



FOR RECOMMENDATION

PUBLIC

OPEN SESSION

TO: Business Board

SPONSOR: Angela Hildyard, Vice-President, Human Resources & Equity
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PRESENTER: Angela Hildyard, Vice-President, Human Resources & Equity
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DATE: January 15, 2014 for January 26, 2014

AGENDA ITEM: 7

ITEM IDENTIFICATION:

Tentative Agreement Between the University Administration and University of Toronto Faculty Association on Article 5 of the Memorandum of Agreement (dated October 10, 2014) and tentative Agreement Between the University Administration and the University of Toronto Faculty Association on the Memorandum of Agreement [Articles 2 and 6] (dated October 10, 2014).

JURISDICTIONAL INFORMATION:

Under Section 5 of its Terms of Reference, “contractual relations with employee groups” fall within the Business Board’s areas of responsibility. Under Section 5.10 of its Terms of Reference, the Business Board has responsibility for “approval of changes concerning the process of determining salaries and benefits” for the University’s employee groups, and for “approval of agreements and changes to agreements outside the *Labour Relations Act* with respect to terms and conditions of employment, subject to any limitations established by law or contract.” Section 31(b) of Governing Council By-Law Number 2 also specifies that issues pertaining to academic employment are also reviewed by Academic Board.

GOVERNANCE PATH:

1. **Business Board [for recommendation] (January 26, 2015)**
2. Academic Board [for recommendation] (January 29, 2015)
3. Executive Committee [for endorsement and forwarding] (February 9, 2015)
4. Governing Council [for approval] (February 26, 2015)

PREVIOUS ACTION TAKEN:

The Governing Council of the University of Toronto first approved a Memorandum of Agreement (MOA) between the University and the University of Toronto Faculty Association

(UTFA) on June 28, 1977, as amended from time to time, last consolidated on December 31, 2006.

HIGHLIGHTS:

As described in more detail in the attached Informational Memo, in the Spring of 2013, a Special Joint Advisory Committee (SJAC) was established with representatives of the University of Toronto and UTFA to discuss potential changes to the MOA between the Governing Council of the University of Toronto and UTFA. The SJAC and its subcommittees met regularly between March 2013 and December 2014 in order to reach the tentative agreement summarized in the attached Informational Memo, including the two tentative agreements regarding changes to the MOA of October 10, 2014, attached here. The SJAC process was extended several times in order to accommodate further collegial discussion and was expertly facilitated by the Honourable Frank Iacobucci.

UTFA's Council ratified the tentative agreement at its scheduled meeting on December 15, 2014, and the Governing Council is now being asked to approve the tentative agreement as per the terms of reference of its various boards and committees. The agreement consists of four elements, which will be considered for approval by the relevant bodies and will be subject to final approval of the tentative agreement as a whole by Governing Council.

The University administration recommends for approval the tentative agreements attached here. As described in the attached informational memo, the proposed changes to the MOA accomplish three goals:

- a) To institute a new non-binding, facilitation and fact-finding process for addressing potential changes to so-called 'frozen policies' in Article 2, certain specified provisions in the MOA itself, and other significant terms and conditions of employment for faculty and librarians contained in existing or proposed University-wide policies;
- b) To include sick leaves, leaves of absence and parental leave benefits in the Article 6 salary and benefit and workload process; and
- c) To clarify the statement on academic freedom in Article 5, including making explicit the fact that "creative professional activities" of faculty and librarians are subject to the protection of academic freedom.

The proposed changes to the MOA in the first attachment (regarding Articles 2 and 6) have been agreed to in principle but not yet drafted with specific wording. Therefore, approval is sought in principle of that agreement at the present time; a request for approval of the specific revisions to the MOA will come forward in a subsequent cycle of governance. Approval is sought of the exact language regarding Article 5 in the second tentative agreement appended here.

FINANCIAL IMPLICATIONS:

N/A

RECOMMENDATION:

Be It Recommended to the Governing Council:

THAT the tentative *Agreement Between the University of Toronto Faculty Association and the University Administration on Article 5 of the Memorandum of Agreement* (dated October 10, 2014) be approved, effective immediately; and

THAT, the tentative *Agreement Between University of Toronto Faculty Association and the University Administration on the Memorandum of Agreement* [Articles 2 and 6] (dated October 10, 2014) be approved in principle, effective immediately.

