



UTFA Information Report

University of Toronto Faculty Association December 11, 2012

SJAC Information Report #1

Collegiality, Shared Governance and Your Faculty Association

Summary

- UTFA and the University Administration are about to commence a process whereby we will revisit and attempt to modernize the capacity of faculty and librarians to be represented through your faculty association. This process is tied to fundamental questions about the meaning of collegial governance.
- We will be re-examining the Memorandum of Agreement prescribing UTFA's role that was developed in the late 1970s primarily to deal with the determination of minimum compensation for faculty and librarians. A key feature of the current arrangement is a process of good faith bargaining and the use of third party neutral mediation and, if necessary, arbitration to achieve settlements. Workload was recently added to the scope of issues that are subject to this bargaining process, but other important issues are not now subject to the bargaining process.
- The current framework was developed as and remains an alternative to conventional union certification. Our attempts to reform this agreement represent a middle path between the status quo and union certification.
- At stake is the institutional capacity of UTFA as the only democratically accountable collective body solely representative of faculty and librarians at the University. We will be looking not only at what issues should be addressed by the Association, but also how those issues are addressed. In particular, we will discuss what matters may be subject to a process of good faith bargaining and dispute resolution featuring interest arbitration (rather than strikes) as a means to reach timely conclusions in negotiations.
- Your input to this process has been and will continue to be vital in shaping the contours of the discussion and the outcome.

Introduction

We are at an important juncture in the history of UTFA and in the history of faculty and librarian participation in governance at the University of Toronto. In the coming months, you will be asked to provide opinions essential to answering two fundamental questions:

1. What should "collegiality" *really* mean when it comes to deliberations and participation in academic decisions shaping the conditions under which we teach, do research, and undertake professional activities?

2. In thinking about the answer to the first question, what is and should be the role of your faculty association at the University of Toronto?

Following a sustained reform campaign leading into and through the most recent round of negotiations, we agreed during mediation in April 2012 to create a Special Joint Advisory Committee (SJAC). Through this process, UTFA and the University Administration will seek to review and modernize the Memorandum of Agreement (MoA) that prescribes UTFA's role at the U of T. The SJAC will also examine the role of faculty and librarians in academic planning (i.e., the procedural and/or collegial dimensions of academic planning initiatives). Two subcommittees will deal specifically with appointments policies for faculty, one focused on the tenure stream, the other on a new stream of teaching intensive and professional faculty (i.e., a faculty stream that will subsume the current teaching stream but also facilitate appointments with emphasis on clinical teaching and research).

The SJAC will re-examine and seek to revise the institutional capacity of UTFA in representing faculty and librarians at U of T. With this in mind, the positions we take in the SJAC process must be informed by your views and preferences. What is at stake is not only whether or not UTFA is empowered to address specific issues, but also *how we address those issues*, including some not mentioned at all in the current MoA (e.g., the procedural aspects of academic planning). As we discussed in our [September 2011 FAQ on frozen policies](#), process matters. The status quo features three mechanisms for determining the monetary and non-monetary terms and conditions of academic employment that apply to faculty and librarians UTFA represents:

- (i) good faith and accountable bargaining with provision for dispute resolution;
- (ii) ad hoc frozen policy negotiations that do not feature these provisions; and
- (iii) unilateral determination entirely independent of UTFA (albeit sometimes informed by advisory-only committees whose membership is unilaterally appointed).

It is this complex and inconsistent arrangement of powers and governance processes that the SJAC is charged with revising and modernizing. [The April 2012 SJAC mediation agreement](#) also stipulates that, at the request of either party, a professional neutral mediator may be enlisted to assist the negotiations.

Why Change Now?

Our university is facing numerous challenges and opportunities. Enrolment growth continues to outpace growth in continuing appointments for faculty and librarians. This growth creates workload stresses that can undermine the quality of teaching and learning and squeeze out time for research; but it is also creating very different conditions for teaching, learning, research, and professional practice across the university. We see more and more casualization of teaching, while private funding from tuition and third party donors now exceeds government support. Yet while we are scandalously underfunded from public monies, the provincial government has recently suggested sweeping changes to higher education that reflect a fundamental misunderstanding of the role of universities (particularly research intensive ones like U of T) in society. At the federal level, controversial changes in both research funding levels and policies and practices threaten academic freedom and undermine knowledge production. At the same time, a proliferation of electronic resources and methods of course delivery is gradually transforming the

work of faculty and librarians, implicating course delivery models, intellectual property and copyright provisions, and norms in publishing and circulating scholarly materials.

