IN THE MATTER OF AN ARBITRATION

(SALARIES, BENEFITS, PENSIONS and WORKLOAD for 2009/2010)

BETWEEN

The University of Toronto Faculty Association

AND

The Governing Council of the University of Toronto

UTFA Reply Brief

Submitted by:

The University of Toronto Faculty Association

April 23, 2010

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Applicable Principles

1. The Administration refers repeatedly (pages 7-12) to awards of arbitrator Donald Munroe in 1986 and 1993 as authority for the importance of "replication" as the goal of interest arbitration. The significance of replication (of what collective bargaining would have produced) goes back much further, of course, and has been alluded to by many arbitrators, including, most recently, (in paragraph 6), Chief Justice Winkler, who identified as a second principle "the mutual commitment of the University and UTFA to ensuring that the University is a leader among the world's best teaching and research institutions of higher learning."

2. However, there is a substantial difference in the views of Arbitrator Munroe, on the one hand, and Chief Justice Winkler and most interest arbitrators, on the other. Munroe takes the singular position that replication involves simply the identification of the factors that both sides may subjectively entertain rather than the evaluation and adjudication of those factors. This is an unworkable approach that has never been adopted by any arbitrator and is flatly repudiated by Chief Justice Winkler at paragragh 17 of his Award where he states:

> There is a single coherent approach suggested by these authorities which may be stated as follows. The replication principle requires the panel to fashion an adjudicative replication of the bargain that the parties would have struck had free collective bargaining continued. The positions of the parties are relevant to frame the issues and to provide the bargaining matrix. However, it must be remembered that it is the parties' refusal to yield from their respective positions that necessitates third party intervention. Accordingly, the panel must resort to objective criteria, in preference to the subjective self-imposed limitations of the parties, in formulating an award. In other words, to <u>adjudicatively replicate</u> a likely 'bargained' result, the panel must have regard to the market forces and economic realities that would have ultimately driven the parties to a bargain. (emphasis added)

3. Chief Justice Winkler goes on in his award to discuss the application of the "replication" principle. In this regard, he adopts (in paragraph 15) Arbitrator Owen Shime's rejection of "ability to pay" in the *McMaster University* case, and

flags "market forces or comparability" and "general economic conditions" or "economic realities" as relevant factors (paragraphs 17, 18-20, 25). Chief Justice Winkler concludes, respecting salaries, at paragraph 25:

> We turn then to the marketplace wage settlements. In that regard, we prefer to give more weight in the analysis to the comparator institutions, both in Ontario and nationally, whose aims and objectives with respect to the combination of education and research most closely resemble those of the University. Logically this market is limited but that is not surprising. It is the natural result of a successful pursuit of excellence for an institution so dedicated to find itself in circumstances where there are few comparables. Wage settlements in that group averaged 3.19% for the year 2005-2006 and averaged 3.17% for 2006-2007. We do not find that either the University's proposal of 2.5% or the Association's proposal of 4% would have ultimately held sway in bargaining against this market data. An amount more reflective of the marketplace realities as demonstrated by the settlements at comparable institutions for the periods in question, would likely have been the result of bargaining. This would maintain the leadership position of the University while at the same time giving effect to its commitment to excellence with due consideration of the marketplace reality.

4. In this case, in the part of its brief dealing with application of the "replication" model, the Administration does not itself suggest that "ability to pay" is a relevant factor;* it alludes to the generally recognized factors of "comparability" and "economic climate". However, it asserts that comparability is not relevant because average salaries at the University are higher than at comparator universities (pages 42-58 and 82) and the economic climate has resulted in lower settlements generally.

5. However, given that other Ontario universities have agreed to settlements for the 2009-10 and 2010-11 years mostly in the range of 3% plus (both pre-and post recession) – in this respect, compare the Administration's brief at page 83 and

* This is not surprising, given the arbitral jurisprudence, as summed up by Chief Justice Winkler. Moreover, in the face of a move to certify, following intensive negotiations in 1984, these very parties removed, as a limitation on arbitration, all previously specified criteria including "the need for the University to operate in a responsible manner" which had been interpreted by the Administration to refer to fiscal considerations.

UTFA's brief at pages 15-17 – to award the University's faculty and librarians less would be to fail to maintain the relative relationship between the salaries for the University's faculty and librarians and the salaries of faculty and librarians at comparator universities. As well, as pointed out elsewhere in this Reply brief, the "average salary" data provided by the Administration is in key respects significantly misleading.

6. Moreover, in terms of the economic climate, also dealt with elsewhere in this brief, the Administration brief notably omits (at page 69) the settlements for groups such as doctors, teachers, firefighters and police – all of which were in the 3% and above range - relying instead on a selective average without identifying where, in the range of wage rate increases, university faculty should most appropriately be situated.

7. Indeed, what stands out most conspicuously from the Administration's brief on economic climate (at pages 74-77) is that, even where economies have been proposed by Canadian universities, one alternative that has not been implemented or agreed to is a wage freeze or cutback of salary increases for university faculty.

8. Finally, with respect to the Ontario Budget and the Compensation Restraint Act (pages 71-73), it is notable that, unlike wage restraint measures in previous (worse) recessions, the Ontario government has not legislated wage controls for employees represented by organizations that have collectively bargained with the employer, such as UTFA, nor has it sought to impose legislative restrictions on the jurisdiction or authority of arbitrators. Without mandatory legislation, arbitrators have uniformly held that it would destroy their independence (and credibility) to award employees less than they would otherwise be entitled to because of the government's ability to pay.

9. In any event, as indicated above, the Administration has not asserted that "ability to pay" is a relevant factor. Moreover, as indicated elsewhere in this Reply brief, in the years involved in this arbitration, the government has allowed university

tuition fees to rise to the point where revenues at the University are increasing at double the historical rate.

Faculty and Librarian Salaries

University salaries should be maintained at the "top of the market."

10. The Administration places considerable emphasis on the absolute level of salaries at the University compared with those paid at other universities in Canada.

11. UFTA submits, however, that given the acknowledged status of the University – a status acknowledged specifically by the Administration and considered a major factor in Chief Justice Winkler's award in 2005 – the absolute level of salaries at the University relative to those paid at other institutions is relevant only to the extent that the relationship between salaries at the University and those at other institutions changes.

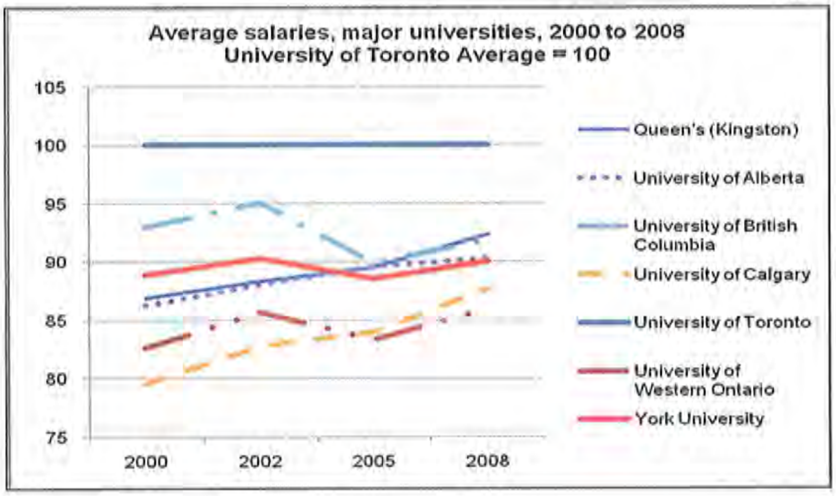
12. Furthermore, we must note that average salary figures are heavily skewed by high end salaries at the University. These high end salaries arise from high starting salaries and ad hoc increases granted by the Administration and not from the collective bargaining relationship between UTFA and the Administration. High end salaries inflate the average and obscure the fact that the University pays low salaries to faculty and librarians at the lower end. UTFA proposes to address this issue through greater percentage ATB increases for members whose salaries are below the median salary.

13. As we discussed in our brief at pages 24 to 26, the relative position of the University's lowest-paid faculty is among the weakest in the group of 10 universities.

14. This skewing effect is also applicable to librarian salaries. Librarians at level I and II rank 6th when compared to their peers at other Group of 10 universities. These librarians comprise 19% of all academic librarians at the University. This fact is obscured if we only consider overage average salaries for librarians as a group.

15. The next chart shows the relationship between average salaries at the University and at six large universities in Canada from 2000 to 2008. It shows that since

2000, the gap between salaries at other comparator universities and salaries at the University has narrowed. Far from illustrating high salaries that can be frozen without competitive consequences, as the Administration asserts, the data underline the need for the University to match or exceed percentage increases at other institutions in order to maintain its relative salary position.



16. With the exception of the University of British Columbia, all of the major universities in Canada have narrowed the gap between their salaries and those at the University since 2000.

Caveats relating to the Reliability of Average Salary Numbers at the University.

17. Two important caveats need to be considered before one can give credence to some of the salary numbers in the Administration's brief.

The Bill Gates effect.