DOCUMENTATION PROVIDED:

- *Tentative Agreement between UTFA and the University Administration re: Article 5 of the MOA* (October 10, 2014)
- *Tentative Agreement between UTFA and the University Administration on the Memorandum of Agreement* (October 10, 2014)
- Informational Memo on Special Joint Advisory Committee.

Agreement Between UTFA and the University Administration re article 5 of the MOA –
October 10, 2014

Article 5: Academic Freedom and Responsibilities

1. The parties to this Agreement acknowledge that the University of Toronto is committed to the pursuit of truth, the advancement of learning, and the dissemination of knowledge. To this end, they agree to abide by the principles of academic freedom as expressed in the following statement: academic freedom is the freedom to examine, question, teach, and learn, and it involves the right to investigate, speculate, and comment without reference to prescribed doctrine, as well as the right to criticize the University of Toronto and society at large. Specifically, and without limiting the above, academic freedom entitles faculty and librarians to:

- (a) freedom in carrying out their activities:
- (b) freedom in pursuing research and scholarship and in publishing or making public the results thereof; and
- (c) freedom from institutional censorship. Academic freedom does not require neutrality on the part of the individual nor does it preclude commitment on the part of the individual. Rather academic freedom makes such commitment possible.

For clarity, these protections apply to teaching, research and scholarship, including creative professional activities, carried out by faculty and librarians in their capacity as employees of the University.

2. A faculty member's professional obligations and responsibilities to the University of Toronto shall encompass (i) teaching; (ii) research, scholarly or creative activity; (iii) service to the University of Toronto. While the pattern of these duties may vary from individual to individual, they constitute the faculty member's principal obligation during the employment year, and include, without being restricted to, responsibilities as follows:

- (a) A faculty member shall carry out his or her responsibility for teaching with all due attention to the establishment of fair and ethical dealings with students, taking care to make himself or herself accessible to students for academic consultation, to inform students adequately regarding course formats, assignments, and methods of evaluation, to maintain teaching schedules in all but exceptional circumstances, to inform students adequately of any necessary cancellation and rescheduling of instructions and to comply with established procedures and deadlines for determining, reporting and reviewing the grades of his or her students.
- (b) A faculty member shall be entitled to and be expected to devote a reasonable proportion of his or her time to research and scholarly or creative professional work. He or she shall endeavour to make the results of such work accessible to the scholarly and general public through publications, lectures and other appropriate means. Faculty shall, in published works, indicate any reliance on the work and assistance of academic colleagues and students.
- (c) Service to the University of Toronto is performed by faculty members through participation in the decision-making councils of the University of Toronto, and through sharing in the necessary administrative work of their Departments, Faculties, the University of Toronto or the Association. In performance of these collegial and administrative activities, faculty members shall deal fairly and ethically with their colleagues, shall objectively assess the performance of their colleagues, shall avoid discrimination, shall not infringe their colleagues' academic freedom, and shall observe appropriate principles of confidentiality.

3. A librarian's professional obligations and responsibilities shall encompass (i) the development of his or her professional knowledge and performance, (ii) contributions to scholarship and creative professional work, (iii) service to the University of Toronto including service to the profession. While the patterns of these duties may vary from individual to individual, they constitute the librarian's

principal obligation during the employment year. A librarian shall carry out his or her responsibilities with all due attention to the establishment of fair and ethical dealings with library users, colleagues and staff taking care to be properly accessible. A librarian shall foster a free exchange of ideas and shall not impose nor permit censorship. A librarian shall ensure the fullest possible access to library materials.

For the University of Toronto

DATE

CA.

