

# UNIVERSITY OF TORONTO

## THE GOVERNING COUNCIL

APRIL 11, 2012

MINUTES OF THE MEETING OF THE GOVERNING COUNCIL held on April 11, 2012 at 4:30 p.m. in the Council Chamber, Simcoe Hall, University of Toronto.

### **Present:**

Mr. Richard B. Nunn ( In the Chair)  
The Honourable David R. Peterson, Chancellor  
Professor C. David Naylor, President  
Ms Diana A.R. Alli  
Mr. Donald Andrew  
Professor Robert Baker  
Mr. Brent Belzberg  
Ms Celina Rayonne Ceasar-Chavanes  
Mr. P. C. Choo  
Professor Elizabeth Cowper  
Mr. Ken Davy  
Miss Maria Pilar Galvez  
Professor William Gough  
Professor Hugh Gunz  
Professor Ellen Hodnett  
Professor Edward Iacobucci  
Mr. Nykolaj Kuryluk  
Professor Michael Marrus  
Professor Cheryl Misak  
Ms N. Jane Pepino  
Professor Andrea Sass-Kortsak  
Professor Elizabeth M. Smyth  
Mr. Howard Shearer  
Miss Maureen J. Somerville  
Mr. W. John Switzer  
Mr. W. Keith Thomas  
Professor Steven J. Thorpe  
Professor Franco J. Vaccarino  
Ms Morgan Vanek  
Ms B. Elizabeth Vosburgh

Mr. Louis R. Charpentier, Secretary of the  
Governing Council

### **Absent:**

Mr. Cary Ferguson  
Ms Judy Goldring  
Mr. Steve (Suresh) Gupta  
Ms Shirley Hoy  
Professor Louise Lemieux-Charles  
Mr. Aly-Khan Madhavji  
Mr. Gary P. Mooney  
Mr. Manveen Puri  
Ms Melinda Rogers  
Professor Janice Gross Stein  
Ms Rita Tsang  
Mr. Chirag Variawa  
Dr. Sarita Verma  
Mr. W. David Wilson

### **Secretariat:**

Mr. Anwar Kazimi  
Ms Cristina Oke

**In Attendance:**

Ms Alexis Archbold, member-elect of the Governing Council  
Mr. James Bateman, member-elect of the Governing Council  
Mr. Michael Donnelly, member-elect of the Governing Council  
Professor Angela Hildyard, Vice-President, Human Resources and Equity  
Professor Scott Mabury, Vice-President, University Operations\*\*  
Mr. David Palmer, Vice-President, Advancement  
Professor Jill Matus, Vice-Provost, Students  
Professor Cheryl Regehr, Vice-Provost, Academic Programs  
Ms Gail Milgrom, Acting Assistant Vice-President, Campus and Facilities Planning\*\*  
Ms Gillian Morrison, Assistant Vice-President, Divisional Relations and Campaigns  
Ms Marny Scully, Assistant Vice-President, Government, Institutional and Community Relations  
Mr. Steve Bailey, Director, Office of Space Management  
Ms Anita Comella, Assistant Dean, Faculty of Kinesiology and Physical Education\*\*  
Mr. Jim Delaney, Director, Office of the Vice-Provost, Students  
Ms Sheree Drummond, Assistant Provost  
Mr. Jason Dumelie, Executive-at-Large, Graduate Students' Union (GSU)  
Ms Sally Garner, Executive Director, Planning and Budget  
Ms Nora Gillespie, Legal Counsel, Office of the Vice-President and Provost  
Dr. Jane Harrison, Director, Academic Programs and Policy, Office of the Vice-President and Provost  
Professor Ira Jacobs, Dean, Faculty of Kinesiology and Physical Education\*\*  
Mr. Richard Levin, Executive Director, Enrolment Services and University Registrar  
Ms Rosanne Lopers-Sweetman, Chief Administrative Officer, Faculty of Kinesiology and Physical Education\*\*  
Professor Henry Mann, Dean, Leslie Dan Faculty of Pharmacy  
Ms Bryn MacPherson, Director, Office of the President  
Mr. Steve Moate, Senior Legal Counsel, Office of the President  
Ms Danielle Sandhu, President, University Affairs, Students' Administrative Council (SAC) which operates as the University of Toronto Students' Union (UTSU)  
Mr. Shaun Shepherd, President-elect, SAC

\*\* In attendance for item 2

***In Camera Session***

**1. Senior Appointment**

On motion duly moved, seconded and carried,

It was Resolved,

THAT Professor Cheryl Misak's term as Vice-President and Provost be extended for six months, from July 1, 2012 continuing to December 31, 2012, subject to such terms and conditions of appointment as are approved by the Senior Appointments and Compensation Committee.

