Appendix "A" to
Report 128 of AB

University of Toronto

OFFICE OF THE VICE-PRESIDENT AND PROVOST

TO: Academic Board

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AGENDA ITEM: 4

ITEM IDENTIFICATION:

Policy for Clinical Faculty

JURISDICTIONAL INFORMATION:

The Academic Board has responsibility for policies related to the appointment, promotion, tenure, suspension and removal of teaching staff.

PREVIOUS ACTION TAKEN:

The *Policy and Procedures for Academic Appointments* [PPAA] governs the appointment of tenure-stream and teaching stream faculty at the University of Toronto. The PPAA references a motion approved by the Academic Affairs Committee of the University's Governing Council on May 1, 1975: "That, pending the receipt of further advice from the Faculty of Medicine, the implementation of the academic appointments policy be delayed for clinical staff." The motion goes on to exempt clinical faculty (active staff in an affiliated hospital) in clinical departments in the Faculty of Medicine. There is currently no University policy that clearly governs clinical faculty or defines their rights and responsibilities.

HIGHLIGHTS:

A background report is attached (Appendix 1) with a detailed chronology of the history of the development of policies for clinical faculty appended. In summary, The Task Force on Clinical Faculty (Appendix 2) has developed recommendations for policies to govern the appointment of clinical faculty at the University of Toronto. These policies define clinical faculty, provide mechanisms for their appointment, dispute resolution and protection of academic freedom in the hospital setting, and protect their academic appointments from being terminated except for cause. They have been endorsed by the

elected Medical Staff Associations, Chief Executive Officers and Chairs of Medical Advisory Committees for all nine fully affiliated teaching hospitals and the

clinical leadership of the Faculty of Medicine. They also received overwhelming majority support in a direct survey of clinical faculty.

The proposed policies have benefited from ongoing discussion with the University of Toronto Faculty Association. One substantial point remains in dispute with the President of UTFA, regarding the nature of dispute resolution when a case of breach of academic freedom arises in the hospital setting. It is not possible to accommodate the concern of Professor Luste, as it would involve the University's asserting jurisdiction over autonomous organizations that the other organizations do not welcome. The proposed mechanism for protecting academic freedom for clinical faculty is superior to the ambiguous protections currently available to them, and is seen to be as such by the clinical faculty and their hospitals as well as the University administration.

There is ambiguity as to whether the Memorandum of Agreement covers clinical faculty. Whether UTFA's consent is required to amend the PPAA as regards clinical faculty is therefore unclear, although all other aspects of the PPAA are clearly 'frozen'. Clinical faculty have endorsed the new policies and view them as superior to the current arrangements. UTFA has not been prepared to concede that any changes to the PPAA should be allowed. If UTFA agreement is not obtained, these policies may have to be brought forward for approval by the Academic Board as separate policies for clinical faculty outside the PPAA.

The proposed policies will be presented in two parts. The draft Policy on Clinical Faculty (Appendix 3) to be approved by the Academic Board contains provisions for defining clinical faculty, academic freedom in the clinical setting, protects against termination of academic appointment except for cause, and delineates the University and its Officers' role in disputes involving academic freedom in the clinical setting. As per the recommendation of the Task Force, a detailed manual of policies and procedures will be developed based on these provisions and subject to review by the proposed clinical relations committee and the Faculty of Medicine Council. The approval of these detailed policies, will require agreement at the Clinical Relations Committee by a two-thirds majority of the representatives of elected medical staff associations as will any future amendments.

At this time the Administration is requesting that the proposed policies be endorsed in principle by the Academic Board. The Administration will then convene the Clinical Relations Committee so that the detailed manual of policies can be developed, circulated for comment, and approved. The Administration will endeavor to obtain agreement from UTFA to clarify the status of clinical faculty prior to bringing forward the policies for final approval by Governing Council.

FINANCIAL AND/OR PLANNING IMPLICATIONS:

The implementation of the policies will help to improve the relationships between the University and the clinical faculty and the affiliated teaching hospitals where they primarily work. The Task Force recommendations do call for some recognition of the work that clinical faculty do in delivering the academic programs of the University. We will bring forward recommendations for the implementation of this recognition through the Planning and Budget Committee in the next academic session.

