

Supplemental Reply Brief of the University of Toronto Faculty Association

1. Unemployment

As indicated in the *City of Windsor* case, unreported, June 15, 1981 (Teplitsky), cited at [1992] Labour Arbitration Yearbook 287:

“The community consists of both its unemployed and employed members, the latter constituting a large majority. There is no reason that I can find to justify the employed members of the community receiving a benefit at the expense of the police officer. Nor was it suggested that any equity attaches in their favour to justify this result. I have no power in my award to make adjustments between the unemployed and the employed within the community. Presumably, provincial and federal policies and programs, such as income tax, social welfare assistance and unemployment insurance, are designed in part for this purpose. In my opinion, any attempt by me to provide relief to the unemployed through my award would produce inequitable results for the police and an undeserved benefit for at least 80% of the community.”

In any event, employment in Canada, and Ontario, is rising rapidly. On May 7, 2010, Statistics Canada released its Labour Force Survey showing an increase since July 2009 of 285,000 and in April 2010 alone of 109,000, “the largest monthly gain in percentage terms since August 2002”. Employment in Ontario increased 109,000 since July 2009, 41,000 of that increase occurring in April 2010. See Tabs 1 and 2.

2. Economic Climate

Ontario has emerged strongly from the 08-09 recession. Growth in Ontario in the third quarter of 2009 (the start of the agreement in this case) was 1.9%, and in the fourth quarter 6.3% real GDP annualized; in Canada the corresponding figure was 0.9% and 5%. Growth in the first quarter of 2010 is estimated to be on a par with the fourth

quarter of 2009. This represents the fastest growth rate since the third quarter of 2000, almost a decade ago. With the economy outstripping all forecasts, the Chief Analyst for Statistics Canada has written in the *Canadian Economic Observer* (April, 2010) that "The recession was shorter and milder in Canada than in the other G7 nations", and milder than the Canadian recessions of 1981-1982 and 1990-1992. (Tab 3) The University of Toronto's Rotman School of Management estimates that the Canadian economy will grow by ~~2.7%~~³ in 2010, and the Ontario economy will grow by 4.1%. (Tab 4). On May 11 the newspapers reported the release by the Conference Board of Canada of its Canadian Provincial Outlook for spring 2010 indicating that Ontario's economy will expand at 3.8% this year, a rate matched only by British Columbia. (Tab 4A).

3. Comparison of Settlement Increases in Ontario as between the Public and Private Sectors

It has been conclusively established that, over the longer term, wage increases in the public sector match those in the private sector, but that within these longer periods the increases in the public sector may fall below or rise above those in the private sector. The sectors do not march in tandem. Thus, when the private sector surges ahead, the public sector will typically only later catch up; when the private sector declines, the public sector will follow suit only at a later date.

Three charts prepared by Hugh Mackenzie illustrate this "lag" phenomenon, in Ontario, for the years 1989 to 2009. (Tabs 5, 6 and 7) The attached table (Tab 8) shows the pattern quite clearly: prior to 1991 public sector increases exceeded private sector increases; from 1992 until 2002 (with one exception) private sector increases exceeded

public sector increases; from 2003 until 2009 public sector increases exceeded private sector increases. The size of the differential in 2009 (1.1%) in favour of the public sector has been exceeded, in favour of the private sector, on five occasions during that same period.

The material provided by Bob Bass (Tab 9), although using the period 1985 to 2009, confirms this pattern. Hugh Mackenzie, in his comment on the Bass material (Tab 10), notes that public sector increases from 1985 to 1989 were still in the catchup phase in response to public sector wage controls in the early 1980's, and it is more appropriate, therefore, to focus on the 1989-2009 period.

Professor Morley Gunderson is the major authority in Canada in this area, having prepared numerous studies on public sector wages as an academic and as a consultant to the federal government. He has written as follows:

1995:

"When the public sector wage increases exceed those in the private sector (e.g., in 1981, 1982) that usually reflects a catch-up for having fallen behind (e.g., in 1979, 1980), and the gains are usually dissipated by subsequent lower increases (e.g., in 1983). Over the long run, the wage changes have been remarkably close to each other in the public and private sectors."

Public Sector Compensation, 1995, p.103 at p. 116 (Tab 11)

1997:

"In shorter intervals within that period of time, wage increases may be slightly higher in the public sector than the private sector, but this usually reflects a catch-up for earlier smaller increases, and the larger increases are usually dissipated in subsequent periods. In essence, the public sector wage line periodically dips below and then above the private sector line."

Canadian Public Sector Employment Relations in Transition, 1997, p. 243 at p. 265 (Tab 12)

2001:

Public-sector settlements are often volatile in the short run, with high settlements often occurring in a particular year; however, this frequently reflects a need to catch up from having lagged behind private-sector wages in previous years, and the unusually high settlements are often dissipated over time.

...

A comparison of the private-sector settlements (col. 1) with the overall public-sector settlements (col. 2) highlights that periods of unusually high settlements in the public sector (e.g. 1981-2; 1984-7) are usually preceded by periods when they are below those of the private sector and are followed by periods when they dissipate relative to the private sector."

