

UNIVERSITY OF TORONTO
THE GOVERNING COUNCIL

Wednesday, April 13, 2005

MINUTES OF THE SPECIAL MEETING OF THE GOVERNING COUNCIL held on
Wednesday, April 13, 2005 at 2:00 p.m. in the Council Chamber, Simcoe Hall.

Present:

Ms Rose M. Patten (In the Chair)
The Honourable Frank Iacobucci,
Interim President
Professor Pamela Catton
Dr. John R. G. Challis
Professor Brian Corman
Mr. Brian Davis
Dr. Shari Graham Fell
Professor Vivek Goel
Dr. Gerald Halbert
Ms Françoise D. Ko
Professor Ian R. McDonald
Mr. Richard Nunn
Mr. Timothy Reid
Ms Marvi H. Ricker

Professor Arthur S. Ripstein
Professor Barbara Sherwood Lollar
Mr. Stephen C. Smith
Miss Maureen J. Somerville
Ms Oriel Varga
Mr. Robert S. Weiss
Mr. W. David Wilson

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

Secretariat:

Mr. Neil Dobbs
Mr. Andrew Drummond

Absent:

Ms Holly Andrews-Taylor
Professor Mary Beattie
Dr. Robert M. Bennett
Professor Philip H. Byer
Mr. Shaun Chen
Mr. P.C. Choo
Professor W. Raymond Cummins
Dr. Claude S. Davis
The Honourable William G. Davis
Dr. Alice Dong
Ms Susan Eng
Dr. Paul V. Godfrey
Ms Shaila R. Kibria

Dr. Joel A. Kirsh
Mr. Ari David Kopolovic
Mr. Joseph Mapa
Professor Michael R. Marrus
Mr. George E. Myhal
Mr. Stefan A. Neata
Dr. John P. Nestor
Ms Jacqueline C. Orange
Mr. John F. (Jack) Petch
The Honourable David R. Peterson
Mr. Andrew Pinto
The Honourable Vivienne Poy
Professor John Wedge

In Attendance:

Professor Angela Hildyard, Vice-President, Human Resources and Equity
Ms Catherine J. Riggall, Vice-President, Business Affairs

1. Policy on Retirement Age Affecting Faculty Members and Librarians (Cont'd)In Attendance (Cont'd)

Professor Tom Alloway, Vice-President, Salaries, Benefits and Pensions, University of Toronto Faculty Association
Ms Sheila Brown, Chief Financial Officer
Ms Sheree Drummond, Assistant Provost
Mr. Steve Dyce, Manager, Benefits, Pensions Information Reporting
Professor David Farrar, Deputy Provost and Vice-Provost, Students
Ms Nora Gillespie, Legal Counsel, Office of the Vice-President and Provost and Office of the Vice-President, Human Resources and Equity
Professor Edith Hillan, Vice-Provost, Faculty
Mr. Ken Lavin, Vice-President, University & External Affairs, University of Toronto Faculty Association
Professor George Luste, President, University of Toronto Faculty Association
Ms Judith Poë, Vice-President, Grievances, University of Toronto Faculty Association
Ms Silvia Rosatone, Manager of Convocation and Governance Committees Secretary
Ms Christina Sass-Kortsak, Assistant Vice-President, Human Resources
Professor Ronald D. Venter, Vice-Provost, Space and Facilities Planning
Professor Safwat Zaky, Vice-Provost, Planning and Budget
Mr. Howard Tam, Vice-President, University Affairs, Students' Administrative Council

1. Policy on Retirement Age Affecting Faculty Members and Librarians

(Arising from Report Number 134 of the Academic Board, April 7, 2005)

The Chair welcomed members and guests and thanked them for attending this special meeting of the Governing Council. It had been called to consider a recommendation from the Academic Board concerning the rescinding of the policy on retirement age affecting faculty members and librarians. Approval of the proposed policy change at this special meeting would enable the administration to implement the *Agreement on Retirement Matters* as expeditiously as possible.

The President thanked members of Council and guests for attending this special meeting of the Governing Council, which he described as a historic meeting. He noted that at their recent meeting the presidents of the group of ten (G10) research-intensive universities in Canada had been very interested in the matter before Council. The proposed arrangements were balanced and provided for flexible retirement opportunities. They had been the product of the lengthy efforts of a working group and were the outcome of excellent leadership from both the Faculty Association and the University administration, with the University's team led by Professor Goel and Professor Hildyard. The outcome had been very positive and very important for the University. Much more work did remain to be done to implement the proposal. The President thanked and congratulated everyone who had been involved in this historic undertaking.