**2. Capital Project: Project Planning Report for St. George Campus Fields Project**

On motion duly moved, seconded and carried,

It was Resolved,

THAT the recommendation contained in the Memorandum from the Acting Assistant Vice-President, Campus and Facilities Planning dated February 22, 2012 be approved.

THE GOVERNING COUNCIL MOVED INTO OPEN SESSION.

**Open Session**

**3. Chair's Remarks**

**(a) Welcome**

The Chair welcomed members and guests to the meeting. He congratulated the President on the extension of his term and thanked him on behalf of the Council on his decision to continue.

The Chair reported on a decision made *in camera*. He announced the extension of the Provost's term to December 31, 2012 and congratulated her on this extension.

**(b) Appointment of Lieutenant-Governor-In-Council Members to Governing Council**

The Chair announced that the Lieutenant Governor had issued the orders that Mrs. Zabeen Hirji and Ms Paulette Kennedy be appointed to the University of Toronto Governing Council for period of three years, effective from March 22, 2012.

**(c) Governing Council Election Results**

The Chair welcomed Professor Steven Thorpe who had been elected to the Governing Council as a teaching staff governor effective March 21, 2012. Professor Elizabeth Cowper, Professor William Gough, Professor Ellen Hodnett, Professor Janice Gross Stein, Mr. John Switzer, and Mr. Chirag Variawa had either been acclaimed or re-elected to the Governing Council.

**3. Chair's Remarks (cont'd)**

In addition, the Chair congratulated and welcomed the following individuals who had been newly elected or acclaimed as members of the Council and would begin their terms on July 1, 2012: Ms Alexis Archbold (Administrative Staff), Mr. James Bateman (Full-time Undergraduate Student), Mr. Michael Donnelly (Graduate Student), Mr. Aidan Fishman (Full-time Undergraduate Student), Mr. Andrew Girgis (Full-time Undergraduate Student), Professor Avrum Gotlieb (Teaching Staff), Ms Arlen Orellana (Part-time Undergraduate Student), Ms Mainawati Rambali (Part-time Undergraduate Student), Mr. Andrew Szende (Alumni), and Ms Nana Zhou (Full-time Undergraduate Student).

**(d) Presidential Search Committee**

The Chair reminded members about the call for nominations for persons to serve on the Presidential Search Committee. The deadline to submit nominations was May 4, 2012.

**(e) Speaking Requests**

The Chair noted that speaking requests had been granted to the Graduate Students' Union (GSU) and the Students' Administrative Council (SAC) which operates as the University of Toronto Students' Union (UTSU).

**4. Report of the President**

The President said that, in light of the agenda for the meeting, he had decided to depart from the practice of extending an invitation to a student group to make a presentation; the tradition of beginning the President's report with a student presentation would return at the next meeting of the Governing Council.

**(a) Awards and Honours**

The President drew the attention of the members to the Awards and Honours list. While extending his congratulation to all whose achievement had been recognized, he highlighted the following:

- University Professor Dick Peltier (Physics), a pioneer in earth system science, had been awarded the Herzberg Gold Medal, Canada's premier science and engineering prize. The Herzberg Gold Medal was the latest in the long list of prestigious honours that had been conferred upon Professor Peltier. In 2002 he had received the Vetlesen Prize, often referred to as the Nobel Prize of earth sciences; and had also won the 2010 Bower Award.

The President noted that the Herzberg Gold Medal had been awarded to a University of Toronto scholar for the fourth time since 2006.

- Mr. Andrew Westoll, Assistant Director, Editorial, Department of Communications and Public Affairs, University of Toronto Scarborough, had won the prestigious Charles Taylor Prize for Literary Non-Fiction.
- The 4x400 metres women's Varsity Blues track team had broken the national record while winning the gold medal at the CIS national championship.
- The Varsity Blues men's swim team had won the silver medal at the CIS national championship.

