussed in the University's Arbitration Brief. The Association's proposal would in year 1 increase PTR from approximately \$6.4 million to \$10.3 million. This additional \$3.9 million would be added each and every year. That is, it would be 1.1% of the salary base the first year; 1.1% + 1.1% = 2.2% the second year; 1.1% + 1.1% + 1.1% = 3.3% the third year; 1.1% + 1.1% + 1.1% + 1.1% = 4.4% the fourth year; 1.1% + 1.1% + 1.1% + 1.1% + 1.1% = 5.5% the 5th year and so on. The cumulative impact over five years increases the amount spent on compensation by more than \$19 million for the entire faculty and librarian PTR scheme.

Entire Faculty and Librarian PTR program
The following chart illustrates the effect of the UTFA PTR proposals on all faculty, librarians and teaching stream PTR over a five year period, and is based on the current PTR cost with no modeling of retirements or replacement salaries.

Salary Base of faculty and librarians, excluding teaching stipends – 2008/09

Year		Current PTR Cost	UTFA Cost of Proposed PTR
2009		$ 6,437,000	10,271,000
2010		$ 6,437,000	10,271,000
2011		$ 6,437,000	10,271,000
2012		$ 6,437,000	10,271,000
2013		$ 6,437,000	10,271,000
	Total	$ 32,185,000	51,355,000
Cummulative Difference over 5 years			19,170,000

Note: PTR is new base money added each year

46. The following charts illustrate (i) the effect the Association's PTR proposal will have on the salary model for a Professor currently at a salary of $130,000 and age 45 – the chart does not include any ATB increases; and (ii) the impact of the current and the Association proposed PTR values on salary.

Impact of Proposed Change to the PTR Pool to increase the pool funds from approximately 2% to 3%

Faculty Member:
Age 45
Current Salary $ 130,000

	Current PTR Scheme			Proposed Increase to PTR pool funds from 2% to 3%		
	Breakpoint		$136,650	Breakpoint		$136,650
	Below BkPt Increment		$ 2,990	Below BkPt Increment		$ 4,485
	Above BkPt Increment		$ 1,695	Above BkPt Increment		$ 2,543
Age	June Current Salary	July 1 PTR	July Final Salary	June Proposed Salary	July 1 PTR	July Final Salary
45	$ 130,000	$ 2,990	$ 132,990	$ 130,000	$ 4,485	$ 134,485
46	$ 132,990	$ 2,990	$ 135,980	$ 134,485	$ 4,485	$ 138,970
47	$ 135,980	$ 2,990	$ 138,970	$ 138,970	$ 2,543	$ 141,513
48	$ 138,970	$ 1,695	$ 140,665	$ 141,513	$ 2,543	$ 144,055
49	$ 140,665	$ 1,695	$ 142,360	$ 144,055	$ 2,543	$ 146,598
50	$ 142,360	$ 1,695	$ 144,055	$ 146,598	$ 2,543	$ 149,140
51	$ 144,055	$ 1,695	$ 145,750	$ 149,140	$ 2,543	$ 151,683
52	$ 145,750	$ 1,695	$ 147,445	$ 151,683	$ 2,543	$ 154,225
53	$ 147,445	$ 1,695	$ 149,140	$ 154,225	$ 2,543	$ 156,768
54	$ 149,140	$ 1,695	$ 150,835	$ 156,768	$ 2,543	$ 159,310
55	$ 150,835	$ 1,695	$ 152,530	$ 159,310	$ 2,543	$ 161,853
56	$ 152,530	$ 1,695	$ 154,225	$ 161,853	$ 2,543	$ 164,395
57	$ 154,225	$ 1,695	$ 155,920	$ 164,395	$ 2,543	$ 166,938
58	$ 155,920	$ 1,695	$ 157,615	$ 166,938	$ 2,543	$ 169,480
59	$ 157,615	$ 1,695	$ 159,310	$ 169,480	$ 2,543	$ 172,023
60	$ 159,310	$ 1,695	$ 161,005	$ 172,023	$ 2,543	$ 174,565
61	$ 161,005	$ 1,695	$ 162,700	$ 174,565	$ 2,543	$ 177,108
62	$ 162,700	$ 1,695	$ 164,395	$ 177,108	$ 2,543	$ 179,650
63	$ 164,395	$ 1,695	$ 166,090	$ 179,650	$ 2,543	$ 182,193
64	$ 166,090	$ 1,695	$ 167,785	$ 182,193	$ 2,543	$ 184,735
65	$ 167,785	$ 1,695	$ 169,480	$ 184,735	$ 2,543	$ 187,278
66	$ 169,480	$ 1,695	$ 171,175	$ 187,278	$ 2,543	$ 189,820
67	$ 171,175	$ 1,695	$ 172,870	$ 189,820	$ 2,543	$ 192,363
68	$ 172,870	$ 1,695	$ 174,565	$ 192,363	$ 2,543	$ 194,905
69	$ 174,565	$ 1,695	$ 176,260	$ 194,905	$ 2,543	$ 197,448
70	$ 176,260	$ 1,695	$ 177,955	$ 197,448	$ 2,543	$ 199,990

Total Earnings over Period	$ 4,072,070.00		$ 4,371,485.00
		Difference	$ 299,415.00

Notes: Average PTR awarded, less the 5% special pool

Impact of Current and UTFA Proposed PTR values on Salary

47. At the bottom of page 29 of its Brief the Association has a chart purporting to show PTR as a percentage of salary. The percentages provided by the Association are not total PTR as a percentage of salary but appear to reflect only tenure stream faculty as a percentage of salary. PTR/Merit is in fact provided to tenure stream faculty, teaching stream faculty, and librarians and the accurate percentages of PTR/Merit as a percentage of salary are as follows:

Increase Data	**Actual Percentage**	**Percentage Tenure Stream Faculty Only**
01/07/2009	1.88%	1.72%
01/07/2008	1.91%	1.75%
01/07/2007	1.98%	1.87%

48. The University does not agree with the Association's description of the "original" PTR/Merit model having "an inflation-corrected relationship of 2.73:1 between starting salary and salary at retirement." The University submits that:

- The starting salaries at the University of Toronto are much higher than any 1972 model ever anticipated due to the demands of the marketplace.
- PTR has become a method or formula to calculate the pool of funds available for merit distribution.
- The "PTR scheme" is not an immutable formula but has been amended from time to time for example:
  a) Five percent pool was created for distribution by the Deans on the basis of merit;
  b) Two $2,500 increases in the breakpoints have been made.

49. The position of the University in collective bargaining has been that a single pool of funds is available for compensation increases whether across-the-board or merit, and its magnitude is necessarily informed by the economic climate and fiscal constraints.

50. The University believes that this approach is consistent both with its obligation to manage the University's affairs in a responsible way and the founding principles of the PTR scheme as introduced to the University in 1973. In an extract from the Budget Committee's Recommendations to Governing Council for the 1973/74 estimates, which recommended the acceptance of a scheme to provide for a merit component of salary (**Tab 5** of University Reply Brief), the following statement was made:

> In the event that funds available are insufficient to permit award of merit increases as proposed, we envisage reductions in salary scale as being necessary.

51. The thrust of the University's position in bargaining has been to give precedent to the PTR scheme over across-the-board increases.

52. On page 30 the Association asserts that the University's PTR system is behind systems in place at other universities and provides tables and charts in support of this assertion. First of all, no source is provided for the data contained in the tables and charts at page 30 and the University is unable to assess the information and the data against usual and generally available data such as G13 university data or Statistics Canada data. Further, it does not appear that the tables and charts relate to anything that is real or the actual situation at any other university. It appears to be an entirely theoretical exercise of applying the PTR scheme at one institution against the salary cohort at another institution (without regard for differences in the demographics of particular faculty groups). It is entirely artificial and of no assistance whatsoever. Further, the fact is that the existing PTR/Merit scheme at the University has been a significant factor helping to contribute to the fact that salaries for faculty and librarians at the University are among the highest in Ontario and Canada.

DECANAL PTR POOL AND ANOMALY AND MARKET ADJUSTMENTS

53. On page 31 in connection with proposals to eliminate the longstanding decanal 5% PTR pool previously agreed to by the Association, and to establish capped funds for anomaly and market adjustments, the Association alleges a "heavy reliance on unilaterally-determined anomaly and market adjustments" by the University. Anomaly and market adjustments in the past five years have never been more than 0.5% of total salaries and have been as low as 0.21% of salaries and reflect a significant downward trend. For 2008-09, 45 faculty received anomaly market adjustments representing merely 0.22% and data for 2009-10 indicates that only 29 faculty received anomaly/market adjustments representing only approximately 0.08%.

54. Further, with respect to the chart on page 33 of the Association's Brief the Association is well aware that in the late 1990's and early 2000's unusually large anomaly/market adjustments were a result of negotiated agreements between the University and the Association to adjust the salaries of female faculty as well as some large discipline based adjustments. The fact is that not only does the administration not have a "heavy reliance on unilaterally determined anomaly and market adjustments", such adjustments are a small component of the total salaries and there is no need for any change or adjustment to the decanal 5% PTR pool or the existing anomaly and market adjustments.

PER COURSE STIPEND AND OVERLOAD RATE

55. For the reasons set out in the University's Arbitration Brief it is the University's position that there should be no across-the-board adjustments including increases to stipend or overload rates.

PENSIONS

III REPLY TO PENSION ARGUMENT

PROPOSALS – PENSION BENEFIT
UTFA Proposal
All pensioners to receive a pension augmentation of 0.3%, retroactive to July 1, 2009, and a pension augmentation of 0.325% on July 1, 2010. This represents the full inflation catch-up for the 2009-10 and 2010-11 academic years. Full indexation to be guaranteed for future years for all retirees. This applies to all pensions received from RPP, OISE and SRA. **[5(a]**
Lower Deck (to YMPE $ max) to be raised to 1.75% for all retired and active members for all years of service and the plan to be "harmonized" to the same lower deck level for all plan members. This applies to pensions received under RPP, OISE and SRA. **[5(b)]**
At the time of retirement, individual faculty and librarians to have the option of receiving a lump-sum payment equal to the commuted value of the individual's pension. People who opt to receive the lump-sum payment to be eligible for benefits on the same basis as those receiving a monthly pension. **[5(c)]**
Working group to review the current SRA and to propose possible changes under/or a new and more equitable, sustainable and affordable Supplemental Retirement Plan. **[5(d)]**

Summary of University's Reply

56. The University's position is that there cannot be any pension benefit improvements, including pensioner augmentation, because the Plan has a deficit of $1 billion on a going concern basis. By July 1, 2011, the Plan will also be in a significant solvency deficit position. Benefit improvements of any kind are unaffordable, including the provision of a commuted value option at retirement.

57. The University would be prepared to agree with the creation of a working group for the purpose of discussing with the Association potential solutions to the current SRA issues on the understanding that any solutions must be sustainable in view of the reality of limited resources. The University does not agree to the proposal for a working group to review the current SRA in the context in which it has been proposed by the Association.]

Augmentation

1. Actuarial Gains and Losses – There is no $14M Credit

58. The Association's argument that there is a $14M credit currently available in the Plan to fund augmentation reflects a fundamental misunderstanding of the actuarial assumptions, as explained below.

59. The assumption found in the July 1, 2009 Actuarial Valuation for the Plan relating to indexing is one of 15 actuarial assumptions contained in that report. Gains and losses on actuarial assumptions are common. They do no provide a source of funding and are more than offset by actuarial losses.

60. Most notably, as at July 1, 2009, the 6.5% assumed investment return resulted in an actuarial loss ($612,694,000). The 6.5% assumed investment return, together with the inflation assumption of 2.5%, reflect the 4% real rate of return target for the Plan. It is not appropriate, therefore, to view either the investment return or the inflation assumptions, or the resulting experience, in isolation.

61. For example, in any given year, the 4% real rate of return could be achieved through an actual increase in inflation of 1% and an actual nominal investment return of 5%. In that case, the actuarial valuation would show the following:

- An actuarial gain on the indexation, given the actual inflation of 1% versus the assumed inflation of 2.5%
- An actuarial loss on investment return, given the actual nominal investment return of 5% versus the assumed nominal investment return of 6.5%

62. Alternatively, in any given year, the 4% real rate of return could be achieved through an actual increase in inflation of 3% and an actual nominal investment return of 7%. In that case, the actuarial valuation would show the following:

- An actuarial loss on the indexation, given the actual inflation of 3% versus the assumed inflation of 2.5%.
- An actuarial gain on investment return, given the actual nominal investment return of 7.0% versus the assumed nominal investment return of 6.5%

63. For the pensioners, in both of the above examples, the gains and losses essentially offset each other. In fact, looking at the July 1, 2009 valuation report, the investment return losses far exceeded the gain on the indexing assumption and all other actuarial gains put together.

64. Further, the mortality experience alone in the valuations from July 1, 2003 to July 1, 2009 inclusive resulted in actuarial losses in excess of $25 million, together with an increase in the pensioner liability as a result of updating the mortality tables to provide for the improving longevity of pensioners.

2. Allegations of Mismanagement are Completely Unfounded

65. The Association alleges that the University has failed to administer the Plan properly in a number of respects which have resulted in the current deficit under the Plan. This is untrue.

66. Firstly, rate of return assumptions change over time and the Plan is no different than other pension plans in that regard. The change to the 4% real rate of return was made as of July 1, 1999, and is entirely consistent with proper actuarial practice and other major pension plan, as illustrated in the table below. In fact, all actuarial assumptions change from time to time. This is both expected and proper.

Pension Plan	Date of Valuation	Real Rate of Return Assumption
Ontario Hydro Pension Plan	December 31, 1999 (for plan split)	4.50% per year for 15 years; 3.75% per year thereafter
Ontario Teachers' Pension Plan	December 31, 2001	4.35% per year
Hospitals of Ontario Pension Plan	December 31, 2002	4.25% per year
Ontario Municipal Employees Retirement System	December 31, 1999 December 31, 2001	4.25% per year
Alberta Universities Academic Pension Plan	December 31, 2002	4.00% per year
Ontario Public Service Pension Plan	December 31, 1999	4.00% per year
Ontario Public Service Employees Union Pension Trust	December 31, 1999	4.00% per year

67. Secondly, the Association's table of "cumulative total" missing contributions at page 37 of its Brief is incorrect. There is no cumulative total of missed contributions equalling $1 billion because these contributions were not made. Furthermore, more than 50% of these "cumulative total" contributions represent notional investment accumulation, as if the money had been deposited into the Plan, which it was not.

68. Thirdly, to the extent actuarial surpluses existed in the Plan in the past, the Association shared in these surpluses through benefit improvements, member contribution holidays, and the application of savings achieved through University contribution holidays in various ways that directly affected the faculty and librarians including during the social contract and in the establishment of the Supplemental Retirement Arrangement.

69. Fourthly, there was (and is) nothing improper in the taking of contribution holidays by the University or in the significant surplus sharing enjoyed by the faculty and librarians, further to agreements specifically entered into between the Association and the University. The Association cannot have it both ways – it cannot criticize the University for the fact that the Plan had actuarial surpluses in the past while at the same time taking full advantage of those very actuarial surpluses.

70. Finally, the Association criticizes the Plan's 2008 investment results. However, even with more modest investment losses in 2008, the Plan would have a significant deficit that would make any kind of benefit improvement unacceptable.

71. The key objective underlying the University's funding and investment strategies is to ensure that the existing pension promise for current and retired members is fulfilled. The investment target return of 4.0% and the modest risk tolerance of 10% are in support of that key objective. UTAM has not been given a mandate to attempt to generate higher returns than the target. Rather, UTAM's active asset management is focused on attaining the targeted return with a reduced level of risk. Any increase in investment management fees as compared with a passive management strategy is not expended for the purpose of generating returns over the target, but rather to achieve the target returns within the acceptable risk profile.

