



# UTFA Information Report

University of Toronto Faculty Association September 23, 2011

## Information Report #19

### **SOME QUESTIONS CONCERNING THE ADMINISTRATION'S APPROACH TO NEGOTIATIONS: ON UNILATERALISM, FROZEN POLICIES AND ARTICLE 6**

#### **What is the origin of the so-called frozen policies approach to negotiations?**

The phrase “frozen policies” refers to the restrictions contained in the Memorandum of Agreement negotiated several decades ago (in the mid-1970s) between UTFA and the University of Toronto Administration. The negotiating process under the Memorandum – including good faith bargaining, mediation and arbitration – only deals with matters of compensation and, as of the last round of negotiations, workload. Certain other important matters are dealt with as a set of frozen policies identified almost 40 years ago which can be changed only by mutual agreement of the two parties, Governing Council and UTFA. Remaining terms and conditions of academic employment which are not named as frozen policies may be unilaterally determined by the Administration.

#### **What are the frozen policies?**

The list of frozen policies identified in the MoA includes a number of matters critical to shaping the conditions of academic and professional work for faculty and librarians, for example, appointments policies for full- and part-time academic staff, policies on promotion, and policies on conflict of interest.

Again, however, a number of critical issues are not mentioned at all, including governance in academic planning. The absence of policy on governance in academic planning has been acutely felt of late, and points to the need for assurances that faculty and librarians are able to participate directly in shaping the conditions under which they do their essential work. Far from undermining core university values, negotiating fairly with UTFA a policy on governance in academic planning as it applies to faculty and librarians is consistent with and inseparable from the promotion and preservation of academic freedom and professional autonomy, as well as peer-based and shared governance.

Other issues left out of the frozen policies framework include health and safety provisions, intellectual property and privacy policies, and the capacity of the Administration to discipline or otherwise “police” the conduct of faculty and librarians.

#### **Is the unilateralism/frozen policies approach consistent with fairness and collegiality?**

No. The frozen policies framework is unresponsive to the voices and needs of faculty and librarians. Frozen policies may only be changed if the Administration agrees. But in negotiations over frozen policies, there is no requirement whatsoever that the Administration (or UTFA for that matter) bargain in good faith. Nor is there any mechanism providing for dispute resolution. “Good faith” bargaining is an enforceable standard for

negotiations requiring the parties to share information, and to be responsive and accountable to one another. Some mechanism for breaking through differences and reaching settlements is also a feature of any mature, responsive bargaining arrangement. An established and well-understood mechanism for timely resolution of disputes provides a process and an incentive to the parties to reach agreement on their own, but also provides for ultimate resolution on matters over which they fail to agree. Without some method of dispute resolution, the options are unilateralism or a stalemate. Using “working groups” to negotiate frozen policies, which the Administration prefers, lacks both of these essential features of a fair, mature and efficient bargaining process.

It also bears noting that the Administration has very significant advantages that often lead to frozen policies in name, but unilateralism in practice. This is because the Administration, by virtue of its role in implementing policies, can and does impose rules and guidelines which condition and alter frozen policies. Over time these imposed guidelines take on the force of policies that have not been properly negotiated with or accepted by UTFA. Examples include the proliferation of unilateral guidelines on effectiveness in teaching that have created great confusion in tenure committee deliberations.

As a result, both in theory and in application, there is reason for concern that the frozen policies approach effectively denies us a fair, responsive and appropriate voice and influence in shaping the conditions of our teaching, research, and creative and professional work. Over time this can become a threat to the university’s reputation for excellence. The work we do is critical to the university. Negotiations over the conditions of our work must reflect this basic reality.

### **Is there reason to move beyond the unilateralism/frozen policies approach?**

The Administration portrays frozen policies as serving to maintain and promote the University of Toronto’s reputation for excellence. Unfortunately, this ignores the extent to which frozen policies are more often than not just that: policies frozen in time, antiquated, out of date and out of step with the dynamic, innovative and ever-changing character of the University of Toronto. The frozen policies approach is an unfair way to bargain, to be sure, but it is also ineffective and inefficient. The frozen policies framework leads to ad hoc, issue by issue discussions (when they happen at all) rather than a comprehensive, mature and consolidated negotiating framework which is much more typical of the university sector throughout Canada.

Equally important, as noted above, the frozen policies framework of our MoA only covers specific named policies. Important aspects of the conditions of our work such as governance in academic planning are ignored altogether. Thus, in effect, faculty and librarians have no capacity under the current MoA to negotiate language ensuring collegial and shared governance in academic planning. This is a serious problem, as we have seen repeatedly and with increasing frequency of late. Far from being a threat to the excellence of the University of Toronto, faculty and librarian engagement – beyond the restrictive terms of our existing Memorandum – is one of the key solutions to the need for real change to make the university more responsive to its diverse community. UTFA is seeking real collegiality and real shared governance institutionalized in provisions for fair bargaining, not the facile platitudes and palliatives we have been offered (particularly of late).

### **What is the difference between the unilateralism/frozen policies approach to negotiations and the way UTFA negotiates compensation (salaries, benefits, and pensions) and workload?**

The frozen policies approach falls far short of the way we negotiate compensation matters and (now) workload. In bargaining over compensation and workload, both parties are obligated to negotiate in good faith, and both have access to an established mechanism for resolving outstanding disputes in the form of third party independent mediation and arbitration (if and when necessary). Frozen policies working groups come with no such provisions.

No other faculty association in Canada makes use of the frozen policies framework. And no one would even contemplate the substitution of frozen compensation policies in place of good faith bargaining with provision for dispute resolution in negotiations over salaries, benefits, pensions and workload as prescribed in Article 6 of the Memorandum.