No doubt, some of these changes also present opportunities to be embraced. But the critical question is: do we have adequate provisions in place for accountable and truly *collegial* deliberations over ways to meet both challenges and opportunities? In the context of university governance, collegiality connotes high degrees of professional autonomy and self-determination among academic staff in shaping not only the content of their specific courses and research programs but also the character and evolution of the academic units of which they are a part. This type of collegial governance is essential to ensuring academic freedom. It is also essential to ensuring academic excellence since those most qualified in any given area of research and teaching are best placed to ensure the quality and integrity of their programs. And collegial self-determination is important not only in the relationship between the institution and the wider social sphere, but also within the university in the relationship between academic administrators and academic staff.

In this context, it is troubling that the University of Toronto is unique in Canada in having no true academic senate and no negotiated comprehensive collective agreement for faculty and librarians. Rather, the U of T is governed by a unicameral system, with a Governing Council that combines ‘academic’ and ‘business’ functions of governance. Many colleagues would like to see truly bicameral governance at this institution. But that is not a change that UTFA can directly secure. Moreover, reform of University governance and changes in the role of the faculty association are not mutually exclusive objectives. Indeed, at some universities, collective agreements negotiated by faculty associations and university administrations bolster the role of the senates, thereby ensuring decisions over such matters as academic program closure and restructuring are collegial.

The purpose of the SJAC is reform and modernization of the role that UTFA plays. A key question is whether and how to expand the institutional capacity of UTFA to advocate for the well-being of faculty and librarians at UTFA. Our current MoA dates to the late 1970s and was established primarily to determine minimum compensation for faculty and librarians. In the mid-1980s, interest arbitration¹ was introduced in order to provide fair and timely resolution to our negotiations. It is not always used, but as has been demonstrated over the years, having the option ensures negotiations are productive and accountable. The mechanism has helped maintain the excellence of the University by ensuring that our faculty and librarians are fairly compensated. But the scope of interest arbitration in our negotiations is limited to minimum salary, benefit, pension, and (since 2010) workload issues. Compensation is important, but it is hardly the only or the foremost interest we share as academics. Other policies that

¹ As we defined it in our [September 2011 newsletter explaining UTFA’s proposed changes to tenure policies](#) “Interest arbitration refers to a phase in negotiations when the parties, having failed to reach agreement in earlier, often quite lengthy bilateral negotiations (and possible mediation), have either agreed to substitute professional neutral adjudication for the right to strike or lockout, or are required by law to make recourse to a third party neutral, as in the case of essential services. In such circumstances, the third party neutral professional will settle outstanding issues based on the submissions and evidence of both parties and usually in light of other settlements in the same or related sectors.” It is important to remember now, as it was then, that interest arbitration and grievance arbitration are fundamentally different. Interest arbitration resolves outstanding issues in collective bargaining. Grievance arbitration involves recourse to a third party in a dispute over an alleged breach of policy or procedure.

shape the context of our work are not addressed in a manner that allows UTFA to be nearly as effective in its advocacy role. These issues include the appointments policies that underpin our employment as professionals and that are dealt with via the ad hoc and largely ineffective mechanism of frozen policies, as well as the procedural aspects of academic planning, a matter ignored altogether in the current MoA.

All Terms and Conditions Negotiable?

Last January, prior to entering mediation, we circulated a questionnaire asking members if they supported UTFA's proposal to make all terms and conditions of academic employment subject to the collective bargaining process (including provision for good faith bargaining and interest arbitration when necessary). Our questionnaire followed a process of face-to-face negotiations extending from June 2011 through January 2012 that resulted in no agreement from the Administration to expand the scope of bargaining, and no response at all on the critical issue of the role of faculty and librarians in academic planning procedures. More than 1500 members responded to the questionnaire, with a majority supporting our proposal as an alternative to the status quo, but with a sizeable minority expressing concerns about this strategy. Following the majority's direction, UTFA's Council overwhelmingly backed the all terms and conditions proposal. With the help of professional mediator Mr. Kevin Burkett, and recognizing the need for ongoing faculty and librarian input, we agreed with the Administration to create the SJAC to further this conversation.