The President also congratulated all who had been recognized through the UTAA Awards of Excellence, the Gordon Cressy Student Leadership Awards, and the members of the Varsity Blues teams who had been honoured at the annual President's reception.

**4. Report of the President (cont'd)**

*(b) CUPE 3902 Unit 1 Update*

The President congratulated all those who had successfully negotiated the collective agreement between CUPE 3902 Unit 1 and the University.

*(c) Provincial Budget*

The President reported that the Provincial government had highlighted its intention in the proposed Provincial budget to reduce expenditure by \$17.7 billion over the next three years. The post-secondary sector was one of the five government sectors that would see some small annual growth – averaging 1.9 per cent to 2014-15. The government had indicated that the proposed increase in funding would adequately cover the costs of enrolment growth in the province. Nevertheless, it remained to be seen whether universities would allow growth to outstrip planned funding – as had been the case in other periods of budgetary stringency. The recently announced Ontario Tuition Grant would continue to grow in step with any provincially regulated tuition increases.

The President expressed his disappointment about one aspect of the proposed budget. The budget had included a *de facto* tax on institutions that enrolled non-PhD international students in the amount of \$825 per student, beginning with the 2013-14 cohort. The cost to the University was estimated to be: \$2.5 million in 2013-14, \$4.3 million in 2014-15; and \$6.4 million in 2015-16. The Provincial government had explained its reasoning by citing the “indirect support through operating grants” that they provided to non-PhD international students. In the opinion of the President, the measure would send a worrying signal about how the government viewed international students. In 2009-10, over 38,000 international students had been enrolled at Ontario post-secondary institutions, and had contributed \$1 billion annually to the province’s economy.

*(d) Federal Budget*

The President highlighted a few items in the proposed Federal budget:

- Cuts to the allocations of the three main granting agencies would be offset by equivalent increases targeted to support industry-academic research partnerships. A total of \$37 million would be redirected from basic research towards applied research.
- Renewed funding of \$500 million over five years had been approved for the Canada Foundation for Innovation.
- Genome Canada was to receive additional funding of \$60 million, and there would be funding for several other research and development, and science and technology initiatives.

The President expressed his approval of the government’s continuing commitment to invest in Canada’s knowledge-based economy.

*(e) Election Results: Governing Council Elections and University of Toronto Faculty Association*

The President congratulated all those who had been elected and re-elected to the Governing Council. He also extended his congratulations to Professor Scott Prudham, President-elect of the University of Toronto Faculty Association (UTFA); and offered a note of thanks to Professor George Luste who was stepping down after serving as President of UTFA for a decade.

**4. Report of the President (cont'd)**

*(f) Exams and Convocation*

Concluding his report, the President offered his best wishes to students who were scheduled to write exams and encouraged governors to participate in the June Convocation ceremonies.

**5. Items for Governing Council Approval**

**(a) Student Financial Support: Report of the Vice-Provost, Students, 2010-2011**

The Chair drew members' to the *Annual Report on Student Financial Support, 2010-11* that had been provided for information as context for the consideration of the Tuition Fee Schedules and the Budget Report. Governance responsibility for the Report resided with the Committee on Academic Policy and Programs, which had received it at its February 28, 2012 meeting, and discussed it in detail.

**(b) Tuition Fee Schedule for Publicly Funded Programs, 2012-13**

Professor Misak said that a prudent and balanced budget was being presented in unsettled economic conditions. She noted that the assumptions made in the University's budget would not have to be re-visited after the recent announcement of the proposed Provincial and Federal budgets. Professor Misak said the budget maintained and enhanced the University's commitment to student access. In addition, new revenues were to be distributed to academic divisions with a goal of improving the student-faculty ratio. More than 60 new teaching positions would be added across faculties where an improvement in the student-faculty ratio was needed.

Professor Mabury provided a presentation on both the Tuition Fee Schedules and the Budget Report (the PowerPoint slides are attached hereto as Appendix "A").

Ms Vosburgh provided the highlights of the proposed tuition fee schedule as they had been provided to the Business Board at its meeting on March 5, 2012.

Discussion

*(i) Members' Comments and Questions*

In the course of discussion, members raised the following points.

