IN THE MATTER OF A SALARY AND BENEFITS DISPUTE

B E T W E E N:

THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO

(”The University”)

- AND -

THE UNIVERSITY OF TORONTO FACULTY ASSOCIATION

("UTFA")

BEFORE:

Mr. Justice Warren K. Winkler	**Chair, Dispute Resolution Panel**
Mr. Larry Bertuzzi	**University Nominee**
Mr. Jeffrey Sack, Q.C.	**UTFA Nominee**

December 12 & 13, 2005

UNIVERSITY REPLY SUBMISSIONS

HICKS MORLEY HAMILTON STEWART STORIE LLP
Thirtieth Floor, T-D Bank Tower
Toronto, Ontario M5K 1K8

Christopher G. Riggs, Q.C.
Tel: (416) 864-7322

Elizabeth M. Brown
Tel: (416) 864-7210

Daniel J. Michaluk
Tel: (416) 864-7253

Solicitors for the University

NOTE

This is strictly a reply to the most significant issues raised by the UTFA Brief. There are additional assertions made in the UTFA Brief to which the University does not agree.

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I SCOPE OF DISPUTE

a. Issues beyond jurisdiction

The University submits that any proposals to create working groups, to alter the parties' practice of sharing information and to change the Memorandum of Agreement are beyond the Panel's jurisdiction (as summarized in table below). These are not matters "relating to salary and benefits" as required by Article 6, section 19. It has replied to some of these responses below without prejudice to this position on the Panel's jurisdiction.

UTFA Proposal #	Issue
2(b)(ii)	Working group on PTR
2(b)(iv)	Working group on salary inversion
2(d)(iv)	Information on commuted value of pension
2(d)(v)	Working group on pension arrangements
3(ii)	Information on benefits (access to Green Shield rules, regulations and guidelines)
3(viii)	Working group on dependant scholarship program
4(i)	Information to individuals on faculty and librarian short lists
4(ii)	Information on individual salaries by department
4(iii)	Information on names and contact information of individuals giving notice to retire
4(iv)	Information officer and arbitration
4(v)	Working groups (generally)
5(i)	Memorandum (appoint task force)
5(ii)	Memorandum (mandatory retirement language)
5(iii)	Memorandum (information sharing)

b. Issues of apparent agreement

The University does not seek a recommendation from the Panel on the issues included in the table below. Without prejudice to its position on the Panel's jurisdiction, the University has included all of the issues in apparent agreement in this table.

UTFA Proposal #	UTFA Proposal	University Proposal
2.b.ii	The parties agree to establish a Joint Working Group to review and report with respect to the PTR model.	The parties agree to establish a Joint Working Group to review and make recommendations with respect to the PTR model.
2.d.iv	The commuted value of the pension for individual faculty members and librarians shall be included in the annual Benefits Statement along with an explanation of what commuted value means and how interest rate changes and other relevant factors may change the amount.	The University agrees to provide in the annual Pension and Benefits Statements for faculty members and librarians an estimate of the lump sum termination value of the pension as of the end of the Plan year, beginning with the Statement as of June 30, 2006. The University and UTFA agree to work towards ensuring that plan members understand that this estimated value is not a guarantee of the amount the member would receive if they terminated from the University.
2(d)(v)	The parties agree to establish a Joint Working Group to investigate and report with respect to alternative pension arrangements, including design, eligibility, transition, and a framework for its introduction. Each party will include its respective actuary or pension consultant as a member of the Working Group.	The parties agree to establish a Joint Working Group to investigate and make recommendations with respect to alternative pension arrangements, including design, eligibility, transition, and a framework for its introduction. Each party will include its respective actuary or pension consultant as a member of the Working Group.
4(i)	The University agrees to include a brochure provided by UTFA in its information package sent to individuals on short lists for faculty and librarian appointments. The University also agrees to provide contact information about the Faculty Association and its website address to individuals who are being offered appointments as faculty members or librarians. The University will provide UTFA with the names and contact information for those who have accepted offers of employment as faculty members or librarians.	The University agrees to include a brochure provided by UTFA in its information package sent to individuals on the short-list for faculty appointments. The University also agrees to provide contact information about the Faculty Association and its website address to individuals who are being offered appointments as faculty members or librarians.