18. If Bill Gates moved into the poorest block in Toronto, on average, all households in that block would appear to be millionaires.

19. The analogy is that at the University, some faculties are much better paid than others. Management and Law are the two faculties with the highest salaries at the University. As a result, when salaries are averaged together regardless of discipline, the fact that most faculty earn less than the average salary is hidden.

20. The following table presents average tenure stream salaries at the University for 2009-10 in five different groupings. The numbers in line 1 correspond to those in the Administration's brief on page 18.

UofT Average Salaries in 2009-10					
	Assistant Professor	Associate Professor	Professor	All Tenure Track	Total Count
1 All Tenure Track Faculty	$ 106,480	$ 127,834	$ 162,918	$ 138,255	1912
2 Only Mangagment	$ 172,401	$ 194,520	$ 229,768	$ 199,409	120
3 Only Law	$ 126,770	$ 157,540	$ 202,927	$ 178,154	49
4 Only A&S	$ 94,572	$ 118,792	$ 155,537	$ 128,370	1111
5 All w/o Manag, Law	$ 98,820	$ 123,233	$ 157,707	$ 132,923	1743

21. It is clear from the above that Management salaries skew the overall results, with Law salaries contributing to that effect. Average salaries for junior as well as senior professors in Management and Law are much higher than in Arts and Science. Yet, as documented in a recent UTFA newsletter,[1] it is the students in Arts and Science classes who subsidize salaries in Management and Law. This salary issue is the reason motivating UTFA's proposal for a larger ATB percentage salary increase for those earning below the median salary.

22. On page 18 of the Administration's brief, the 'faculty salary structure' table is misleading and incorrect. To illustrate, all average salaries for Assistant Professors in the above table exceed the $86,900 'MAX' in the table.

23. The next table compares line 1 with line 5 in the above table. In line 5 all Management and Law salaries are removed

[1] See Tab 61 (UTFA Information Report, "How Undergraduates Subsidize Professional Faculties: A Look at UofT's Budget Model," January 5, 2010).

UofT Average Salaries in 2009-10					
	Assistant Professor	Associate Professor	Professor	All Tenure Track	Total Count
1 All Tenure Track Faculty	$ 106,480	$ 127,834	$ 162,918	$ 138,255	1912
5 All w/o Manag, Law	$ 98,820	$ 123,233	$ 157,707	$ 132,923	1743
6 $ Difference	$ 7,660	$ 4,602	$ 5,211	$ 5,332	
7 Percentage Reduction	7.2%	3.6%	3.2%	3.9%	

24. In summary, the Bill Gates effect accounts for average salaries appearing between 3% to 7% higher than they would be without Bill Gates on the block.

The Teaching Stream effect.

25. This is the converse of the Bill Gates effect but has the same effect of inflating the average. Namely, if one removes the lowest salaries from a sample, the overall average will be inflated.

26. The University has two faculty streams, the tenure stream and the teaching stream. The teaching stream is a teaching-intensive stream and not a teaching-only stream. On average, teaching stream faculty at the University have lower salaries than tenure stream faculty. Most other institutions do not make this distinction between tenure and teaching streams and therefore include their teaching stream equivalent appointments with their tenure stream data. Thus, the data from Statistics Canada is misleading because it excludes the University's teaching stream but includes teaching stream equivalent appointments at other universities.

27. Therefore, a meaningful comparison of the University's average salaries with average salaries at institutions that do not have a teaching stream would have to include both teaching and tenure streams at the University. However, because our teaching stream ranks differ from tenure stream ranks (teaching stream does not

use the Assistant, Associate and full Professor ranks), we cannot compare average salaries by rank. We can only compare overall averages for all faculty.

28. The teaching stream effect is significant because the University has the highest percentage complement of teaching stream appointments, with 382 teaching stream members compared to 1912 tenure stream members (ratio of 1 to 5).

29. The table below shows that when teaching stream salaries are included, the overall average is decreased by $7,086 (5.1%) from $138,255 (line a) to $131,169 (line d). And when we also take into account the Bill Gates effect by removing Management and Law (for both tenure and teaching streams), the overall average salary is now reduced $11,840 (8.6%) from $138,255 (line a) to $126,415 (line e).

UofT Average Salaries in 2009-10

		Average Salary	Total Count
a	Tenure Track Faculty	$ 138,255	1912
b	Lecturers	$ 85,200	200
c	Senior Lecturers	$ 107,249	182
d	All Tenure + Lecturers	$ 131,169	2294
e	All w/o Manag, Law	$ 126,415	2090
f	$ Difference (a-e)	$ 11,840	
g	Percentage Reduction	8.6%	

Validity of Salary Comparisons.

30. Comparing apples to apples is important. In its comparison tables, the Administration does not appear to take into account whether or not comparator institutions cited in their brief have the same faculty structure as represented by the University's salary numbers. As a result, the Administration's salary comparisons must be viewed with a grain of skepticism.

31. To illustrate this point, on page 43 of the Administration's brief, it states: "[a]verage salaries of all professorial ranks combined is $16,625 (13.9%) more than their comparators at the next highest paid research intensive university in Canada." This is misleading for the reasons below.

32. Their statement is in reference to the table on page 42, which shows the University of Waterloo as the next average highest salary after the University with an overall average salary of $119,688. Waterloo does not have a Management faculty and has a much smaller proportion of teaching stream equivalent appointments than the University. Furthermore, living expenses in downtown Toronto are considerably higher than in Waterloo and warrant a higher scale for that reason alone. If the Administration had taken into account these differences, it would be hard to claim a real 13.9% difference.

33. In conclusion, while the University may still be the best paid faculty overall in Canada, the differences are not as great as the Administration's brief would suggest.

34. And if the University is the best university in Canada it should have the highest salary scale.

The University's characterization of PTR is incorrect

The PTR model is self-funding and does not cause a net increase to base budget.

35. On page 21 of its brief, the Administration states that "a PTR/Merit based increase costs the University the same as an ATB."

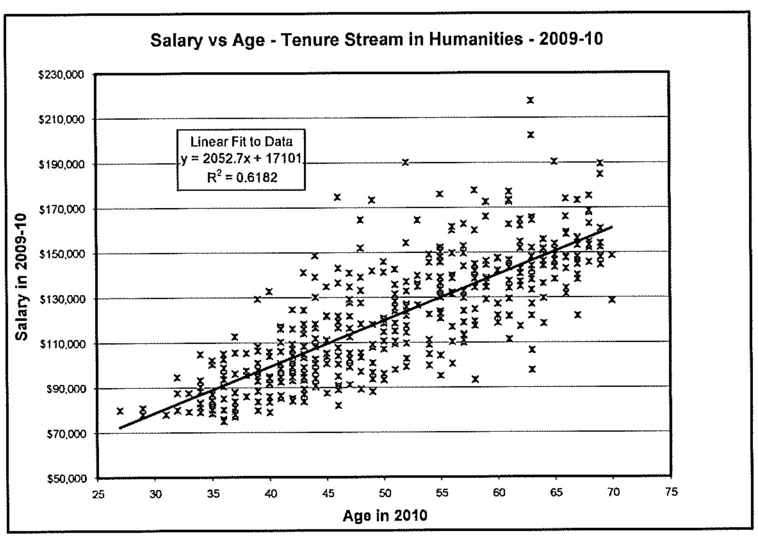
36. This is incorrect. This does not correspond to the University's PTR model and is not supported by the salary data.

37. In a steady state (where there is no net increase in faculty numbers), PTR funds should not be a net cost. While ATB is a net increase to cost, PTR funds are recycled from higher salaried exiting faculty to pay lower salaried incoming

faculty. This has been pointed out to the Administration many times yet they continue to cling to this incorrect statement.

38. If what the Administration purports were to be true, (a) incoming faculty members replacing retiring faculty members would have to have the same salaries (even though they are around 30 years younger), or (b) no faculty members would ever retire or die of old age (i.e. they never need to be replaced). Obviously, neither statement is correct.

39. The simplest way to show this is to look at salaries in an academic cohort. The following chart plots age vs. salary and superimposes the best linear fit line for the 422 tenure stream faculty in the Humanities for 2009-10. The line clearly shows a correlation of salary with age. It illustrates that an incoming humanities professor at age 30 can expect an initial salary of about $78,500. At retirement, 35 years later at age 65, the same professor can expect (on average) to exit with a salary of about $150,500. This represents a salary difference of $72,000. These are the funds that are recycled via the PTR model.



40. On page 21 of the Administration's brief, the claim is made that the PTR recovery model "has ceased to have any meaningful application" and is "obsolete." How then do they explain the implications of the above scatter plot data? The empirical evidence is to the contrary.

41. It is true that because mandatory retirement at age 65 was abolished as of July 1, 2005, a new steady state needs to be established. And as the scatter plot illustrates, there are about 38 faculty in Humanities who are currently older than 65. But one must also keep in mind that the agreement to end mandatory retirement also encouraged early retirement (before age 65) by waiving any early retirement actuarial loss in pensions. We do not know how many faculty in Humanities opted to retire before age 65 since 2005. This would help balance out those who retire after 65.

