



Information Report

UNIVERSITY OF TORONTO *faculty* ASSOCIATION

August 7, 2014

SJAC Information Report #6

Introduction: UTFA Proposes Compromise on the MoA

At the end of this bulletin, and posted on our [website](#), you will find UTFA's revised proposal for modernizing the Memorandum of Agreement (MoA).

The MoA lays out the relationship between UTFA and the Governing Council of the University of Toronto. It specifies how terms and conditions of employment (both monetary and non-monetary) for faculty and librarians are negotiated. The MoA and our proposal to change it deal with matters fundamental to all of us as academics and as employees of the University. Given its importance, we urge you to read this message and the proposal carefully.

The proposal is a significant compromise by UTFA from our previous position that all terms and conditions of employment for faculty and librarians be negotiable, with access to binding arbitration if necessary. The compromise outlines a new and needed approach to addressing matters not now formally negotiable, either because the current MoA ignores these matters altogether, or because it leaves them "parked" as frozen policies. Matters now ignored or frozen include vital non-monetary policies that shape the content of our work as academics, including, for instance, procedures guaranteeing faculty and librarian involvement in academic restructuring initiatives (omitted from the current MoA) and academic freedom and appointments policies (frozen by the current MoA). The compromise proposal involves a non-binding but public and transparent facilitation and independent Fact-Finding process for addressing such matters. We believe it would, if accepted, represent a significant improvement from the status quo.

Background: the SJAC Process

UTFA has proposed modernization of the MoA in response to your wishes. Consistently – over several years, and via numerous means (surveys, focus groups, etc.) – a majority of UTFA's members has expressed dissatisfaction with the current MoA and a desire to have a stronger voice in important University decisions that affect them.

The demand for change led to the establishment of the Special Joint Advisory Committee (SJAC) process involving UTFA and the University administration. Originally established in April of 2012, SJAC's core terms of reference are:

- (i) To consider possible changes to appointments policies for both teaching stream and tenure stream faculty;
- (ii) To examine the participation of faculty and librarians in significant academic restructuring initiatives; and
- (iii) To review the strengths, weaknesses, and options for modernization of the MoA.

More background on this unprecedented initiative may also be found on our [website](#).

UTFA tabled its proposal on June 26, 2014 after four months of facilitation in the SJAC process working with the Honourable Frank Iacobucci. The proposal contains the minimum core elements of what UTFA's negotiating team is prepared to recommend for approval. Importantly, the Administration's team is *not* yet in a position to recommend UTFA's proposal to Governing Council for approval. Instead, the Administration proposed to consult more widely on the proposal over the summer.

UTFA's Council has accepted an August 25th deadline to allow this consultation to take place, after which the Administration is to respond. Hence the timing of this bulletin.

UTFA's Proposal for a New Way Forward

The core elements of our proposal include the following:

1. The proposal first envisions *comprehensive* bilateral negotiations over terms and conditions of employment identified (by either UTFA or the Administration) as being in need of revision in any given round of bargaining. After the conclusion of this initial bilateral phase, unresolved matters would be referred to one of two separate tracks for dispute resolution as described below.
2. The main negotiating process as described in Article 6 of the current MoA would be left largely as is. That is, in addition to minimum salary, benefit, pension, and workload provisions, the proposal involves adding only sick leaves, leaves of absence and maternity, family care and parental leaves to the scope of what could potentially be determined by a professional neutral arbitrator (or arbitration panel) in the event that the parties are unable to come to voluntary agreement in bilateral negotiations.
3. As an alternative to broadening the scope of mediation and arbitration, the proposal contemplates an entirely new process to deal with a wide range of issues, including key policies that shape the context of our work as

academics. Specifically, the proposal provides for a two-step process involving first facilitation and then, if agreement cannot be reached, a Fact-Finder or Fact-Finder panel. After consulting with the parties, the latter would make public the “exit” or final positions of UTFA and the Administration. The Fact-Finder would also be empowered to issue non-binding recommendations. This second, new track of dispute resolution would pertain to the following matters:

- (i) The list of frozen policies in Article 2 of the current MoA with the addition of any agreed-upon policy on procedural aspects of academic restructuring;
 - (ii) Article 3 of the MoA (eventually to become appointments and promotion policies for librarians), the non-arbitrable components (if any) of MoA Article 4 dealing with Research and Study Leaves, and MoA Articles 5, 7, 9, 10 (including privacy and technology issues), 11, 13, 18 and 19; and
 - (iii) Other policies, practices, or procedures that significantly affect terms and conditions of employment of faculty and librarians in their capacity as employees of the University of Toronto. Under our proposal, any disputes over whether a policy or practice that either party seeks to negotiate meets these criteria would be resolved by the existing Grievance Review Panel (a body that is chaired by a legally trained person with experience and expertise in university matters).
4. With respect to the Fact-Finder as discussed in 3 above, UTFA has proposed a single, third-party neutral professional individual. This person would be “legally trained and/or have labour relations experience, and have experience and expertise in university/academic matters”. However, we are also prepared to agree to a three-person Fact-Finder panel. The proposal lays out a couple of options for composing such a panel, but we have indicated that we will **not** agree to any wholesale a priori exclusion of librarians or teaching stream faculty (from U of T or otherwise) from eligibility.

Discussion

These are the main features of the UTFA proposal. It embodies a marked departure from UTFA’s prior insistence that all terms and conditions of employment be negotiable with access to arbitration in the event that bilateral negotiations fail. You will recall that for some years now, UTFA has proposed to negotiate terms and conditions of faculty and librarian employment with the Governing Council by making

broader use of the collective bargaining process in Article 6 of the current MoA. Notably, that process does feature recourse to arbitration when necessary.

It bears noting that the vast majority of faculty associations in Canada are unionized and so negotiate terms and conditions of employment – including important academic policies – comprehensively. At most of these institutions, strikes and lockouts are used (rarely) for resolving bargaining impasses. At the same time, most North American universities also have senates in which the majority of membership is composed of elected academic staff. Both unionized faculty associations and senates provide democratic accountability in the determination of both the conditions and context of academic work in the university. Both provide forms of collegial governance by enhancing the voices of faculty and librarians in decision-making over matters directly pertinent to their work as teachers, scholars, and professionals. But U of T's governance model features no senate and no union. And our current MoA is silent on numerous important issues, or, as noted, merely parks them without providing a means for periodic modernization.

While some colleagues are content with the status quo, others see clouds on the horizon in the form of changes in higher education that demand better, more rigorous mechanisms to ensure collegial and shared governance. Others argue that problems are already evident in the form of too much unchecked administrative authority.

To be sure, the unionization of UTFA, while always an available option should faculty and librarians choose it, remains controversial and divisive. Indeed, UTFA's proposal to make wider use of arbitration as an alternative to strikes and lockouts responded to the widespread demand from our membership for change while at the same time addressing concerns about the potential for any future strike or lockout to disrupt teaching. However, via the SJAC process, we have been unable to secure agreement from the Administration on broadening the scope of arbitration along the lines we originally proposed. Time is running out on the SJAC process. The new proposal is a compromise, but one we believe would be an important improvement on the status quo.

While a Fact-Finder (or Fact-Finder panel) would have no power to award provisions, we are hopeful that the proposal would draw on collegial norms by making public the positions of both UTFA and the Governing Council, opening them to wider scrutiny in the event that the parties are unable to agree, and thus promoting accountability and transparency. We foresee that these provisions of the Fact-Finder process could have a positive, disciplining effect on both UTFA and the Administration in our negotiations. But we also welcome your views.

Conclusion

The modernization of the MoA was the largest, most difficult issue tackled via the SJAC process. But the SJAC addresses other matters, as noted above. We continue to

work on changes to appointments policies for faculty in both the teaching and tenure streams. We are working on an entirely new, negotiated policy setting out procedural language to be applied in the event that significant changes to academic units are being contemplated. We are also seeking to update privacy language to ensure that the now strictly customary rights of U of T academics to control access to their academic records and correspondence (electronic and otherwise) are formalized and upheld in a changing technological and regulatory environment. The current MoA is entirely silent on both of these latter two issues, a serious omission that undermines academic freedom.