But where do we go from here? Do we continue to insist on full scope bargaining rights? Making all terms and conditions of our employment negotiable would bring us in line with well over 80 percent of the rest of faculty and librarians in Canada who are covered by a collective agreement. But the vast majority of faculty and librarians with full scope bargaining rights are also members of certified trade unions and we are not. For certified faculty associations, strikes and lockouts are used (if infrequently) to resolve bargaining impasses. Only a few faculty associations – including Ryerson and UBC – have full scope bargaining with recourse to interest arbitration, not strikes or lockouts to resolve disputes. The UBC framework was essentially the model for our 'all terms and conditions' proposal last year.²

Historically, an aversion to strikes and lockouts in the university has been one of the main reasons faculty and librarians at the U of T have chosen (to date) not to certify. While it is in principle possible to certify and still make use of interest arbitration in lieu of strikes or lockouts in negotiations, both parties to the negotiations would have to agree to do so, and so we could not guarantee that configuration. Thus, for now, we continue to press for reform, rather than have our choices reduced to the stark polarities of no change on the one hand and union certification on the other. The SJAC process allows us to continue the reform strategy and, as long as there is hope it can work, this will be our primary strategy.

We recognize that not everyone supports expanding the scope of collective bargaining as a way to reform governance in the university. Some see collective bargaining as another face of a creeping corporatism they would rather resist, or as an overly adversarial process. We have heard and continue to hear these concerns. However, collective bargaining, like democracy, may not be perfect, but it may well be the best

² The Queen's University Faculty Association also has extensive experience with full scope bargaining and interest arbitration, but that has been a round-by-round agreement by the parties to go to arbitration over matters they are unable to resolve.

and only way to ensure institutionalized shared governance and collegiality by creating a formal mechanism and collective institutional capacity for faculty and librarians to negotiate for themselves the terms under which they undertake their teaching, research, and professional duties and activities. Moreover, while some may wish to see additional democratic reforms of the faculty association itself (e.g., more direct democratic participation for members), it is important to note that as one party to these negotiations, UTFA is already the most democratically accountable representative body for faculty and librarians in this university.

Making all terms and conditions of our employment subject to the collective bargaining process could mean significant change. You will need to tell us if it is too much change. Some might argue, for instance, that we should exclude matters such as the grounds for tenure or promotion to continuing or permanent status from determination by any professional neutral third party. This position reflects distaste for allowing the language of important academic policies to be finalized in negotiations by ‘outsiders’ who may not understand academic affairs. At the same time, however, others will argue that interest arbitrators are highly skilled professionals accustomed to crafting settlements appropriate to the institutional setting in question. Moreover, interest arbitrators draw from the proposals and positions the parties make in negotiations, together with norms in the broader sector as appropriate. Thus, and as we explained in our [December 2011 bulletin on interest arbitration](#), it is hardly the case that interest arbitrators pull language “out of their hats”.

If we are to exclude matters such as the grounds for tenure from being determined by neutral professional interest arbitrators, we then must ask ourselves what alternatives exist for making sure that negotiations are productive and fair to the parties. We know this: at the end of the day, there are only two recognized and established mechanisms for resolving matters in collective bargaining when the parties cannot agree. One is strikes and lockouts, and we have historically been averse to their use here. The other is interest arbitration. As we discuss possible restrictions on the scope of what is negotiable with access to interest arbitration, we will all have to bear this in mind.

Conclusion

This is a big year for UTFA and the University and we need you to help. UTFA’s Council has elected teams of representatives to conduct the negotiations on the SJAC and its two subcommittees (listed in Appendix A). But these representatives need to hear from you.

In the coming months, we will be sending out questionnaires for members to fill out. Please take the time to complete these as they are one of the main mechanisms we use to shape our priorities, both on matters of substance (e.g., should time to tenure be extended at the U of T as the University Administration has proposed, and why or why not?) and matters of process (e.g., which matters, if any, should be excluded from the scope of interest arbitration and why?). Process and substance are not separate in this conversation. Being able to advocate effectively for our members requires a bargaining process that is mature, constructive, effective, balanced and accountable. Even if we are able to secure agreement on policy changes now, we need to be able to revisit them in the future based on our experience in their implementation. These are all issues the members should consider in providing us with feedback and guidance.