3. Augmentation will negatively affect the Plan's future.

72. Augmentation while the Plan has a $1 billion deficit is not appropriate. It will further increase the liabilities of the Plan at a time when, not only does the Plan have a very significant going concern deficit, a significant solvency deficit is looming that will require additional special payments, absent regulatory relief, commencing in 2011. This is not a circumstance in which augmentation of pensioners' benefits can or should be provided.

73. Further, augmentation would be contrary to the University's funding policy, adopted in 2004, and amended in 2007, which states:

> Over the past years, **augmentation has essentially represented a distribution of surplus**. In the absence of a pension surplus, provision of further augmentation is very uncertain. However any augmentations that might be provided in future would have to be funded, either by contributions to the plan or from any future pension surpluses. **The latter strategy [ie. funding from surpluses] makes the most sense given the rationale for making augmentations**.

74. The Business Board strategy is to:

> Make provision for funding any future augmentations that might occur by setting aside the corresponding amount **from pension surpluses existing at the time.**

75. The above strategy is consistent with best practices for good pension governance and reflective of the current funding environment for defined benefit plans generally.

76. It is also consistent with the direction given by the Province of Ontario in the 2010 Budget that future benefits like inflation protection (this would include not only augmentation but also the indexing provisions of the Plan) is to be linked to plan performance.

4. Maintaining a Balance between the Interests of Active Members and Pensioners

77. A related issue is the need to balance the interests of active members (who are currently contributing to the Plan) and pensioners (who are no longer contributing to the Plan). This is not a situation where pensioners have been disadvantaged relative to active members and/or a "catch up" requirement exists. On the contrary:

- Each time augmentation has been provided over and above indexing in the Plan, it has been provided at no cost to the pensioners. Their contributions as active Plan members were based on the current 75% of CPI inflation protection and, for pre July 1, 1992 pensioners, inflation protection equal to 60% of CPI.

- When inflation protection was increased from 60% to 75% of CPI in 1992, this was extended to existing pensioners at no cost (the contribution rate for active members was at that time increased to reflect the higher level of inflation protection).

- Effective July 1, 2002, the pension benefits for pensioners who retired prior to July 1, 1996, were increased by retroactively increasing the accrual rate used to calculate their pension on salary up to the CPP maximum salary from 1.0% to 1.3%. This improved formula increased the Plan's liabilities (based on pensioners across all staff groups) by $49 million.

78. Active member contributions pay part of the cost of Plan. Those contributions are based on a partially-indexed pension, not a fully indexed pension. Providing augmentations after retirement is changing the cost structure of the Plan. There is no way of going back to pensioners/beneficiaries to collect the contributions that they should have made to a plan indexed at 100% of CPI, instead of at 75%.

79. The pensioners' liabilities are very significant within the Plan. As of July 1, 2009, the liability for pensioners and beneficiaries under the Plan (all staff groups) is approximately $1.4 billion, representing approximately half of the Plan's liabilities.

80. With the Plan now in a significant deficit, augmentation is a retroactive improvement that has to be borne by the active members of the Plan. This is not a risk that should be assumed by the University or the Plan members in the context of the current $1 billion deficit and a looming solvency deficiency.

Increase to the Lower Deck Component of the Pension Benefit Formula

81. For the reasons set out above with respect to augmentation, and specifically in light of the $1 billion deficit in the Plan, there can be no increase to the lower deck component of the formula under the Plan at this time. It will increase the liabilities of the Plan by $112 million(for active and retired members) and is completely inappropriate in the circumstances.

Commuted Value at Normal Retirement Date

82. 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. As well, this is not a cost-free option and if there were expanded use of the commuted value option, there would be significant costs to the Pension Plan for the following reasons:

- An actuarial loss now results from members who elected commuted values on early retirement. Under the actuarial valuation, liabilities for pensions in payment are discounted based on a 4% real rate of return, (this rate of return reflects the equity risk premium). However, commuted value payments are currently based on real rates of return of less than 2.0% (these are prescribed rates of return, which do not reflect any equity risk premium). For an individual retiring with a liability under the valuation of $900,000, the commuted value payment would be $1,080,000 resulting in a $180,000 loss to the Pension Plan for that one individual.

- If the commuted value option was extended under the Pension Plan to normal or postponed retirements, there would have to be some recognition of the cost of this provision in the actuarial valuation of the Pension Plan. If the actuarial valuation reflected that 5 out of 100 Faculty/Librarian retirements elected the commuted value, the accrued liability would increase by approximately $10 million and the current service cost would increase by approximately $650,000 or 0.2% of the participant salary base for Faculty and Librarians. If the election rate was 10%, the increase in accrued liability would be approximately $20 million and the increase in current service cost would be approximately $1.3 million or 0.4% of the participant salary base.

- Allowing commuted value transfers on retirement also exposes the Pension Plan to anti-selection risk by retiring members (i.e., members in poorer health are more likely to elect a commuted value transfer, leaving the Pension Plan with retirees having higher expected longevity). This becomes more and more of a risk with later retirements resulting from the elimination of mandatory retirement.

- In an indexed plan such as the University of Toronto Pension Plan, the commuted value includes the value of the 75% of CPI indexation. The commuted value is in effect providing the value of indexation to the member in one lump sum up-front, whereas indexation is in place to protect the pension's buying power over the long term.

- The Plan is a defined benefit plan. Allowing a commuted value transfer on normal or postponed retirement essentially converts the Plan to a defined contribution plan at retirement for those members who elect the commuted value. This is not consistent with the pension philosophy of the University or the terms of the Plan. Nor is it required by minimum pension standards legislation.

- With a pension plan as rich as the University of Toronto Pension Plan, the commuted values are often in excess of the maximum amounts that can be transferred on a tax-sheltered basis to a registered retirement vehicle (currently the commuted values are well in excess of the maximum transfer values) resulting in a significant portion of the commuted value being taxed immediately.

83. For all of these reasons, the Plan does not permit a member from taking the commuted value at the normal retirement date (age 65). A Plan member is also not permitted to "resign" at age 65 and take the commuted value option.

BENEFITS

84. In the health, dental and disability benefits portion of its Arbitration Brief the Association selectively compares some aspects of the benefit packages at other universities with the University of Toronto.

85. From a replication model and total compensation perspective the benefits for faculty and librarians and retired faculty and librarians at the University of Toronto are unique and distinguishable from the benefits package at any of the universities referred to by the Association in its Brief. In particular, the University of Toronto is unique in that current benefits apply equally to active and retired faculty and librarians, with no additional cost or diminution in benefit levels for retired faculty members. As set out in the University's Arbitration Brief there is a very significant unfunded liability component related to retiree benefits. As of April 30, 2009 it was approximately $282 million. It is growing and will continue to grow.

86. In a collective bargaining environment where, for some time now most, if not all, employers are trying to avoid creating new retiree benefits, expanding retiree benefits, or trying to negotiate ways to limit or reduce the ever increasing cost and liability associated with retiree benefits, the Association has and continues to insist that actives and retirees have the same level of benefits available at the same cost to retirees as actives. In the replication model of collective bargaining the University would not in this economic climate agree to benefit improvements, and certainly would not agree to the type of benefit improvements proposed by the Association.

87. Further, the Association's benefit proposals appear to be disconnected from or made without regard for total compensation and is presented as a form of wish list or laundry list of benefit improvements. The University's position is that there should be no benefit improvements for the period of time covered by this arbitration award and that is its position in respect of each and every one of the Association's benefit proposals and the University has not commented in this Reply Brief on each of the benefit proposals. Some brief comments on some of the proposals are in order.

100% Premiums

88. With respect to the Association's assertion that most "comparator institutions" "pay 100% of the insurance premiums for extended health care, dental care and hospital accommodation", none of those universities make the full range of those benefits which are available to active employees available to retirees at the same cost to retirees as actives. Further, the total compensation cost of this proposal alone is approximately $4.6 million or approximately 1.15%, which does not take into account the inevitable increase to the unfunded liability cost.

Carry Forwards

89. With respect to the Association's proposal for carry forwards of coverage maximums the University is not aware of any other university that has such a

provision in its benefit plans and indeed is not aware that it is normative practice in the benefit plans of any employer.

Prescription Drugs

90. In the 1990's a Synopsis of Benefit Plans was provided to faculty and librarians. The cover page of that document included the following:

> This represents a summary of benefits only. In all cases, the plan document, policy, or legislation, as applicable will govern the terms and conditions of the benefit plans. If you have any questions about the extent of coverage, please call the Human Resources Department.
>
> (See Tab 17 of UTFA Document Book)

91. In the late 1990's the Synopsis of Benefit Plans was amended to read "most prescription drugs" and continued to have the note that this represents a summary of benefits only (see Tab 18 of UTFA Documents Book). This was done to provide accurate information to plan members that reflected the actual provisions of the drug formulary which was in effect prior to 1998 with Liberty Health, and previously with Blue Cross. This drug formulary was referenced in the official plan document which existed with both plan administrators. The University has never had a drug plan which – without any conditions – covered all drugs which require a prescription.

92. In August of 1998, the University administration, the Faculty Association and the Staff Association participated in a joint study - <u>Evaluation of Group Health and Dental Benefits</u> – conducted by external consultants Johnson Inc. As part of that study, Johnson Inc reported that

> The current prescription drug benefit allows for drugs which legally require a prescription (Blue Cross Formulary 1) and are reimbursed at 100%.

93. As part of that study, Liberty Health provided information regarding the three drug formularies available to plan sponsors, which were carried forward from the

former Blue Cross. These formularies were shared as part of the benefit review. After the 1997 negotiations which saw the removal of over-the-counter medications, the University was using Liberty's Formulary One. Their summary states:

> Formulary One: "prescription -only drugs"
>
> Formulary One provides coverage for most drugs which legally require a written prescription plus Insulin and related diabetic supplies. Other drugs which may be purchased over-the-counter at a pharmacy, even if prescribed by a physician, are not eligible for reimbursement under this plan.

94. Subsequently, after dialogue with the Faculty Association, the University agreed to add back a category know as "life-sustaining over-the-counter" medications. Specifically, the University moved the drug plan to Liberty's Formulary Three, which states:

> Formulary Three: "life sustaining OTC's"
>
> Formulary Three introduces an element of cost containment by eliminating coverage for prescribed over-the-counter medications, with the exception of those OTC's which are considered to be life-sustaining such as drugs used in the treatment of heart disease, Parkinson's disease, Cystic Fibrosis, and Tuberculosis. Many employers believe that it is important to provide this level of coverage for their employees and, in fact, Formulary Three is our most popular drug plan.
>
> Prescribed OTC medications such as antihistamines and muscle relaxants which the employee can pick up off the pharmacy shelf are not covered under Formulary Three.

95. In a Q&A provided with this document on Liberty's Drug Plans, they also stated:

> Question # 4) Comment on your formularies – are they standard compared with other companies?
>
> Answer # 4) More or less, however note that the LH formularies are based on LH's specific criteria.

> Question #5) How often do the formularies change/get updated?
> Answer #5) As often as daily, it depends on the launching of new drugs on the Market

96. All insurers/benefit plan administrators provide their own formularies which – as noted above – are more or less the same. However, each develops their own criteria for the review of and addition or removal of drugs on the formulary. In addition, drugs on the formulary sometimes require special approval, or additional medical information to ensure that the drug is being prescribed for the indicated use as per the approvals from Health Canada. While a drug may be on the formulary, it may not always be eligible for coverage if prescribed for an 'off-indication' use.

97. The University, in moving to Green Shield (a decision which was reviewed with and supported by both the Faculty Association and the USW) moved the plan to Green Shield's formulary which would have been similar but not identical, and ensured that Green Shield included the 'life-sustaining over-the-counter' medications. The University did not unilaterally change the coverage by removing any specific drugs or move from 'all' to 'most'. As noted above, the change to the term "most' was to reflect the actual Formulary Three previously administered by Liberty Health (see extract from Liberty Health policy agreement dated April 1998 – **Tab 6** of University's Reply Brief).

98. The University has never removed coverage for Viagra. When first introduced in Canada, Liberty advised the University that it would not, as a matter of standard practice, add coverage for Viagra to its formulary, but an employer could decide to add it as an exception. In discussion with the Faculty Association, the University agreed to add it to our plan. Liberty agreed to add it as a conditional drug – that is it required medical evidence to support coverage for a member. The University did agree to a 'usual and customary maximum' of 30 pills / 3 months. There has been no change to that coverage. In the plan rules supplied to the Association, Viagra is listed under the heading "Generally Excluded". This is a category of drugs under Green Shield's administration system that most

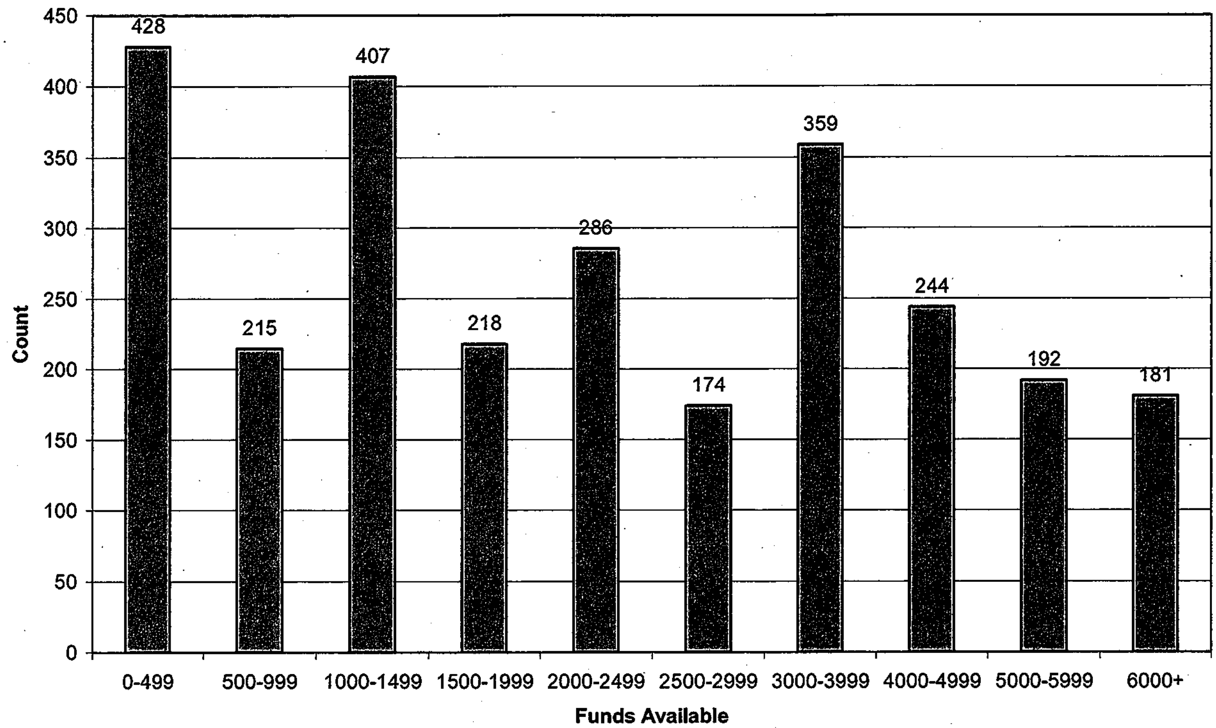
plans do not usually cover i.e.- “generally excluded:". However, beside the list of each ED drug is an “I” which means it is included on our formulary. The University continues to provide coverage where medically necessary for this drug, at the same level as before.