PTR increments are distinct and not part of ATB.

42. In addition to the cost issue, it is important to emphasize the role of PTR, how it differs from ATB and what prior mediations/arbitrations have written on this.

43. The purpose of PTR is to recognize the academic and professional development of faculty as they progress through their careers. The PTR system was designed in about 1972 so that faculty starting salaries increase by a factor of 2.75, from age 25 to 65. (Today, few, if any, faculty are hired at age 25.)

44. The PTR system is analogous to moving through a salary range. It is purely promotional. It represents career advancement and recognizes employees' development as they progress through their careers. In contrast, ATB parallels negotiated increases to the entire salary range.

45. This issue was debated during the arbitration with Arbitrator Kevin Burkett in 1982. The issue was whether PTR should be included in determining how UTFA salaries had fared in relation to inflation. UTFA maintained that PTR is irrelevant. Arbitrator Burkett agreed with us. In his award, he wrote:

> The purpose of the PTR increase, therefore, is not to advance the salary ranges but to recognize merit by moving individual faculty members through the salary ranges. Upward movement of the salary ranges is achieved by means of, and in the amount of, the annual economic increase. It follows that only the amount of economic increase should be included for purposes of determining how faculty salary ranges have fared over time.

> The defect in the University's position is illustrated by the example of the faculty member whose salary, including PTR, has kept pace with, but not exceeded, inflation during the period when he has been promoted from assistant to associate to full professor. The University does not dispute that the faculty member is entitled to monetary recognition for promotion. However, because his salary has remained constant in real terms throughout the period, it cannot be said that he has both maintained his salary level in real terms and received recognition for his promotions. It is open to the faculty member in this situation to claim one of two things; that he has not received real monetary recognition for his promotion or that the value of his base salary has fallen.[2]

46. Similarly, Donald Munroe, Q.C., in his 1986 award, used the phrase "on scale" to distinguish ATB from PTR. Although the Administration tried to lump the two together, as they are doing now, Munroe clearly separated PTR from ATB in his award. And in his 1992 arbitration award, he again treated ATB and PTR separately.

47. Chief Justice Winkler also treated ATB and PTR separately in his award for 2005-07.[3]

48. The Government of Ontario also treats ATB separately from PTR. For example, the Compensation Restraint Act does not allow any increases to be made to a pay range but allows a specific employee's salary to increase *within* a pre-existing pay range to reflect seniority, merit or an upgrading of skills.[4]

49. The consensus, therefore, supports UTFA's understanding of PTR as distinct, and not part of, ATB.

Aggregate PTR amounts as at July 1, 2009 represented 1.71%, not 1.9% of the salary base.

50. On pages 2, 20 and 21 of its brief, the Administration states that "PTR/Merit payments represented a base compensation increase of 1.9%."

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[2] See Tab 62 (Kevin Burkett's Arbitration Award for 1982-83) at page 21.
[3] See Tab 4 (Chief Justice Winkler's Award for 2005-06 and 2006-07) of UTFA's Book of Documents.
[4] See Tab 16 (The Compensation Restraint Act) of the Administration's Documents.

51. Our calculation has it at 1.71% of the total salary base, not 1.9%. UTFA requests an accounting of how the Administration arrived at 1.9%.

52. Our 1.71% number is the weighted average of four distinct groups: tenure stream faculty (at 1.69%), teaching stream faculty (at 2.08%), librarians (at 2.04%) and contract faculty (at 3.32%).

University Settlements in Ontario and Canada

53. In arguing its position with respect to replication, the Administration makes the rather remarkable statement that "faculty and librarian settlements at other Ontario or Canadian universities would have been of little or no relevance as a factor" and that "[i]n these circumstances the percentage increase in faculty salaries at other universities is not a relevant factor vis-a-vis current faculty compensation at the University of Toronto" (page 82) because average professoriate salaries at the University are higher than anywhere else in Canada. It appears that the Administration believes our faculty salaries are already so high that no increase is justified.

54. The Administration made a similar argument to Munroe in 1986-87 and the argument was rejected:

> Reduced to its essentials, the University's position is that the panel should award the lowest increase necessary to allow the University to effectively compete in the university marketplace. That argument has at least two flaws. To the extent that it represents an invocation of the arbitral notion of the prevailing standard, it puts the cart before the horse. Assuming that there is a prevailing standard within the Ontario university community..., it is – or ought to be – the standard set by this university; more fundamentally, the University's position is more in keeping with a system of unilateral decision-making by the employer than it is with a regime of collective bargaining or, as here, a process designed to achieve what might be characterized as the "product equivalent" of collective bargaining.[5]

55. Although the overwhelming and clear pattern of settlements between 3.0% and 4.0% in the university sector in Ontario and Canada may be inconvenient to the Administration, and is undoubtedly unhelpful to its argument, the pattern established by a large number of settlements in exactly the same sector as the University can hardly be considered irrelevant.

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[5] See Tab 5 of the Administration's Documents.

56. Indeed, UTFA's position is that in cases where there is a clear pattern of settlements in the sector, there is no basis for going outside the sector for comparators.

57. With respect to the university sector, UTFA's submissions present details of settlements in the university sector across Canada and in Ontario. In the Ontario comparators in particular, UTFA's submissions present separately ATB increases in contracts negotiated before and after the failure of Lehman Brothers in September 2008 (generally accepted as the start of the downturn).

58. Here, the principle of replication on which the Administration relies so heavily is not helpful to its case. In the absence of interest arbitration, the parties would have been negotiating in the spring of 2009, at the same time as several of the agreements referred to in UTFA's materials were being negotiated.

59. Finally, in its summary of agreements in the university sector included in its argument in chief, the Administration makes a common mistake in its manner of presenting university sector settlements. It reports only those increases that are labelled as ATB in agreement summaries. In an appropriate comparison, all increases that are generally applicable to the base pay of all members of the bargaining group should be included in the ATB total. This would not include PTR or its equivalent, which is treated as a career progress increase in all university pay systems, but would include items variously labelled as catch-up, global market adjustments, etc. These different labels may serve a useful purpose at individual institutions in providing a basis for separating faculty salary increases from those of other university employees, but for university-to-university comparisons, they are irrelevant. For the purposes of comparison, any increase that applies generally to all faculty members is an ATB increase, regardless of what it is called.

60. The table on page 83 of the Administration's brief is full of these errors.

- The 2% increase for 2009-10 for UBC is actually 3.32%.

- The 3.25% increase for 2009-10 for Western is actually 3.91%.
- In the memorandum of settlement for OCAD, the 0.5% increase claimed in the table is actually a 3.0% ATB increase.
- The 3.0% increase for 2009-10 for Waterloo is actually 3.36%.
- The 3.2% increase for 2009-10 for Queen's is actually 3.4%; the 3.2% increase for 2010-11 is actually 3.70%.
- The 3.5% increases for Brock for 2009-10 and 2010-11 are actually increases of 3.58% in each year.
- The 3% increases for Ryerson for 2009-10 and 2010-11 are actually increases of 4.24% in each year.
- The 3.25% increases for Laurentian for 2009-10 and 2010-11are actually increases of 3.75% in 2009-10 and 3.80% in 2010-11.
- The 2.24% increase for Carleton in 2009-10 is actually an increase of 2.70%.
- The increases for Ottawa of 3.0% in 2009-10 and 2.75% in 2010-11 are actually 3.50% and 3.00%, respectively.

Economic Environment

Economic recovery in Canada and Ontario

61. Unlike the situation that has prevailed in other broadly-based recessions, Canada fared considerably better than most other jurisdictions during the recession, has begun to recover more quickly and in a broad consensus of international economic observers, is in much better shape to consolidate its economic recovery than most other jurisdictions.

62. That consensus view is confirmed in an analysis of the 2008-09 recession published recently by Statistics Canada in the Canadian Economic Observer, April 2010 edition.[6] The report finds that the recession in Canada was both shorter and less severe than the recession in other G7 nations: between the third quarter of 2008 and the second quarter of 2009, GDP in Canada fell 3.6% compared to 3.8% in the US and to larger declines in Europe and Japan. This recession in Canada was relatively mild in comparison to the recessions of 1981-82 and 1990-92.

63. While these conclusions are for Canada as a whole, the signs of economic recovery at the provincial level in Ontario are already clearly visible.

64. Indeed, the evidence to date suggests that the positive budgetary effect of economic recovery is already being felt. The government's deficit projections for 2009-10 were revised more than $3 billion downwards in the 2010-11 budget. Using conservative assumptions, the government has forecast that the deficit will be eliminated over a five-year period. However, even the improved deficit forecast understates the economic reality. Had the government not chosen to book its ad hoc $500 million contribution to the Pension Benefits Guarantee Fund 2009-10 and defer recognizing a further $700 million of Federal transfer payment revenue until 2010-11, the forecast deficit would have been a further $1.2 billion

[6] See Tab 60 (Philip Cross, "Year –End Review of 2009") in UTFA's Book of Documents for excerpts of this report. The full report may be found at http://www.statcan.gc.ca/pub/11-010-x/2010004/part-partie3-eng.htm.

lower. Furthermore, the decision to allocate the entire amount of the government's $4 billion in loans to General Motors and Chrysler to the 2009-10 fiscal year further exaggerated the 2009-10 deficit relative to the underlying economic reality.