- A member noted that the Governing Council meeting to consider tuition fee schedules and the budget report had been scheduled during the exam period, which, in the member's view, had resulted in the absence of four of the eight student governors on Council.
- The member recalled that at the May 19, 2011, meeting of the Governing Council, the administration had made a commitment to provide a further report of the Program Fee Monitoring Committee along with the administration's recommendations to the Governing Council during the 2011-12 governance year. When would the administration be bringing the report to the Council?
- A member commented that the *Annual Report on Student Financial Support, 2010-11* had indicated an increase in student debt level, even though there had been significant increases in the level of financial assistance provided for students. Were initiatives being put in place to address the gap between the financial aid for students and the actual debt load? Other than the University of Toronto Advance Planning for Students (UTAPS), was there any other financial assistance available to students from families with household incomes that precluded them from receiving OSAP funding?

**5. Items for Governing Council Approval (cont'd)**

**Tuition Fee Schedule for Publicly Funded Programs, 2012-13 (cont'd)**

- A member referred to a slide in Professor Mabury's presentation on the average "effective tuition" for students who had received OSAP in 2009-10. The slide showed that the ratio of the tuition paid by students to the tuition funded by the University and/or a Provincial bursary as 49 per cent to 51 per cent for students enrolled at the Faculty of Arts and Science; and 37 per cent to 63 per cent for students enrolled at the Faculty of Applied Science and Engineering. The member asked whether the administration had any plans to bring these proportions in line across divisions.
- A member referred to the *Annual Report on Student Financial Support, 2010-11* and noted that approximately \$461,000 had been awarded to 256 part-time students in 2010-11 through the Noah Meltz Student Assistance Program (NMSAP). In the opinion of the member, this represented a small proportion of students receiving assistance as there were approximately 7,000 part-time students at the University. How had these figures changed compared with the assistance provided to part-time students in previous years? What was the anticipated growth for the NMSAP for 2012-13?
- A member emphasized the need for improvements in communication strategies through the University's website aimed at providing information on estimated costs and financial assistance available to prospective students. Such information would serve as an effective recruitment tool to attract students from lower socio-economic status groups who lacked access to information on the affordability of post-secondary education and financial management.
- In the opinion of a member, graduate students had been identified as "loss making" in the report on Student Financial Aid. In this light, what was the logic to increase the intake of graduate students in the coming years?

(ii) *Guest Speaker*

Ms Danielle Sandhu addressed the Council on behalf of the Students' Administrative Council (SAC) which operates as the University of Toronto Students' Union (UTSU), making the following points:

- The Provincial government had failed to demonstrate a vision for the post-secondary sector, and had undermined institutions from growing and meeting their needs with stagnant levels of per-student funding. The Ontario Tuition grant had resulted in the elimination of several grants available to students in need and the Ontario Work-Study Program.
- The University had demonstrated its commitment to access through the financial aid guarantee. However, student debt continued to rise and many students faced difficulty in financing their education. It was important to lower upfront costs paid by students.
- The elimination of the Doctoral completion grant had significantly affected a large number of doctoral students.
- The impact of the program fees and an increase in ancillary fees had affected many students.
- Students, faculty and the administration needed to lobby the Provincial government for a better funding framework for higher education and to ensure accessibility to quality education for all students.