PER Allowance

99. There is currently $7.47 million accumulated, unused, in PER accounts. Approximately 56% of the total amount granted under the PER program has been spent since its inception in 1999. The table below shows that approximately 76% of eligible faculty members and librarians have PER expense accounts with balances greater than $1,000, over 53% of faculty members and librarians have PER expense accounts with balances greater than $2000 and over 36% of faculty members and librarians have PER expense accounts with balances greater than $3,000.

Budget Available	Count	Percentage	Cumulative Percentage
0-499	428	15.8%	100.0%
500-999	215	8.0%	84.2%
1000-1499	407	15.1%	76.2%
1500-1999	218	8.1%	61.2%
2000-2499	286	10.6%	53.1%
2500-2999	174	6.4%	42.5%
3000-3999	359	13.3%	36.1%
4000-4999	244	9.0%	22.8%
5000-5999	192	7.1%	13.8%
6000+	181	6.7%	6.7%
Grand Total	2704	100.0%	

Count of Current UTFA members PER Fund Amounts Available as of May 2009



100. Professional expense reimbursement ("PER") was first introduced at the University in 1999 at $250 per year, and the amount of the annual allowance has been increased over the years to $1,250 for 100% FTE. The PER benefit enables UTFA members to claim reimbursement for professional memberships, books, journal subscriptions, materials, equipment, conference fees, travel, computer hardware and software and other expenses related to their scholarship. The allowance is granted annually and is allowed to accumulate indefinitely.

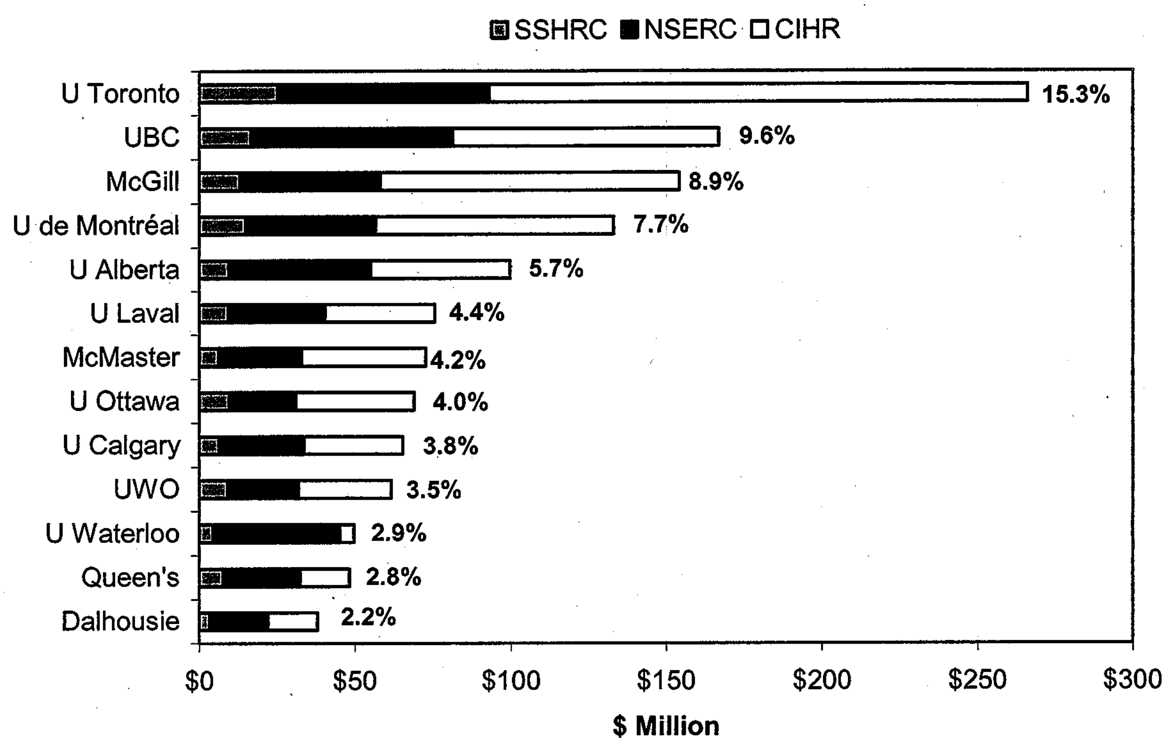
101. Full time and part-time faculty and librarians participate in the PER program. Part-time employees who have greater than or equal to 50% but less than 100% of a full-time workload receive 80% of the annual PER allowance ($1000) and part-time employees who have greater than 25% but less than 50% of a full-time workload receive 50% of the annual allowance ($625).

102. A professional expense reimbursement is more beneficial at universities that are less research-intensive than the University of Toronto. Faculty members at the University have access to a range of resources that support their scholarship and teaching activity.

103. Faculty members have an excellent track record in attracting funds from external sources. The three federal granting councils – the Social Sciences and Humanities Research Council, the Natural Sciences and Engineering Research Council and the Canadian Institutes for Health Research – are the major source of peer-reviewed funding in Canada. The University leads all universities in total funding from each of the councils (see charts below from the Office of the Vice-President, Research and Associate Provost's Annual Report 2009 and the Market Share Analysis 2008). The University also leads all Ontario universities in research infrastructure funding under Ontario government programs, receives the greatest amount of funding under the Canada Foundation for Innovation program (a federal infrastructure support program) and has the greatest number of Canada Research Chairs.

104. Further, faculty members and librarians who are unsuccessful in research grant competitions can apply to the University's Research Board to have a portion of their salary converted into a research grant from which they can deduct professional and research expenses.

Federal Granting Council Funding to G13
2008-09

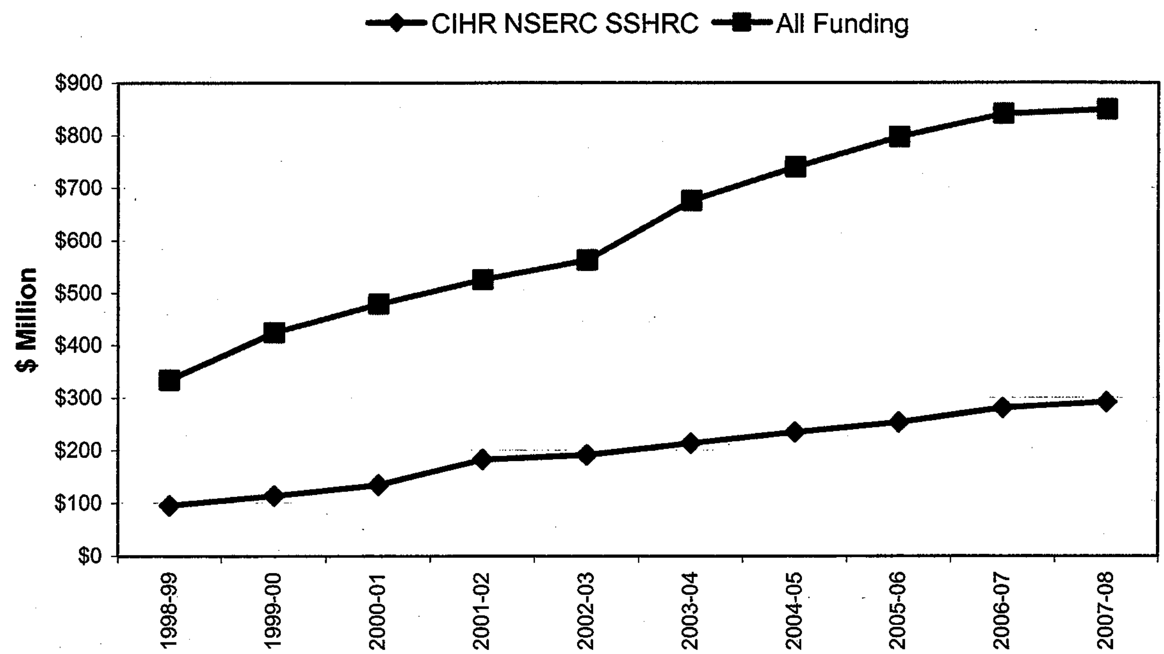


Excludes Networks of Centres of Excellence, Canada Research Chairs, Indirect Costs and funding for the Canadian Light Source and Canadian Microelectronic Corporation.

Affiliates and partner hospitals counted with each university.
Percentage of total for all Canadian colleges and universities is shown for each.

Sources: Councils' statistical tables.

Research Funds Awarded 1998-99 to 2007-08
U of T Including Partner Hospitals



Funding includes indirect costs of research when provided by external sponsors.
CIHR NSERC SSHRC includes funding for Canada Research Chairs but not from the Indirect Costs Program (included in All Funding)

105. The University also supports faculty members through a number of its own funding programs. For example:

- It has become common practice for Deans and Department chairs to provide start-up funding packages to newly hired faculty members. For example, newly hired faculty members at OISE/UT are reimbursed for any travel and relocation expenses and are given a new computer. Other Divisions and Departments have similar support programs.

- The University provides a $10,000 annual research allowance to all on-campus faculty (outside of Medicine) who occupy a Canada Research Chair.

Approximately 120 members of the University's faculty are in receipt of this annual allowance.

CHILD CARE

106. This was a new breakthrough benefit in the last round of negotiations and there should be no change to it.

DEPENDANT SCHOLARSHIP PROGRAM

107. Current scholarship provides 1/2 value of the arts and science general tuition fee as a scholarship to an eligible dependent who has at least 80% in their best six college/university level grade 12 courses, and who is studying full-time for a first undergraduate degree at any recognized degree-granting educational institution in the world and Ontario community colleges or OCAD.

108. In the summer of 2009, CRA changed their view of dependant waiver programs, and confirmed that dependant waiver programs are no longer taxable benefits to the employee. This is the same treatment previously provided to the dependant scholarship program.

109. The Dependant Scholarship Program should not be modified as proposed by the Association. The Association's submissions in their Arbitration Brief blend and confuse the University's Dependant Scholarship Program in contrast to tuition waiver type programs at other universities. The University's Dependant Scholarship Program is transferrable and can be applied against a dependant child's tuition at virtually any post-secondary institution in Canada, the U.S. or abroad, and including Ontario community college programs and OCAD.

110. In a chart at the bottom of page 62 the Association purports to compare this Dependant Scholarship Program at the University to what it labels as "tuition benefit for dependants" at other institutions and ranks Ottawa, UBC, Ryerson and York number 1 at 100% value of full-time undergraduate tuition fee. However, all of these tuition benefit programs at those universities have no or very limited

transferability and are in fact tuition waiver programs for those universities with very limited, if any, transferability of the benefit to other post-secondary institutions in Canada, the U.S. or abroad. The Association is not comparing apples and apples. The University is not aware of any other Canadian university that provides a 100% scholarship program fully transferable to any post-secondary institution nor should this – which is the effect of the Association's proposal – be awarded by the arbitrator.

RESEARCH AND STUDY LEAVE

111. With respect to research and study leave there is no need to modify this benefit. At 82.5% research and study leave is within an appropriate range with other large research intensive universities. When one considers the average salary at the University of Toronto at 82.5% compared to the higher percentages with lower salaries at the other universities, the University remains competitive.

LIBRARIAN RESEARCH DAYS

112. There is no need to increase the number of research days above the existing ten research days. In 2008-9 less than 20% (24 out of 140) librarians used the full ten research days. There is no need for further increases in these days.

WORKLOAD

113. In its Arbitration Brief the Association has a section titled "Major Difference Between the Workload Proposals". Some of these differences have been addressed by the revisions to the University's workload proposal contained in its Arbitration Brief. With respect to other differences between the University's workload proposal and the Association's workload proposal the University has the following comments:

- The University does not agree with the Association's preamble and in particular does not agree that the intent of the Workload policy is to "reduce excessive workload" or to avoid punitive applications and submits that the University preamble is more appropriate to a collegial university policy.

- The establishment of a workload policy is a significant change and care should be taken to retain flexibility and simplicity which will permit it to evolve over time through interpretation and implementation by the colleagues at the unit level.

- With respect to the principles, the University has agreed to include most of the principles set in the Association's list and those which it has not included (proportionability and enforceability) are addressed through actual provisions in the University Policy. The University does not agree that the detailed articulations of the principles proposed by the Association are appropriate and a necessary development of the principles will occur by their application in the units on a collegial basis over time and in the context of practical application.

- The University does not agree to the Association's formulaic approach described as "proportionality". This approach is inappropriate at the University particularly with respect to the teaching stream which encompasses a large range of diverse duties and job descriptions including writing centre and language centre instruction, course coordination, laboratory instruction as well as and course instruction.

114. The PPAA sets out the duties and responsibilities for teaching stream namely :

> i) a. The ranks of Lecturer and Senior Lecturer are to be held by faculty members whose duties normally consist of teaching students who are in degree programs or the Transitional Year Programme, and related professional and administrative activities. Lecturers may have independent responsibility for designing and teaching

> courses or significant components of courses within their departmental and divisional curricula.

115. The Provosts' PTR instructions already provides for the PTR of teaching stream to appropriately reflect their activities:

> A separate weighting of teaching and service should be made for Teaching Stream staff. A teaching stream faculty member who engages in pedagogical and/or discipline-based scholarship in relation to the field in which s/he teaches shall be evaluated on that activity.

116. The University and the Association are currently engaged in discussions regarding potential changes to the PPAA and the creation of a new appointment category which will address some of the Association's other concerns.

From: Steven Barrett [sbarrett@sgmlaw.com]
Sent: 03/05/2010 08:32 AM EST
To: John Brooks
Cc: Rosa Medhurst
Subject: RE: U of T and UTFA

John, here are our comments on the latest draft

Finally, I confirm our agreement that, with respect to the information sharing issue, " TEPLITSKY REMAINS SEIZED OF THE ISSUES PURSUANT TO AND IN ACCORDANCE WITH THE AUGUST 7, 2007 MEMORANDUM OF AGREEMENT BETWEEN THE PARTIES AND THESE ISSUES CAN BE DEALT WITH PURSUANT TO THAT MEMORANDUM OF AGREEMENT IF NECESSARY, SEPARATE AND APART FROM AN ARBITRATION ON SALARY AND BENEFITS, AND ARTICLE 8 WORKLOAD, UNDER ARTICLE 6 OF THE MEMORANDUM OF AGREEMENT."

Steve, set out below is the University's response on the "Outstanding Issues" as set out in your February 23, 2010 email, responding to my February 7, 2010 email to you, both of which are set out in full below. Using the same format as your February 23, 2010 email the University is prepared to proceed as follows:

From: John Brooks [jeb@hicksmorley.com]
Sent: February 17, 2010 11:53 AM
To: Steven Barrett
Cc: nora.gillespie@utoronto.ca; Rosa Medhurst
Subject: U of T and UTFA

WITHOUT PREJUDICE

Steve, I am following up on and responding to your February 11, 2010 "Outstanding Issues" email and your :

Imbedded in CAPS below in the text of your February 11, 2010 email is the University's response to the outstanding issues raised by UTFA.

9. Finally just to confirm our agreement that Teplitsky's jurisdiction in the arbitration includes the information sharing issue
AS DISCUSSED THE UNIVERSITY ACKNOWLEDGES THAT MR. TEPLITSKY REMAINS SEIZED OF THE ISSUES PURSUANT TO AND IN ACCORDANCE WITH THE AUGUST 7, 2007 MEMORANDUM OF AGREEMENT BETWEEN THE PARTIES AND THESE ISSUES CAN BE DEALT WITH PURSUANT TO THAT MEMORANDUM OF AGREEMENT IF NECESSARY, SEPARATE AND APART FROM AN ARBITRATION ON SALARY AND BENEFITS, AND ARTICLE 8 WORKLOAD, UNDER ARTICLE 6 OF THE MEMORANDUM OF AGREEMENT.