65. The deficit arose from three broad causes: revenue losses resulting directly from reduced economic activity; expenditure increases occurring automatically in an economic slowdown; and extraordinary short-term expenditures required to fund the economic stimulus measures implemented by the Federal and Ontario governments. Because all three of these deficit drivers are temporary and naturally self-correcting with a return of economic growth to its trend line, the appropriate expectation is that the deficit will take care of itself over a reasonable period of time.

66. Two aspects of the provincial government's response to the deficit are of particular importance. First, as noted above, the government appears to have resisted calls for precipitous and draconian action to reduce the deficit in the short term. Like many governments around the world, the Government of Ontario has acted on concerns that a premature end to fiscal stimulus could push the economy back into recession.

67. Second, the government continues to stress the importance of education in general, and of its signature educational institutions in particular, in the government's priorities, and in its strategies for building the Ontario economy of the future.

68. Education features prominently in the economic strategy backgrounder tabled by the Minister of Finance with his budget. To quote:

> Education is the top priority for the McGuinty government. A well-educated workforce enhances the province's economic growth and competitiveness. Ontario's colleges and universities also open the province to the world, attracting students from every corner of the globe.

> Ontario's colleges and universities play a critical role in equipping people for success and preparing them to generate the ideas, products and jobs that will ensure future prosperity.[7]

69. The budget announced $310 million in new funding to support 20,000 new postsecondary education spaces in Ontario for the academic year beginning in September 2010.

70. In addition, immediately following the budget, the government addressed the uncertainty surrounding its tuition policy, authorizing increases in regulated tuition fees of 5% per year for the next two years, with only 10% of the increase earmarked for bursaries and other forms of student assistance. Combined with the 5% annual increases authorized in the "Reaching Higher" policy originally announced in the 2006 Ontario Budget, this means Ontario universities will have had the benefit of six consecutive years of 5% tuition increases by the end of the 2011-12 academic year.

71. Both Premier Dalton McGuinty and Finance Minister Dwight Duncan have repeatedly stressed that, whatever measures the government decides to take in response to the economy, the areas of education and health are priorities that will be protected. The 2010 Budget measures are fully consistent with that position.

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[7] Ontario Budget 2010 backgrounder: Creating Jobs Through New Investments in Postsecondary Education and Northern Ontario; Ontario Ministry of Finance; March 25, 2010.

Public Sector Settlements

72. On page 69 of its brief, the Administration provides a selective list of public sector settlements.

73. While UTFA's position is that university sector settlements are the most relevant to these proceedings, if other public sector settlements were to be taken into account, we must consider where faculty and librarians should fall within the range of public sector settlements. UTFA submits that regard should be taken of the increases negotiated with, or awarded to, doctors and teachers which are also in line with increases received by police and firefighters in Ontario.

74. Highlights from recent settlements or awards for these groups are described below.

Ontario Government/Ontario Medical Association

Settlement (October 2008)

October 1, 2008	3.0%
October 1, 2009	2.0%
October 1, 2010	3.0%
September 1, 2011	4.25%

In addition, there were numerous other "incentive/efficiency" payments to physicians above and beyond the normative amounts set out above.

Toronto District School Board/Ontario Secondary School Teachers

Settlement (September 2009)

September 1, 2008	3.0%
September 1, 2009	3.0%
September 1, 2010	3.0%
September 1, 2011	3.0%

City of Toronto/Police Association:

Arbitration Award (Kaplan) (December 2008)

2008	Salary Increase
January 1	3.00%
July 1	0.30%
2009	
January 1	2.00%
July 1	0.60%
December 1	0.845%
2010	
January 1	2.00%
July 1	0.91%
December 1	0.25%

Ontario Firefighters

Local	2009	2010	2011
Ajax	3%		
Amherstburg	2.50%	2.50%	
Barrie	3%		
Bradford	3.60%	3.60%	
Brampton	3%	3%	
Brantford	3.30%		
Burlington	2%		
Chalk River	6.50%	6.50%	
Cobourg	4.54%	3%	
Collingwood	3.60%	3.80%	
Cornwall	3.40%		
Elliot Lake	5.50%	5.75%	
Georgina	4.70%		
Guelph	3.50%		
Halton Hills	3%	3%	
Hamilton	3%		
Hawkesbury	6.10%		
Innisfil	4.25%	6%	
Kapuskasing	5%	3%	3%
Kenora	3%	3%	
Kitchener	3.30%	2.90%	2.90%
LaSalle	3%	3%	3%
London	3.12%		
Markham	3.76%		
Milton	3%	3%	3%
Mississauga	3.70%		
Niagara Falls	3%	3%	
North Bay	3.25%	3.50%	
Oakville	3%	3%	3%
Orangeville	3.60%	3.80%	3.80%
Orillia	3.50%		
Oshawa	3%		
Ottawa	3.20%	3.25%	
Pembroke	3%		
Peterborough	3%		
Pickering	3.02%		
Port Colborne	2%		
Prince Edward County	5.90%	5.50%	5.25%
Renfrew	4.35%	4.55%	4.75%
Richmond Hill	3.76%	3.23%	
St. Catharines	3%	3%	
St. Thomas	3%	3%	
Sarnia	3%	3.50%	
Sault Ste. Marie	3%	3.50%	
Smiths Falls	4%		
Thorold	3%	3%	3%
Timmins	3%	3%	
Toronto	3.50%		
Wasaga Beach	4%	4.60%	
Welland	3%	3%	2.75%
West Nipissing	3%	3%	
Whitby	3%		
Whitchurch-Stouffville	4%		
Windsor	3.14%		
Woodstock	3.15%		
Average	**3.5%**	**3.6%**	**3.4%**

Private Sector Settlements

75. The Administration's brief places considerable emphasis on the prevailing trend for low settlements in private sector negotiations.

76. In addition to the obvious problem that settlements in the university sector covering 2009, 2010 and 2011 do not reflect this pattern, there is a broader issue raised by reliance on private sector collective bargaining settlements as comparators with the university sector. Workplaces and job categories in the private sector which draw from the same labour market as universities tend to be non-union. By the same token, workplaces in the private sector in which wages and working conditions are determined through collective bargaining tend not to be in the same part of the labour market as university faculty members.

77. An indication of the state of the labour market can be found in the data on average weekly earnings from Statistics Canada.[8] The most recent issue of Employment, Earnings and Hours published by Statistics Canada on March 31, 2010 shows that average earnings in the broad job categories most likely to be comparable to those of university faculty are in a different world from industrial workers when it comes to pay.

78. Key sectors showing substantial increases from January 2009 to January 2010 include: professional, scientific and technical services (3.9%); management of companies and enterprises (7.8%); educational services (5.3%); health care and social assistance (4.1%); and public administration (4.6%).

79. Because these data do not follow individuals, but rather track sectoral averages, they net out increases related to scale movement and promotion, and therefore are a reasonable proxy equivalent to ATB in the university sector.

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[8] http://www.statcan.gc.ca/daily-quotidien/100331/t100331b1-eng.htm

Consumer Price Index – Inflation forecasted

80. In paragraph 92 of the Administration's brief with respect to the Consumer Price Index, the Administration limits its comment to a recitation of the measured inflation rate for 2009 of 0.35% for Ontario and 0.44% for Toronto. By restricting its observations to the record for calendar year 2009, it is implicitly suggesting that that would be a reasonable expectation for the remainder of the period under consideration in these proceedings.

81. That view of inflation is, to say the least, out of date.

82. All of the major economic forecasters project that, after the brief dip to 0.3% in 2009, inflation is expected to be back in the neighbourhood of the Bank of Canada's 2% CPI inflation target in 2010 and 2011.

83. The forecasts of the five large Canadian chartered banks are as follows:

Forecast	**2010**	**2011**
TD	1.7%	1.9%
BMO	2.2%	1.9%
CIBC	2.0%	2.1%
BMO	2.0%	1.8%
Scotia	1.9%	2.3%

84. Of more significance, given its policy role in managing inflation, the official Bank of Canada view is fully consistent with the chartered bank forecasts.

85. In a statement released on April 20, 2010, the Bank of Canada stated as follows with respect to inflation:

> Core inflation, which has been somewhat firmer than projected in January, is expected to ease slightly in the second quarter of 2010 as the effect of temporary factors dissipates, and to remain near 2 per cent throughout the rest of the projection period. Total CPI inflation is expected to be slightly higher than 2 per cent over the coming year, before returning to the target in the second half of 2011.

86. In other words, for the last year and a half of the period covered by these proceedings, the Bank of Canada expects total CPI inflation to be in excess of 2%.

The University Budget

The University's Budget is not relevant to these proceedings.