RECOMMENDATION:

It is recommended that the Academic Board approve in principle:

THAT the draft Policy on Clinical Faculty dated May 27, 2004, hereto attached as Appendix 3, as the basis for the formation of a Clinical Relations Committee which will develop a detailed Manual of Policies and Procedures for Clinical Faculty on the understanding that the final policy will be brought forward for approval by Academic Board and Governing Council.

Backgrounder: Policy for Clinical Faculty development

Clinical Faculty and the University

Clinical faculty play an essential role in the University and its Faculty of Medicine. They assume a significant responsibility for the education of over 800 undergraduate medical students and 1800 postgraduate clinical trainees. Increasingly, clinical faculty also play a significant role in the supervision of graduate students, now numbering in the hundreds. The clinical departments of the University also contribute significantly to the University's research mission. Together, they account for over half of the research funding flowing through the Faculty of Medicine and the University's affiliated hospitals, amounting in turn to about one-third of all University research funds. The majority of these funds are obtained from peer-reviewed government and non-profit agencies.

The relationship of the clinical faculty with the University is fundamentally different from that of other tenure-stream faculty. Some clinical faculty are registered on the University payroll, but few derive the majority of their income from the University or work solely for the University. The majority work as self-employed professionals who voluntarily pool their earnings from clinical practice, through practice plans. These plans then redistribute the earnings as income to the clinicians and help to subsidize the academic missions of the teaching hospitals and the University. As such, clinical faculty are governed by a complex set of policies and agreements including those of the University and the affiliated hospitals, the affiliation agreements between these organizations, and the practice plans. Furthermore, clinical faculty have accountability internally to the Medical Advisory Committee and clinical leadership of the hospital and externally to organizations such as their professional regulatory body, the College of Physicians and Surgeons of Ontario.

Task Force on Clinical Faculty

The governance arrangements between the University, the hospitals and the clinical faculty have remained essentially unchanged for a number of decades (see chronology in Appendix 1). Yet the working environment for clinical faculty has changed considerably and increased in complexity. As a result significant challenges have arisen in our relationships in the recent past. Provost Adel Sedra struck a task force in January, 2002 to examine issues related to clinical faculty at the University of Toronto in order to make recommendations on how the relationships could be optimized.

The Task Force issued a report in November, 2002. It is accessible at http://www.provost.utoronto.ca/userfiles/page_attachments/library/6/2858_2125534_final.pdf. The Task Force was widely representative. It included colleagues from a range of clinical departments and settings and differing ranks. Among its members were an elected president of a medical staff association, chair of a medical advisory committee, a physician-in-chief with expertise in health policy, a hospital chief executive, an ophthalmologist-educator, a physician-bioethicist, and a clinical department chair. The Task Force also included on-campus colleagues with appointments in the tenure stream in Medical Genetics and Microbiology, Law, and Economics.

The recommendations of this task force clarify the issues that shape the relationship between clinical faculty and the University and provide an important new framework for collaboration among the University, the teaching hospitals and practice plans.

Because clinical faculty have accountability to both the University and an affiliated hospital, implementation of the recommendations requires creation of specific policies to govern the nature of clinical appointments, and revision to the affiliation agreements with each hospital.

As noted in the report, the Memorandum of Agreement has governed the relationship between the University of Toronto and its faculty. It is the Memorandum of Agreement that delineates the minimum rights, privileges and benefits which the University grants to its academic staff. Central to the Memorandum is the protection of academic freedom. The Memorandum stipulates that there will be no change to basic policies and practices, commonly referred to as "frozen policies".

The applicability of the Memorandum to clinical faculty is questionable on several counts. However, among the frozen policies covered by the Memorandum is the *Policy and Procedures on Academic Appointments (PPAA)*. With regard to clinical faculty, there is a policy gap in the *PPAA*. The *PPAA* includes a place-holder paragraph that defines clinical faculty and notes that it 'awaits further advice' from the Faculty of Medicine. This placeholder has remained in place for over 25 years. While several attempts have been made to address this vacuum, no resolution has previously been reached.

The proposed policies will fill this policy vacuum and clarify the terms of appointment for clinical faculty. The consultation of the Task Force made it clear that clinical faculty wish to have policies to govern their University appointments that are specific to their own circumstances. Further, the recommendations of the Task Force report have won support from elected representatives of medical staffs, medical advisory committees, and hospital executives.