----- Forwarded by John Brooks/hicksmorley on 11/02/2010 02:46 PM -----

From: Steven Barrett <sbarrett@sgmlaw.com>
To: "jeb@hicksmorley.com" <jeb@hicksmorley.com>
Cc: "mteplitsky@teplitskycolson.com" <mteplitsky@teplitskycolson.com>, Jeffrey Sack <jsack@sgmlaw.com>, Cathy Lace <clace@sgmlaw.com>
Date: 11/02/2010 02:40 PM
Subject: Outstanding Issues

John, I thought it would be helpful before our 3 oclock call to set out our response to the document you circulated on Tuesday:

9. Finally just to confirm our agreement that Teplitsky's jurisdiction in the arbitration includes the information sharing issue

Mandatory Membership Discussions (RAND)

MONTREAL, MAY 28, 1998

IN THE MATTER OF AN AGREEMENT

BETWEEN:

THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO
(the University)

- and -

THE UNIVERSITY OF TORONTO FACULTY ASSOCIATION
(the Association)

Regarding the Proposal to
Provide for the Deduction of Dues for
Newly Hired Faculty and Librarians
Effective July 1st, 1998

PRESENT:

Special Designated Panel:
- The Honourable Alan B. Gold, O.C, O.Q., Q.C., LL.D. (Chairman)
- Jeffrey Sack, Q.C.
- Roy L. Heenan

University of Toronto:
- John C. Murray (Counsel)
- Nora A. Gillespie (Counsel)

University of Toronto Faculty Association:
- Allison Hudgins (General Counsel)
- Carol Wolkove (Counsel)
- Evelyn Napier (Counsel)

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REPORT, OPINION AND RECOMMENDATION

1 THE ISSUE

The issue is the proposal by the Association to provide for the deduction of dues for newly hired faculty and librarians, effective July 1st, 1998, according to what it calls a modified Rand Formula, as hereinafter more fully set out.

2 THE FACTS

2.1 On June 16th, 1997, the parties entered into a three-year Agreement which provided, *inter alia*, as follows:

> "Outside of Article 6 salary and benefits negotiations, the parties agree to create a Special Committee of six persons, three appointed by each party, to inquire into, review and report to the University community, UTFA Council and Governing Council on the advisability of amending the Memorandum of Agreement to include a provision making mandatory dues payment to UTFA (or equivalent payment to an agreed upon charity) for new faculty members and librarians. The Special Committee will be appointed by July 15, 1997 and complete its work and reporting by October 31, 1997. The Special Committee shall endeavour to come to a unanimous report. In this event, the parties agree to put the report before UTFA council [sic] and the Governing council [sic] for decision. If the Special Committee report is not unanimous, either party may ask the panel of Judge Gold, Roy Heenan and Jeffrey Sack to convene a hearing and then issue a report including its opinion and recommendations on this issue and the parties agree to place the panel's report in a timely manner before UTFA Council and the Governing Council for decision."

2.2 The Special Joint Committee was duly appointed, met and then reported as follows:

> "The Committee has met on five occasions. Regrettably the Committee was unable to come to a unanimous recommendation regarding the proposal.
>
> The members of the Committee unanimously agreed that it is in the best interests of the University to have a strong faculty association, and that the proposal raises important issues of fairness.
>
> The members appointed by the Association believe that it is unfair that the costs of the benefits provided by the Faculty Association are not shared equally by all those who enjoy these benefits. The Faculty Association's solution to this problem, which it has been advised is legal, is that a policy of mandatory dues check-off (not membership) for new hires be instituted, subject to an ability to object conscientiously and redirect the dues to an appropriate charity, which leaves membership in the Association entirely voluntary. The "opt-out" formula suggested by the administration does not address the problem of the unfairness of having the majority of faculty members and librarians pay for everyone,

including those who benefit from the Association's activities, but do not contribute to its expenses.

The members appointed by the administration believe i) that is not fair to impose mandatory dues on future colleagues while leaving dues payment for current faculty members and librarians voluntary, ii) that this proposal raises legal issues and iii) that it would change the voluntary nature of the Association. As a result they cannot accept the Association's proposal and propose as an alternative an arrangement under which new hires are presumed members of the Association but with the right to opt out.

According to the terms of the Memorandum of Settlement between the Association and the Governing Council reached in June 1997, if the Special Committee report is not unanimous, either party may ask the panel of Judge Gold, Roy Heenan and Jeffrey Sack to convene a hearing and then issue a report including its opinion and recommendations on this issue and the parties agree to place the panel's report in a timely manner before UTFA Council and the Governing Council for decision."

3 THE HEARING

In due course the panel was asked to convene a hearing and to issue a report. The hearing was held in Toronto on Saturday, March 7th, 1998, in the presence of the parties and counsel.

We are grateful to counsel for carefully drawn briefs and thorough and persuasive argument.

4 THE PROPOSALS

4.1 The Association's proposal is drafted in the following terms:

"1. [The] settlement between the University of Toronto administration ("administration") and the University of Toronto Faculty Association ("Faculty Association") [should] include an article that would require new faculty and librarians hired on or after July 1, 1998, as a condition of employment, to grant written authorization to the University for the deduction from salary and remission to the Association of Association membership dues or an amount equivalent to dues, as determined from time to time in accordance with the Constitution of the Association [...]

2. The provision also would include an option, for those new faculty and librarians who as a matter of conscience object to paying dues, to donate his or her dues to the University or a charitable organization recognized in Canada under Part 1 of the *Income Tax Act (Canada)*."

4.2 The Administration's proposal reads as follows:

"The University therefore proposes that the Panel recommend that Article 13 of the Memorandum of Agreement between the Governing Council of the University of Toronto and the University of Toronto Faculty Association be amended by deleting the first paragraph of the present Article 13 and replacing it with the following new provisions:

A. No faculty member or librarian shall be required to join the Association as a condition of employment. However, subject to B below, the University agrees to continue the present practice of deducting Association dues from the salaries of all faculty members and librarians who so elect, and shall forward the dues collected to the Association in accordance with present practice. On or before the tenth day of each month, the University shall deliver to the Association, a list of all persons from whose salaries deductions of Association dues were made during the previous month. On January 1st and July 1st of each year, the University shall also provide the Association with a list of all faculty members and librarians.

B. Commencing July 1, 1998, faculty members and librarians shall be required, as a term of employment at the time of hiring, to provide a written authorization (such authorizations to be subject to provisions 1 and 2 below) to deduct from his or her salary a sum equal to the membership dues in the Association fixed annually in accordance with its constitution and to remit that sum to the Association. The University agrees to deduct dues from the salaries of all such faculty and librarians according to the written authorizations and shall forward the dues collected to the Association. The requirement for written authorization to deduct Association dues from salary will also provide that:

1) the faculty member or librarian, may annually, on or before July 1st, in writing request the University not to deduct dues for a one year period commencing July 1st and ending June 30th of the next academic year; and

2) at the expiration of the one year period, failing a written renewal of a request by the faculty member or librarian that the University not deduct Association dues for a further one year period, the University will commence deducting Association dues from his/her salary and will remit such dues to the Association."

5 REPORT, OPINION AND RECOMMENDATION

For the reasons that appear in the opinions attached hereto to form part thereof, we are of the opinion, Mr. Roy Heenan dissenting, that the proposal put forth and supported by the Association is fair and appropriate in the circumstances of the case, and we do hereby recommend its adoption.

The Honourable Alan B. Gold, O.C., O.Q., Q.C., LL.D.
Chairman

Jeffrey Sack, Q.C.

Roy L. Heenan (see separate recommendation)

Roy L. Heenan (Dissenting)

MONTREAL, MAY 28, 1998

IN THE MATTER OF AN AGREEMENT

BETWEEN:

THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO
(the University)

- and -

THE UNIVERSITY OF TORONTO FACULTY ASSOCIATION
(the Association)

Regarding the Proposal to Provide for the Deduction of Dues for Newly Hired Faculty and Librarians Effective July 1st, 1998

OPINION AND RECOMMENDATION

of the
Honourable Alan B. Gold, O.C., O.Q., Q.C., LL.D.

The issue, together with the socio-economic, historical, political and legal forces that are at play in this matter have been fully and properly canvassed in the opinions of my learned colleagues. It is unnecessary, therefore, for me to say here what they have already said. Instead, I shall limit my remarks to the brief exegesis which follows, and which, with respect, I believe to be sufficient to decide the issue.

In a society governed by the rule of law, when *valid* views conflict, to seek compromise is not only the proper thing to do, it is the only thing to do. On this we are all agreed. The problem, of course, is the nature and extent of the compromise required to bring about a just solution to the conflict. Here the parties are unable to come together. For the Association, the modified Rand Formula is a fair and reasonable compromise; for the University, the Association's proposal still goes too far.

After the most careful consideration I have come to the conclusion that the proposal put forth by the Association is both a fair and a reasonable compromise in the circumstances. My reasons may be shortly stated.

In a diverse democracy our freedoms must, on occasion, adapt or even yield to embrace a principle or to accommodate a purpose that we have come to hold dear. This is such an occasion, and the Rand Formula, as we know it now, is such a purpose. Fair play requires no less.

The Rand Formula is now part and parcel of the collective bargaining process, having earned, over the years, its *titres de noblesse*. It operates to balance the economic forces at play during collective bargaining.

True, the University is not a commercial or industrial enterprise, factory or shop, and its lecture rooms, its laboratories, and its libraries are not offices or shop floors. On the other hand, the University is an employer, and its faculty and librarians are its employees. This is the inescapable status of the parties. Moreover, the University and the Association have been engaged in bargaining of one form or another for many years. Consequently, the normal tensions and strains that obtain in any employment relationship and particularly in collective bargaining are everpresent here. This fact alone requires, in all justice, the establishment and maintenance of an equilibrium between the economic strengths of the parties, who, though always partners in pursuit of the advancement of learning, may be thrust from time to time, into the unwilling role of adversaries. The modified Rand Formula seeks to achieve such an equilibrium.

No one will deny, of course, that the Rand Formula of today is not quite the formula propounded in 1946, over a half century ago; but that was then, and this is now. Time and experience have made it what it is, and university communities throughout the land, and society in general, have accepted it for what it does and usually does well. Of course, it is not a magic formula, however modified or applied; it is a compromise, a compromise as necessary for the non-certified Association as it is for the certified trade union, perhaps even more.

Today, we recognize that the very concept of liberty is inseparable from the concept of community; and that each of these two concepts is meaningless in the absence of the other. We may say that the power of society extends no further than the common good, but that it does extend so far as to encompass the common good. Initiatives which must be undertaken collectively for the benefit of all usually carry with them an individual levy. Each may dissent freely from the policies of government or other institutions, or, as in the present case, of the University or of the Association; but each is also called upon to bear a reasonable share of the legitimate costs of a democratic decision representing the majority of community members. To do so is not, nor has it ever been regarded, as an unfair or unjustified burden on individual freedom. The common good and overriding public interest can and do define the rights and freedoms of each of us in a free and democratic society. It was no accident therefore -indeed it was inevitable, one might say - that in the *Charter*, section 1 finds its place[1].

While there have always been numerous and diverging views as to the appropriate role, extent and authority which governmental and institutional power may legitimately exercise in a democratic community, even those who would strike the balance in favour of the greatest possible degree of personal liberty and against all but minimal intrusions into the life of the individual, must recognize that some actions require the participation of everyone; and that, in some cases, in order to achieve a valid purpose, the cost and risk of that valid purpose must be spread among all the members of the community.

If authority be needed for the conclusion to which I have come, it may be found in the decision in the Supreme Court of Canada in *Lavigne v. OPSEU*[2] which held that the Rand Formula does not in any way impose an unacceptable or unreasonable burden on freedom of association, freedom of expression, or freedom to dissent.

---

1 *Canadian Charter of Rights and Freedoms*:

> "Section 1:
> The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."

2 [1991] 2 SCR 211. The Supreme Court, in a seven-member panel, were unanimous in their decision that the imposition of an automatic check-off clause was not an unreasonable burden on individual employees, but rather a rational and legitimate means of establishing and enhancing democracy in the workplace. Wilson J. (L'Heureux-Dubé concurring) held that the automatic check-off clause did not violate either freedom of expression under section 2 (b) of the *Canadian Charter of Rights and Freedoms* or freedom of association under section 2 (d). She then went on to add in *obiter* that even had she found a *Charter* violation, the check-off clause would be saved under section 1, since it clearly met all the tests of justification [(i) valid legislative objective; (ii) proportionality (rational connection, minimal impairment, effects)]. Cory J. joined Wilson and L'Heureux-Dubé JJ. in their reasoning on these issues. McLachlin J. concurred in the result arrived at by Wilson J., but drafted her own reasons. For their part, La Forest, Sopinka and Gonthier agreed that there had been no infringement of freedom of expression under section 2 (b). With respect to section 2 (d), they held that while there had been indeed an infringement of the right of freedom of association because the check-off clause forced active dissenters to support the union, the clause was nonetheless saved under section 1 of the *Charter*, since it was a reasonable means of ensuring that unions have the resources necessary to enable them to carry on effective collective bargaining (see especially at 334).

In the result, I am firmly of the opinion that the Faculty Association's proposal is a fair and reasonable accommodation; one moreover which makes no excessive, unreasonable or abusive demands upon the employees who will be affected. It does not threaten or thwart either democracy or academic freedom. Indeed, it can be seen to foster it[3], and it is therefore the appropriate solution to the present dispute between the parties.

I favour and recommend its adoption.

The Honourable Alan B. Gold, O.C., O.Q., Q.C., LL.D.
Chairman

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[3] *Ibid*, per Wilson J. at 272.

IN THE MATTER OF AN AGREEMENT

B E T W E E N:

THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO

(the University)

- and -

THE UNIVERSITY OF TORONTO FACULTY ASSOCIATION

(the Association)

Regarding the Proposal to Provide for the Deduction of Dues for Newly Hired Faculty and Librarians Effective July 1, 1998

OPINION AND RECOMMENDATION OF JEFFREY SACK, Q.C.

The Issue

On June 16, 1997, the parties agreed on all the terms of a Memorandum of Settlement, save for one issue, the Rand formula. As is well known, the Rand formula is an arrangement whereby employees in a bargaining unit are not required to become members of the bargaining agent, but are required to pay dues, ordinarily by way of a deduction from wages, equivalent to membership fees. This formula accommodates concerns over compulsory membership while at the same time solving the problem of so-called "free riders", i.e. employees who receive the benefit of services performed by the Association, such as representation in negotiations and grievance proceedings, but do not share in paying the cost. At present, 65% of the faculty members and librarians at the University of Toronto pay the cost of services that benefit all faculty and librarians.

Background

As matters presently stand, both the payment of dues and membership in the Association are voluntary. Under the terms of the Memorandum of Settlement, the parties agreed to refer the Association's request for a Rand formula to a Special Joint Committee and, if the Committee was not unanimous, to this Panel for a recommendation, which will be placed before the Association's Council and the Governing Council for decision.

In mediation and before the Panel both parties put forward modified positions. The Association proposed a Rand formula, but only for newly hired faculty and librarians, and with a proviso permitting bargaining unit members who object, for reasons of conscience, to direct that the amounts otherwise due in accordance with the Rand formula be paid to a recipient agreed upon by the University and the Association. The Administration proposed a scheme that would allow all faculty and librarians to opt out each year, without restriction to conscientious grounds, and without provision for substitute payment to a charity or other agreed upon recipient.

Positions of the Parties

Before the Panel the Administration acknowledged that the existence of "free riders" is unfair, and that there is no legal impediment to implementation of the Association's proposal. The Special Joint Committee stated that "it is in the best interests of the University to have a strong Faculty Association". This view was expressly adopted before the Panel by the Administration which in its submissions affirmed that it "recognizes the importance to the university community of a strong faculty association."