UTFA Proposal #	UTFA Proposal	University Proposal
4(v)	Joint Working Groups shall be established effective July 1, 2005 to deal with the following matters: a. Pensions b. PTR c. Salary adjustment fund d. Dependent scholarship program The membership of each of these Joint Working Groups shall include three representatives of each party. The parties agree that each Joint Working Group will be provided with the data it needs. The groups will determine the analysis and presentation methods for data to be used so that both parties work from a common set of data. The groups will gather facts, identify issues and consult with the University community and will report to their respective principals no later than April 30, 2006. The deliberations and reports of the working groups shall be confidential, and no public disclosure will be made without the agreement of both parties. The parties agree that any incremental costs arising from the activities of these working groups will be the subject of future negotiations.	The membership of each of these Joint Working Group shall include three representatives of each party. The parties agree that each Joint Working Group will be provided with data in accordance with the provisions of Article 11. The groups will determine the analysis and presentation methods for summary statistical data to be used so that both parties work from a common set of data. The groups will gather facts, identify issues and consult with the University community and will report to their respective principals no later than April 30, 2006. The deliberations, reports and recommendations of the working groups shall be confidential and no public disclosure will be made without the agreement of both parties. The parties agree that any incremental costs associated with the adoption of recommendations arising from these working groups will be the subject of future negotiations.
5(i)	The parties agree to appoint a Task Force to report to the parties with respect to any proposed changes to the Memorandum of Agreement. Each party will name a Co-Chair and up to four representatives. It is understood that the representatives of either party may consult broadly. The Task Force will report by April 30, 2006.	The parties agree to appoint a Task Force to make recommendations to the parties with respect to any proposed changes to the Memorandum of Agreement. Each party will name a Co-Chair and up to four representatives. It is understood that the representatives of either party may consult broadly. The Task Force will report by April 30, 2006.
5(ii)	In the light of the abolition of mandatory retirement, parties have agreed outside of negotiations to discuss removal of the following phrase from Article 4 (c) of the Memorandum: "...provided the requested leave does not fall within seven years of the normal age of retirement.	

UTFA Proposal #	UTFA Proposal	University Proposal
5(iii)	Delete the last paragraph of Article 11 and substitute the following: It is understood that this Article shall not be construed to require the University (a) to compile information and statistics in particular form if such data are not already compiled in the form requested, or cannot, without unreasonable efforts, be compiled in such form, or (b) to provide any information relating to any named individual. The University shall designate an Information Officer who shall conduct the exchange of information with an Information Officer designated by the Association. If any dispute arises with respect to the implementation of this Article, the matter shall be referred by either party, as expeditiously as possible, to a mutually agreed upon arbitrator who shall, within 48 hours from the referral, confer with the parties and issue a final and binding decision including appropriate directions. If the parties cannot agree upon an arbitrator, or in the event that he or she is unable or unwilling to act, the President of the Ontario Labour-Management Arbitrators' Association shall select the arbitrator.	Article 11 – delete the last paragraph of Article 11 of the Memorandum of Agreement and substitute the following: It is understood that this article shall not be construed to require the University, (a) to compile information and statistics in particular form if such data are not already compiled in the form requested; or (b) to provide any information related to any individual or otherwise prohibited by law. The University shall designate an information contact person who shall conduct the exchange of information with an information officer designated by the Association. If any dispute arises with respect to the implementation of this article, the matter shall be referred by either party, as expeditiously as possible, to the Chair of the Grievance Review Panel or his or her designate who shall, as expeditiously as possible, confer with the parties and issue a final and binding decision including appropriate directions.

c. Application of recommendation

Research Associates are not covered by the terms of the Memorandum of Agreement and are not included in the University's proposals. The Panel also does not have the jurisdiction to determine the status of Research Associates nor to make any award that would include them.

The University also states that there is no principle that requires the Panel to award equal benefits to active and retired employees.