The proposed policies provide a mechanism for enabling a course of self-determination for our clinical colleagues. Governance of the relationship for clinical faculty must involve a partnership between the University, the affiliated hospitals and the practice plans.

Among the most fundamental rights and responsibilities of all faculty, including clinical faculty is academic freedom. **The proposed policies entrench in University policy the definition of academic freedom for clinical faculty and provide a clear role for the University in safeguarding the academic freedom of clinical faculty.** Achieving this will require co-operative mechanisms with the hospitals and practice plans to meet the University's obligation in this regard. A unique mechanism for the resolution of academic freedom disputes that may arise in the clinical setting has been proposed. While hospitals and practice plans will have jurisdiction over their own settings, they will take part in a common dispute resolution panel of the University that will make legally binding findings of fact on disputes that involve academic freedom.

The proposed policies will provide for definition of clinical faculty member categories (e.g., full-time, part-time and adjunct) and appointment procedures. **The policies will entrench in University policy that clinical faculty members with continuing appointments cannot be terminated other than for specific and legitimate cause.**

It is also proposed that a Clinical Relations Committee be established to recommend the specific policies and procedures for clinical faculty. The membership of the Clinical Relations Committee will be broadly representative in order to safeguard the interests of clinical faculty. In particular, the voting structure will ensure that the **Medical Staff Associations, as the elected representatives of individual clinical faculty members, will have a clear voice in the development of policies and the appointment of members of dispute resolution panels for clinical faculty**. No changes in the policies and procedures can be made without the consent of a two-thirds majority of the representatives from the clinical collegium.

Implementation of the Task Force Recommendations

The Administration has faced a double-bind in responding to clinical faculty and implementing policies specific to their situation. UTFA cannot claim to speak for clinical faculty given that its constitution bars them from full-voting membership. Further, the Administration received in 2003 a written statement from hospital Medical Staff Associations and Medical Advisory Committees that explicitly rejected any representations made by UTFA on their behalf. The applicability of the Memorandum to clinical faculty, as noted, is questionable. However, the Memorandum also freezes the PPAA which is one obvious point for introducing the new policies for this group of colleagues. Thus, seeking to negotiate with UTFA so as to unfreeze the PPAA would violate the rights of clinical faculty; but without UTFA's consent the PPAA could not be unfrozen and revised.

Hence, last year, the Provost requested that UTFA consent to amend the Memorandum in a fashion that would end any jurisdictional ambiguity and allow amendment of the PPAA for clinical faculty. Prof. Neuman gave notice as well that if UTFA would not assent, the Administration would proceed to amend the Memorandum only in that regard. This led to considerable anxiety about the integrity of the Memorandum and potential destabilization of the working circumstances of those faculty and librarians covered by it.

The Provost then withdrew the notice to UTFA after receiving assurances that UTFA understood the desire for self-determination of clinical faculty, and wished only to offer constructive commentary on the proposed policies. During the last year, the administration and UTFA have indeed engaged in extensive discussions in regard to the task force recommendations. UTFA has made many excellent suggestions in regards to the clinical faculty policies, and the resulting policies are improved as a result. The polices being put forward have accepted UTFA recommendations on the definition of academic freedom, the provisions for ensuring that the elected representatives of clinical faculty have veto powers over any changes to the policies, and the composition of the two dispute resolution panels. UTFA proposed as well that the administration and UTFA should work with a mediator, Professor Hugh Scully of the Department of Surgery. Unfortunately, he was disqualified by UTFA before his report could be issued.

At present, one essential element remains standing between the administration and UTFA. This is in regard to how disputes involving academic freedom should be resolved. Disputes involving clinical faculty that arise in the hospital setting will normally be subject to the binding processes of that setting. When there is a concern about academic freedom, the hospitals and practice plans have agreed to a clear role for the University. First, University department chairs will have a role as mediators of the dispute. If this fails, the complainant can go before a Tribunal that will have the authority to issue a binding determination of fact that all parties have agreed not to dispute in further steps up to and including the courts. However, the determination of any remedy arising out of a finding of a breach of academic freedom would return to be implemented by the hospital or practice plan.