However, the Administration objected to the Association's proposal on the ground that mandatory payment of the equivalent of Association dues does not allow for the right to dissent, a value especially prized in the university context.

To this, the Association responded that, whatever the situation as it relates to compulsory membership, there is nothing in the mandatory payment of dues for services rendered by the Association which associates an individual faculty member or librarian with the views of the Association or that obstructs the individual faculty member or librarian from freely expressing his or her own views. In support, the Association cites the reasons given by members of the Supreme Court of Canada in the course of delivering its judgment in *Lavigne v. OPSEU,* [1991] 2 S.C.R. 211. In particular, the following passages are cited:

> "Collective bargaining is one means of addressing the concerns of labour relations in a modern industrial society. The importance of the role that the collective bargaining movement has historically played in improving the conditions of workers in this country cannot be denied. It is not unreasonable for the legislature to require those workers who receive the benefits from collective bargaining to contribute towards its cost. ... To bring the discussion down to earth somewhat, I would suggest that a worker like Lavigne would have no chance of succeeding if his objection to his association with the Union was the extent that it addresses itself to the matters, the terms and conditions of employment for members of his bargaining unit, with respect to which he is "naturally" associated with his fellow employees. Few would think he should not be required to pay for the services the Union renders him in this context. ... I agree that, in so far as the Rand formula provides for a mechanism for payment of dues to the Union for collective bargaining, it does not infringe on the freedom of association.
>
> The fact that no restriction is put on the manner in which contributed money is expended leaves the decision as to what is and what is not in the interests of the union and its members in the hands of the union membership. It, therefore, clearly has the effect of promoting democratic unionism. ...

The problem with the opting-out formula is that it could seriously undermine unionism's financial base. It could perhaps even undermine its membership base, since its availability would be an incentive to refrain from becoming a member of a union. If one could opt out, there would be less incentive to become a member, since, presumably, one of the present advantages of membership is that one gets a vote on how one's money will be spent. This would obviously be less attractive if one could unilaterally prevent one's money from being spent on matters of which one disapproves. I would add that the ability to opt out would undermine the spirit of solidarity which is so important to the emotional and symbolic underpinnings of unionism. ... Under an opting-out regime, the criterion under which expenditure decisions will be made may well become the acceptability of proposed expenditure to those likely to exercise the right to opt out, rather than a genuine attempt to identify and pursue what is in the best interests of those represented by the union."

Laforest, J. at pp. 326-338

"The formula permits individual employees to choose not to belong to the union, but stipulates that they must pay union dues, in order to avoid the unfairness of giving non-union employees a "free ride". In essence, while not a member of the union, the person who opts out is required to pay dues on the basis that he or she benefits from the activities of the union on behalf of all employees. ... The Rand formula allows a worker to choose whether or not to be a member of the union, but requires that in any event he or she pay dues. As such, it represents a carefully crafted balance between the interest of the majority in the union and individuals who may not wish to belong to the union.

The whole purpose of the formula is to permit a person who does not wish to associate himself or herself with the union to desist from doing so. The individual does this by declining to become a member of the union. The individual thereby dissociates himself or herself from the activities of the union. Fairness dictates that those who benefit from the union's endeavours must provide funds for the maintenance of the union. But the payment is by the very nature of the formula bereft of any connotation that the payor supports the

> bereft of any connotation that the payor supports the particular purposes to which the money is put. By the analogy with government, the payor is paying by reason of an assumed or imposed obligation arising from this employment, just as a taxpayer pays taxes by reason of an assumed or imposed obligation arising from living in this country. By the analogy of commerce, the payor is simply paying for services and benefits received."

McLachlin, J. at pp. 345-347

> "...The Rand formula has grown in popularity in this country precisely because it is a fair means to achieve that balance without which collective bargaining cannot succeed. Compulsory dues check-off is a means by which to shore up union strength in bargaining relationships plagued by inequality. Its success in Canada has stemmed from the fact that in enhancing union security it does not work to suppress expression but to foster it...Indeed, the Rand formula specifically provides for dissent by stipulating that no member of the bargaining unit is required to join and thereby become a member of the union. Free expression was thus enhanced by giving unionists and non-unionists alike a voice in the administration of the employment relationship. ...
>
> The fact that the appellant is obliged to pay dues pursuant to the agency shop clause in the collective agreement does not inhibit him in any meaningful way from expressing a contrary view as to the merits of the causes supported by the Union. He is free to speak his mind as and when he wishes. Nor does his being governed by the Rand formula have such an effect. It is a built-in feature of the Rand formula that Union activities represent only the expression of the Union as the representative of the majority of employees."

Wilson, J. at pp. 272-281

In fact, no evidence was presented to the Panel that the existence of the Rand formula at any university in Canada has inhibited a faculty member's right or readiness to express dissenting views.

Moreover, the Association submits, the practice at universities in Canada is overwhelmingly consistent with its position. Indeed, the Association points out that, whether certified or not, nearly all faculty associations in Canada have some form of union security provision that at the very least provides for a Rand formula. Of the thirteen major universities included in MacLean's comparator group (apart from McGill where special considerations apply), there is no university, other than the University of Toronto, which does not provide for a Rand formula. In Ontario, the Association notes, the University of Toronto may soon be the only university without a full Rand formula governing all faculty members.

The Association asserts that the costs of providing services to the faculty are substantial and growing and that, with shrinking resources resulting from an imminent bulge in retirements, a situation of financial instability will result such that it will not be feasible for the Association to function effectively without a Rand formula arrangement. As it is, the Association notes, its proposal for a modified Rand formula for newly hired staff only will mean that many years will elapse before all faculty pay the equivalent of Association dues. While noting the agreement of the Administration that it is important that the University have a strong Faculty Association, the Association cites Justice Rand's finding in the *Ford Dispute* that "the argument [against mandatory dues checkoff] is really one for a weak union": *Labour Gazette*, January 1946, p. 128.

The Administration also objects to the Rand formula for newly hired faculty and librarians on the ground that it discriminates between younger and older faculty members and librarians. The Association responds that the current two-tier system of those who pay their fair share and those who do not is inequitable, and that with retirement and attrition the passage of time will lead eventually to a unified system. In any event, the Association submits, it is not open to the Administration to take this position when it objects to removing any such discrimination, if it does exist, by including all faculty and librarians in the Rand formula arrangement. Indeed, the Association points out, the same distinction, between existing and newly hired faculty and librarians, characterizes the Administration's own proposal. The Association reiterated its readiness to expand its proposal to include all faculty and librarians if the Administration would agree. The Administration declined to agree. The Association also notes that the practice of "grandparenting" or exempting existing employees from a change in employment conditions is not unusual, and has been upheld as a reasonable compromise by the courts: *Beauregard v. Canada*, [1986] 2 S.C.R. 56 (S.C.C.).

Conclusion

I believe that I have fairly and fully, if succinctly, summarized the submissions of the parties. In the absence of agreement, it is necessary for members of the Panel to make a recommendation. After considering all of the representations, ably presented by counsel for both parties, I have concluded that the proposal of a modified Rand formula deserves to be recommended.

In the first place, it represents a significant compromise that is substantially less in its reach than the arrangement that is prevalent at other Canadian universities. Moreover, it allows for conscientious objectors, provided an equivalent payment is made to an agreed upon recipient.

Second, as the Supreme Court of Canada has observed, since it does not require membership in the Association, the Rand formula does not interfere with an individual's legitimate right to dissent. Indeed, as noted above, no evidence was presented to the Panel that the existence of the Rand formula at any university in Canada has inhibited a faculty member's right or readiness to express dissenting views. I do not regard the exemption or "grandparenting" of existing faculty members and librarians as discriminatory and, in any event, I consider it justified in the circumstances, as a means of achieving a change in employment conditions without affecting those already in the system.

Third, there is unanimous agreement by all that the existence of "free riders" is unfair to those who pay a consequentially disproportionate share of the costs of Association services. Not only is it inequitable, but it tends to engender a sense of injustice that can only serve to create a division among faculty and librarians that is inimical to the existence of a strong faculty association.

Finally, I think it is important to record that both parties have expressed their belief in the need for a strong faculty association. Indeed, a great institution such as the University of Toronto can flourish only if the rights of its faculty are protected through a vigorous, independent association. Moreover, key to the success of the University is a faculty association capable of fulfilling the responsibilities placed upon it under the Memorandum of Understanding. For this reason, as well as for reasons of fairness, I consider that the modified Rand formula as proposed is essential to the viability of the Faculty Association and to the well-being of the University.

Jeffrey Sack, Q.C.
Member, Dispute Resolution Panel

OPINION AND RECOMMENDATION
of
Roy L. Heenan

The University of Toronto and the University of Toronto Faculty Association have a remarkable system for resolving problems which has served them well. It is based on a voluntary relationship including voluntary recognition of the Association and the signing of a Memorandum of Agreement.

The Faculty Association summarized the unique nature of the relationship thus:

> "Rather than the formal procedures and legal guarantees that would come through certification both U.T.F.A. and the University have preferred another route, that of the University voluntarily recognizing the bargaining rights of the U.T.F.A. <u>This latter route employs methods congenial to the University".</u>

It is against this background that the University and the Faculty Association undertook to address the issue of dues payment to the Association for new faculty and librarians as a result of the last negotiation. They are to be congratulated on the result. Both parties have voluntarily agreed that commencing July 1st, 1998 all new faculty and librarians will be required at the time of hiring to authorize the deduction of dues and their remittance to the Association as a term of employment. Against this major agreement in this negotiation, there is one single point of disagreement: - whether such authorization should be permanently binding on the new faculty and librarians or whether new faculty and librarians may suspend the authorization after one year on an annual basis.

They have asked for our opinion on this matter.

My first reaction is to congratulate the parties on what they have achieved and recommend that this be accepted for these negotiations. There are two reasons for this recommendation.

The first is that, given the nature of the relationship, the parties are to be encouraged to reach agreement voluntarily rather than relying on outside intervention. The parties are both mature and professional and have demonstrated in the agreement that they have reached that they can and do accept their own responsibility to bargain. This is infinitely to be preferred to solutions imposed by outsiders. For those of us who are not of the University of Toronto active community to impose our views would not only be presumptuous but would discourage the parties from reaching their own' agreement. Where I believe we can well assist in mediation, the solutions that come from the parties are to be preferred to those that come from third parties. Further, we should encourage the open and direct discussions between the parties without having those parties looking over their shoulders for solutions from outside. This is the system they themselves have chosen. For this reason alone, my recommendation is that we adopt the considerable agreement that they have reached in this area, with the possibility of the opt out. The parties may well fashion any further solutions based on the experience they encounter over the next two years. I believe this is to be in the best interests of the University community.

The second reason for my choice is one of principle. The voluntary nature of the Association and the voluntary recognition by the University must be noted. We are being asked by the Faculty Association to impose a mandatory and <u>permanent</u> obligation on all new faculty and librarians to forever pay compulsory union dues. This does not mesh easily with the voluntary system which the parties have chosen and which has served them well. It would separate and distinguish the new faculty from their colleagues and change the voluntary nature of the Association.

I note that the proposal advanced by the University was put forward by a distinguished panel of academics consisting of Professor Don Dewees, Professor Brian Langille and Professor Adel Sedra. I believe that the recommendation which includes an opt out after a one year period is sensitive to realities of the University and the necessary relationships between academic colleagues.

The three members above-mentioned who were appointed by the administration believe

> "I) that it is not fair to impose mandatory dues on future colleagues while leaving dues payment for current faculty members and librarians voluntary,
> ii) that this proposal raises legal issues and
> iii) that it would change the voluntary nature of the Association. As a result they cannot accept the Association's proposal and propose as an alternative an arrangement under which new hires are presumed members of the Association but with the right to opt out."

I agree.

I am, of course, fully familiar with the rationale of Mr. Justice Rand in the original Rand formula and, in those circumstances, I do not disagree with his rationale. I do note, however, the "special features and circumstances" related by Mr. Justice Rand to the automotive industry at the time of a legal strike (p.127-128), which considerations are quite different from the University faculty and the voluntary relationship which exists both with the Faculty Association and with the University of Toronto. I also note, in passing, the great emphasis that Mr. Justice Rand places on union democracy as a correlative part of his formula providing specifically for supervised secret ballot rules to be imposed on the union as a price for any form of mandatory dues.

Much of what Mr. Justice Rand devised including the aspects of dues, union democracy, ballots and decertification have been incorporated into our labour codes. These provisions simply do not apply to the voluntary relationship existing within the University of Toronto and the Association itself.

I disagree with my colleagues strongly on three issues.

1. They write "that no one will deny, of course, that the Rand Formula of today is not quite the formula propounded in 1946, over half a century ago; but that was then and this is now." Very true. But the direction that our society has taken, inspired in no small part by the values of the *Charter of Rights and Freedoms*, is toward a greater recognition of the rights and freedoms of the individuals and away from compulsions of the state or collectivities. <u>That</u> is the present context, which was addressed eloquently by a majority of the Supreme Court in *Lavigne* v. *S.E.F.P.O.,* [1991] S.C.R. 211.

In the context of a union certified under an Act of Parliament (containing thus most of Mr. Justice Rand's checks and balances), Mr. Justice LaForest writing for himself, the late Mr.

Justice Sopinka, Mr. Justice Gonthier and Madame Justice McLachlin made the following observations at p.318:

> "Recognition of the freedom of the individual to refrain from association is a necessary counterpart of meaningful association in keeping with democratic ideals.
>
> (...)
>
> Forced association will stifle the individual's potential for self-fulfilment and realization as surely as voluntary association will develop it.
>
> (...)
>
> Freedom can primarily be characterized by the absence of coercion or constraint. <u>If a person is compelled by the state or the will of another to a course of action or inaction which he would not otherwise have chosen, he is not acting of his own volition and cannot be said to be free</u>. One of the major purposes of the Charter is to protect within reason from compulsion or restraint.

Mr. Justice LaForest, added speaking for himself, Mr. Justice Sopinka and Mr. Justice Gonthier at p.323:

> "I think it is fair to construe payment of dues which are used to further the object of the union as "maintaining or participating in" this particular association. In fact OPSEU forcefully argued that the mandatory contribution of union dues under an agency shop provision is an essential component of the union's right to 'maintain' the association under section 2(d) of the Charter."

I agree with all these statements. I particularly note that democracy and freedoms of the individual are not yesterday's values.

Whatever may be said for the merits of the formula in a context where the rights and obligations of the Association and of the members of the bargaining unit are spelled out by law, such factors are noticeably absent in the present voluntary relationship. It has been a constant feature of the Rand formula from its inception that the correlative rights and obligations of members and union democracy have been joined with the dues issue either by Mr. Justice Rand or in subsequent legislation. We are being asked to uncouple them, in this instance, and that would be a first. I am neither inclined nor presumptuous enough to fashion such provisions. If I were to, I would have to address the rules of union democracy and the obligations of the Association toward its members or dues payers on which my colleagues are completely silent. Judge Rand was not.

2. The second point of disagreement is the nature of a university. Judge Gold says quite properly that a university is not a commercial or industrial enterprise, factory or shop. I would add for myself that rules devised in the industrial world should be more critically scrutinized before transposing them to an academic community. A university is an institution which celebrates academic freedom and the free flow of ideas. Dissent is a necessary part of that community and persuasion an integral tool. A voluntary association should in this context win the support of its members; it will be much the stronger for it.

In the context of the University of Toronto faculty and librarians, the "free rider" argument is both insulting and incoherent. To couple the academics refusal to join the association with a mere desire to save the monthly dues does not, with respect, do credit to legitimate grounds for disagreement and dissent. In an academic community we must expect principled discussions and disagreements. It is for this reason that the voluntary relationship commends itself strongly to me as being especially appropriate to this fine institution and its members.