Professor Hildyard said that discussions on this matter with the Faculty Association had been taking place for over one year. Both parties had sought an outcome

1. Policy on Retirement Age Affecting Faculty Members and Librarians (Cont'd)

that would support the University's major goals: the ability to engage in and manage the process of academic planning and the ability to attract and retain senior scholars. The University had in fact lost a number of senior scholars who would have continued here with the availability of more flexible retirement arrangements, and the current mandatory retirement policy had been a negative factor in efforts to recruit a number of senior scholars. While the University wished to be able to attract and retain senior scholars, it also wished to be able to attract young academics and to continue to enhance the diversity of the faculty and librarians through new appointments. Professor Hildyard acknowledged with gratitude the work of Professor Alloway as co-chair of the working group.

Professor Hildyard presented the highlights of the tentative *Agreement on Retirement Matters*, which had been approved by the Business Board, subject to the Governing Council's approval of the proposal to amend the policy on retirement age affecting faculty members and librarians.

- **Long-term objectives.** Professor Hildyard stressed the importance of the new arrangements' being consistent with the University's engagement in academic planning and their utility in retaining and attracting senior scholars while at the same time allowing the opportunity to recruit new academics and to enhance diversity. The new arrangements would allow faculty members and librarians to make choices concerning their retirement arrangements at three different stages: before their normal retirement date at age 65, at that normal retirement date, and after that date.
- **Cost.** It was important that the new arrangements be essentially cost-neutral to the pension plan. That was particularly the case in view of the fact that the pension plan presently had a liability that was being amortized. It was also important that there be no major negative impact on the operating budget, and the financial impact of the proposed arrangements be manageable within the current long-range budget plan.
- **Holistic approach.** In arriving at the proposed arrangements, the parties had considered early retirement, phased retirement, post-age-65 employment, benefits, pensions and, importantly, the post-retirement relationship. Many very active retirees wished to ensure a means for their continuing relationship with the University.
- **Societal and legislative framework.** It was important to recognize the changes taking place in the societal and legislative framework concerning retirement. It was anticipated that there would soon be a challenge to the Supreme Court decision that had upheld the legitimacy of mandatory retirement arrangements. There were many very active individuals who were well able to, and wished to, make a continuing contribution past age 65. In addition, it was expected that the Ontario Government would enact new legislation. It was anticipated that the

1. Policy on Retirement Age Affecting Faculty Members and Librarians (Cont'd)

legislation would not be detailed, and the University wished to have in place arrangements that would meet its needs when the anticipated legislation came into effect. Finally, it was necessary to take into account the requirement of the Income Tax Act that required that employees covered by pension plans begin to draw their pensions no later than December 1 following their 69th birthday.

- **Elements of the agreement to support academic planning.** It was deemed essential that the framework for the agreement support the academic planning process. The agreement required that faculty members and librarians give a minimum of one year's notice of their intention to retire. Many other institutions did not have a provision for such notice. The proposed phased retirement program set an irrevocable retirement at the end of a fixed, three-year period. In other institutions, the period for phased retirement varied from two years to five years, but the three-year period would provide this University with four years notice of departure. The availability of phased retirement was of great value and was an example of best practice. Many professionals did not want to stop their professional activities suddenly, and this option would assist people to move into retirement. The current voluntary early academic retirement program (VEARP), which permitted early retirement at age 55, would end. Faculty members and librarians would be permitted to opt for retirement under that program until December 31, 2005, with retirement permitted to June 30, 2010. The approval of the Provost would continue to be required for any retirements under the VEARP.
- **Elements of the agreement to provide certainty of treatment of the employment relationship, including salary, pension and benefits.** Where individuals continued to work past their usual retirement date, they would be expected to carry out the full scope of their duties including teaching, research and service. Between the normal retirement date and the required pension start date, that is between the ages of 65 and 69, they would continue to accrue pension benefits arising from their increased salary and increased number of years of service. But, there would be no additional, actuarial increase in pension entitlement arising from work past the normal retirement date. Such actuarial increases were permitted in some other plans because employees who worked past the normal retirement date would draw their pensions for fewer years. In addition, faculty members and librarians would not "double dip," that is receive both their salary and their pensions, before age 69, when the Income Tax Act required that they begin to draw their pensions. It would be determined at a later date, in the light of any new legislation, what arrangements could be made for partial pension and partial work, which was not currently permitted in Ontario under pension legislation. Benefits would continue as before the normal retirement date, with two exceptions. First, long-term disability insurance would cease. If employees became disabled, they would be expected to retire and draw their pensions. Second, while the University's term life insurance would continue to be available, it would be limited in its amount.