Hospitals are autonomous institutions with accountability to their own boards; clinical practice plans are accountable to their own clinical partners who generate the available income and are subject to internal agreements and self-governance. Neither can reasonably allow a third party organization such as the University to impose remedies. The UTFA President insists that the University must be able to do so. The Administration and clinical leaders take the view that the UTFA President's position is unworkable and grounded in employment relationships on campus that are not applicable in the clinical sphere. They further hold that the proposed policies provide a very powerful tool for protection of academic freedom in the clinical sphere. Last, they hold that UTFA in the final analysis has no right to determine the policies that clinical faculty wish for themselves.

Medical Staff Association Survey

In the meantime, the Medical Staff Associations requested that the Ontario Medical Association run a web-based survey on their behalf. A letter was sent to all Greater Toronto Area members of the Ontario Medical Association by the Chief Executive of the OMA, notifying them of the web-survey. The survey went live on the OMA website in mid-March 2004. On 22 March 2004, the Faculty of Medicine e-newsletter published a statement from Prof. Paul Dorian, President of the St. Michael's Hospital Medical Staff Association and chair of the Clinical Teachers' Association of Toronto. It stated:

"Virtually all academic physicians in Toronto will by now have received a letter from Dr. David Pattenden, CEO of the OMA, regarding a 5-question web-based survey about their views on the relationship between clinical faculty and the university. The OMA initiated this survey at the request of the medical staff associations [MSAs] at the nine teaching hospitals fully-affiliated with the University of Toronto."

"Last year, the Provost's Task Force on Clinical Faculty tabled proposals to clarify our status and formalize our role in policy formulation. The Task Force recommendations were endorsed by the executives of hospital MSAs and Medical Advisory Committees. However, the University of Toronto Faculty Association [UTFA] has not agreed that clinical faculty should deal directly with the University outside of UTFA's general Memorandum of Agreement with the University. This is clearly undemocratic because,

as the OMA has noted, UTFA does not allow clinical faculty to become full voting members and has no record of engaging or representing clinical faculty collectively."

"MSAs strongly favour the new policies as providing an important first step towards direct representation for clinical faculty in dealing with the Administration. The MSAs accordingly urge all clinical faculty to complete this 5-minute survey. "

Subsequently, the Faculty newsletter ran an item on 5 April 2004 as requested by UTFA.

MESSAGE FROM UTFA EXECUTIVE RE: CLINICAL FACULTY

The UofT Faculty Association (UTFA) has posted a document on its website that outlines UTFA's position concerning clinical faculty, hospital-based research scientists, and the proposed new dispute resolution procedures. Go to http://www.utfa.org/ to read the complete document. It is hoped that this document will clarify some of the confusion surrounding this complex issue."

A number of reminders were sent out by the Medical Staff Associations and by clinical chairs. The overwhelming majority of physicians in Ontario are members of the OMA, owing to a mandatory dues deduction program that has been in effect since 1992. However, to allow responses by physicians who are not members of the OMA, the OMA arranged to send out hard copies of the survey on request. The survey was closed on 5 May 2004.

The survey drew 491 responses. There were 17 duplicate web responses where the same physician responded twice; the first response received was used for analysis. Among hard-copy responses 12 were submitted without any identifiers, and were eliminated as they could be duplicates or ineligible. The OMA generated a list of names and affiliations for the remaining respondents and, with the consent of the MSAs, forwarded the list to the Faculty of Medicine for its Human Resources office to confirm that the respondents held a clinical faculty appointment. There were 44 non-faculty responses. This left 418 eligible respondents. The following is the summary of the responses by question.

Q1. Do you believe that the University of Toronto Faculty Association (UTFA) should be your representative in dealings with the University of Toronto?

'Yes' was indicated in 61 or 14.6% of the total eligible responses, while 'No' was indicated in 357 or 85.4% of the total eligible responses.

Q2. Do you want clinical faculty to have their own direct relationship with the University of Toronto outside the Memorandum of Agreement between UTFA and the University?

'Yes' was indicated in 386 or 92.3% of the total eligible responses, while 'No' was indicated for 32 or 7.7% of the total eligible responses.

Q3. Do you endorse the recommended policies set out by the Task Force on Clinical Faculty?

'Yes' was indicated for 347 or 83.0% of total eligible responses, while 'No' was indicated for 71 or 17.0% of total eligible responses.

