



University of Toronto TORONTO ONTARIO M5S 1A1

GOVERNING COUNCIL SECRETARIAT

March 16th, 2000

Memorandum to: Members of the Business Board

Subject: Indemnification for Directors of Incorporated Business
 Ancillary Operations

Members of the Governing Council and other members of Governing Council boards and committees are, pursuant to section 27A of By-Law Number 2, indemnified by the University in the event that a successful legal action is undertaken against them personally for their acts or omissions in carrying out their duties as governors or as members of the board or committee. This indemnification supplements the directors' and officers' liability insurance carried by the University.

The Governing Council has established three wholly-controlled business corporations and approves the appointment of their directors, including many volunteers from outside of the University. Those corporations are: the University of Toronto Press Inc., the University of Toronto Innovations Foundation and the new University of Toronto Investment Management Corporation. Those corporations, in their By-Laws, provide that the corporation will indemnify their directors (and officers), but their resources are limited and the directors have reason to expect that the University itself will provide indemnification. In 1992, the Governing Council approved University indemnification for members of the Board of Directors of the University of Toronto Press. In 1995, the University similarly provided indemnification for Directors of the University of Toronto Foundation (a crown corporation established to receive gifts to the University, providing tax incentives that were at the time more favourable than the University itself could offer.) From time to time, Directors of the Innovations Foundation have enquired about a University indemnification, and the Vice-President - Research and International Relations has proposed that the University act to provide such indemnification. The University of Toronto Investment Management Corporation will be responsible for nearly \$4-billion of University and pension fund assets. The University has been very fortunate to have secured the agreement of several outstanding individuals to serve on the Board of the Corporation. In recruiting a number of those individuals, the President has assured the potential directors (whom he will nominate to the Executive Committee) that he will act to request appropriate University indemnification.

The directors of the incorporated ancillary operations are in all cases "approved and nominated," on the recommendation of the President of the University, by the Executive Committee of the Governing Council. The indemnification specifically excludes: (a) legal actions taken by the ancillary corporation itself to procure a judgement against one of its directors, (b) cases of willful neglect or willful default, and (c) prior indemnification provided by an insurance policy. The directors of these corporations are in fact "additional insureds" under the University's officers' and directors' insurance coverage. Therefore, it would be most unusual for the University itself to have to act to cover Directors' costs under this proposal.

The proposed indemnification resolution is identical to that previously approved for the University of Toronto Press. I propose:

THAT for incorporated business ancillary operations established by the Governing Council ("ancillaries"), when the appointment of Directors is approved by the Governing Council or the Executive Committee thereof,

Except in respect of an action by the ancillary to procure a judgment in its favour, the University will indemnify and save harmless every director of the ancillary and the heirs, executors and administrators and the estate and effects of each of them respectively, from time to time and at all times, from and against all costs, charges and expenses whatsoever (including amounts paid to settle an action or satisfy a judgement and fines and other monetary penalties) that such a person sustains or incurs in or about any civil, criminal or administrative action, suit or proceeding that is brought, commenced or prosecuted against him or her, for or in respect of any act, deed, matter or thing whatsoever, made done or permitted by him or her, in or about the execution of the duties of his or her office, except such costs, charges or expenses as are occasioned by his or her own willful neglect or willful default and except to the extent that any such person is indemnified under a policy or contract of insurance or indemnity with respect to any such costs, charges or expenses.



Secretary of the
Governing Council