87. The Administration devotes considerable attention in its brief to its budgeting process, with particular emphasis on its rolling five-year budget plan and its system for allocating funding to academic divisions. It also presents carefully selected details related to current and forecast budget issues. In this respect, UTFA does not accept (and indeed contests) both the relevance and the reliability of the Administration's assertions.

88. Before getting into the substance of the budget issues, it should be noted that to the extent that the Administration's budgeting process and its procedures for allocating funding to academic divisions constrain its decision-making with respect to faculty salaries and benefits, those constraints are self-imposed, and cannot be taken as determinative of any of the issues between the parties in these proceedings. For example, the fact that the Administration has chosen to constrain base budgets and allocate the budgetary room thus created to centrally determined academic priorities may well be interesting to the university community, but reflects decisions made by the Administration.

89. Turning to the substantive issues, it is important to note at the outset that the Administration is not actually making a formal ability to pay argument. Rather, its argument centers on the concept of replication and does not submit ability to pay as a factor to be considered.

The Administration's submissions show that revenues are expected to increase faster than in prior years.

90. From the Administration's perspective, it is just as well that it is not making an ability to pay argument because, as far as the two academic years that are the subject of these proceedings are concerned, based on the information provided by the Administration in its own brief, it does not have an ability to pay argument.

91. In paragraph 87 of its brief, the Administration acknowledges that its revenue is projected to grow by 5% annually over the two-year period covered by these proceedings. This growth is in contrast with the Administration's own assertion that, on an enrolment-corrected basis, its revenue had grown in prior years by only 2.5% per annum.

92. The Administration's brief is replete with selected details intended to suggest that the University is in dire financial straits. However, if we step back from the details, the Administration's acknowledgement of a 5% annual growth in revenue amounts to an acknowledgement that it does not have an ability to pay argument to make.

93. Furthermore, even the economic impact projected by the Administration from the suspension of distributions failed to materialize. Although deficit funding of $45 million was authorized to ameliorate the effect of the suspension of distributions on academic programs, only $17.8 million of that funding was actually taken up.

94. In paragraph 53, the Administration addresses the issue of provincial funding, pointing out, correctly, that provincial funding since 1992 has not kept up with inflation, but neglecting to point out that over the same time, the government allowed tuition fees to increase at a rate much higher than inflation to offset that impact.

95. In paragraphs 56 to 58, the Administration refers to increases in pension contributions that may arise from the current pension funding deficit. The problem with that argument in the context of these proceedings is that the next required funding valuation will be based on the finances of the plan as of July 1, 2011, one day after the end of the agreement that is the subject of these proceedings.

96. Even the 5% per year funding increase forecast in the University's budget understates the revenue base. In paragraph 67, the Administration acknowledges that its forecasts do not include the $16 million in year-end 2009-10 funding for

previously unfunded spaces or the University's share of the $310 million allocated in the 2010 budget for new spaces in the 2010-11 academic year.

97. Furthermore, in paragraph 69, the Administration acknowledges tuition revenue increases of 4.3% in each of 2009-10 and 2010-11.

98. The brief also makes highly-questionable adjustments in its selective data presentation. In paragraph 74, it compares the rate of growth of expenditures with the rate of growth of revenue, asserting that revenue has increased by 2.5% while expenditures have increased by 4%. However, the 2.5% revenue increase figure has been "adjusted" to an undisclosed extent "to remove the impact of enrolment volume increases," while the expenditure figure has not. On its face, therefore, the comparison is meaningless.

99. In paragraph 51 of its brief, the Administration cites financial problems with its endowment funding as a source of financial pressure. Considerable attention has been paid to the fact that the University's endowment fund fared particularly poorly in the financial market reversals of 2007 and 2008.

100. Most universities have made some adjustment to their endowment fund distribution policies as a result of these market reversals. However, to our knowledge, the University is the only university in Canada whose administration chose to suspend such distributions in their entirety. It should be pointed out that nothing forced the Administration to do so.

Historically, the University's actual financial results have been significantly more positive than its projections.

101. Finally, the Administration's budget projections should be taken with a healthy number of grains of salt.

102. The following table presents budgeted and actual figures for operating revenue and expenditures for recent years. In four of the five years, there was a budgetary turn-around resulting from overestimates of expenditures and underestimates of

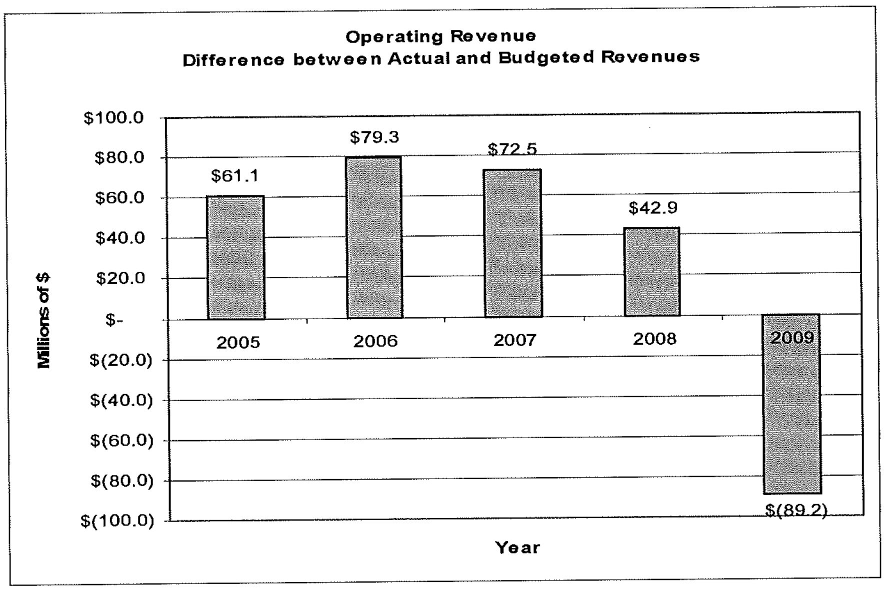
revenue of more than $100 million. Only one year showed a negative in-year variance, and in one other year, the variance was over $160 million on the positive side for the University's budget.

	Actual			Budget			Difference		
Year Ended April 30	Revenues	Expenses	Net Income	Income	Expense	Surplus	Income	Expense	Net Income
	($ M)	($ M)	($ M)	($ M)	($ M)	($ M)	($ M)	($ M)	($ M)
2005	$1,152.0	$1,071.0	$81.0	$1,090.9	$1,115.2	$(24.3)	$61.1	$(44.2)	$105.3
2006	$1,235.4	$1,143.8	$91.6	$1,156.1	$1,172.8	$(16.7)	$79.3	$(29.0)	$108.3
2007	$1,367.6	$1,214.4	$153.2	$1,295.1	$1,304.4	$(9.3)	$72.5	$(90.0)	$162.5
2008	$1,379.2	$1,275.9	$103.3	$1,336.3	$1,336.3	$-	$42.9	$(60.4)	$103.3
2009	$1,350.6	$1,384.1	$(33.5)	$1,439.8	$1,439.8	$-	$(89.2)	$(55.7)	$(33.5)

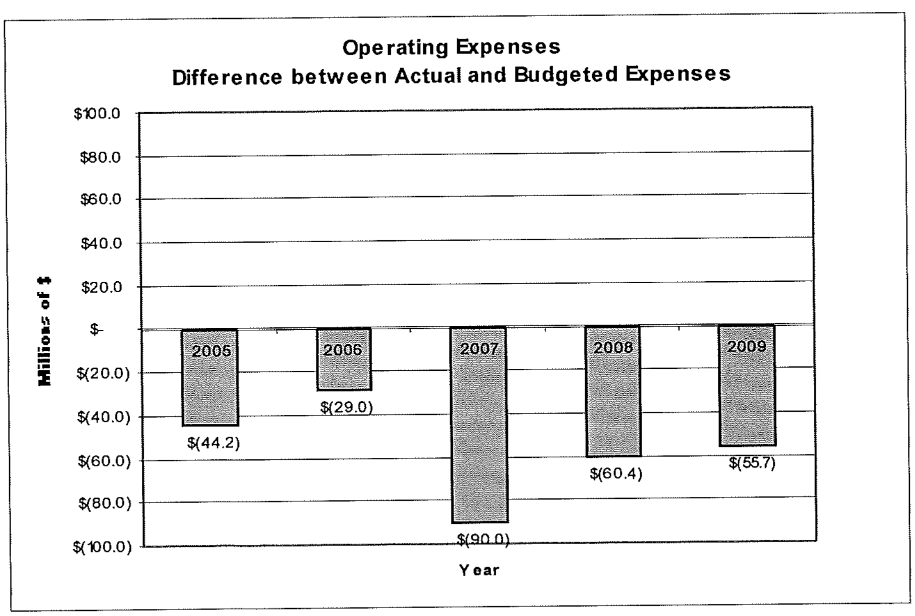
Source: University of Toronto Financial Statements and Budgets for 2004-05 through 2008-09.

103. The next three graphs illustrate the Administration's pattern of under-estimating revenues, over-estimating expenses and the resultant effect on net income/loss.