Further, I must remark in the present context that for new faculty members under the proposed formula there is no possibility for the new faculty and librarians of ever suspending the payment of union dues regardless of the nature of their disagreement with the Association. It is a mandatory and <u>permanent</u> obligation, and one which, because it is mandatory and permanent may well be offensive to future academics. It will also subject them to a different regime from their colleagues. Is an "opt out" after one year so offensive? Of what are we so afraid? If indeed there was a stampede out of the Association after one year, the reasons for that would have to be very closely examined. I do not believe the "free rider" explanation would suffice, which is the only one advanced.

3. Thirdly, the late Mr. Justice Rand tied the compulsory payment of union dues at the shop floor to specific mechanisms to ensure union democracy, particularly by the imposition of secret ballots on the union for both continued right of representation as well as the rejection of contracts and the calling of strikes. In fashioning mandatory permanent payment of dues in this voluntary relationship, I do not think that we can ignore this essential element. I was most struck in the present negotiations by the Association's absolute insistence that the University's offer made in good faith to the Faculty Association at the end of mediation (after 18 months of negotiation) <u>not</u> be made known to the faculty. In a letter to its membership on May 22nd, 1997 it called any reference to the offer by the University an

"ethical breach". Such a charge was in my view completely unfounded. If an offer is made after eighteen months of negotiations at the urging of the mediation panel, I believe it <u>should</u> be made known to the faculty and librarians, with of course whatever recommendations the Association wishes to make. There should be a far greater openness and forthrightness with the membership than I noticed in this instance.

The practical experience further disinclines me from recommending the Association proposals, and commends the "opt out" safety value proposed by the University which I think is necessary. I also believe that the Association will be stronger rather than weaker as a result.

SUMMARY

In summary, the University of Toronto and the University of Toronto Faculty Association have a unique relationship based on voluntary association, recognition and negotiation. It has served the community well. I respect that relationship and leave to the parties the responsibility for solving the problems that emerge as they have done in the past. In the present instance, they have reached a major agreement concerning new faculty and librarians. I do not wish to add a compulsory element of future maintenance of dues which would distinguish them from their academic colleagues at the University.

I, therefore, recommend that the proposal containing the "opt out" after one year be accepted.

Without Prejudice

COSTING OF UTFA SALARY AND BENEFIT PROPOSALS
FOR 2009/10
(thousands of dollars)

CONFIDENTIAL
23-Apr-10
* documents attached

	Relevant Base $	*09/10 Annual Cost* $	*% of June 30/09 Base Salaries including Teaching Stipends*	Estimated 2010 Base $	*10/11 Annual Cost* $	*% of June 30/09 Base Salaries including Teaching Stipends*
Estimated base salaries for Faculty and Librarians as of June 30, 2009	**$342,368**			**$376,692**		
Estimated Teaching Stipends	**$7,898**			**$8,176**		
Estimated base salaries for Faculty and Librarians as of June 30, 2009 (includes teaching stipends of 7.898 million)	**350,267**			**$384,868**		
Cost of full PTR for 10/11 (UTFA proposal calls for 3% of salary base)		*$6,437*	*1.838%*		*$11,301*	*3.226%*
A COMPENSATION						
1) Salary - ATB Increase						
a. 4.00% (based on recent settlements)		*$13,695*	*3.910%*		*$15,068*	*4.302%*
other items: a)preeminince ot UofT and it's faculty,						
b. additional cost of flat dollar minimum increase for those below median 10/11 estimated as ~10 % increase to overall ATB (as per UTFA brief)		*$1,314*	*0.38%*		*$1,477*	*0.422%*
2) Salary Scale						
a. Each Associate Professor's salary shall exceed each Assistant Professor's salary within the same unit		*$1,146*	*0.33%*			
3) Career Progress Adjustments						
a. Increase PTR pool from 1.88% to 3%	*	*$3,835*	*1.095%*			
Note: Only one year cost reflected here, but proposal continues to spend approx. 50% more in each outlying year						
For example, over next 5 years, would result in approximately $19 million increase in base salary						
plus increase PTR breakpoint ***Note: Only one year cost reflected but additional cost continues in outlying years***	*	***not costed***				
b. eliminate 5% Decanal pool and replace with super merit pool		***not costed***				
c. Market Adjustment/Anomaly Fund		***not costed***				
4) Per-Course and Workload Premiums						
a. The rate per full course be increased from $14,490 to $15,000 effective July 1, 2009 The rate per full course be increased from $15,000 to $15,500 effective July 1, 2010	*	*$278*	*0.079%*		*$273*	*0.078%*
b. Provide Salary Premium for faculty and librarians based on workload		***not costed***				
Compensation Sub Total (including PTR)	376,692	*$26,704*	*7.624%*		*$28,118*	*8.028%*
Estimated base benefits (excluding statutory benefits) for Faculty and Librarians as of June 30, 2009 - 16.67%	57,073					
Total relevant salary and benefit base — salary 342,368; base ben 57,073; **total 399,441**						
Estimated increase in salary related benefits (Pension, LTD and Group Life) (excludes stipend rates)		*$4,405*	*1.258%*		*$4,642*	*1.325%*
			% of June 30/09 Total Salary & Benefit base			*% of June 30/09 Total Salary & Benefit base*
Sum Total - Salary (including increase to salary related benefits costs)		*$31,109*	*7.788%*		*$32,760*	*8.201%*

Without Prejudice

COSTING OF UTFA SALARY AND BENEFIT PROPOSALS
FOR 2009/10
(thousands of dollars)

CONFIDENTIAL
23-Apr-10
* documents attached

Item		Total	Relevant Base $	09/10 Annual Cost $	% of June 30/09 Total Salary & Benefit base	Estimated 2010 Base $	10/11 Annual Cost $	% of June 30/09 Total Salary & Benefit base
5) Pensions								
a. i. All retirees to receive augmentation of their pensions in an amount of 0.3% as of July 1, 2009. This applies to pensions from UofT, OISE/UT and SRA.								
Increase in Accrued Liability:	01-Jul-09	$ 3,300						
Annual Special Payment:		$ 340		$340	0.085%			
Increase in Accrued Liability:	01-Jul-10	$ 3,300						
Annual Special Payment:		$ 340					$340	0.085%
a. ii. Full indexation of pension be guaranteed for future years for all retirees.								
Increase in Accrued Liability:		$ 125,000						
Annual Special Payment:		$ 12,900		$12,900	3.230%			
Increase in Current Service Cost:		$ 3,700		$3,700	0.926%			
b. Lower Deck (to YMPE $max) to be raised to 1.75% for all retirees and active members for all years of service (that is - "harmonize" all plan members to the same 1.75% lower deck formula). This applies to pensions received from RPP, OISE/UT and SRA. *(assumes no increase in participant contributions)*								
Increase in Accrued Liability		$ 112,000						
Annual Special Payment		$ 11,600		$11,600	2.904%			
Increase in Current Service Cost		$ 1,600		$1,600	0.401%			
c. People who opt to receive a lum-sum payment be eligible for benefits on the same basis as those receiving a monthly pension				*not costed*				
Sub Total Pension Proposals								
Increase in Accrued Liability		*$ 243,600*						
Annual Special Payments		*$ 25,180*						
Increase in Current Service Cost		*$ 5,300*						
B Benefits								
1) Health, Dental and Disability Benefits								
a. Employer to pay 100% of Health benefits for active and retired faculty and librarians				*$4,596*	*1.151%*			
b. Allow carry-forward of unused annual or biannual coverage maximums on major restorative dental services, vision care, professional services and clinical psychology				*$219*	*0.055%*			
d. Clinical Psychologist yearly max to be increased to $2500				*$100*	*0.025%*			
e. Vision Care maximum to be increased to $500 / 24 months				*$211*	*0.053%*			
f. Annual caps on Massage therapy, physiotherapy and chiropractic care increased to $750 / year				*$212*	*0.053%*			
g. Major restorative dental yearly max to be increased to $3500 per person				*$376*	*0.094%*			
h. Benefits available to people who retired during and after 1981 to be available to those who retired before 1981				*$81*	*0.020%*			
Sub total Group Health and Dental Proposals		$5,795						
Note: These benefit costings do not reflect the significant increase in unfunded liability for future retiree benefits					*0.000%*			
2) Other Benefits								
a. Expense Reimbursement								
i. Expense Reimbursement to increase from $1250 to for full-time faculty	$1,500			*$537*	*0.134%*			
ii. Expense Reimbursement to increase from $1250 to for full-time pre-tenure faculty, librarians and teaching stream	$3,000			*$1,093*	*0.274%*			
iii. Expense reimbursement for part-time and retirees at 40% of the PERA rate per FCE				*not costed*				
b. Adjust Child Care benefit fund from 1M to 1.5M				*$500*	*0.125%*			
Allow the maximum benefit to be claimed by both spouses				*not costed*				
c. Adoption leave to be harmonized with maternity and parental leaves benefits								
d. Dependent Scholarship Program								
i. increase to 100% of the amount of academic fees for 5 full-courses in a general program in Arts and Sciences (avg of 260 scholarships/ year* additional $2,500/child)				*$650*	*0.163%*			
ii. eliminate 80% GPA requirement				*not costed*				
iii. Add Transitional Year Program				*not costed*				
iv. Dependent child eligible for a double scholarship if both parents are UofT employees				*not costed*				
e. Research Leave								
The salary for Research Leave be raised to 90% from the current 82.5%			*	*$1,396*	*0.349%*			
f. Parking and Transit								
Parking subsidies or transit passes for instructors teaching in evenings				*not costed*				
g. Transportation Subsidy for faculty cross-appointed to multiple campuses								
$600 per faculty				*not costed*				
Sub Total Benefits and Pensions				***$40,110***	*10.042%*		***$340***	*0.085%*

Without Prejudice

COSTING OF UTFA SALARY AND BENEFIT PROPOSALS
FOR 2009/10
(thousands of dollars)

CONFIDENTIAL
23-Apr-10
* documents attached

		Relevant Base $	09/10 Annual Cost $	% of June 30/09 Total Salary & Benefit base	Estimated 2010 Base $	10/11 Annual Cost $	% of June 30/09 Total Salary & Benefit base
3) *"No Cost" Proposals*							
d. Librarian Research Days increased from 10 to 20 days							
Each Librarian entitled to 20 days per year for professional development		*	*$485*	*0.139%*			
Sub Total			*$485*	*0.139%*		*$0*	
Total			*$71,704*	*17.951%*		*$33,100*	*8.287%*

A 2) a. Each Associate Professor's salary shall exceed each Assistant Professor's salary within the same unit

Use department to define the unit
Cost is amount to that is 1$ higher than the highest assistant prof salary in department
data used was June 2009 dataset

There are 105 Tenure Stream Associate professors who would be affected by this proposal
They are distributed among 37 departments with the maximum in one department of 16

Total Cost of proposal = $1,145,790

with $420,752 being concentrated in two departments

PH Apr 22/10

Compensation Proposal 4) - Stipendiary Rate

The rate per full course be increased to	**$15,000**	**effective July 1, 2009**
assume that all stipends are paid at the the base stipend rate:		
1) Estimated budget for Teaching Stipends 2009		$7,898,480
Estimated teaching stipends		545
2) Proposed increase in stipend rate (15000 -14,490)		**$278,000**

The rate per full course be increased to	**$15,500**	**effective July 1, 2010**
assume that all stipends are paid at the the base stipend rate:		
Estimated teaching stipends (assume no increase)		545
2) Proposed increase in stipend rate (15500 -15,000)		**$272,549**

Benefit Cost Details:

A) Move to 100% Employer paid EHC/Vision/Semi-Priv/Dental
Cost includes the current premiums paid by employees PLUS increases from proposed benefit plan changes
PLUS increase to unfunded liability of future retiree benefits

i) Current Cost for employees:

	Actives Single	Actives Family	Retirees Single	Retirees Family	Total
EHC	$ 148,371.48	$ 1,427,903.64	$ 121,692.48	$ 743,584.68	$ 2,441,552.28
Semi-Priv	$ 16,624.44	$ 91,730.04	$ 16,306.80	$ 50,760.00	$ 175,421.28
Dental	$ 141,849.72	$ 883,681.80	$ 116,610.72	$ 449,349.12	$ 1,591,491.36
Total	$ 306,845.64	$ 2,403,315.48	$ 254,610.00	$ 1,243,693.80	$ 4,208,464.92

Cost to move to 100% ER cost based on current provisions $ **4,208,464.92**

ii) Impact of Proposed Changes

b) Carryforward of coverage maximums	$	72,978.53
d) Clinical Psychologist increase from 2,000 to 2,500	$	33,285.13
e) Vision Care increase from 250 to 500/24 months	$	70,248.31
f) Caps on Professional Services be increased to $750 combined	$	70,730.91
g) Major Restorative be increased from 2,500 to 3,500	$	93,943.13
h) Pre-81 added to regular benefit plans	$	46,714.94
Sum Total	**$**	**387,900.95**

iii) Estimated impact on Future Retiree Benefit obligations

Note: These benefit costings do not reflect the significant increase in unfunded liability for future retiree benefits

B) Carry Forward of Coverage Maximums for unused portion for 3 years

Present cap of $500 / person/ plan year
Present EHC is $243.27 /F and $63.62 /S
Provide caryforward of unspent annual amount for 3 yrears increase in costs is 3% of total EHC rates
Impact on ER component is family $ 5.47 / month
single $ 1.43 / month

Current Enrolment	Active	Retirees	Total
Single	771	637	1408
Family	1946	1019	2965

ER COST	Single	$	24,185.78
	Family	$	194,749.80
	Total	**$**	**218,935.58**
EE COST		**$**	**72,978.53**

C) Reinstatement of Prescription Drug Coverage for all prescription drugs approved for use in Canada
Not Costed

D) Clinical Psychologist Benefit be increased from $2,000 to $2,500 per person/year
Present cap of $500 / person/ plan year
Present EHS component of EHC is $39.50/F and 15.32 / S
Increase from 2,000 to 2,500 combined cap, increase in costs is 8% of EHS rates
Impact on ER component is family $ 2.37 / month
single $ 0.92 / month

Current Enrolment	Active	Retirees	Total
Single	771	637	1408
Family	1946	1019	2965

ER COST	Single	$	15,530.80
	Family	$	84,324.60
	Total	**$**	**99,855.40**
EE COST		**$**	**33,285.13**

E) Vision Care be increased from $250 to $500 every 24 months

Vision Care is currently part of the EHC benefit
Present premium for vision care within the EHC is $11.32 family and 3.88 single /month (er pays 75% of this cost).
Increase from 250 - 500 is 60% increase in costs

Impact on ER component is:	Fam 11.32*.6*.75 =	$ 5.09	/month
	Single 3.88*.6*.75 =	$ 1.75	/month

Current Enrolment	Active	Retirees	Total
Single	771	637	1408
Family	1946	1019	2965

ER COST	Single	$ 29,500.42
	Family	$ 181,244.52
	Total	**$ 210,744.94**
EE COST		**$ 70,248.31**

F) Professional Services Combined Max be increased to $750

Present cap of $500 / person/ plan year
Present EHS component of EHC is $39.50/F and 15.32 / S
Increase from 500 to 750 combined cap, increase in costs is 17% of EHS rates

Impact on ER component is	family	$ 5.04	/ month
	single	$ 1.95	/ month

Current Enrolment	Active	Retirees	Total
Single	771	637	1408
Family	1946	1019	2965

ER COST	Single	$ 33,002.96
	Family	$ 179,189.78
	Total	**$ 212,192.73**
EE COST		**$ 70,730.91**

g) Major Restorative be Increased from 2,500 to 3,500 per person/ year

Present Cap of $2,500 be increased to $3,000/person/year
Present Dental is 164.14/F and 70.19/S
Increasing cap by $1,000 will add 6.5% to dental rates

Impact on ER component is	family	$ 8.54	/ month
	single	$ 3.65	/ month

Current Enrolment	Active	Retirees	Total
Single	757	641	1398
Family	2015	1056	3071

ER COST	Single	$ 61,230.39
	Family	$ 314,542.14
	Total	**$ 375,772.53**
EE COST		**$ 93,943.13**

H_) Pre-81 Retirees

So if converting to U of T Plans at 2009 rates without improvements:

	#	HCSA Max
Single	87	$ 87,000
Family	10	$ 15,000
	97	$ 102,000

	ER cost Single	Family	Monthly Total	Annual Total
Dental	$ 5,275.68	$ 1,418.10	$ 6,693.78	$ 80,325.36
EHC	$ 4,149.90	$ 1,824.60	$ 5,974.50	$ 71,694.00
Semi-Private	$ 556.80	$ 127.10	$ 683.90	$ 8,206.80
Total				$ 160,226.16
Less Annual HCSA cost				$79,000.00
Total ER Cost				**$ 81,226.16**
Estimated EE cost				*$ 46,714.94*

This costing does not take into account the impact on claims utilization, which could be significant.