II REPLY TO SALARY ARGUMENT

MATTERS NOT IN DISPUTE
Effective July 1, 2005 the minimum salary for Librarian III and IV to be increased to $62,500 and $75,700 respectively
Effective July 1, 2005 the salary ceiling for Librarian II to be eliminated
Effective July 1, 2005 The minimum salary for Lecturers to be increased to $60,000
Effective July 1, 2005 the minimum per course stipend rate payable to part-time non-sessional appointments represented by UTFA and faculty embers teaching on overload to be increased to $12,500

PROPOSALS – SALARY	
University Proposal	**UTFA Proposal**
2.5 % ATB increase effective July 1, 2005 Normal PTR (2.1%) Distribute a special one time PTR allotment July 1, 2005 calculated on the basis of $500 per FTE for Professoriate and prorated amounts for Lecturers and Librarians. Ten percent of the additional amount will be set aside to be added to Provostial and Decanal merit pools.	4.0% ATB increase effective July 1, 2005. **[2(a)]** Each PTR pool shall be increased by 1.0% of total salary in that pool, effective July 1, 2005. **[2(b)(i)]** An amount of 0.5% of total salary shall be set aside for the purpose of addressing salary inversion and anomalies. Allocation shall be retroactive to July 1, 2005. **[2(b)(iii)]** The senior salary category for faculty and librarians shall be abolished, effective June 30, 2006. **[2(b)(v)]**

a. A “catch-up” award would offend the replication principle

The University’s dominant consideration in bargaining with its faculty and librarians is the value of its total compensation package relative to what is offered by other major institutions in the Canadian university system. In developing a bargaining position, the University looks closely at what other universities pay today and what they can be expected to pay in the future. The University does not give weight to historical compensation patterns. To do so would serve no purpose, because the *real* choices that faculty and librarians make about employment and the *real* choices the University makes about its fiscal constraints are based strictly on current and forward-looking considerations.

UTFA has requested that the Panel look back in history – as far back as 1972 – in making its recommendation. UTFA's position is not based in economic reality, so should be given no weight if the replication principle is to be respected. This was the essential point made by Arbitrator Shime in *Re McMaster University and McMaster University Faculty Association* (1990), 13 L.A.C. (4th) 199. At pages 202 – 203, Mr. Shime rejected the Association's claim for a CPI catch-up and questioned why, in the past, the parties had bargained for such an amount:

> Arbitrator/selectors recognizing the limitations of third party intervention have always looked to free collective bargaining for assistance in decisions concerning wage determination. The use of this criteria [sic] carries with it an implicit recognition that collective bargaining is an economic power struggle where wage determination is governed by market-place conditions and, therefore, arbitrator/selectors have recognized that no union, or employer is ever really satisfied with the ultimate wage settlement. But, inherent in these settlements is a recognition of market conditions and what the exercise of an economic power struggle will yield or not yield at any given time. Settlements do not reflect satisfaction and are, in effect, an acquiescence by the parties in the exigencies of the market-place at a given time. Thus to some extent, I view previous settlements by faculty, whether they be faculty unions or associations, whether certified or uncertified, or whether they have occurred in the context of particular procedures developed by a specific university and its faculty, as an acquiescence, albeit without satisfaction, in the wages that were determined. To go beyond those settlements to the degree that I am now requested is in some respects like being a revisionist historian or a mason shoring up chinks in past settlements with pieces of catch-up. One should only be prepared to go beyond those settlements with considerable hesitation.
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> ***
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> This issue of catch-up, as the parties perceive it, has thus created a two-level bargaining process. In the first instance the parties bargain about the present and in the second instance they bargain about the past, it is a most unusual process. It is as if they are driving forward while looking in the rear-view mirror. The concept of catch-up thus makes bargaining a more complex exercise than need be and seems to be an impediment to the parties constructing a positive relationship through self-resolution in the bargaining process.
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> ***
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> In my view it is preferable to determine salaries and benefits by comparing salary schedules. Again, the most significant indicator of salaries is what free collective bargaining has produced for the same or similar positions at other universities.