In addition to questionnaires, we are continuing to convene in-person, informal discussions over the issues in order to enable you to ask questions of and make comments to UTFA representatives as well as to engage with one another. These informal meetings are well under way and will continue next term. If you or your colleagues would like to schedule such a discussion in your academic unit or some other grouping, please write to membership@utfa.org. More generally, feedback is always appreciated at bargaining@utfa.org. Those seeking more information and background may want to consult some of the documents listed in Appendix B.

We have fundamental choices to make. If collegiality is to continue to mean what it has meant at U of T, that is, largely informal and ad hoc consultation based on advisory-only committees selected by the Administration to deal with important matters of academic policy, then there is no need to change. If collegiality is instead to mean something more accountable and transparent, reflecting the collective voice of faculty and librarians, then much needs to change. Either way, the choice is yours to make.

We hope to see many of you at our holiday gathering, beginning at 5:00 pm on December 17 at the Faculty Club on the St. George campus. If you plan to attend, please RSVP to faculty@utfa.org. Whether we see you there or not, all best wishes for the end of the first academic term and for a safe, productive, and relaxing seasonal break.

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Appendix A: UTFA Representatives Involved in the SJAC Process

Members of the Special Joint Advisory Committee

Paul Downes – Associate Professor, Department of English; Vice-President, UTFA

Paul Hamel – Professor, Faculty of Medicine; Director, Health Studies, University College; UTFA Council Representative

Jennifer Jenkins – Associate Professor and Canada Research Chair, Department of History; Member-at-Large, UTFA Executive

Scott Prudham – Professor, Department of Geography and School of the Environment; President, UTFA

Harriet Sonne de Torrens -- Visual Resource Librarian, UTM; Chair, UTFA Librarians' Committee and Member of UTFA Executive

Judith Taylor – Associate Professor, Department of Sociology and Women and Gender Studies Institute; UTFA Council Representative

Members of the SJAC Sub-committee Dealing with Tenure Policies

Ettore Damiano – Associate Professor, Department of Economics; Member-at-Large, UTFA Executive

Linda Kohn – Professor, Department of Biology, UTM; Member-at-Large, UTFA Executive

Helen Rodd – Professor, Department of Ecology and Evolutionary Biology; UTFA Council Representative

Judith Teichman – Professor, Department of Political Science, UTSc; Chair, Appointments Committee and Member of UTFA Executive

SJAC Sub-committee Dealing with the Proposed New Faculty Stream (including the current Teaching Stream)

Connie Guberman – Senior Lecturer, Department of Historical and Cultural Studies and Women's and Gender Studies, UTSc; Chair, Equity Committee and Member of UTFA Executive

Brock MacDonald – Senior Lecturer, Director of the Academic Writing Center, Woodsworth College; Chair, Teaching Stream Committee and Member of UTFA Executive.

Cynthia Messenger – Senior Lecturer, Director of Writing and Rhetoric, Innis College; Vice-President, UTFA

Jun Nogami – Professor and Chair, Department of Materials Science and Engineering; UTFA Council Representative

Appendix B – Links to Supplementary Materials Relevant to the SJAC Process

1. [Memorandum of Agreement between the Governing Council and UTFA](#)
2. [May 2011 Bargaining Report Announcing All Terms and Conditions Proposal](#)
3. [UTFA's June 2011 Proposal on Governance in Academic Planning](#)
4. [UTFA September 2011 Open Letter Concerning All Terms and Conditions Proposal](#)
5. [UTFA September 2011 Bulletin on Frozen Policies and Unilateralism](#)
6. [UTFA November 2011 Bargaining Report on Academic Freedom, Academic Excellence, and Collegial Governance](#)
7. [UTFA December 2011 Bargaining Report on Expanding the Scope of Interest Arbitration in Our Negotiation Process](#)
8. [UTFA February 2012 Bargaining Report Concerning Mediation Phase of Negotiations](#)
9. [Mediation Agreement Establishing the Special Joint Advisory Committee Process](#)
10. [Academic Matters Magazine April 2007 Issue "Restructuring the Academy"](#) (see particularly the article by Glen Jones entitled "The Academy as a Work in Progress")
11. Anderson, Barbara and Glen A. Jones (1998). "Organizational Capacity and Political Activities of Canadian University Faculty Associations". *Interchange* 29(4): 439-461.