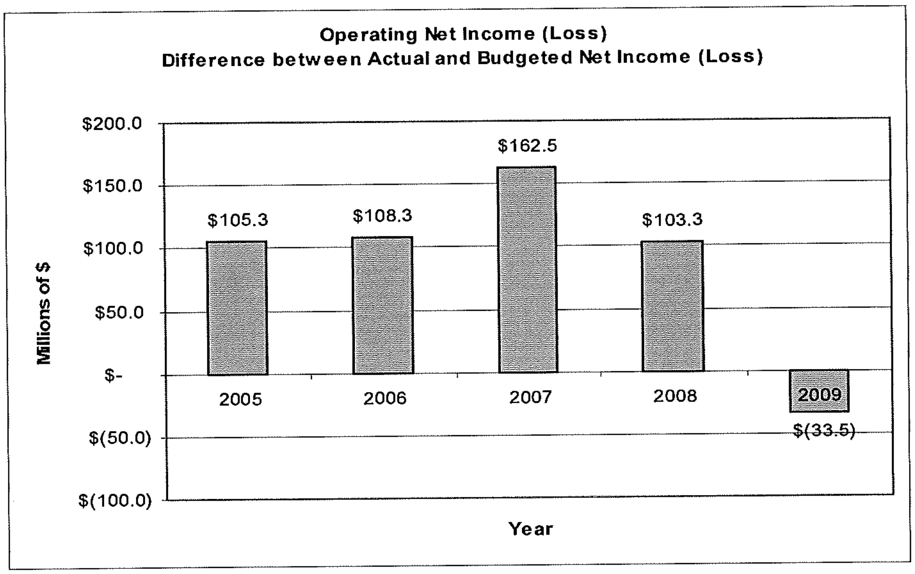
104. The positive bars below show that actual operating revenues were between $42.9 million and $79.3 million greater than what was budgeted for the fiscal years ended 2005, 2006, 2007 and 2008.



105. The negative bars below show that actual operating expenses were between $29.0 million and $90.0 million less than budgeted for each of the last five fiscal years.



106. The positive bars show that the effect of the Administration's conservative budgeting was a surplus of between $103.3 million and $162.5 million greater than was projected for the fiscal years ended 2005 through 2008.



Faculty and librarian compensation is a diminishing portion of the University's expenses.

107. It is important to note again that the proportion of the operating budget attributable to faculty and librarian total compensation has diminished approximately 50% from 47% of operating expenses in 1997-98 to 28% of operating expenses in 2008-09. Faculty and librarian compensation no longer accounts for the bulk of the University's expenses.

108. In particular, when CPI is taken into account, the real dollar cost of faculty compensation per student FTE has decreased by about 24% over 12 years from $6,512 per student FTE in 1997-98 to $4,926 per student FTE in 2008-09 in constant dollars. Please see pages 18-19 of UTFA's brief.

Total Compensation Report

The Administration's claim that a 1% salary increase would cost $3.95 million is incorrect.

109. On page 13 of their brief, the Administration writes that "[t]otal compensation for faculty and librarians for the period May 1, 2008 to April 30, 2009 was $395,352,378 such that a 1% increase in salary represents a total compensation cost of approximately $3.95 million."

110. In the "Summary of Total Compensation – Faculty and Librarians" table on page 15 of the Administration's brief, "total salaries and wages for faculty and librarians" are reported to be about $316 million while the "University's Benefit Plans Vontributions" are an additional $79 million, which together make up the $395 million total.

111. The "University's Benefit Plans Contributions" includes pension contributions, legislative plan contributions (Canada Pension Plan, Employment Insurance, health tax, and work place safety insurance), medical plan contributions (extended health care, dental, semi-private hospitalization, and vision care), Life and LTD contributions (disability insurance and group life insurance), and joint membership. Many of these contributions are capped (or have a cap component) or are fixed, and so are not directly linked to a salary increase.

112. For example, over $100 million or about 35% of the total salary mass represents individuals with a salary in excess of the pension salary cap of $150,000. For these individuals, no pension consideration or contributions are required in respect of new salary income above $150,000.

Workload

113. It is not clear what the Administration is arguing in paragraphs 127 to 129 with respect to the implications of amending the Memorandum of Agreement to include workload as this applies to the replication model of interest arbitration. From UTFA's perspective, as set out in our main brief, replication requires this board to look to other freely negotiated workload clauses in the university context in resolving differences between the administration and UTFA workload proposals. And, given the recognition by both parties of the University of Toronto as a pre-eminent post-secondary institution, this University should be a leader in ensuring meaningful and effective workload rules and processes which provide for an appropriate and equitable balance of teaching, service and research responsibilities, as reflected in the principles and procedures set out in UTFA's proposal.

114. However, any suggestion that the the Administration should somehow receive "credit" for agreeing to remove but one of the antiquated and regressive restrictions on the scope of bargaining under the Memorandum cannot be credibly advanced, particularly given the extent to which at other universities in Ontario and elsewhere there are no few if any restrictions on the scope of bargaining. Moreover, at no time during negotiations did the Administration suggest that its "concession" to negotiate workload, and to amend the Memorandum to make workload arbitrable, was tied to any Article 6 issues. To the contrary, the only link made by the, Administration to negotiating workload was in relation to its wish to negotiate other non-monetary and non-Article 6 issues, including time to tenure and professor of practice. For its part, the Administration has not pursued the time to tenure issue in negotiations for reasons that were not disclosed, and the Professor of Practice negotiations are ongoing via a mutually agreed upon working group. Moreover, throughout the bilateral phase of negotiations, the Administration insisted that a firewall remain between monetary and non-monetary issues as the Administration in fact acknowledges in its brief.

Pensions

The Administration is the cause of the UofT Pension Plans' underfunded status.

114. On pages 29, 31 and 97 in its brief, the Administration acknowledges that at this time the University of Toronto Pension Plan (RPP) is underfunded by about $1 billion.[9]

115. What the Administration fails to acknowledge is that they are the cause of the present underfunding. The Administration deliberately changed actuarial assumptions a number of times, thereby enabling almost 20 years of pension contribution holidays to the RPP. In 2000 they created UTAM to manage the assets but subsequently failed to supervise it properly.[10] Total operating costs for the pension plan have exploded. They are now in excess of $26 million per year[11], representing a 700%[12] increase over the past decade. The CEO of UTAM is the highest paid university employee in Ontario at over $600k in 2009 – while UTAM was dead last in pension performance in Canada in 2008[13] - losing almost $1 billion in the value of the RPP's pension assets.

116. The Administration fails to mention that only a few years ago they were quite specific and clear as to who had funding responsibility, stating:[14]

> The participant contributions are determined by a specific formula. The balance of the cost of funding the pension promise is the sole responsibility of the University. In other words, the University bears the risk of fulfilling that pension promise and must manage that risk prudently.

117. The Administration failed to manage the pension plan risk "prudently" and now they argue that UTFA members need to increase their contribution rates.

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[9] As at December 31, 2009, the UofT Pension Plan had assets of about $2.2 billion.
[10] Tab 63Report of the President's Committee on Investment Policies, Structures, Strategies and Execution, December 2009).
[11] See Tab 13 in UTFA's Book of Documents
[12] Fees and expenses as a percent of assets were 1.5% in 2009.
[13] See Tab 14 in UTFA's Book of Documents
[14] See page 101of UTFA's Arbitration Brief

115. The Administration notes that it has made some changes its proposals. One such change is for the first time to propose that the general principles governing the assignment of workload, and the rules governing unit workload committees, the assignment of workload, and service and teaching components, would apply only to "Faculty" but not to "Librarians". UTFA's proposal, and, until amended at arbitration, the Administration's proposal, applied these general principles, procedures and rules to faculty and librarians alike, and there is neither any basis for nor is it proper for the Administration to now seek to cut back on its previous proposal.[9] In order to avoid further and potentially damaging confusion, in UTFA's proposal and unless specifically stated otherwise, "member" refers to faculty or librarian members, and all provisions of UTFA's proposal are to apply generally to all members of UTFA with the exception of section 7.0 which deals with measures unique to each stream. UTFA has been consistent from the outset in this regard, as until now has the Administration.

116. With respect to principles, the Administration fails to explain in its proposal the omission of principles set out in UTFA's proposal, including good governance and proportionality. Furthermore, the Administration has failed to offer any explanation as to why many of the principles in 1.2 to 1.10 should not be included. This includes:

(i) encouraging temporary reductions in workload for pre-tenure faculty and pre-promotion teaching stream faculty;

(ii) the obligation to organize and distribute work to allow all faculty and librarians to take an annual vacation,

(iii) the grandparenting provision in 1.5;

(iv) the extension of the existing Memorandum Article 8 commitment to best efforts to provide support and infrastructure;

[9] As reflected in UTFA's proposal, "member" must be understood to refer to individual faculty or librarian.

(v) the acknowledgement of class size as a pedagogical concern to be collegially resolved; and

(vi) the need to eliminate significant discrepancies in workload in similar areas across the three campuses coupled with the establishment of a joint committee to examine working conditions for faculty and librarians at UTSC and UTM.