**5. Items for Governing Council Approval (cont'd)**

**Tuition Fee Schedule for Publicly Funded Programs, 2012-13 (cont'd)**

(iii) *Administrative Response*

- The Provost provided the following responses:
  - The administration planned to provide a report from the Faculty of Arts and Science Program Fee Monitoring Committee at the May 17, 2012, meeting of the Governing Council.
  - The report on Student Financial Aid indicated that the University continued to be accessible to students from families in the lower social-economic status groups. The University shared the concern for better communication strategies targeted at students enrolled in schools in low-income neighbourhoods in the city. The Transitional Year Program, one of the University's programs aimed at providing access to students from low-income families, was the best and most successful in the country.
  - The recently-announced Ontario Tuition Grant was targeted at undergraduate students from families with a combined annual income of under \$160,000. It was expected that this limit would provide relief to students from middle-class families who were disqualified from receiving OSAP funding. However, she noted that the Provincial government had withdrawn the matching funds previously provided for a number of programs.
  - The ratios for the "effective tuition" were not aligned across divisions because tuition fees varied across divisions. Need-based financial aid would continue to be provided and would not be aligned with new revenues.
  - The Doctoral completion grant had not been eliminated. The funds set aside for this grant had been supplemented and devolved to the departments.
  - The language of revenue loss and gain in respect to graduate students had been used only in the context of setting out the budget. Graduate students were not viewed as "loss makers" for the University. Rather, the University was committed to funding PhD students. However, the University could not forgo tuition from doctoral students in their seventh or eighth year of study.
  - The University campaign would target funding for the NMSAP.
- Professor Matus and Mr. Richard Levin provided the following responses:
  - The survey conducted for the report of the Student Financial Support had indicated that a large proportion of students had little or no debt outside of OSAP.
  - A number of positive changes to the NMSAP had resulted from recommendations made by a review committee in 2011. Funding allocated under the NMSAP for 2012-13 would be determined at a later.
  - The University's commitment to financial aid was not contingent upon the tuition fees increases and went beyond the requirements mandated by the Provincial government.

The President added the following comments:

- The effect of the implementation of the Ontario Tuition Grant remained to be determined.
- The President acknowledged that the proportion of eligible students graduating with higher levels of OSAP debt had risen in recent years, as had the proportion of students graduating with any OSAP debt. He said that the University hoped to see some reduction in these numbers next year with the new Ontario Tuition Grant.
- Funding for graduate scholarships remained a real challenge. The number of graduate scholarships awarded in Ontario remained below the national average. Funding for graduate scholarships had been identified as a priority in the University campaign.



**5. Items for Governing Council Approval (cont'd)**

**Tuition Fee Schedule for Publicly Funded Programs, 2012-13 (cont'd)**

- The University continued to balance a triad of responsibilities which included quality, accessibility and affordability. Notwithstanding recurring challenges, the University continued to be ranked world-wide as a leading institution.
- In the prevalent economic climate, advocacy efforts could not be expected to bring about the optimal results. The University would continue to strive to deliver the best services within its limited means.

On motion duly moved, seconded and carried

It was Resolved

THAT the Tuition-Fee Schedule For Publicly Funded Programs in 2011-12, as described in Professor Mabury's February 20, 2012 report to the Business Board, and the tuition fees in 2012-13 and 2013-14 for the special programs identified in Tables B2 and C2 of Appendices B and C of the report, be approved.

Documentation is attached to Report Number 195 of the Business Board as Appendix "A".

**(c) Tuition Fee Schedule for Self-Funded Programs, 2012-13**

Ms Vosburgh reported that self-funded programs received no government funding, and that their fees were set to recover at least their direct costs.

On motion duly moved, seconded and carried

It was Resolved

THAT the tuition-fee schedule for self-funded programs for 2012-13, a copy of which is attached to Professor Mabury's February 20, 2012 memorandum to the Business Board as Table 1, be approved.

Documentation is attached to Report Number 195 of the Business Board as Appendix "B".

**5. Items for Governing Council Approval (cont'd)**

**(d) Budget Report, 2012-2013 and Long Range Budget Guidelines, 2012-13 to 2016-17**

Professor Hodnett summarized the thorough consideration of the *Budget Report* that had occurred at the Academic Board meeting of March 14, 2012. The Provost, the Vice-President, University Operations, and the Executive Director, Planning and Budget, had provided a detailed presentation to the Board, followed by extensive discussion and questions by members. Ms Vosburgh reported that the Business Board had considered the *Budget Report* at its meeting on March 5, 2012, focusing on its role to advise the Governing Council of the financial prudence of the document. The proposed balanced budget had also received an evaluation of prudence from the President. The Business Board had voted to support the budget, concurring with the prospective recommendation of the Academic Board that it be approved by the Governing Council.

On motion duly moved, seconded and carried

It was Resolved

THAT the *Budget Report 2012-13* be approved, and

THAT the *Long-Range Budget Guidelines, 2012-2013 to 2016-2017*, be approved in principle.

Documentation is attached to Report Number 178 of the Academic Board as Appendix "A".

**CONSENT AGENDA**

On motion duly moved, seconded, and carried,

It was Resolved

THAT the consent agenda be adopted and that the items be approved.