Oct 10, 2014

Lucy Kaldyana

For the University of Toronto Faculty Association

DATE

**AGREEMENT BETWEEN UTFA AND THE UNIVERSITY
ADMINISTRATION ON THE MEMORANDUM OF AGREEMENT,
OCTOBER 10, 2014**

1. Article 6 arbitration to be extended to sick leave, leaves of absence and maternity, family care and parental leave (as per university administration proposal).
2. The following matters would not be subject to Article 6 binding arbitration, but instead would be subject to the facilitation and fact-finding process described in paragraph 3 below (hereafter the “facilitation and fact-finding process”):
 - a) Current Article 2 listed policies.
 - b) The new policy on the process for Academic Restructuring, which is to be newly added to the policies listed in Article 2 and which will not be subject to the fact-finding and facilitation process for a period of 5 years after the new policy is approved.
 - c) Memorandum Article 3, the non-arbitrable components (if any) of Article 4, and Articles 7, 9 except as it relates to academic freedom, 10, 11, 13, 18 and 19 (includes privacy and technology issues); and
 - d) Other significant terms and conditions of employment for faculty and/or librarians contained in existing or proposed University-wide policies (hereafter “Significant Terms and Conditions of Employment”). Any differences over whether any matter comprises Significant Terms and Conditions of Employment will be resolved by the GRP.
3. The Memorandum would be amended to provide for the following:
 - a) Each round of bargaining would commence with good faith bilateral negotiations over those terms and conditions of employment as specified by each party, both those subject to arbitration and those not subject to arbitration. This period of negotiations would continue for up to 3 months, subject to extension if the parties so agree. At the conclusion of the negotiation period, those issues that are within the scope of either Article 6 or the facilitation and fact finding process will be dealt with as set out below.
 - b) For those matters that are subject to arbitration, as per existing

Article 6, where the parties cannot reach agreement with the assistance of a mediator, the existing arbitration (dispute resolution panel) provisions of Article 6 would apply.

- c) For those matters identified in paragraph 2 above, and subject to the time restriction in 2(b), the parties would agree on a facilitator to assist them to reach mutual agreement. If the parties cannot agree, the Chief Justice of Ontario would appoint the facilitator.
- d) If the parties did not reach agreement on such matters with the assistance of the facilitator, either party could refer the matter(s) to the fact-finding phase of the process. The fact-finding phase would be conducted by a three person panel provided the parties could mutually agree on all three members of the panel, failing which there would be a one-person fact-finder who would be appointed as follows. The parties could appoint any individual by mutual agreement. Failing agreement, the parties would ask the Chief Justice of Ontario to appoint the fact-finder. The criteria for appointment by the Chief Justice would be that the fact-finder would be external to the University (i.e. not a current faculty member or librarian) who is a current or former academic with a record of academic achievement at a comparable peer research-intensive university, with expertise and substantial experience in university matters, and who would bring a fair-minded perspective to the fact-finding task. If the agreed upon or appointed fact-finder does not have legal training or labour relations experience, he or she may seek advice from the legal counsel to UTAC or the Chair of the GRP as the fact-finder considers appropriate.
- e) The parties would provide written submissions to the fact-finder/panel with respect to the matters under consideration. The fact-finder/panel would otherwise determine the appropriate procedure, which may include an opportunity to meet with the parties for further input, and confidential informal feedback to the parties.
- f) Following its review, the fact-finder/panel shall prepare a Report, setting out the issues agreed upon by the parties, the issues in dispute between them, a summary of the parties' respective positions on the unresolved issues, and non-binding recommendations to the parties on the matters in dispute, which non-binding recommendations could include elements of either party's proposal on unresolved matters.

- g) The fact-finder's/panel's recommendations will not be made public until two months after the recommendations have been made to the parties. During that period, the parties may reach agreement on the matters in dispute.
- h) If the parties do not reach agreement on some or all of the matters in dispute within that two month period, the fact-finder's/panel's recommendations on unresolved matters will be made public. Unless Governing Council and UTFA Council agree to the recommendations or to some modification of the recommendations, no changes will be made. Where recommendations are jointly agreed to and approved by Governing Council and UTFA Council, the matters agreed to will form part of Article 2 or the relevant Article of the Memorandum of Agreement as the case may be.
- i) Unless otherwise agreed by the parties, the facilitator and fact-finder will be independent of and not employed by either party.

4.