Compensation in the Public Sector, 2001, p. 533 at p. 539 (Tab 13)

2009:

"Further insight into public- and private-sector wage differentials can be gained by examining time-series data on wage changes in the two sectors. Table 15.6 reports annual wage increases between 1979 and 2007, based on collective agreements involving 500 or more employees. It shows the wage changes for the private and public sectors as a whole and also disaggregates the public-sector data by major group. Data in the table indicate that, since 1979, unionized private-sector employees have received substantially higher cumulative wage increases than unionized public employees. Between 1979 and 2006, private-sector employees won cumulative wage increases of 278 percent; public-employee wages increased by 261.5 percent. In only 12 of 28 years did public employees negotiate higher wage settlements than their private-sector counterparts. Looking at the various components of the public sector shown in Table 15.6, we can see that local government employees received the largest overall wage increases and that federal government employees received the lowest increases. Taking the data in this table as a whole, there is no support for the contention that unionized public-sector wage settlements have out-stripped those in the private sector since 1979; indeed the reverse appears true."

Canadian Labour and Employment Relations, 2009, at p. 424 (Tab 14)

4. Wage Increases in Comparable Groups in the Private Sector

The movement of average salaries in the public and private sectors as a whole is not very helpful since an average represents a conflation of widely varying rates of increase, and these rates are affected by the state of the particular industry or subsector, and by the competitive forces at play as between similar positions. Thus,

wage increases in the automotive and forestry sectors are currently substantially lower than in other sectors. For university faculty, a more appropriate comparator in the private sector is the group performing “professional, scientific and technical services”. For this group, wages over the one-year period from January 2009 to January 2010 increased by 3.9%. See Statistics Canada, Average Weekly Earnings, Table 1. (Tab 15)

5. Movement in CPI

While comparable settlements in the university faculty “marketplace” have been and are the most significant factor in the determination of salary increases for University of Toronto faculty, movement in the CPI has been a factor, in the sense that there is an expectation that faculty will at least maintain their real income. When faculty fall behind the CPI, there is a call for catchup, but this is typically advanced as a minimum.

If one looks at salary levels over the longer period, one may observe that cumulatively salaries for University of Toronto faculty have matched CPI increases since 1980, but lag over 6%, in real income behind where they were in 1970. See Tab 16. If the recessionary year (2008-09) is omitted, the lag is substantially greater, in respect of both time periods. There has, moreover, been no automatic lockstep relationship, whether looking at the CPI for the current year or looking back to the prior year. In certain periods there has been a loss to inflation, and in other periods a “catchup” gain. The size of the gain is influenced primarily by settlements at comparable universities, with catchup being an ancillary consideration.

On this occasion, the Administration asserts that, while it has taken the position that ATB increases should not be based exclusively or primarily on CPI increases, that has been the Association's position (Administration Reply Brief, para. 19). Such is not the case. Various UTFA briefs show that matching the rate of inflation is a minimum expectation, and that comparison with university faculty settlements elsewhere is a major concern. (Tab 17) Indeed, the Administration's present position that university faculty settlements elsewhere are irrelevant and that CPI increases as part of the economic climate are a "much more significant factor" (Administration Reply Brief, para. 20) is the precise opposite of the Administration's consistent position in the past, as indicated in the attached passages from its previous briefs, which discounted the significance of CPI as a factor in university faculty salary determination. (Tab 18 A and B, Tab 19A and B, Tab 20A and B).

The Administration's change in its position on this issue is short-sighted. Over the period of the contract under review (2009-11), the rate of inflation is currently projected to hover around 2%, but there is a concern, widely held, that it may jump significantly. To tie minimum increases in University of Toronto faculty salaries to CPI would commit the Administration to at least matching these increases in years to come.

On the issue of the significance of movement in the CPI, see also Owen Shime, *McMaster University*, Tab 21 at para. 8; Winkler Award, para. 23; and Owen Shime, "Interest Arbitration" Tab 22, at p. 205.

6. Comparison to University Faculty Salaries in Ontario

Comparability with other faculties in Ontario, and at comparable universities elsewhere, is a major factor in the determination of salary increases at the University of Toronto, and indeed has been recognized by Arbitrator Owen Shime (Tab 21, paras. 20-23 and Tab 22, p. 207) and other arbitrators (Winkler Award, para. 25) as the primary criterion in university faculty salary determination. In the past, both parties have relied upon this factor, in their negotiations, and in their briefs to arbitration. As indicated in the attached chart (Tab 23), the pattern of salary increases over the past 30 years bears out this close relationship. Moreover, there is no justification for paying University of Toronto faculty a lesser increase than other university faculty in Ontario (set out, for 2009-10 and 2010-11, in UTFA's Brief, at p. 15), particularly when the cost of living is higher in Toronto than it is elsewhere in the province, and it is acknowledged that the University of Toronto faculty are at the highest level of ability and accomplishment (see University of Toronto eBulletin, May 6, 2010, Tab 24), and that there is a continuing need to attract faculty and librarians of the highest quality.

IN THE MATTER OF A MEDIATION/ARBITRATION

BETWEEN:

The University of Toronto Faculty Association

and

The Governing Council of the University of Toronto

**BOOK OF DOCUMENTS FILED
ON BEHALF OF
THE UNIVERSITY OF TORONTO FACULTY ASSOCIATION**

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4. *New Economic Forecasts – More Short-Term Strength than We Expected*, Policy and Economic Analysis Program, Rotman School of Management, April 27, 2010
- 4A. *Ontario and B.C. to lead recovery*, Toronto Star, May 11, 2010
Ontario to share top spot in recovery, National Post, May 11, 2010
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