Q4. Do you believe that these recommended policies represent an improvement on your current terms and conditions of appointment with the University of Toronto?

'Yes' was indicated for 322 or 77.0% of total eligible responses, while 'No' was indicated for 96 or 23.0% of total eligible responses.

Conclusion

Clinical faculty have indicated through multiple vehicles of consultation that they wish to proceed with the proposed policies that were developed in consultation with them, and to enjoy a direct relationship with the University as is their right. Input from UTFA has been sought and has been helpful in making positive revisions to the originally proposed policies. Although there are continuing disagreements with the UTFA President, the Administration takes the position that any issues with the proposed policies can best be identified and rectified by those to whom they apply, represented through the Joint Clinical Relations Committee. The applicability of the UTFA-Governing Council Memorandum of Agreement to clinical faculty is questionable on several levels. The Administration does not accept UTFA's jurisdiction over clinical faculty, and even were such jurisdiction to be established, Article I of the Memorandum of Agreement allows groups to negotiate terms and conditions that they believe are superior to those in the Memorandum and related policies. Since the PPAA is a frozen policy under the Memorandum, and to avoid any perceived threat to the Memorandum that governs the working circumstances of colleagues on campus, the proposed policies are being brought forward as a separate Policy on Clinical Faculty. The PPAA will remain as is. We remain optimistic that, in 3-5 years, after the clinical faculty policies have been implemented, evaluated, and revised as needed in accordance with the wishes of clinical colleagues, a consolidation of the PPAA may be possible with UTFA's consent. For now, that is a housekeeping matter that should not delay the implementation of a new dispensation for some of the University's most distinguished and productive faculty members.

May 27, 2004

APPENDIX 1:

CHRONOLOGY

1975: The University of Toronto adopts its *Policy and Procedures for Academic Appointments [PPAA]*.

The PPAA is directed at traditional campus-based tenure-stream appointments. The group developing the policies determines that it is not able to properly address clinical faculty issues. The PPAA references a motion approved by the Academic Affairs Committee of the University's Governing Council on May 1, 1975: "That, pending the receipt of further advice from the Faculty of Medicine, the implementation of the academic appointments policy be delayed for clinical staff." The motion goes on to exempt clinical faculty (active staff in an affiliated hospital) in clinical departments in the Faculty of Medicine.

1977: A Memorandum of Agreement between the University of Toronto Faculty Association and the University's Governing Council is signed, governing the relationship between the University of Toronto and its faculty and librarians.

There is no 'scope' clause that clearly defines which University employees are covered. Clinical faculty are not clearly defined as being covered by the Memorandum.

Clinical faculty do not receive ballots from UTFA in the ratification vote for the Memorandum as UTFA's constitution does not grant them voting status. This adds to the existing ambiguity regarding whether the Memorandum covers clinical faculty as most are not University employees.

The Memorandum provides an arbitration mechanism for resolving disputes which was intended to be outside of the Labour Relations Act. It allows individuals or groups to seek terms or conditions for their relationship with the University that they consider to be more favourable than those in the Memorandum. The Memorandum also provides that there will be no change to basic policies and practices. Included in the resulting "frozen policies" is the PPAA. In other words, if the Memorandum is interpreted to apply to them, clinical faculty are caught in a 'frozen vacuum', not covered by the PPAA.

1978: The academic appointment of a clinical faculty member, Prof. Marcel Kinsbourne, a neurologist at HSC, is terminated.

The dispute is not resolved by usual methods. The University and UTFA agree that clinical faculty should access the grievance process established for on-campus faculty under the Memorandum given the lack of availability at that time of any mechanism specific to clinicians that would allow them to appeal decisions by academic administrators. Nonetheless, clinical faculty cannot serve as arbitrators on the Grievance Review Panel. Further, they can only be represented by UTFA if they pay dues to UTFA, but as noted, they are barred from full voting membership in UTFA.

1979-1996: Various attempts are made to develop a policy specific to clinical faculty. All fail.

In none of the cases were hospital Medical Staff Associations or Medical Advisory Committees involved in framing the policy, nor were the proposals brought back to key clinical stakeholders for discussion and approval. UTFA meanwhile does not grant clinical faculty full voting membership and takes no steps of its own to remedy their uncertain status in the University.