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- **Elements of the agreement to provide flexibility for faculty members and librarians.** There would no longer be a mandatory retirement date. There would be in the pension plan a provision for early retirement without actuarial reduction of pension entitlement for those age sixty with at least ten years of pensionable service. This would be a right; there would not be, as at present under VEARP, a requirement for the approval of the Vice-President and Provost. Because there would be no actuarial enhancement of the pension benefit for retirement after age 65, the outcome would be cost-neutral to the pension plan, with savings from those retiring after age sixty-five offsetting the cost to the plan of early retirements. The new arrangement would replace the current voluntary early academic retirement program, which would be eliminated following the transition process described above. There would be a new phased retirement program. There would be special transitional arrangements available for the “class of 2005” – those faculty members and librarians whose mandatory retirement date would be June 30, 2005. They would be entitled to apply for the phased retirement arrangement, which would require the approval of the Vice-President and Provost. If denied phased retirement, they would be able to obtain a contract to work at 20% of full-time for one year, which would include teaching.
- **Elements of the agreement to balance and control costs.** The agreement had succeeded in building in balances to contain costs. The current voluntary early academic retirement program, permitting early retirement at as early as age 55, would end and there would be no further need for retiring allowances for early retirement below age 60. The operating funds that would have been spent on those retiring allowances would be freed to pay for retiring allowances under the phased retirement program. The cost to the pension plan of early retirements with unreduced pensions would be offset by the saving arising from postponed retirements without actuarial increases. In the long term, it was assumed that some would retire early and others would continue to work past age sixty-five, making the combination of arrangements essentially cost-neutral to the pension plan.
- **Amendment to the Memorandum of Agreement with the Faculty Association.** To effect the new arrangements, the Governing Council was being asked to approve an amendment to the basic memorandum of agreement with the Faculty Association to eliminate the provision for early retirement and to replace it with the statement that “there shall be no mandatory retirement date for faculty members and librarians whose 65th birthday occurs on or after July 1, 2005.”
- **Number of retirement-eligible faculty members and librarians.** Nearly 1,000 faculty members and librarians would have decisions to make concerning their retirements under the new options. 405 (324 male and 81 female) between the ages of 60 and 64 as of July 1, 2004 (the last actuarial valuation date) would be eligible for the full range of on-going options. A further 419 (290 males and 129 females) would have the option of seeking early retirement under the current

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arrangements but would have to await age sixty to retire under the new arrangements. Finally 142 people (99 male and 43 female) were ages 53 to 54, and could opt at this time for retirement under the current arrangement on June 30, 2006.

- **Likely retirement-age pattern.** The actuaries, in estimating the cost of the proposal, had modeled likely retirements based on the experience at universities in Manitoba, Quebec and some U.S. jurisdictions that did not have a mandatory retirement age. They estimated that 30% of faculty would retire before age 65, nearly 80% would retire by age 65, and 96% would retire by age 68. Under legislation, all pension plan members were required to start drawing their pensions on the December 1 after they turned age 69. In short, there was no reason to expect that all faculty members and librarians would continue to work to a very late age; that had not taken place elsewhere.

Professor Corman conveyed the regrets of Professor Cummins, who was unable to attend the meeting owing to a previous academic commitment. He reported that the Academic Board had received a full presentation concerning the proposed new arrangements and had also heard remarks by the President of the Faculty Association. The Academic Board had had a lengthy discussion of the proposal. A member had suggested that the central operating budget provide funds to make the phased retirement program available for faculty members and librarians whose normal retirement date was June 30, 2005. Professor Goel had responded that decisions had already been made concerning the replacement of the positions of those individuals. In some cases their positions had already been filled and were being paid for by special bridge financing. In other cases, the positions had been eliminated to accommodate budget reductions. With respect to the cost of the phased retirement program, the Dean of Arts and Science had estimated that the cost to his Faculty would be between \$500,000 and \$1-million annually for each individual. The Board had engaged in a substantial discussion about the consequences of the proposal to the availability of new faculty positions. Professor Goel had stated his expectation that in the long run there would be minimal impact on the number of new positions available. With respect to immediate impact, the outcome was harder to predict. The University of Toronto would be the first institution in Ontario to eliminate mandatory retirement and to introduce a phased retirement program. The University's experience might be different from that of other institutions because the tax system in Ontario was different from those in other jurisdictions. Professor Goel's colleagues in the Provost's office would in the coming months be working with Principals and Deans to develop a forecast of the number of new academic positions likely to become available over the next few years.