**6. Site Reassignment: Development of Site 10 on St. George Street at Galbraith Road for the Centre of Engineering Innovation and Entrepreneurship within the Faculty of Applied Science and Engineering**

On motion duly moved, seconded, and carried,

It was Resolved

THAT Site 10 on the University of Toronto St. George Campus, at 47-55 St. George Street be assigned for the Centre of Engineering and Innovation and Entrepreneurship within the Faculty of Applied Science and Engineering for a five-year period beginning March 2012 to March 2017. If the Faculty is unable to initiate a capital project for the site by March 2017, the Site will become available for other institutional purposes.

Documentation is attached to Report Number 178 of the Academic Board as Appendix "B".

**7. Minutes of the Previous Meeting of February 16, 2012**

The minutes of the February 16, 2012 meeting were approved.

**8. Business Arising from the Minutes of the Previous Meeting**

There was no business arising from the previous meeting.

**9. Reports for Information**

The Council received for information the following reports:

- (a) Report Number 178 of the Academic Board (March 14, 2012)
- (b) Report Number 195 of the Business Board (March 5, 2012)
- (c) Report Number 168 of the University Affairs Board (March 13, 2012)
- (d) Report Number 6 of the Pension Committee (December 14, 2011)
- (e) Report Number 445 of the Executive Committee (March 29, 2012)

**10. Date of Next Meeting**

The next meeting of the Governing Council was scheduled for Thursday, May 17, 2012 at 4:30 p.m. in the Council Chamber, University of Toronto Scarborough.

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**11. Report of the Implementation Task Force on Governance**

Professor Gough reported that several meetings and consultation sessions had been held with groups on both the University of Toronto Mississauga (UTM) and University of Toronto Scarborough (UTSC) campuses. Detailed consultation drafts outlining the structures and responsibilities for the Councils of both campuses and their respective committees had been prepared and discussed. It was the intention of the Implementation Task Force to bring its recommendations to the June 25, 2012 meeting of the Governing Council.

**12. Question Period**

A member commented on the success of the University's Summer Mentorship Program. The member said that the Program had assisted in providing access to higher education to several hundred of its graduates. Mr. Shaun Shepard, President-elect, Students' Administrative Council (SAC) which operates as the University of Toronto Students' Union (UTSU), who was present at the meeting, had been a graduate of the Program. The member's comments received applause from the Council.

### **13. Other Business**

#### Non-Tuition Ancillary Fees

The Chair invited Professor Scott Mabury to provide background information on the non-tuition ancillary fees. Professor Mabury said that at the Business Board meeting held on March 5, 2012, student representatives from the Institute of Biomaterials and Biomedical Engineering (IBBME) and GSU, had identified concerns regarding the ancillary fees in the Clinical Engineering MHS and PhD programs. Prior to the April 5, 2012, meeting of the Business Board, the administration had reviewed the concerns, in line with the policy set by the MTCU. As a result, the administration would:

- Refund non-tuition ancillary fees in three categories for the 2011-12 academic period due to insufficient communication provided to students;
- Refund a proposed fee for 2011-12 that did not meet the MTCU policy requirement;
- Update the IBBME website to ensure better communication with students on proposed fees revisions;
- Conduct a review of category 5 and 6 ancillary fees to ensure that the existing fees met with the MTCU and University policy requirements; and
- Ensure that process for review and approval of new fees would be comprehensive and appropriate notification would be provided to students.

Professor Mabury said that the review would be completed by fall 2012.

The Chair invited Mr. Jason Dumelie to address the Council. Mr. Dumelie said that the GSU had challenged the procedure that had been followed by the University to introduce non-tuition related ancillary fees on the grounds that the MTCU policy required that fees be approved by the University's governing body and that sufficient notice be provided; challenged whether some of the fees had been correctly categorized as category 5 or category 6 protocol exempt non-tuition related compulsory ancillary fees; and had formally requested information about these fees to better understand the University's rationale in the classification of ancillary fees.

In the opinion of Mr. Dumelie, the non-tuition ancillary fees needed to be approved by the Governing Council and were to cover the following costs:

- Direct cost of travel or accommodation of students for field trips;
- Learning material and clothing that the students kept;
- Materials that were used to make items that became the property of the student;
- Purchase of a material or service, where the University acted as a broker between a student and vendor; and
- Any costs involved with the placement process for work-term placements.