1996-1999. The Apotex-Olivieri affair draws national attention. Four physicians at HSC -- Drs Nancy Olivieri, Helen Chan, Brenda Gallie, and Peter Durie -- launch grievances against university administrators involved in the dispute around the L1 trials. Lines between hospital and University administration are blurred by two aspects of the case. First, as is true in most major paediatrics centres in North America, the paediatrician-in-chief is also department chair and head of the practice plan. Second, the University is a signatory to two Alternative Funding Plan [AFP] agreements through which income flows en bloc to physicians' practice plans at the hospital. This differs from other teaching hospitals where individual physicians bill OHIP on a fee-for-service basis and their income is pooled. However, the AFP agreements govern the flow of funds to the practice plans and broad accountability for use of funds, not the disbursement decisions that are made by the practice plans themselves.

Spring 2001. The grievance proceedings continue intermittently.

HSC continues to refuse to cooperate with the Grievance Review Panel as regards production of documents relevant to the adjudication of the dispute. The University's view was that the hospital should collaborate in fact-finding without attorning to the remedial jurisdiction of the Panel. The Panel uses its arbitral powers to issue a demand for documents. The hospital seeks a judicial review of these arbitral powers, but a Judge rules in favour of the Panel. The hospital announces that it will consider an appeal, and in the meantime, will contest the production of any and all documents that relate to internal confidential matters. With further confrontation and litigation looming, the case stalls again.

Summer 2001: Physicians in the Alternative Funding Plans at the Hospital for Sick Children negotiate a long-awaited new deal that gives them raises as high as 40%.

The physician grievors involved in the L1 dispute object to the fact that the relevant agreements do not contain specific references to academic freedom and that the University is not a signatory to the agreements. UTFA supports the four physicians in seeking a court injunction blocking the deal. The Ontario Medical Association [OMA] leadership, Minister of Health, and HSC CEO are all apprised of the court action; all sign off before the request for an injunction can be heard, rendering the injunction moot.

September 2001: UTFA funds a new grievance by the same doctors, attempting to establish the jurisdiction of the Grievance Review Panel over the HSC practice plans, and

threatening, rather improbably, disaffiliation of the HSC as the penalty for non-compliance.

The University argues that the GRP has no jurisdiction over practice plans. The OMA and four hospital Medical Staff Associations also warn against this incursion into professional matters by a panel of tenure-stream faculty and librarians, and they seek standing in the case. The Grievance Review Panel rejects the standing of the Medical Staff Associations and the OMA. As legal costs again mount for UTFA and the University, and as the scope of the impasse becomes clear, the case stalls once more.

December 2001: Many clinical colleagues are angered by UTFA's tactics, the potential intrusion of an external tribunal into their independent practice arrangements, and the judgements rendered by the Grievance Review Panel.

Clinical faculty send scores of letters of protest to the President of the University, insisting that UTFA cease purporting to represent clinical faculty, and asserting non-applicability of the Memorandum of Agreement.

2002: Then Provost Adel Sedra appoints the Task Force on Clinical Faculty to develop new policies for clinical faculty that will end the 28 year old policy vacuum, and give clinical faculty their own dispute resolution mechanisms.

The Task Force consults widely, engages Medical Staff Associations, and clinical and hospital leadership, and develops a set of policy proposals that are widely supported in the clinical sphere. The Task Force tabled draft recommendations in the spring of 2002, with an open call for comments. The Task Force issues its final report in November 2002. The proposals clarify the appointment status, perquisites, and dispute resolution mechanisms for clinical faculty.

http://www.provost.utoronto.ca/userfiles/page_attachments/library/6/2858_2125534_final.pdf

See also FAQ at
http://www.library.utoronto.ca/medicine/taskforces/FAQclinicalFacultyReport.pdf

The proposals receive the endorsement of presidents of Medical Staff Associations at the nine fully-affiliated teaching hospitals, the chairs of the Medical Advisory Committees at those same institutions, the clinical department chairs in the Faculty of Medicine, all deans in the Faculty who are licensed physicians, chiefs of major clinical departments in hospitals, and chief executives of all the major teaching hospitals. The new Provost, Prof. Shirley Neuman, responds favourably to its proposals.

http://www.provost.utoronto.ca/userfiles/HTML/nts_6_2853_1.html

December 2002: Provost Neuman advises UTFA that the University seeks to clarify the ambiguity in the Memorandum regarding clinical faculty. She proposes that if UTFA does not agree to amend the Memorandum of Agreement to clarify that clinical faculty are outside it, the current Memorandum will terminate in July 2003 and be replaced by an identical Memorandum specifically excluding clinical faculty. However, she first seeks

UTFA's voluntary agreement to the clinical faculty policies and labels the continuation of the policy vacuum as undemocratic.