### **Does interest arbitration really “hand over” control of the university to an independent third party?**

Again, simply, no. We will have more to say about this in future communications, as we will about the Administration’s discussion of our proposals for improvements to the tenure policies and to governance in academic planning. But at the outset, members should understand that there are two quite different kinds of third party involvement invoked by UTFA’s proposals. In tenure and promotion policies, we have proposed that “The chair of the [tenure appeals] Panel shall be a legally trained person external to the University with experience and expertise in university matters, mutually agreeable to the University and the Association.” Here, we are not proposing to replace the panel and we are certainly not proposing to place tenure decisions in the hands of this person. Rather, we seek a chair with independence and experience in the functioning of universities, with expertise in adjudication and administrative law, and with necessary independence from both parties, to help ensure that tenure and panel deliberations and decisions are proper and fair. Any claims to the contrary are intended to create confusion over what we have actually proposed. Members may and should consult our proposal (it is on our website and has been since it was tabled), and indeed all of our proposals, and review them against the Administration’s claims.

The second form of third party involvement we are proposing involves broader use of the process familiar to us in Article 6 negotiations over compensation and workload. This process has worked well in the past; the parties meet face to face, exchange information and proposals, and, if they can agree, do not proceed to mediation or arbitration. If they do proceed to these phases, the primary goal is still to facilitate a settlement agreed to by the parties. Mediated settlements are consensual and subject to mutual ratification. Interest arbitration, when necessary, involves a professional third party resolving the differences between the parties in a manner intended to be consistent with what the parties would have negotiated had they been able to reach agreement, and which generally reflects prevailing norms in the sector.

Where interest arbitration is used, it is used as a last resort to deal with outstanding differences. The provision of a prescribed dispute resolution mechanism of this kind acts first and foremost as an incentive for the parties to bargain in good faith, compromise and reach agreement on their own. Where interest arbitration applies in the workplace (as it does, for example, where the right to strike is regarded as inappropriate, such as in essential services including health and the fire and police sectors), it is widely recognized as the only fair, independent and reasonable alternative to the resolution of collective bargaining differences by way of strikes or lockouts.

We should add that the varied concerns raised by the Administration – about top-down decision-making; increased inflexibility and bureaucracy; a rise in adversarial relations; ongoing threats to peer review, collegiality, self-governance and departmental autonomy – sound remarkably like a description of some recent experiences in the exercise of academic planning under the status quo the Administration wishes to retain.

The Administration’s apparent fixation on interest arbitration tellingly sidesteps entirely the underlying rationale for our proposal. We are committed, simply and plainly, to ensuring our bargaining is fair, accountable and productive. No answer has been forthcoming from the Administration as to how our concerns with the fundamental inadequacy of the status quo can be met — other than with more status quo.

We readily acknowledge that only a few universities in Ontario make use of interest arbitration to resolve outstanding disputes in matters beyond compensation (though Queen’s University also has extensive experience in this approach), but what the Administration has not acknowledged is that in the vast majority of university settings in Canada, there is an established mechanism in place for resolving outstanding disputes. Most use

strikes and lockouts. Our members have expressed reluctance (to this point) to embrace that avenue. Therefore, our proposed approach, as explained in our recent open letter to the Administration, respects our traditions and reflects the current will of our members to engage in a collegial dialogue about the need for real change, and for fair and effective negotiations over all of our terms and conditions of academic employment. So far, our call to the Administration for a willing partner in this dialogue has been met with responses that fall (ironically) far short of reasoned, collegial engagement. It is also important to note, in considering how well the status quo is working, that to date the Administration has failed to respond in any substantive way to our proposal for much needed policies dealing with governance in academic planning. This proposal was tabled in negotiations in June. Is this the collegial university we want and deserve? Hardly.

### **What are UTFA's goals in the current round of negotiations?**

UTFA's goal, consistent with our constitutional mandate, is to promote the welfare of our members. This includes promotion of collegial relations among faculty and librarians in their diverse institutional settings, and also collegial relations with the University of Toronto Administration. The Provost has claimed that "the Memorandum of Agreement with UTFA has enabled the University to become one of the world's great public institutions of higher learning and advanced research." We do agree that the provisions for good faith negotiations with access to independent and fair dispute resolution under Article 6 have been critical in allowing UTFA to secure fair compensation for the excellent work of our faculty and librarians over the years, thus allowing the university to attract and retain top talent. That is one of the reasons we are seeking to make broader use of this approach to negotiations. But it is more accurate to say that the creative, path-breaking work of faculty and librarians, together with contributions from students and staff, have made this university great. And keeping it great is one of our most important goals. This is what UTFA's current proposals are all about.

To do this, we need real collegiality, real shared governance, and institutionalized fairness in our dealings with the University Administration. Our proposals are not "radical." If anything, in seeking to take the existing process for negotiating over compensation and workload and apply this to all terms and conditions of academic employment, we are pursuing a cautious and time-tested course. We have offered the Administration the opportunity to rectify the profound shortcomings of our current Memorandum in a manner that extends and respects the longstanding and successful mechanism we have used at the University of Toronto to facilitate fair negotiations for almost four decades (instead of moving now to follow the path taken by well over 80% of our colleagues across the country represented by certified trade unions with full scope collective bargaining). The Article 6 mechanism has been shown to be effective. The frozen policies approach has not been effective or responsive, nor is unilateralism any way to govern a collegial university.

Our negotiating team is committed to ensuring that our voices are heard, and with your support, to securing a negotiating process that is fair, mature, comprehensive and responsive. Fair outcomes can only come from fair negotiations.

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