The last time UTFA was granted CPI catch-up was over 20 years ago in the "Burkett Award". To use the above-noted words of Mr. Shime, the legacy of the Burkett Award has made bargaining between the parties a more "complex exercise than need be". UTFA continues to focus on the 1982 Burkett Award as the main justification for its salary proposal. It has raised the Burkett Award persistently even though, in direct response, the parties agreed to remove the “CPI principle” (and five other principles) from the Memorandum of Agreement. These negotiations produced the current Article 6:

> The dispute resolution panel shall make every reasonable effort to issue a unanimous report *which shall attempt to reflect the agreement the parties would have reached if they had been able to agree*. [emphasis added]

This language reflects a move to a replication model of decision making, as recognized by Arbitrator Munroe in his 1986 award (at pages 6 and 7):

> Rather, the essential function of the decision-maker becomes the identification of the *factors* which likely would have influenced the negotiating behaviour of the particular parties in the actual circumstance at hand. It is the dynamic mix of those factors which produces the end result. [emphasis in original]

The University submits that the Panel should give effect to the parties’ agreement and reject UTFA’s claim to a CPI “catch-up” as all dispute resolution panels have done since the Memorandum of Agreement was amended. A close examination of Mr. Burkett’s decision reveals his heavy reliance on the CPI principle; accordingly, the award is an artefact:

> I must decide if the claim for catch-up… is a valid claim within the parameters of the agreed criteria. (p. 13)
>
> ***
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> I do not accept that the amount by which past settlements may be said to be substandard is a loan which must be repaid in the form of salary increases in excess of that required on application of the criteria. (p. 14)
>
> ***
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> I must decide whether on the language of the criteria which govern my decision in making this case, I am allowed to consider arguments in favour of catch-up. As I read the first four criteria, I am directed to assess the adequacy of present overall compensation against changes in the CPI, salaries and benefits of other professions and groups in society and the need to attract faculty members and librarians of the highest quality. (p. 18)

b. UTFA’s comparison argument does not justify its ATB proposal

As explained, the University looks closely at what other universities pay today and what they can be expected to pay in the future because the real choices that faculty and librarians make about employment are based strictly on forward-looking considerations.

Employees make their choice by comparing the total compensation at competing universities, the largest and most important single component of which is salary.

Take, for example, a current or prospective faculty member or librarian who is choosing between earning $120,000 at the University of Toronto and $100,000 at another university. The individual will compare total salary and total benefits (although benefits are harder to compare) in making a choice. To suggest that the individual would consider why the competing salaries numbers are different – that is, whether one university's salary offering is superior because of ATB increases, PTR increases or market-related considerations – is untenable. Regardless of the competing universities' salary structure, the incentive to enter or leave the employment relationship is the same and is derived from the total salary amount. Any other approach is inconsistent with the replication model, relies on distinctions that are more theoretical than real and should be rejected.

UTFA has avoided any analysis of absolute salary amounts in favour of pointing to recent settlements inside and outside the university sector. UTFA bases its salary proposal on a claim that the normative ATB increase in 2005 – 06 is 3.0% to 3.5% (Tab 2, page 4 of UTFA submissions).

ATB increases are only relevant as one component of salary. The parties only look to ATB increases as a partial indication of what other institutions will *actually pay* their faculty and librarians. Since an ATB increase is only one component of salary that will actually be paid, an ATB increase in isolation does not strongly influence bargaining behaviour, particularly when the parties are negotiating a one year agreement. ATB is only relevant in conjunction with the salary it relates to.

Moreover, the parties to a one year agreement would be more likely to agree to a lower ATB increase (with the University allocating money to its other competing demands) than the ATB increase granted in multi-year comparator agreements which include a premium for labour stability – i.e. an amount paid to save the cost of negotiating a new agreement and, more importantly, to protect against unanticipated inflationary changes in the market.

Based on the above, noting again the University's superior overall compensation, the University submits that a 2.5% ATB is the amount that the parties would have collectively bargained in the context of a one year agreement if they had been able to agree.

c. The PTR scheme is functioning as it was designed

UTFA suggests that average salaries should reflect the model embedded in the PTR scheme at its inception. This is simply wrong. PTR was never intended to be a model against which salaries would be assessed some 30 years later. Current salaries, informed by the competitive marketplace, are higher than any 1972 model could have contemplated. Salaries are determined through the operation of a competitive market. The PTR scheme, on the other hand, is a method of calculating and distributing a pool of funds on the basis of merit.