SD Dec 9/09

B Benefits 2a - Reimbursement of Expenses

a) The amount for reimbursement for work related expenses for full-time faculty increased from $1,250 per year to $ 1,500 per year. Those working part-time shall also have their reimbursement entitlement increased proportionally and pro-rated

b) The amount for reimbursement for work related expenses for full-time pre-tenure faculty, librarians and teaching stream increased from $1,250 per year to $ 3,000 per year. Those working part-time shall also have their reimbursement entitlement increased proportionally and pro-rated

a) Increase from $1,250 to $1,500 for Faculty

1) Budget transferred to Department/Divisions in fiscal year 2009 @ $1250 / full-time faculty		$2,682,750
2) Estimated FTE from deposits ($2,682,750 / $1250)		2,146
Current July 2008 cost estimate = FTE * $ 1,500		$3,219,300
3) Estimated cost to provide increase from $1,250 to (FTE * $ 250)	$ 1,500	$536,550

b) Increase from $1,250 to $3,000 for Teaching Stream, Librarians and pre-tenure faculty

1) Budget transferred to Department/Divisions in fiscal year 2009 @ $1250 / full-time faculty		$780,375
2) Estimated FTE from deposits ($780,375 / $1250)		624
Current July 2008 cost estimate = FTE * $ 3,000		$1,872,900
3) Estimated cost to provide increase from $1,250 to (FTE * $ 1,750)	$ 3,000	$1,092,525

Total Estimated Cost of Proposal 1 - Reimbursement of Expenses **$1,629,075**

ii) Part-time and retired faculty represnted by UTFA to receive 40% of the PERA rate per FCE

not costed

B Benefits 2 e Research and Study Leave

Research leaves be raised to 90 % of salary from current 82.5 %

1) Number of Faculty on full-year R&S Leave in 2008		131
2) Estimated total number of Faculty eligible for R&S Leave (FTE)		2165
3) Estimated total number of Faculty eligible for Leave in any given year (FTE/7)		309
Current utilization rate 12 month		42%
4) Average salary for those on 12 month leave - 2008/2009	$	128,000
5) Estimated average salary =2008/09 average*(proposed ATB 2009)	$	133,120
6) Cost to improve leave from 82.5 % -> 90 % salary for current utilization (assume current utilization rate*estimated avg sal in 2008*7.5%)	**$**	**1,307,904**
7) Assume additional 20 % take full leave at 90 %		26
8) Replacement cost - Assume 2 overload teaching stipends - 10% salary savings rate proposed by UTFA effective July 1, 2009	$	16,688
9) Cost to provide replacement salary for additional leaves (replacement salary)	**$**	**87,776**
Estimated annual cost of R&S Leave Proposal	**$**	**1,395,680**

Notes:

1) Assumes increase in Faculty utilization rate by 20 %
2) Assumes average annual salary increased by UTFA's proposed ATB
3) FTE of eligible Faculty is based on FTE supported from the operating budget
4) Assumes cost is the difference of moving from 82.5 % salary to 90 % salary for those currently on leave PLUS the additional cost of providing replacement salary for increased utilization of R & S Leave (90 % salary + replacement cost - 100 % salary)
5) count includes 97 @ 82.5% salary for 12 months + 50% of 67 @ 91.23% for 24 months (12 month leave pay reduction over 2 years) counts as of Sept 30, 2008
6) This costing excludes the Librarians, which would add an additional 30-50k / year

B 3 d. The annual number of Research Days for Librarians to be increased from 10 to 20

June 30, 2009 Total Salary Base for Librarians	$12,616,785
June 30, 2009 Daily Salary Base (salary base / 260 working days)	$48,526
Daily salary base increased by UTFA ATB Proposal	$50,467
Maximum Cost to increase Research days from 10 to 20 (daily salary base * 10 days)	**$485,261**

Current usage of R&S days
24 librarians used the full 10 days available in the 08/09 year.
Minimum cost is approximated as only those who used their full allotment will use the full 20 days. Use an average salary for librarian III/IV to calculate the daily rate.

Minimum Cost = 24 * avg. daily rate * 10 days * UTFA atb proposal

June 30, 2009 Avg Librarian III/IV annual salary =	99037
June 30, 2009 Daily Salary Base (salary base / 260 working days)	$381
Daily salary base increased by UTFA ATB Proposal	$396
Minimum Cost to increase Research days from 10 to 20 (daily salary base * 10 days)	**$91,419**

ALL ITEMS CONSUMER PRICE INDEX - CANADA

Annual Average for 2002 = 100

Month	Index	% Change from same month one year ago
2009		
January	113.0	1.1%
February	113.8	1.4%
March	114.0	1.2%
April	113.9	0.4%
May	114.7	0.1%
June	115.1	-0.3%
July	114.7	-0.9%
August	114.7	-0.8%
September	114.7	-0.9%
October	114.6	0.1%
November	115.2	1.0%
December	114.8	1.3%
2010		
January	115.1	1.9%
February	115.6	1.6%
March	115.6	1.4%
April		
May		
June		
July		
August		
September		
October		
November		
December		

ALL ITEMS CONSUMER PRICE INDEX FOR ONTARIO

Annual Average for 2002 = 100

Month	Index	% Change from same month one year ago
2009		
January	112.4	1.4%
February	113.1	1.5%
March	113.7	1.8%
April	113.2	0.6%
May	114.0	0.4%
June	114.2	0.0%
July	113.7	-1.2%
August	113.7	-1.0%
September	113.8	-1.1%
October	113.9	0.2%
November	114.6	1.0%
December	114.1	1.2%
2010		
January	114.5	1.9%
February	115.1	1.8%
March	115.3	1.4%
April		
May		
June		
July		
August		
September		
October		
November		
December		

ALL ITEMS CONSUMER PRICE INDEX - TORONTO

Annual Average for 2002 = 100

Month	Index	% Change from same month one year ago
2009		
January	112.5	1.6%
February	113.2	1.7%
March	113.8	2.1%
April	113.1	0.8%
May	113.9	0.5%
June	114.0	0.2%
July	113.6	-1.1%
August	113.6	-1.0%
September	113.7	-1.0%
October	114.0	0.3%
November	114.4	0.8%
December	113.9	0.8%
2010		
January	114.5	1.8%
February	115.1	1.7%
March	115.3	1.3%
April		
May		
June		
July		
August		
September		
October		
November		
December		

(Extracts from the Budget Committees Recommendations for the 1973-74 Estimates dated Nov. 30, 1972, which relate to P.T.R.)

I. Salary Recommendations

(1) It would be unwise, in the Budget Committee's judgment, to permit academic salaries in this University to fall significantly below those in other universities or in comparable segments of the community.

(2) In a period of financial stringency, adherence to the principle in (1) may involve the reallocation or reduction of the academic staff establishment; we therefore recommend as a matter of urgency that the contractual provisions relating to the employment of both tenured and non-tenured staff should come under immediate review in order to achieve the maximum flexibility in the deployment of the University's academic staff resources for the future.

(3) In our consideration of academic salaries, we have been strongly influenced by the proposals of the University of Toronto Faculty Association. We recommend acceptance of the principle that allocation of funds to the full-time academic salary account for career advancement be considered separately from across-the-board changes. We recommend that the career advancement component be allocated to individuals entirely on the basis of merit. However, the career advancement schedule should be subject to the establishment of ceilings for each academic rank, not to be exceeded except after special review of individual cases in the Office of the Vice-President and Provost. For 1973-74, we propose the following ceilings, that can be reached by increments for career advancement in all teaching divisions except for clinical staff in the Faculties of Medicine and Dentistry: Lecturer, $15,500; Assistant Professor, $19,000; Associate Professor, $23,000. We propose that appropriate ceilings for each academic rank in the clinical staff of the Faculties of Medicine and Dentistry, and for other ranks not designated above, be established after further study by the Office of the Vice-President and Provost. We note that salaries above a certain level are reviewed annually by the Senior Salary Committee as directed by the Governing Council, and at present that level is $30,000.

Subject to ceilings.

(4) The sum allotted for these merit increases would be calculated by adding together for each continuing full-time faculty member $700 or the difference between the ceiling for the relevant rank and the individual's salary, whichever is less, if the salary he receives is less than $26,000, and $400 if the individual is earning $26,000 or more. We estimate the

(4) Cont'd cost of this recommendation to be $1,060,000 over the ten months from July 1, 1973 to April 30, 1974 (i.e., approximately 3% of the 1972-73 level of full-time academic salaries). (The cost estimates in this recommendation and in recommendations 7, 8, 11 and 12 are for the St. George Campus only, although the policies would be applied to Scarborough and Erindale as well.)

(5) We recommend to the Planning and Resources Committee that the above proposal be accepted as the basis for the career advancement component of academic salary increases for a three-year trial period (i.e., up to and including the 1975-76 academic year). Should this proposal be adopted for three years, the $700 and $400 amounts used to calculate the sum for merit increases should be increased annually by a percentage equal to the percentage change in the salary scale. In addition it is suggested that the salary ceilings for each rank, as well as the $26,000 breakpoint, should be reviewed annually. In the event that funds available are insufficient to permit award of merit increases as proposed, we envisage reductions in salary scale as being necessary.

(6) We recommend that, in the distribution of those funds,

1) the Vice-President and Provost (in allocating funds as between divisions) and Deans (in allocating funds as between departments) not be bound to allocate funds in strict proportion to the weighted number of continuing full-time teaching staff;

2) Deans and chairmen be directed to make genuine evaluations of merit in determining distribution to individuals, according to explicit criteria which they may subsequently be required to furnish to the Office of the Vice-President and Provost;

3) adequate disclosure of the statistical distribution of such increases be ensured, under rules to be established by the Vice-President and Provost, after consultation with the University of Toronto Faculty Association.

(7) For 1973-74, we recommend that the across-the-board salary increases be <u>3.5 per cent</u> on the salaries of each member of the continuing full-time academic staff. The estimated cost of this recommendation is $1,183,000.

(Copy of President's letter to Heads of Academic Divisions)

Dear

1973-74 Estimates

The amount of the Target Budget of your Division for 1973-74 and the additional amounts provided for salary increases for members of the academic and non-academic staffs of the Division are set out at the end of this letter.

Enclosed, in triplicate, are estimate forms on which the details of your approved 1972-73 Estimates for the 12 months ending April 30, 1973, have been printed. Please enter the details of your proposed 1973-74 Estimates for the 12 months ending April 30, 1974 on these forms in accordance with the enclosed memoranda on the manner in which the Estimates should be prepared. The originals of these forms, together with related notes on your proposed estimates, should be forwarded to the Budget Office of the University, Room 10, Simcoe Hall, as soon as possible but not later than ____________.

The 1973-74 Target Budget

For 1973-74 the value of the basic income unit is to be $1,825., an increase of 3.4% over the current value.

The enrolment projections for 1973-74 have taken into account a shortfall in the current year - we have about 2.26% less enrolment than had been projected for the three campuses. Fortunately our current income is not suffering from the effect of this shortfall because (a) the formula weight for Arts and Science was increased from 1.20 to 1.24, and (b) the spring term count of graduate students as of July 1, 1972 was considerably higher than projected.

Our net income for 1973-74 for the St. George campus has been estimated at about 5.6% more than that estimated for 1972-73. This estimate may prove to be over-optimistic. For this reason you are requested to avoid additional long-term commitments, so that if the expected enrolment does not materialize, downward adjustments of the 1973-74 appropriations may be possible.

In order to finance certain unavoidable increases in operating costs and to provide for reasonable increases in salaries, it has been necessary to make reductions in the base budgets of certain academic and non-academic divisions. Even with these adjustments, and assuming other economies, the 1973-74 Target Budget shows a deficit of about $810,000 for the St. George campus.

The Target Budgets for Scarborough and Erindale Colleges continue to show deficits in 1973-74. These Colleges have been asked to balance annual operating expenditures and revenues not later than the 1975-76 budget year.

Provision for Academic Salary Increases

A. Full-time Academic Staff (Professorial ranks and Lecturers)

1. Every full-time faculty member is to receive an across-the-board increase of 3.5%.

2. The recommendations of the Presidential Advisory Committee on the Budget on merit increases, which have been approved by the Governing Council, read in part:

> In our consideration of academic salaries, we have been strongly influenced by the proposals of the University of Toronto Faculty Association. We recommend acceptance of the principle that allocation of funds to the full-time academic salary account for career advancement be considered separately from across-the-board changes. We recommend that the career advancement component be allocated to individuals entirely on the basis of merit. However, the career advancement schedule should be subject to the establishment of ceilings for each academic rank, not to be exceeded except after special review of individual cases in the Office of the Vice-President and Provost....
>
> We recommend that, in the distribution of these funds,
>
> 1) the Vice-President and Provost (in allocating funds as between divisions) and Deans (in allocating funds as between departments) not be bound to allocate funds in strict proportion to the weighted number of continuing full-time teaching staff;
>
> 2) Deans and chairmen be directed to make genuine evaluations of merit in determining distribution to individuals, accord- to explicit criteria which they may subsequently be required to furnish to the Office of the Vice-President and Provost;
>
> 3) adequate disclosure of the statistical distribution of such increases be ensured, under rules to be established by the Vice-President and Provost, after consultation with the University of Toronto Faculty Association.
>
> . . . .

The amount for the Career Advancement Fund in your budget is shown at the end of this letter. The distribution is to be made to individuals on the basis of genuine evaluations of merit according to explicit criteria. To assist you in assessing merit, criteria will be suggested by the Vice-President and Provost. He may ask you to account for the factors which lead to the distribution of merit increases in individual cases.

3. The full-time academic salary scales from July 1, 1973 will be as follows:

	Minimum	Maximum except in Clinical Medicine and Dentistry	Maximum for Clinical Medicine and Dentistry
Lecturer	$ 9,500	$15,500	$15,500
Assistant Professor	11,500	19,000	24,000
Associate Professor	14,300	23,000	26,000
Professor	19,000	-	-

4. All staff members with salaries of $30,000 or more will be dealt with by the Senior Salary Committee of the Governing Council. Consequently no funds for increases in such salaries have been included in the allocation to your division. A list of such persons, if any, is attached, and you are asked to send recommendations for their salary increases to the Vice-President and Provost as soon as possible.

5. A special fund has been established to supplement the salaries of women members of the full-time academic staff where anomalies can be demonstrated to exist. A committee under the chairmanship of Dr. P.P.M. Meincke, Vice-Provost, has been established in the office of the Vice-President and Provost to review the career advancement profile of all women on the full-time academic staff, and will recommend on the disposition of the special fund, which is not included in the allocation to your division.