117. Furthermore, with respect to UTFA's proposed 1.8, the Administration's proposes in its paragraph 4 dealing with "Faculty Members in the Teaching Stream (page 92), that no three term teaching will be required as per the current terms of Article 8 of the MOA. This corresponds to 1.8 in UTFA's proposal. First, any such protection should not be limited to the teaching stream but applies to all faculty. Second, the concern animating UTFA's proposal is that vulnerable faculty can be pressured into teaching three terms, and for that reason includes the language "nor shall they be pressured to volunteer to do so". The Administration's language not only removes this injunction against pressure, but seemingly invites faculty to take on teaching in three terms or overload teaching;. The Association has no interest in preventing members from doing so of their own free will, but the Administration's proposal to include language emphasizing that teaching stream members in particular may voluntarily agree to teach in three terms is unnecessary, unhelpful, and potentially coercive in the context of widespread reports of pressure being placed on members of the stream to teach in all three terms. Third, the Administration's language suggests that teaching stream members could increase their "normal workload" (see top of page 93) by adding a third term of teaching, when in fact any extra teaching workload would be in the form of compensable "overload" unless other aspects of workload were explicitly reduced.

118. Generally, with respect to the Administration's proposed language on unit workload committees, on assigning/establishing individual workload, and on the teaching and service components of normal workload, it is UTFA's position that

it is preferable to provide necessary guidance in order to ensure that the processes are fair, consistent, and conducted in a regular and predictable way, and give force to the guiding principles. This includes specifying criteria and timelines for the process of establishing workload norms and assigning individual workload, ensuring a collegially appointed and representative committee, and providing rules for dealing with disagreements between the unit and the Administration's representatives about normal workload of the unit. UTFA's language accomplishes these objectives in a manner consistent with the approach taken in other universities, while the Administration's is deficient. Furthermore, restricting the establishment of normal workload in each unit to five year intervals, as the administration proposes, does not reflect the pace of change within a university. Other universities provide for annual or more regular reviews; UTFA's proposal of a three year interval seems eminently reasonable.

119. With respect to the Administration's proposed Unit Workload paragraph 6 (at page 90), while the Administration recognizes the principle of transparency, it fails to give it substance. The principle of transparency requires transparency for members of the unit over how individual workloads relate to the workload norms and principles. UTFA's proposed approach in Article 5.7 secures this necessary degree of transparency in a manner that the Administration's proposal does not.

120. With respect to the teaching stream (paragraph 132 (i) at pp. 86 -87 of the Administration's brief, the Administration's proposal entirely fails to address the proliferation of teaching related duties in the teaching stream, which is the main issue raised by UTFA in this area and addressed in UTFA's proposal.

121. With respect to librarians, and as noted above, the Administration is attempting to hive off all language for librarians from the rest of the provision in the proposed workload article (including the workload principles, a unit workload committee for collegially establishing workload norms and the requirement that workload be assigned consistent with specified criteria). There can be no justification for singling out librarians in this discriminatory manner. Librarians

are professionals and valued colleagues. They are also essential to the academic, educational and research missions of the University. The Administration's proposal does not reflect this.

122. The Administration's proposal seems premised on the assumption that librarians are incapable of professional judgement and self-direction in undertaking high levels of work and achievement. It is imperative that librarians, as a professional and academic community, be permitted to function as professionals and participate in the collegial development of workload norms – including across campuses – as is the case with their peers in the faculty. While UTFA has proposed exceptions to reflect "the unique missions of library units", there should otherwise be consistency in the manner in which workload provisions are developed.

123. The Administration's proposal also fails to address the proportional distribution of librarian activities and efforts, and fails to make any provision for protecting adequate time and autonomy for librarians in the conduct of professional, scholarly, and research activities. The administration's proposal suggests workload should be assigned "consistent with the specific position responsibilities of librarians." However, librarians do no have job descriptions. Positions do not have terms of reference. There is no existing metric with which a librarian or an administrator could do anything "consistent with the specific position and responsibilities of librarians." In this respect, while the Administration proposes that each librarian "will have the opportunity to discuss with the appropriate unit head or senior administrator the distribution of their duties for the next academic year", this is proposed in the absence of any meaningful criteria or processes to be followed and will have the effect of replicating many of the problems that librarians now report in the workplace – including a pervasive lack of collegiality in workload assignment and management.

124. With respect to tenure stream guidelines, the Administration proposal omits altogether the need for criteria and the future development of guidelines, as set out in UTFA's proposed Article 7.3 at page 85 of UTFA's main brief.

125. Finally, with respect to dispute resolution, the timelines are unreasonably tight. Twenty working days is the time limit for grievances generally, and while individuals can be encouraged to file complaints expeditiously, a time line closer to that contained in the grievance procedure is more appropriate. Furthermore, the time for referral by the individual to the next step of the procedure should be no less than the time Administration is given to respond. As well, the second step should be expanded to include the Chief Librarian or his or her designate. Second, to the extent a complaint about individual assignment relates to the Memorandum (e.g. Article 5 academic freedom, Article 8 inadequate resources, or Article 9 discrimination and harassment), then a grievance under Article 7 to the GRP would be necessary and appropriate. Third, the scope of the complaint about individual workload assignment must extend to all criteria and processes set out in the workload article (including Article 5). Fourth, the dispute resolution process should be subject to the Arbitration Act. Fifth, as is the case with similar adjudicative decision-makers, the term of appointment should be a two year term. Sixth, there should be provision for advance disclosure of any information reasonably necessary for resolution of the dispute. Seventh, in order to given the process credibility, there is no basis for specifying that the adjudicator be a current or former Chair or Dean at the University of Toronto. To the contrary, the Adjudicator should not necessarily be dependent on or tied to the University in any way. In this respect, UTFA's understanding is that the rationale for removing individual workload assignment disputes from the GRP was the need for an accessible, timely, informed and responsive process, but not to avoid independent and impartial review. One approach would be to provide that the Workload Adjudicator should simply be mutually agreed upon by the parties without restriction. In the event of a failure to agree, the Workload Adjudicator shall be appointed by the Chair of the GRP in consultation with the parties. Finally, UTFA

reiterates its proposal that the parties be given a reasonable period of time to work out the details of the process, with the board remaining seized.

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[15] See page 101of UTFA's Arbitration Brief

July 1, 2011 Solvency Valuation Issue.

130. The Administration mentions its concern for this filing date and its associated funding implications on pages 29 and 97 of its brief.

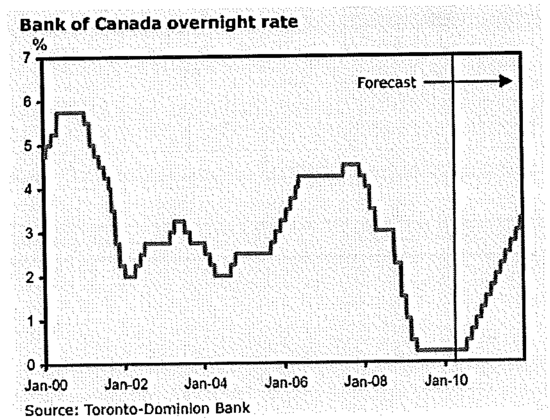
131. Background. The Financial Services Commission of Ontario (FSCO) requires the preparation and submission of an actuarial valuation every three years. The University's previous regulatory filing was for July 1, 2008. The next required filing is therefore due for July 1, 2011. In practice, the University has an actuarial valuation conducted annually. However, it did not submit to FSCO for July 1, 2009 – hoping for an improvement in interest rates before it files again.

132. Indexation. Pension plan sponsors can game the FSCO valuation by not including pension indexation in defined benefit (DB) plan solvency valuations. It is optional. The Administration has NOT been including indexation in its pension solvency submissions. This enabled the Administration to avoid additional contributions as well as to take the many contribution holidays that it took. Other DB pension plan sponsors, such as the Ontario Teachers Pension Plan (OTPP), voluntarily include pension indexation in their solvency valuations. The decision by the Administration not to include the cost of indexation in its solvency submission is a major contributor to the present underfunded status of its pension plan.

133. Interest Rates. There is a real possibility that the solvency crisis may go away by July 1, 2011. Much of the solvency crisis is driven by the current low long term interest rate. The recent low interest rate era is unprecedented. As interest rates rise, the pension solvency liability diminishes and the solvency deficit for most plans could go away. The media today are heralding the prospect of a future increase in interest rates, as noted in the following newspaper text from April 20, 2010:

> The era of cheap money is over. The Bank of Canada this morning left its benchmark lending rate at an historic low but signalled that interest rates

will soon rise as the economy rebounds and inflation remains hotter than expected.[16]



Thus perhaps by this June or June 2011 there will no longer be a pension solvency crisis for our pension plan.

134. Borrowing. But what if interest rates only go up significantly after June 2011? How will the University deal with the resulting cash flow crisis in its operating budget? The Administration has considered this possibility with the following comments at Business Board:

> One option being considered to deal with the solvency funding requirement was to borrow to provide additional funding for the registered pension plans.[17]

Go-forward risk sharing is linked to joint sponsorship.