(a) The University administration will notify UTFA in a timely way of proposed changes to or of proposed new University-wide terms and conditions of employment of faculty members and/or librarians. UTFA will be given a reasonable opportunity to respond to such proposals. If the Administration and UTFA agree that the proposal comprises Significant Terms and Conditions of Employment, or if failing agreement, on the expeditious application to the GRP, the GRP decides it comprises Significant Terms and Conditions of Employment, then UTFA may refer the matter to the facilitation and fact-finding process under paragraphs 3(c) to (g) and no changes will be made (absent agreement) until one month after the end of the facilitation and fact-finding process (i.e. until one month after public release of recommendations).

(b) In some circumstances the University administration may have a bona fide need to seek changes to or propose new University-wide terms and conditions of employment of faculty members and/or librarians in an expeditious manner or before a particular date or event (e.g. as a result of new or changed legislation, government directive or policy, or new or changed rules of an external agency). If the University administration and UTFA agree that it comprises Significant Terms and Conditions of Employment or failing agreement, on the expeditious application to the GRP the GRP decides it comprises Significant Terms and Conditions of

Employment and UTFA refers the matter to the facilitation and fact-finding process the parties will cooperate to ensure that the process is expedited such that from the time of notice to UTFA under 4(b) above until the recommendations of the fact-finder are made public under 3(g) above no more than 6 months time shall pass (including a truncated time for the fact-finding recommendations to be made public under 3(g) above from 2 months to 15 calendar days), failing which the University may implement the changed or new Significant Terms and Conditions of Employment before the completion of the facilitation and fact-finding process. The Chair of the GRP will resolve any difference over whether there is a bona fide need on an expedited basis.

(c) Nothing herein shall prevent the University administration from implementing a change to or new Significant Terms and Conditions of Employment in a timely way as required by law but the facilitation and fact-finding process still applies. The Chair of the GRP will resolve any difference over whether the change or new policy was required by law.

NOTE: The University administration and UTFA have also proposed other changes to the MOA which require further discussion between the parties.

For the University of Toronto

DATE



Oct 10, 2014



For the University of Toronto Faculty Association

DATE

Informational Memo on Special Joint Advisory Committee (SJAC)

Context

In the Spring of 2013, a Special Joint Advisory Committee (SJAC) was established with representatives of the University of Toronto and University of Toronto Faculty Association (UTFA) to discuss potential changes to the Memorandum of Agreement (MOA) between the Governing Council of the University of Toronto and UTFA. The SJAC was created to address several issues, including (i) possible changes to appointments policies for both faculty streams; (ii) the role of faculty and librarians in academic planning; and (iii) review of the strengths, weaknesses and options for modernization of the Memorandum of Agreement.

The SJAC and its subcommittees met regularly between March 2013 and December 2014 in order to reach the tentative agreements summarized below. The SJAC process was extended several times in order to accommodate further collegial discussion and was expertly facilitated by the Honourable Frank Iacobucci.

We are very pleased that representatives of UTFA and the University administration have reached tentative agreement regarding changes to the MOA and on related issues falling under the auspices of the SJAC process. It is to the credit of both parties and to our Facilitator that our shared strong commitment to the University of Toronto enabled us to reach a tentative agreement on these challenging and important issues. UTFA's Council ratified the agreement at its scheduled meeting on December 15, 2014, and the Governing Council is now being asked to consider for approval the tentative agreement as per the relevant respective terms of reference for its various boards and committees.

History

The University Administration and UTFA first entered into a comprehensive MOA on June 28, 1977. The MOA's basic structure and processes have served the institution well over the course of more than three decades. The agreement has enabled the University to become one of the world's great public institutions of higher learning and advanced research because of its support for the collective interests of faculty and librarians while providing for individual autonomy and flexibility in their scholarly and teaching pursuits.

The MOA sets out a process for the negotiation of faculty and librarians' salaries and benefits and workload; it enshrines vigorous protection of academic freedom; it contains a grievance and arbitration procedure; it protects core academic policies from unilateral change; and, it deals with various other terms and conditions of employment for faculty and librarians. Among the MOA's unique features are provisions that establish a process for negotiation of salary and benefit minimums and workload policy, including interest arbitration by a dispute resolution panel where the parties are unable to reach

agreement. One of the stated purposes of the MOA is to promote and maintain harmonious, collegial relationships within the University of Toronto, including the settlement of differences without resort to strikes and lockouts under the Ontario Labour Relations Act.