Mr. Dumelie concluded by recommending the following:

- Misclassified fees charged to students be refunded;
- Future fees be introduced in a manner consistent with MTCU policy; and
- The interpretation followed during the review of the fee classification be appropriately narrow to costs as indicated earlier.

**13. Other Business (cont'd)**

Access Copyright

Professor Matus provided members with the following statement from the administration on Access Copyright. The Chair ruled that this statement be included in the minutes:

*A) Governance and Ministry Compliance*

*In responding to the questions and concerns of the GSU, I am going to deal first with the question of the Governance process followed in reaching the new License with Access Copyright that replaced the one that expired at the end of 2010.*

*It is very important to note - and this seems not to have been appreciated fully when the issue has been discussed in the past – that the administration, in reporting this License and Fee to Business Board for information, rather than seeking additional Governance approvals, was following explicit Governing Council policy.*

*I will only mention the key provisions relevant to the policy context within which the License was negotiated and reported to governance.*

*The Governing Council's Memorandum of Agreement with the students "For a Long Term Protocol on the Increase or Decrease of Compulsory Non-Tuition Related Fees" (often referred to as "the Protocol" or "the COSS Protocol") lists, in the Appendix on page 9, several fees that are exempt, and are instead "covered by the University's Policy on Ancillary Fees." One of the exempt fees, under the heading "Fees for Materials or Services where the Institution Acts as a Broker with a Vendor for the Student," is the "CANCOPY" fee. CANCOPY is the former name of Access Copyright. So, the Policy names this particular fee and makes it clear that it is covered by the Ancillary Fees Policy.*

*The Policy on Ancillary Fees makes it clear, in section 5 dealing with "Cost Recoveries" and subsection 5.7, dealing with "Materials, services or licenses where the university acts as a broker or vendor for the students" that the CANCOPY (now Access Copyright) fee can be adjusted annually by administrative authority, provided that the adjustments relate to changes in cost, and are for goods and services and licenses that comply with the Policy on Ancillary Fees, which this particular fee does. All changes are to be reported annually to the Business Board for information.*

*Thus, the Administration followed Governing Council's own policy, and it adjusted the fee pursuant to a new License, and reported this to the Business Board for information. The point is this: if Governors wish to change the Policy they can do so in the future, but they should not revisit administration action that has been clearly grounded in existing Policy. If members wish to suggest future changes to the Policy, please contact the Provost's office.*

*As for whether the University's Policy and its Memorandum with the Students comply with the Ministry's Guidelines, they clearly were viewed as complying when the Policy was introduced and the Memorandum with Students was reached – hence the reference to the CANCOPY fee in the Memorandum, and the fact that the Policy on Ancillary Fees mirrored the Ministry guidelines by including the new category. Before the new License with its new fee was entered into, Provost's Office staff confirmed with the Ministry that this fee remained consistent with the Ministry guidelines.*

**13. Other Business (cont'd)**

*The current Policy itself includes a statement indicating that it was updated “to conform with new requirements established by the Ministry of Education and Training”.*

*Finally, even though this Access Copyright fee is compliant with both University Policy and the Ministry’s Guidelines, it is important to note that at the recent meeting of Business Board it was reported that the Administration would undertake a review of Category 5 and 6 ancillary fees to ensure that existing fees meet with MTCU and University policy requirements, and that the Administration will examine the process for review and approval of new fees in order to ensure a) that fees meet the policy requirements; and b) that appropriate notification is undertaken. Thus, for the future, there will be ample opportunity to provide input into any issues regarding the possible renewal of the new License when it expires on December 31, 2013.*

*B) The License*

*It is worth noting that, in the last decade, very few people seemed significantly interested in copyright issues at the University, and they were certainly not interested in the University’s License with Access Copyright. The License that the University entered into with Access Copyright in January of 2012 was not a brand new thing: it was an evolution of the previous License, which had subsisted for many years, the most recent License being entered into in 2004. It was an evolution that among other things provided much-needed clarity regarding the copying of paper published works into digital form for inclusion in online course learning management systems (such as Blackboard, etc)*