Invited to address Council, Professor Luste introduced his colleagues from the Faculty Association who had played key roles in negotiating the proposed arrangements. He also believed that the proposal represented a historic agreement, which he supported fully. The Council of the Faculty Association, in a rare outcome, had unanimously supported the proposal. The historic and comprehensive agreement should be regarded

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as a cause for celebration. It made it easy for faculty members and librarians to retire early, to phase in their retirement, or to delay their retirement, and it made provision for post-retirement arrangements. Professor Luste offered his sincere thanks to the senior administration for coming to the table on the issue. He recalled that the Faculty Association's Council had two decades ago passed a resolution calling for an end to mandatory retirement, and the Association had seventeen years ago gone to the Supreme Court of Canada to challenge the requirement for mandatory retirement as discriminatory and contrary to the Charter of Rights and Freedoms. The continuing requirement had for many years been hobbling the University's efforts to achieve its academic mission.

Professor Luste said that the Association remained concerned with respect to one part of the proposed agreement, clause 12 which dealt with faculty members and librarians whose normal retirement date was June 30, 2005. The Association had heard from only two or three individuals in the "class of 2005" who would like to take advantage of the new phased retirement arrangement. Most faculty members and librarians had already made their plans. Professor Luste's concern was that the reaching of the agreement had implied that phased retirement would be a meaningful option for all active faculty members and librarians. The cost of providing this benefit to the few faculty members who would take advantage of it would be well worth it to eliminate the sole sour taste that would be left from this otherwise outstanding agreement.

The President congratulated Professor Luste and his colleagues on their role in arriving at the agreement. With respect to the question raised by Professor Luste concerning the class of 2005, he recognized the concern, but he stressed that the agreement was a package and that, as with all negotiated packages, it would be wrong to focus on one element that could cause the entire agreement to unravel. He urged that his colleagues in the administration and the Association instead rejoice in the agreement and work to implement it in the best possible manner.

Among the matters that arose in questions and discussion were the following.

(a) Cost of early retirement to the pension plan. In response to a question, Professor Hildyard said that under the current voluntary early academic retirement program, the University made a cash payment into the pension plan based on years of service to buy the early retirement benefits. With the proposed new arrangement, the University would determine and meet any legal requirements to allow early retirements and to keep the pension plan appropriately funded.

(b) Pension benefits to faculty members and librarians taking phased retirement. The pension received by faculty members and librarians who took advantage of the phased retirement program would be based on their full-time-equivalent salaries combined with their full years of service, with part-time service under the phased retirement program counting as full years. There would, however, be no actuarial increase or reduction in their pensions if they retired after or before their usual retirement date.

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(c) Transitional arrangements. A member supported the President's view that the transitional arrangements for faculty members and librarians of the class of 2005 represented a part of a full agreement and that one part of the agreement should not be re-opened for further negotiation. It was unfortunate that there would always be people who were caught in a transition and not able to take advantage of improvements. There was, nonetheless, room for discretion, and the member hoped that the Vice-President and Provost, would act in the spirit of the new agreement and exercise his discretion generously, as far as possible.

Professor Goel recalled that there were two options for members of that group. First, they would be entitled to apply for the phased retirement arrangement, which would require the approval of the Vice-President and Provost. If that approval were not forthcoming, they would be able to continue to work at 20% of full-time for one year and, as at present, they would be eligible to continue to teach individual courses on stipend. The University's ability to permit members of this group to have the benefit of the phased retirement program would depend on the number of faculty members and librarians who applied for it. When applications were received, it would be necessary to model the cost. Clearly, if all sixty individuals applied for the program, given its commitments to new appointments and budget reductions, the University would not be able to afford to grant all of the requests. If the number of applicants was small, it might be possible to respond more favourably. Professor Goel assured the Council that he would act in a fair and appropriate manner and as generously as financial circumstances allowed.