135. The Administration states in its brief on page 98:

> The Ontario Budget document stated that any temporary solvency funding relief that might become available to university plans would be conditional upon greater risk sharing by plan members.

136. As the Ontario Budget itself emphasized (quoted at page 99 of the Administration's b

rief), the Arthurs Expert Panel "recommended that exemptions of this nature

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[16] Globe and Mail, Business section, April 20, 2010.
[17] Sheila Brown, Chief Financial Officer, Feb 8, 2010 Business Board minutes. http://www.governingcouncil.utoronto.ca/Assets/Governing+Council+Digital+Assets/r0208.pdf

should only be contemplated for pension plans that are structured to provide for joint risk-sharing and joint decision-making." Moreover, the Ontario Budget states that the government will consider additional temporary funding relief only if there is, *inter alia*, conversion to joint sponsorship for future services.

137. Risk sharing by its definition implies a future go-forward sharing of uncertainty. It does not mean transferring a legacy liability from the past to another party.

138. Notably, while the Ontario Budget document states that "converting to joint sponsorship for future service" would be one of the conditions of its support, in the 2009 Pension Governance Mediation/Arbitration hearings UTFA proposed joint pension governance. It was squarely rejected by the Administration.

1987 Agreement and Past vs. Present Funding

139. The Administration states on page 97 of its brief:

> Member contributions were last increased over a decade ago. Almost 25 years have passed since the 1987 agreement was entered into, and the time has come to take a fresh look at the contribution levels that proper funding requires.

140. It should be noted that all past increases to the pension contribution rate were agreed to by both parties as through mediation. No prior increase was ever imposed via arbitration.

141. All past contribution rate increases were associated with pension improvements. Members willingly increased their contribution rates to pay for their share of improved pension benefits.

142. It was a shared understanding among both parties that as a result of the 1987 agreement the Administration assumed all funding responsibility beyond the fixed input contributions by the members. This is demonstrated by the following UTFA Newsletter text from 1988 by then President Fred Wilson who clearly attests to this understanding, as do the Administration's own words in prior briefs. (quoted earlier and in UTFA's Arbitration Brief).

> <u>The Plan Surplus</u>[18]
>
> During the last several years, UTFA had agreed that pension plan members would be responsible for any deficits in the plan and that members would also benefit from any surplus. UTFA's calculation of the amount of the surplus to be used as a benefit for members was, however, challenged by the administration.
>
> In order to settle the issue, UTFA last year, during the salary and benefits negotiations, traded the claim on the surplus for increased benefits (the indexing of the pensions) and for the assumption by the University of all responsibility for deficits.
>
> The new agreement simply puts the responsibility for keeping the pension fund at acceptable actuarial levels on the administration's shoulders. This means that it is now incumbent on the University to put monies into the fund as necessary to satisfy its liabilities to provide the benefits accruing to plan members. In some years, such as the present, this may mean that no contributions are required from the University. <u>On the other hand, this new agreement also means that when investment income is usually low, in a recession for example, the University will still be required to fund the plan fully, even if that entails the University making considerably larger contributions to the plan than it has in the past.</u>
>
> It is not correct, as some have suggested, that UTFA has agreed to the plan of the University that it make no contributions to the pension plan for a two-year period. UTFA made no such agreement. But the agreement made during the last negotiations has the consequence that the University can, <u>at its own risk</u>, take a two-year holiday. The University's actuaries have indicated that in their view the risk is not large, but in any case <u>the risk is that of the University and not of the plan members: the University will be required, whatever happens, to supply to them the benefits defined by the plan</u>.
>
> (emphasis added)

143. In 1988, the Administration's and the pension plans' actuaries clearly did not appreciate the true long term risk of the missing pension contributions!

144. Member contribution rates did not change as a result of the 1987 agreement. The 1988 Hewitt actuarial report describes the participant contribution rates as:

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[18] From the March 7, 1988, #6, UTFA Newsletter.

> Each participant contributes each year the equal to 2-1/2% of the participant's regular salary up to the CPP Maximum Salary plus 5% of the participant's regular salary in excess of the CPP Maximum Salary.

145. At paragraph 135(b) of its brief, the Administration states:

> The 1987 agreement between the parties under which the Association "abandoned" its claim to the surplus gave $68 million of the then existing surplus to members in the form of very significant benefit improvements.

This overlooks the point in Fred Wilson's 1988 letter that the pre-existing pension agreement to share both benefits and costs was not working. The Administration and UTFA could not agree on the amount of the surplus. As it turns out, it was substantial. For example, the 1986 actuarial assumption in the pension plan for salary increases was in the 8% to 10% range. This assumption was reduced to a flat 7% shortly after 1987, resulting in an increased notional surplus. Today, that actuarial assumption is even lower, at 4.5%.

146. UTFA is always amenable to a fresh look going forward. UTFA is certainly open to discussions about the funding for go-forward pension accruals – so long as it is distinct from any responsibility for past accruals.

147. What UTFA will not do is ask its members to pay for *past* errors that were clearly the fault of and due to mismanagement by the Administration.

The Administration's claim that "current service cost perspectives ignore the true cost of the Plan" is not correct.

148. This is a most interesting section in the Administration's brief (page 99). It includes new admissions and hidden confessions.

149. It acknowledges that unfunded liabilities can and do arise for a host of reasons – including the late admission that actual investment returns may be lower than assumed investment returns and that contribution holidays may be responsible for the unfunded liability. At paragraph 148 of its brief, it lists six general possibilities but does no attribution analysis as to what the quantitative effect of

each reason might be. It is possible that some of the reasons listed may in fact have provided an actuarial surplus.

150. The Administration states (page 100):

> 150. Member contributions should be viewed relative to the total University contributions to fund the Plan since, at least in part, the unfunded liability in the Plan at any point in time is a product of previously understated current service costs. Member contribution increases are justified on this basis alone, as a means to adjust for current service contributions that were lower than they should have been. (emphasis added)

151. This is a puzzling statement. What specifically are the "previously understated current service costs"? One interesting possibility comes to mind. In 1986 the service cost ratio for employer/employee was 2.62[19] – when the assumed investment return rate was 2.25% real return. In the years that followed, as the Administration kept increasing the assumed investment rate of return from 2.25% real to 4.00% real, this not only reduced the overall plan liability and so allowed the years of contribution holidays, but it also reduced the employers annual service cost, such that by 2001, the input ratio was down to 1.68. An unintended consequence? In effect, the Administration painted itself into a corner. The Administration, in arguing that member contributions increases are justified "as a means to adjust for current service contributions that were lower than they should have been," is now arguing that UTFA members should have to make up for the Administration's own unduly low contributions.

152. The Administration states (page 103):

> 161. Actuarial surpluses under the Plan were shared with the Association members, through negotiated settlements and mediator/arbitrator awards both in 1987 and thereafter. These agreements resulted in significant Plan improvements and member contribution holidays.

153. Tab 12 in the UTFA's Book of Documents tabulates the contributions for both the plan members (this includes both faculty and staff) and the employer from 1987

[19] See Tab 58 of UTFA's Book of Documents.

to 2009. In today's pension plan dollars, the relative value of the employer holidays is about ten to one (1002.6 / 94.0). Hypothetically, this ratio would be much higher if the interest rate assumption of 2.25% was used throughout.

The Administration's Claim of "Consistent and Significant Surplus Sharing since 1987" is not correct.

154. Paragraphs 162 to 178 of the Administration's brief list the pension benefits received by UTFA members from 1989 to 2008. All involved negotiations, mediation or arbitration. Most refer to pension augmentation, some to contribution holidays and some to other issues.

155. The Administration sees this as "surplus sharing". It is anything but that.

156. Judge Winkler's arbitration award for 2005-07 has the following opinion on this topic:[20]

> The mere existence of a current actuarial deficit provides no compelling reason to depart from that bargaining model. Here the Association chooses to seek augmentation to the pension benefit available to its members as part of its total compensation package. In our view, the Association's proposal is reflective of a bargained result when total compensation is considered in the context of a two year settlement.

157. What the Administration calls "surplus sharing" was simply part of the relevant "total compensation package" that was awarded or settled. From the perspective of total compensation, the source of funds to pay for particular benefits that were negotiated is not relevant. For example, we do not try and ascribe the funds to pay for ATB to student tuition fees or some other source. Money is money.

158. There is one particular pension 'benefit" that can be questioned. In paragraph 178(c) on page 105, the Administration's brief states :

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[20] See Tab 4 of UTFA's Book of Documents at paragraph 36.

> the University directed: ... in excess of $84.5 million out of savings from contribution holidays to the establishment of the Supplemental Retirement Arrangement (1996 agreement with the Association).

159. In 1996 UTFA did agree to a complex settlement that included the Administration's SRA proposal. UTFA recently reviewed in the SRA in detail and distributed a newsletter.[21] To many UTFA members who contributed payroll deductions to it for many years, it was a liability not a benefit. The SRA was poorly conceived and implemented.

[21] See Tab 64 (UTFA Information Report #12, "SRA Pension Inequity").