*As was indicated by the President in the previous Governing Council meeting, the benefits of broader access, including open access, are well understood and particularly relevant to the mission of the University in expanding knowledge. But those benefits are not attained all at once, and they cannot be attained without paying attention to the reality of copyright regulation, including the reality of the litigation that the University and many others found themselves embroiled in with Access Copyright.*

*The factors that influenced the decision to enter into a new License, and the form that the License took, have been mentioned before, but here is a brief summary:*

- *A context that included very lengthy and complex litigation before the Copyright Board and the courts, with a real potential for a very unfavourable result before the Copyright Board that could have cost more, covered less, and been fully retroactive. If those who object to the License think that they would have achieved a significantly more favourable outcome before the Copyright Board than what the License provides, they have yet to point to any of the Board’s rulings on this matter or in the jurisprudence generally that would fill one with confidence as to that prediction*
- *There was a clear need to expand into digital rights coverage.*
- *There was a sense, based on solid information, that the risks of opting out of the Interim Tariff issued by the Copyright Board, and relying instead exclusively on negotiated publisher-specific licenses and on fair dealing, would be too risky for the University at this time (perhaps this will change in the future).*
- *The fact that Bill C-11, the new Copyright Act, had not yet been passed. It still has not, even though it is in the final stage and will almost certainly pass in its current form.*
- *The fact that the jurisprudence regarding the educational use and fair dealing exemptions in copyright legislation is still in rapid evolution, and it would be naïve to think that all judicial interpretations would usher in a new world where existing copyright protection (and the very powerful copyright collectives) became irrelevant just because the users were at a university.*

**13. Other Business (cont'd)**

- *The fact that the new fee is very comparable to what applies in Quebec to universities such as McGill under the Copybec license.*
- *The fact that the indemnity that the License grants provides some real protection for off-side copying inadvertently done by faculty and students – something that could happen in an institution as decentralized as the University of Toronto.*
- *The fact that the elimination of course pack fees would benefit a large number of students.*
- *The fact that the risk of a very substantial retroactive fee increase, which was a very serious concern, was eliminated.*
- *The fact that the terms of the License were fully supported by another major Ontario university (Western) and were negotiated in light of guidance from copyright law legal experts.*
- *And, finally, the need for a time of stability during which time the University could develop greater copyright compliance resources, through education and other means.*

*The President, the Provost, the Chief Librarian and others were of the view, that putting all of these elements, and many more, into a complex calculus yielded a conclusion that this new License was in the best interests of the University of Toronto's copyright creators and copyright users, at least for the next year and a half until the expiry of the new License at the end of 2013.*

*They and others have devoted a lot of time to explaining their rationale, and confirming that the License conformed to applicable Policy. One hopes that the ensuing dialogue will lead to constructive engagement of faculty and students on copyright issues in the future.*

*Finally, in response to a question about consultation with students about the apportionment of the Access Copyright fee I can report as follows.*

*The Office of the Vice-Provost, Students sent invitations to 27 student societies (including the student governments) and to the student members of Governing Council, in order to discuss the apportionment of the Access Copyright fee. Several meetings were held through February, 2012. Although a number of ideas were discussed (such as charging students in course-pack heavy programs a larger share), there was only one issue where there was consensus and for which our student information system could easily accommodate apportionment. Previously, part-time students were charged one third of the former Access Copyright/Cancopy fee. In order to make the practice consistent with the manner in which student services fees are charged, the new Access Copyright fee will be charged to part-time students at a rate of 20 per cent of the amount charged to full-time students.*

Non-human primate Research

A member sought clarification on conflicting media reports on the use of animals for the purposes of research at the University.

The President replied that the current use of primates for research purposes was winding down at the University. Alternative models to the use of primates for research continued to be sought by investigators. However, when necessary and ethically justifiable, the use of primates for unique experiments (for example, those that involved the investigation of neurodegenerative disorders) could not be over-ruled. The President said that the University's stated position in the matter had received a positive editorial response in the media.

**13. Other Business** (cont'd)

Information Technology

A member commended the efforts of the President and Professor Matus in the facilitation of the availability of information technology to teaching assistants.

The meeting adjourned at 6:30 p.m.

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Secretary

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Chair

May 7, 2012