Another member urged that all active faculty members be given the opportunity to continue to work or to opt for the flexible retirement arrangements. Faculty members and librarians in the retirement class of 2005 had served the University for many years and should have the benefit of the new arrangements. While that would have a cost, so too would the potential legal liability of discriminating against members of that group.

(d) Arrangements for faculty members and librarians who continued to work past age 69. A member expressed his pleasure that the parties would continue to discuss arrangements for faculty members who chose to work past age 69, when the Income Tax Act required that they begin to draw their pensions. He said that "double dipping" was not at all favourably viewed by public opinion, and he urged the parties in their further discussions to avoid that outcome. Another member reiterated the point, noting that there was some perception in society that tenured academic employment already enjoyed a high level of privilege. He urged that the University strongly advocate a change in the Income Tax Act to end the provision requiring that all members of pension plans draw their pensions at age 69, whether or not they were working.

(e) Cases where retirement was appropriate but not accepted voluntarily. A member asked the Vice-President and Provost how the University would address cases where it was clear that a faculty member or librarian could no longer adequately discharge duties and should retire, but where the individual did not recognize that fact.

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Professor Goel replied that the University had in place policies and practices that would remain applicable to tenured faculty members past the normal retirement date. Performance in teaching, research and service was reviewed annually for purposes of progress-through-the-ranks salary increments. Teaching would continue to be evaluated by such means as student course evaluations and judgements concerning curriculum development. Research contributions and capability were reviewed both internally and externally. External peer-review occurred in connection with applications for research grants and submission of books and articles for peer review for publication. All faculty members were assessed thoroughly for tenure or promotion. Evaluations of many faculty took place in connection with consideration for programs such as Canada Research Chairs and endowed chairs. All evaluations would continue for faculty members of all ages and throughout their careers fairly and without discrimination with respect to age.

Another member urged that evaluations be applied without age discrimination but be applied rigorously with respect to all members of the faculty. In the absence of doing so, there was a real issue of reputational risk. Professor Goel assured the member that the University would continue to work to improve the progress-through-the-ranks system, especially by improving training for faculty members and academic administrators. He looked forward to working with colleagues in the Faculty Association to effect improvements to the system.

(f) End of mandatory retirement and employment equity. A member observed that the end of mandatory retirement could result in the slowing of the engagement of new faculty members. That made it all the more important to redouble efforts to increase the number of members of visible minorities and aboriginal Canadians in the faculty and among librarians. Another member also urged that efforts be enhanced to engage new faculty members and librarians from all designated groups.

Professor Goel noted that the end to mandatory retirement would in itself be of benefit to women faculty members and librarians, who sometimes had fewer years of service than their male counterparts and would like to take advantage of the opportunity to continue past the age of sixty-five to enjoy an academic career fully and to enhance their pension income. He stressed also that the University's ability to address equity and human rights questions was dependent on the ability to engage new faculty members and librarians and therefore on the availability of financial resources.

In the course of discussion, a member congratulated the administration on the successful outcome of these negotiations. The successful ending of the mandatory retirement program along with the phased retirement program was one of a number of recent outstanding successes, which had included the University's success in influencing the recommendations of the Rae review.

1. Policy on Retirement Age Affecting Faculty Members and Librarians (Cont'd)

On motion duly made and seconded, it was RESOLVED

1. THAT the policy on retirement age affecting faculty members and librarians, namely 'no faculty member or librarian shall be required to retire before the 30th day of June following or coincident with the faculty member's or librarian's sixty-fifth birthday', as stated in Article 2 (f) of the Memorandum of Agreement between the Governing Council of the University of Toronto and The University of Toronto Faculty Association, be rescinded, effective June 30, 2005.

and

2. THAT the previous policy on retirement age affecting faculty members and librarians, be replaced by the provision that 'there shall be no mandatory retirement date for faculty members and librarians whose 65th birthday occurs on or after July 1, 2005', as stated in Article 2 (f) of the tentative Memorandum of Agreement between the Governing Council of the University of Toronto and The University of Toronto Faculty Association, effective July 1, 2005

The meeting adjourned at 2:50 p.m.

Secretary

Chair

May 16, 2005