6. The basis of the determination of the amount of the Career Advancement Fund and the guidelines for the distribution of the Fund and certain other requirements with respect to the salaries of affected academic staff members will be found in Appendix A.

B <u>Instructors and Other Full-time Ranks not covered in A.</u>

The funds provided for academic salary increases include provision for a 3 1/2% across-the-board increase in the salaries of Instructors and other full-time ranks plus 3% to be distributed on the basis of merit.

C <u>Part-time and Junior Staff Members.</u>

The funds provided for academic salary increases include an across-the-board increase of 3 1/2% for part-time junior staff members, but on the basis that although such staff members may be replaced, their numbers should not be increased. Budget reductions should not be made by reducing provisions for the remuneration of graduate students.

D Extension Department Stipends.

The stipend rates for 1973-74 have been increased by $100. The rates will be $2,100 for lecturers and assistant professors, and $2,600 for associate and full professors.

E Salaries of Deans and Principals and other Heads of Academic Divisions.

Increases in these salaries will be dealt with by the Senior Salary Committee.

F Vacant Positions.

You are reminded that proposals to fill vacant positions in the Estimates, or to establish new positions, must be approved in every case by the Vice-President and Provost.

II. Professional Librarians

The salary grade minimum for professional librarians has been increased and the new rates are shown below. The amount allocated for salary increases is 6 1/2% which may be distributed on the basis of a general increase of 3 1/2% and 3% for merit.

Level	1973-74 Minimum
Librarian I	$ 8,600
Librarian II	9,450
Librarian III	11,350
Librarian IV	13,900

III. Non-Academic Salaries.

The salary ranges for classified non-academic positions have been increased with effect as of July 1, 1973. These are set out in an attachment to a memorandum, from the Personnel Department, which is enclosed. I am pleased to inform you that a special fund has been created to improve the salaries in certain categories of classified non-academic positions. The purpose of this fund is to eliminate certain anomalies in our non-academic salary structure and to bring the actual salaries paid more in line with those which should prevail in terms of the new classification system which was established as of February 1, 1971 but which have not been fully achieved. The manner in which this fund is to be used is also indicated in the memorandum from the Personnel Department. The amount allocated to your division for increases for non-academic staff members does not include funds for increases for positions on the Senior Salary List. A list of these positions, if any, is attached.

IV. <u>An Added Burden</u>

Efforts to persuade the Provincial Government to adopt a more realistic fiscal year for universities have been unsuccessful. The fiscal year remains May 1st to April 30th while the academic year, relevant for staff appointments, runs from July 1st to June 30th. Therefore in the Estimates for 1973-74, current salary rates will apply for 2 months (May and June) and the new rates effective July 1st will apply for only 10/12th of the fiscal year. The provision allowed for salary increases includes therefore only 83.33% of the estimated increase in annual salary rates.

....

The amounts allocated to your division for salary increases for academic and non-academic staff should not be used for other purposes in your Estimates. However, where positions have been established since July 1, 1972, by the transfer of appropriations between academic and non-academic salary accounts, it may be necessary for you to have some flexibility in the use of the funds allocated for increases as between academic and non-academic salaries. <u>It should be pointed out that the salaries you recommend for 1973-74 may only be considered as being tentatively established until final approval of your Estimates has been given.</u>

Because the time remaining for the compilation of the 1973-74 Estimates before they become effective on May 1, 1973 is so short, would you please submit your Estimates as quickly as possible and, in any case, no later than the deadline established. Once your Estimates are approved, you may then submit appointment forms for those of your staff members on an annual basis whom you wish to reappoint and for those for whom you are recommending promotion in your Estimates with effect from July 1, 1973.

The Vice-President and Provost, and Mr. George Court, Financial Analyst, will be pleased to provide assistance with problems which you may have concerning your Estimates. Questions on the manner in which items should be shown in the Estimates should be referred to the Budget Office of the University, local 2213, Room 10, Simcoe Hall.

Yours sincerely,

J R Evans

J. R. Evans,
President

Attachments and
Enclosures

APPENDIX A

Career Advancement Fund

The provision for the Career Advancement Fund is calculated to provide, on the average, an increase of $700. for full-time academic staff with a rank from Lecturer to Professor who are $700. or more below the ceiling of their rank - or of the rank to which they are being promoted - until, as a full professor, a member achieves a salary of $26,000., after which the normal averageannual increase would be reduced to $400., and for those within $700 of the maximum for their rank the amounts required to bring their present salaries up to the rank maxima.

Although it is intended that staff members should not normally receive merit increases which would bring their present salaries above the maximum for their rank or for the rank to which it is proposed they be promoted, you may in exceptional cases make such a recommendation in a letter to the Vice-President and Provost, and if the recommendation is approved the additional funds over the maximum will be incorporated in your Estimates. A merit increase for a staff member whose present salary exceeds the maximum for his rank will be dealt with on the same basis.

In notifying faculty members of their salary increases, the division or department head should identify the component representing the across-the-board increase and the component for career advancement based on the assessment of merit. Such notification, im writing, should be sent only after the estimates of the division have beem approved. The average increase in the division or department should alsm be indicated in the letters to individual staff members.

Each academic division may be requested by the Vice-President and Provost to prepare for publication to the staff a histogram showing the distribution of career advancement increases in each department in units of $100; in the larger departments, this should be divided between those over and under $26,000. In addition, the major divisims may be requested to produce a similar histogram by rank.

LIBERTY MUTUAL.

Liberty Mutual Insurance Company

Liberty Centre, 3500 Steeles Ave. East, Markham, Ontario, L3R 0X4 • Tel: (905) 946-4000

Policy Number: **1339 et al**

LIBERTY MUTUAL INSURANCE COMPANY (hereinafter called Liberty Mutual), hereby agrees with

UNIVERSITY OF TORONTO

(hereinafter called the "Policyholder")

to provide benefits in accordance with the Administration Services Only Agreement and the terms and conditions of this Policy.

Effective Date: **APRIL 1, 1998** at 12:01 a.m. standard time, with the right of renewal in accordance with the terms and conditions of this Policy.

Currency: Every amount due and payable under this Policy will be in Canadian Dollars.

Renewal Date: **JULY 1, 1998**, and each **JULY 1** thereafter.

This Policy, together with the Application for Group Insurance and the Delivery Agreement, will constitute the entire contract between the parties and cancels and replaces all previous policies issued to the Policyholder as of the effective date.

Signed for Liberty Mutual at Markham, Ontario, Canada, on **JUNE 1, 1998.**

Examiner

Gery J. Barry, Vice President

Barry S. Gilvar, Corporate Secretary

GENERAL PROVISIONS

1. DEFINITIONS (Continued)

"Diagnostic Services" means a diagnostic test or service which is used to confirm or rule out the presence of a disease in an individual who is being investigated for signs and symptoms of illness or to determine the efficacy of treatment currently being prescribed. The term does not include screening tests.

"Drugs and Medicines" means any of the substances specifiec in the applicable drug formulary provided under this Policy, as determined by Liberty Mutual.

"Elective Treatment" will include treatment or surgery:

(a) not immediately required for the relief of acute pain and suffering;

(b) which medically could be delayed until the Covered Person's return to Canada;

(c) which the Covered Person elects to have rendered or performed outside Canada following emergency treatment for, or diagnosis of, a medical condition which (on medical evidence) would not prevent the Covered Person from returning to his or her province of residence to receive such treatment or surgery.

"Emergency illness" means an acute, unexpected or unforeseen sickness or injury which required immediate non-discretionary medical attention.

"Eligible expense/Charge" means any medically necessary, reasonable and customary item of expense (unless specific maximums or limitations are indicated), at least a portion of which is covered under at least one of the plans covering the person for whom the claim is being made. When a plan provides benefits in the form of services rather than cash payments, the reasonable cash value of each service provided shall be considered to be both an eligible expense and a benefit paid.

"Employee" means a person who is a resident of Canada, who is actively employed by the Employer and who is a member of a classification stated in the Schedule of Benefits.

"Employer" means **UNIVERSITY OF TORONTO ET AL.**

"Government Plan" means any plan or arrangement provided by or under the administrative supervision of any government. This includes, but is not limited to, the Ontario Health Insurance Plan, the Workers' Compensation Act of Ontario and comparable legislation in other jurisdictions.

"Hospital" means a public hospital licensed under the Public Hospital Act of Ontario or recognized by the Ministry of Health as a public hospital, or a duly licensed general active treatment facility in another jurisdiction, which has physicians and registered nurses on duty or on call 24 hours per day. Unless expressly stated otherwise herein, the term does not include a federal hospital, a private hospital, rest home, nursing home, convalescent home, chronic care facility, health spa or hotel, a home for the aged or an institution used primarily for the confinement or treatment of alcoholism or drug addiction.

"Hospitalization" means to be admitted to a hospital as an inpatient.

"Inpatient" means a patient confined to a hospital for more than 24 hours on the recommendation of the attending physician.

"Licensed", **"certified"**, or **"registered"** means licensed, certified or registered to practice the profession, by the appropriate authority in the jurisdiction in which the care or services are rendered, or, where no such authority exists, having the proper recognition from the professional institute or association which regulates the particular profession.

GENERAL PROVISIONS

1. DEFINITIONS (Continued)

"Medically necessary" means a treatment, service or supply which is generally accepted by the medical profession as essential, effective and appropriate in the diagnosis, care or treatment of a specific medical condition, sickness or injury.

"Physician" means a licensed, certified or registered medical practitioner.

"Plan" means any plan under a group contract, group policy, or group plan arranged through an Employer, Union, Trustee or Association, blanket insurance or family insurance, prepayment or capitation plan or any government plan or coverage required or provided by statute.

"Plan year" means a period of twelve consecutive months as stipulated by the Employer.

"Policyholder" means the applicant for this Policy.

"Provincial Government Health Insurance Plan Allowance" means the amount allowed or provided as payment for a health service charge, including a charge by a physician or a hospital, under the Health Insurance Act of Ontario or the comparable legislation of the province in which the Covered Person is resident when the charge is made.

"Reasonable and customary" means charges which are usually made in the absence of this or any similar coverage, for a specific type of care, service or supply, based on representative fees and prices in the geographic area in which the care, service or supply was incurred, as determined by Liberty Mutual.

"Registered Nurse" (R.N.) means a person who is licensed, certified or registered as such in the jurisdiction in which the services are rendered.

"Resident" means a person who is a resident of Canada, as defined in the Income Tax Act.

"Retired Employee" means an Employee who has retired from active employment with the Employer, and who is listed in a classification eligible for coverage hereunder.

"Stabilized condition" means the physical condition has evolved to the level where care and treatment no longer require the skills of a Registered Nurse, as determined by Liberty Mutual, and for which the Regulated Health Professions Act of Ontario and/or the College of Nurses of Ontario guidelines (or comparable regulations/guidelines in other jurisdictions) permit the transfer of care to a person who is not a Registered Nurse.

"Travelling Companion" means any person who has prepaid accommodation and or transportation with the Covered Person. (Maximum four persons, including the Covered Person).

"Vehicle" means a passenger automobile, motorcycle, motor home, or truck with a gross vehicle weight of less than 8,000 pounds (3,630 Kg.), provided such vehicle is not licensed to carry passengers for hire.

EXTENDED HEALTH BENEFIT

6. DRUGS & MEDICINES

Charges for injected allergy sera; drugs and medicines as defined herein and listed in Liberty Mutual Formulary Three, when purchased on the prescription of a physician or dentist, and which are dispensed by a licensed, registered or certified pharmacist, physician, dentist or hospital. This includes extemporaneous preparations provided at least one of the ingredients is eligible as defined.

Liberty Mutual must be provided with the following:

- the prescription number
- the drug identification number (DIN)
- the name, strength, and quantity of the drug or medicine

Liberty Mutual has the authority to inspect the prescription.

Charges for the following diabetic supplies provided Liberty Mutual is given a receipt or claim from the provider:

- insulin
- needles
- syringes
- chemical testing agents.

For a person 65 years of age and older, charges for the following expenses which are no longer payable under the government program as a result of amendments to *The Ontario Drug Benefit Act*, made by *The Savings and Restructuring Act*, will be eligible for reimbursement under this Policy:

(a) for a person with an annual income of $16,018 or less, or a combined employee and spousal annual income of $24,175 or less:

  i) the per prescription dispensing fee, up to a maximum of $2; and
  ii) the difference in cost between the generic drug and the brand name drug.

(b) for a person with an annual income over $16,018, or a combined employee and spousal annual income over $24,175:

  i) the $100 deductible for the first $100 of prescriptions;
  ii) the per prescription dispensing fee, up to a maximum of $6.11; and
  iii) the difference in cost between the generic drug and the brand name drug.

No coverage is provided for:

(a) vitamins (other than injected vitamins), vitamin/mineral preparations, food supplements, and general public (G.P.) products, whether or not prescribed;

(b) smoking cessation aids;

(c) that part of any one prescription for drugs or medicines which is in excess of a three month supply, unless prior approval has been given by Liberty Mutual.

Dispensing fees will be payable up to the maximum amount stated in the Schedule of Benefits.

EXTENDED HEALTH BENEFIT

EXCLUSIONS

Liberty Mutual will not pay benefits for expenses incurred:

1. for any care, services or supplies which are not medically necessary, as determined by Liberty Mutual;
2. for or in connection with dental care or services, except as otherwise provided in this Policy;
3. for care, services or supplies which are for primarily cosmetic purposes, except those which are in connection with reconstructive surgery required to repair or replace tissue damaged by disease or bodily injury;
4. for rest cures, travel for health reasons, periodic health checkups, or examinations for the use of a third party;
5. for services provided in a health spa, chronic care or psychiatric Hospital or chronic care unit of a general Hospital, except as otherwise provided in this Policy;
6. for services or supplies provided while confined in a nursing home or home for the aged;
7. as a result of conditions resulting from war, whether or not war is declared, from participation in any civil commotion, insurrection or riot, or while serving in the armed forces;
8. for nebulizers or vaporizers;
9. by a Covered Person for which he or she is entitled to obtain benefits or reimbursement under any Government Plan, or which would be provided without charge in the absence of this Policy;
10. for additional, duplicate or replacement appliances or devices, except where the replacement is required because the existing appliance can no longer be made serviceable due to normal wear and tear, or as the result of a pathological change, subject to prior written approval by Liberty Mutual;
11. as a result of self-inflicted injury;
12. while committing, or attempting to commit, direct or indirectly, a criminal act under legislation in the jurisdiction where the act was committed;
13. for the completion of claim forms or other documentation;
14. for failing to keep a scheduled appointment or for transfer of medical files;
15. for drugs, injectables, supplies or appliances which are experimental or which are not approved by the Health Protection Branch of Health & Welfare Canada for use in Canada;
16. for care, services or supplies utilized as treatment of lifestyle choices, as determined by Liberty Mutual;
17. for benefits or that part of benefits which cease to be payable under any government program;

EXTENDED HEALTH BENEFIT

18. for drugs or medicines, services or supplies which have been self prescribed, or prescribed by or for family members;

19. for drugs, medicines, services or supplies, while an inpatient of a hospital, needed for treatment of the condition requiring hospitalization;

20. for service agreements;

21. which are covered under the Deluxe Travel Benefit contained in this Policy; or

22. which involve wilful concealment or misrepresentation of any material fact or circumstance concerning this coverage, either before or after the incurrence of an expense. In the event that any claim(s) submitted by the Covered Person is (are) found to be inappropriate after due investigation, then the Covered Person shall indemnify Liberty Mutual from all costs related to the investigation. (Waiver by Liberty Mutual of its rights to indemnification in any particular instance will not preclude Liberty Mutual from exercising its rights in any other situations that may arise).