Highlights

The Governing Council is being asked to approve the four major elements of the tentative agreement reached with UTFA based on the terms of reference for the various governance boards and committees:

1. Changes to the MOA – specifically relating to Articles 2, 5, and 6
2. Changes to the *Policy and Procedures on Academic Appointments* (PPAA) regarding the teaching stream
3. Changes to the PPAA regarding the tenure stream
4. *Policy and Procedures for Faculty and Librarians on Academic Restructuring* (new)

With the exception of the changes to Article 5, the proposed changes to the MOA have been agreed to in principle but not yet drafted with specific wording. Therefore, approval is sought in principle of the agreements at the present time, with a request for approval of the specific revisions to the MOA to come in a subsequent cycle of governance.

The proposed changes to the MOA accomplish three goals:

- a) To clarify the statement on **academic freedom** in Article 5, including making explicit the fact that “creative professional activities” of faculty and librarians are subject to the protection of academic freedom;
- b) To include sick leaves, leaves of absence and parental leave benefits in the **Article 6** salary and benefit and workload process. These policies have previously been included in the Article 2 “frozen policies” category which required agreement between with UTFA to change but were not part of the Article 6 negotiation and dispute resolution process; and
- c) To institute a **new non-binding, facilitation and fact-finding process** for addressing potential changes to so-called ‘frozen policies’ in Article 2, certain specified provisions in the MOA itself, and other significant terms and conditions of employment for faculty and librarians contained in existing or proposed University-wide policies. Such matters are not subject to any prescribed process for bringing the parties together under the current MOA, and discussions about such matters have taken place on an *ad hoc* basis historically.

The proposed changes to the PPAA regarding **teaching-stream** faculty also have been agreed to in principle subject to agreement on the specific policy wording. Approval in principle is sought at the present time, with approval of the policy wording to come subsequently. The proposed changes recognize the value and unique contributions of teaching-stream faculty to the University. After implementation, the changes will result in rigorous, competitive appointment and evaluation systems that will be consistent across the institution. Specific changes include: initial four-year teaching-stream appointments; provision for a mandatory interim review with a term of teaching and service reduction following successful renewal and a two year re-appointment; a review for promotion to continuing status in year six; and the introduction of professorial ranks and titles that will recognize

accomplishments across a teaching-stream faculty member's scholarly career. If the proposed policy changes are approved, current full-time Senior Lecturers and full-time Lecturers with continuing-stream appointments will have an opportunity to elect to transition into the new policies or to remain under the existing policies.

The proposed changes to the PPAA regarding **tenure-stream** faculty – here with specific wording for approval, as agreed to by both parties – will make significant changes to tenure and promotion procedures that we believe are to the benefit of our colleagues and better align U of T with peer institutions around the world. For example, the changes will extend the normal tenure clock from five to six years and provide pre-tenure faculty with an academic term with reduced workload prior to their tenure review to permit them to address issues identified during their interim review. If the proposed policy changes are approved, current pre-tenure faculty members will have a one-time opportunity to elect to transition into the new policies or to remain under the existing policies.

Finally, approval is sought of a ***new Policy and Procedures for Faculty and Librarians on Academic Restructuring***, which sets out a process that will ensure full and appropriate collegial involvement and consultation with faculty members and librarians when certain significant changes to academic units are being proposed. This new *Policy* reflects our shared commitment to best practices of consultation with faculty and librarians about potential academic restructuring proposals, specifically when it comes to the disestablishment, amalgamation, or relocation from one campus to another of an academic unit.

Although not a part of the SJAC tentative agreements, the parties have committed to making review of the *Policies for Librarians* a priority, once the above elements are approved.

Consultation

The various elements of this agreement have undergone significant discussion and consultation to ensure the support of faculty members and librarians. This 22-month process has been a highly engaged one, with discussion, feedback, and communication at various times during the process. Various elements were presented to and discussed with Principals & Deans, the Executive Committee of Governing Council, and Principals, Deans, Academic Directors, and Chairs (PDAD&C). In addition, UTFA undertook its own process of consultation with its membership.