The SJAC team wishes to thank the Honourable Frank Iacobucci for his assistance via the SJAC facilitation process, and also the Administration's bargaining team for its engagement in the SJAC process. The matters we are discussing are fundamental to you and your colleagues and to the future of the institution. Please read the UTFa proposal carefully. If you have views or questions regarding this proposal, please make them known to us at bargaining@utfa.org. You may also wish to provide feedback to the Administration during its consultation phase ending August 25, 2014. After that point, the parties will re-engage to see whether our proposal can form the basis of an agreement. If so, there is still considerable work left to be done. If not, then the SJAC process will fail and we will be left to explore our remaining options.

All best wishes for the rest of the summer.

The UTFa SJAC team is:

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Paul Hamel – Professor, Department of Laboratory Medicine & Pathobiology, Faculty of Medicine; UTFa Executive Member
Jennifer Jenkins – Associate Professor and Canada Research Chair, Department of History; UTFa Council Member
Cynthia Messenger – Senior Lecturer, Director of the Writing and Rhetoric Program, Innis College; UTFa Vice-President
Scott Prudham – Professor, Department of Geography and School of the Environment; UTFa President
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**UTFA PROPOSAL (FOR CONSULTATION BY UNIVERSITY
ADMINISTRATION) – JUNE 26, 2014**

Without prejudice via the facilitator

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). In context of agreement below, UTFA would withdraw previous proposals to further extend Article 6 arbitration
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:
 - a) Article 2 listed policies including the proposed process of academic restructuring [**NOTE: UTFA understands that the administration has a revised proposal on the process of academic restructuring, and looks forward to receiving a revised proposal as soon as possible**];
 - b) Memorandum Article 3, the non-arbitrable components (if any) of Article 4, and Articles 5, 7, 9, 10 (includes privacy and technology issues), 11, 13, 18 and 19; and
 - c) Other policies, practices or procedures that significantly affect terms and conditions of employment of faculty and librarians in their capacity as employees of the University of Toronto. (Any differences over whether a matter falls within this language to 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.
 - 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 excluded from arbitration (and identified in paragraph 2), the parties would agree on a facilitator to assist them to reach mutual

agreement. If the parties cannot agree, the Chief Justice would appoint the facilitator.

- d) If the parties did not reach agreement on matters excluded from arbitration with the assistance of the facilitator, the parties would agree on an independent, external fact-finder who would make recommendations on the outstanding issues. The fact-finder will be legally trained and/or have labour relations experience, and have experience and expertise in university/academic matters. If the parties cannot agree on the fact-finder, the Chief Justice will appoint the fact-finder.

NOTE: Alternatively, UTFJA is prepared to agree that unless the parties agree to a single fact-finder, there would be a panel of three members, with the chair of the panel selected as above, and with one other member of the panel chosen by UTFJA and one other member chosen by the administration. These additional two members would also be required to have experience and expertise in university matters. Failing agreement, the Chief Justice would select these additional panel members.

NOTE: Alternatively, UTFJA is prepared to agree that unless the parties agree to a single fact-finder, there would be a panel of three members, with the chair of the panel selected as above, and with the other two members mutually agreed. These additional two members would also be required to have experience and expertise in university matters. Failing agreement, the Chief Justice would select these additional panel members.

- 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) In the event the recommendations of the panel are not unanimous on some or all matters, the recommendations of the majority of the panel, or in the event there is no majority, the recommendations of the Chair, shall be the recommendations of the panel. If the members of a panel are unable to agree

among themselves on matters of procedure or as to the admissibility of evidence, the decision of the chair governs.

- h) The fact-finder's/panel's recommendations will not be made public until a reasonable period of time **[to be agreed, UTFA has proposed one month]** after the recommendations have been made to the parties. During that period, the parties may reach agreement on the matters in dispute.
- i) If the parties do not reach agreement on some or all of the matters in dispute within that one-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 to the unresolved matters will be made. Where recommendations are jointly agreed to, the matters agreed to will form part of Article 2.
- j) Unless otherwise agreed by the parties, the mediator, facilitator, and fact-finder chair will be independent of and not employed by either party.