January-February 2003: Academic leaders across the campus support the right of clinical faculty to self-determination. An open letter from the presidents of all the Medical Staff Associations and the chairs of the Medical Advisory Committees emphasizes full support for the Task Force proposals and urges the Administration to get on with turning them into policy. The Medical Staff Association Presidents and Medical Advisory Committee Chairs explicitly repudiate UTFA as their agent. Academic Board discusses the issue and the majority speak out in favour of the new dispensation for clinical colleagues. See:
http://www.utoronto.ca/govcncl/bac/details/ab/2002-03/abr20030116.pdf

Debate, however, is clouded by the Administration threat to terminate the Memorandum of Agreement. Concerns are expressed by many colleagues that the matter should be resolved outside the Memorandum to avoid destabilizing the Faculty-Administration relationship on campus. UTFA argues that it is fully prepared to agree to a specific policy for clinical faculty, and wishes only to comment based on a desire to ensure the greatest possible consistency with policies for on-campus faculty. UTFA also warns that if the Administration proceeds, UTFA may refuse to reinstate the previous Memorandum and organize a union on campus. The Administration withdraws notice of intention regarding the Memorandum and engages in further discussions with UTFA. See:

http://www.provost.utoronto.ca/userfiles/HTML/nts_6_1799_1.html and
http://www.provost.utoronto.ca/userfiles/HTML/nts_6_1797_1.html

Spring 2003: Discussions with UTFA move slowly, but positive agreement is reached on some revisions, e.g. revised definition of academic freedom, mechanism to safeguard veto rights of clinical faculty regarding any changes to the new policies, composition of the dispute resolution panels, and clarifying the appeal mechanism in the clinical sphere.

UTFA suggests Dr. Hugh Scully, Professor of Surgery and Past President of both the Ontario and Canadian Medical Associations, as a mediator. The Administration agrees. Dr. Scully prepares a draft report recommending revisions to some aspects of the proposed policies but strongly endorsing the right to self-determination of clinical faculty and the general thrust of the Task Force proposals. UTFA does not respond over the summer.

Fall 2003: UTFA now advises that Dr Scully is no longer acceptable as a mediator. The Administration attempts to continue further discussions, but no further progress is achieved.

The Ontario Medical Association becomes engaged at the request of Medical Staff Associations and decides to directly gather the views of clinical faculty. A survey is organized to enable clinical faculty to express their views of the proposals that were endorsed by the executives of the Medical Staff Associations.

Winter-Spring 2004: UTFA President George Luste sends a memorandum of response on December 12, 2003. UTFA remains concerned about the lack of binding remedies for disputes in the clinical sphere, and offers other criticisms of the clinical faculty policies. See:

http://www.utfa.org/Memo%20of%20Dec%2011%202003%20re%20Clinical%20Faculty.pdf

The Administration responds to UTFA. See: http://www.provost.utoronto.ca/userfiles/HTML/nts_6_6404_1.html Meanwhile, the OMA websurvey is posted for several weeks and garners over 400 useable replies.

APPENDIX 3

Policy for Clinical Faculty
DRAFT May 27, 2004

The purpose of this policy is to formalize the status and recognition of clinical faculty members by the University of Toronto, provide a framework for the governance of clinical faculty relations with the University, enhance processes for addressing grievances of individual clinical faculty regarding University matters and establish a mechanism to protect the academic freedom of eligible clinical faculty members as regards their work in clinical settings.

1. Clinical faculty are licensed physicians who hold joint appointments between a clinical entity (fully affiliated hospital, or partially-affiliated hospital, or an affiliated community practice or other entity with a relationship to the University of Toronto) and a clinical department in the Faculty of Medicine at the University of Toronto. Clinical faculty are not normally employees of the University of Toronto. Their financial arrangements are normally through independent medical practice (solo or group), a practice plan which pools independent clinical earnings or alternative funding arrangements, or salaries at an affiliated institution. Eligible clinical faculty are those who have a major engagement in academic work, participate in a practice plan that meets specific core principles (Task Force Report on Clinical Faculty, November 2002), work in an affiliated hospital (or setting) that continues to meet the terms and conditions of a University-Hospital affiliation agreement, and who generally have no outside clinical or other employment.

2 A Clinical Relations Committee will be established to provide accountability for relations between the University of Toronto, clinical entities, and clinical faculty members. The committee will be chaired by the Vice-Provost, Relations with Health Care Institutions and will consist of:

- University estate

  The Provost (or designate)
  University Chairs of the clinical departments

- Medical Staff Association Estate

  President (or designate) of the Medical Staff Associations from each fully affiliated hospital

- Medical Advisory Committee Estate

  Medical Advisory Committee Chair (or designate) from each fully affiliated hospital

- Hospital Administration Estate

  Chief Executive Officer (or designate) from each fully affiliated hospital

3 The Clinical Relations Committee will be responsible for the recommending to the Provost policies and procedures related to matters including but not limited to:

a. Definition of categories of clinical faculty (e.g., part-time, full-time, adjunct)
b. Appointment of clinical faculty
c. Dispute resolution mechanisms for clinical faculty
d. Recommending to the President nominees for dispute resolution committees and panels for clinical faculty.
e. Provision for representation of partially-affiliated hospitals or part-time clinical faculty in the existing estates

Approval of such policies and procedures and nominations for the committees and panels will require the approval of a two-thirds majority of the members of each estate. Policies and procedures that are recommended by the Clinical Relations Committee will be presented to the Council of the Faculty of Medicine. The recommendations of these policies and procedures will be presented to the Provost for approval and reporting to the Academic Board for information.

4. The University appointment of a clinical faculty member who has passed probationary review will not be terminated unless there is cause. Cause includes, but is not limited to: gross research misconduct; violation of sexual harassment and non-discrimination policies; failure to reveal a relevant criminal offence that would call into question the appointee's ability to serve as a clinical role mode; conviction of a relevant criminal offence; inability to carry out reasonable duties; revocation of hospital privileges by any affiliated hospital resulting from clinical issues; failure to maintain reasonable competence in his or her discipline, including, without limitation, competence in teaching and research; and professional misconduct.

5. Eligible clinical faculty members have a right to academic freedom, which is defined as the freedom to examine, question, teach and learn, and the right to investigate, speculate and comment without reference to prescribed doctrine, as well as the right to criticize the University and society at large. Specifically, and without limiting the above, academic freedom entitles eligible clinical faculty members to have University protection of this freedom in carrying out their academic activities, pursuing research and scholarship and in publishing or making public the results thereof, and 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.

The University and fully affiliated teaching hospitals affirm that eligible clinical faculty have academic freedom in their scholarly pursuits. All clinical faculty remain subject to the applicable ethical and clinical guidelines or standards, laws and regulations governing the practice of medicine and the site-specific relevant site's policies or by-laws.

6. The University of Toronto has a fundamental role in the protection of academic freedom for clinical faculty. This includes:

    - University Chairs acting as advocates for clinical faculty members when issues of academic freedom arise in the clinical setting
    - The Dean promptly investigating referrals to his or her office of allegations of breach of academic freedom
    - Appointment of an independent panel of colleagues from the clinical faculty and tenured faculty in medicine to adjudicate disputes involving apprehended breach of academic freedom in the clinical setting.

    The affiliated clinical entities and practice plans where eligible clinical faculty work have agreed to accept the determinations and judgement of the panel. Where the finding that there has been a breach of academic freedom by such a panel does not lead to any remedial action by the affiliated hospital or practice plan, the Vice-Provost, Relations with Health Care Institutions must intercede with the hospital Chief Executive Officer (or equivalent in the relevant site).

    If there is no remedial action taken as a result of the said Vice-Provost's actions, the President of the University must intercede with the hospital Board (or equivalent in the relevant site). The Finding of Fact will be published by the University and the complainant may use the Finding and fact of University intercession in any court proceedings.

    May 27, 2004