UTFA also claims that its proposal to increase the PTR pool by 1% of the salary base "would re-establish the merit pay pool at close to the percentage of total salary envisaged for merit pay in the original design of the PTR system in 1972." Again, the proportion of the salary base to be invested in the PTR system was never part of its design. The fact that merit-based pay has been reduced as a percentage of salary is a function of the considerable increase in average salaries over the level of ATB increase. In fact, (although the University does not accept the methodology used) the UTFA brief alludes to this – noting that starting salaries increased from 1997 to 2004 by 34% in the Faculty of Arts and Science and by 56% in the professional divisions while ATB awards increased by 17%. UTFA's argument implies that rising average salaries are a negative phenomenon simply because they have been rising as a result of the market for academic talent in addition to the PTR system.

The University strongly disagrees. Article 1 of the Memorandum of Agreement expressly recognizes that UTFA only bargains minimum conditions of employment and that individuals and groups may seek and obtain more beneficial terms. There is nothing objectionable about the University's discretionary participation in the market for academic talent. In fact, having the flexibility to respond to demands of the market in order to attract the best academic appointments is essential to the University's mission.

d. PTR increases are not a substitution for market-related increases

In his annual memorandum to Principals, Deans, Academic Directors and Chairs, Provost Goel recently set out the principles underlying the PTR scheme, which neither directly nor indirectly relate to retention and recruitment (UTFA Book of Documents, Volume III, Tab 2I, at page 3):

> 1. PTR is the only source of promotional increases for faculty members and librarians, but it is based on the assumption that each individual's rate of promotion is a function of that individual's MERIT.
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> 2. While there is a career path for a 'typical' faculty member or librarian, no two individuals are alike. Some careers will progress rapidly and hence will merit high PTR awards, and some careers will not progress and hence will merit no PTR awards.

By arguing that the prevalence of market-related increases is an indication that the PTR system is somehow not functioning, UTFA ignores the difference between increases that are awarded for merit and increases that are awarded based on market considerations. Moreover, its suggestion that a 1% increase to the PTR pool will obviate the need to make market-related salary adjustments is flawed. While individuals' meritorious performance may lead to offers from other universities, UTFA cannot reasonably claim that a 1% increase to the PTR pool (which is widely distributed among faculty and librarians) will allow the University to effectively respond to such offers.

e. The Panel should adopt the 1993 Committee's conclusions

The exact structural issues that UTFA has raised in support of its proposals were considered in the early 1990s by the Committee to review the Administration of PTR. The University invites the Panel to adopt the committee's conclusions (UTFA Book of Documents, Volume III, Tab 2H, at page 3).

> In the 20 years since the PTR scheme was introduced many things have changed. The normal age at which faculty members are hired into tenure stream positions has risen. The salary at which faculty members are initially hired has risen more than inflation.

> Thus the model on which the PTR scheme was based is even further removed from actual salaries than it was 20 years ago.
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> Despite all these changes, the scheme works well in many respects. It ensures that every academic administrator has money available each year to reward meritorious performance within the administrator's department or division. This money, awarded solely on the basis of merit, is sufficient to fund rationally and systematically the career progress of all members of the department or division.

f. UTFA's 1% PTR proposal should be rejected

The proposal to increase the PTR pool by 1% of base salary must be rejected. The increasing amount of money the University spends on recruitment and retention is simply a positive indication of the University's efforts to succeed in the international market for academic talent. It is not a problem that needs solving, nor is it a challenge that is addressed by UTFA's proposal.

UTFA's proposal would support the PTR merit scheme, but as the University has stated, it would also commit the University to a perpetual and automatic additional 1% salary increase in each and every year quite apart from any future negotiated ATB increases. In light of its current fiscal constraints, and particularly in the context of a one year award, the University's proposal to increase the PTR pool by $500 for the current year is appropriate. These constraints are acknowledged in President Naylor's installation address, which is included in UTFA's materials (Book of Documents, Volume II, Tab 6). The University's proposal also makes better sense in an award which will run for only another six months.

As noted at page 46 of the University Brief, the cost of the UTFA proposal over five years is $12 million compared to the $1.71 million cost of the University's one year only increase.

The following table illustrates the impact of the UTFA 1% proposal compared to the University's one year increase proposal over the career of one faculty member. This example does not include any ATB increases.

Effect of PTR Proposals on the Total Dollars Paid to a Faculty Member

The following table illustrates the effect the proposals will have on the salary
for an Assistant Professor hired at age 35 at a salary of $85,000 (Current 2005 levels)
The chart does not include ATB increases.

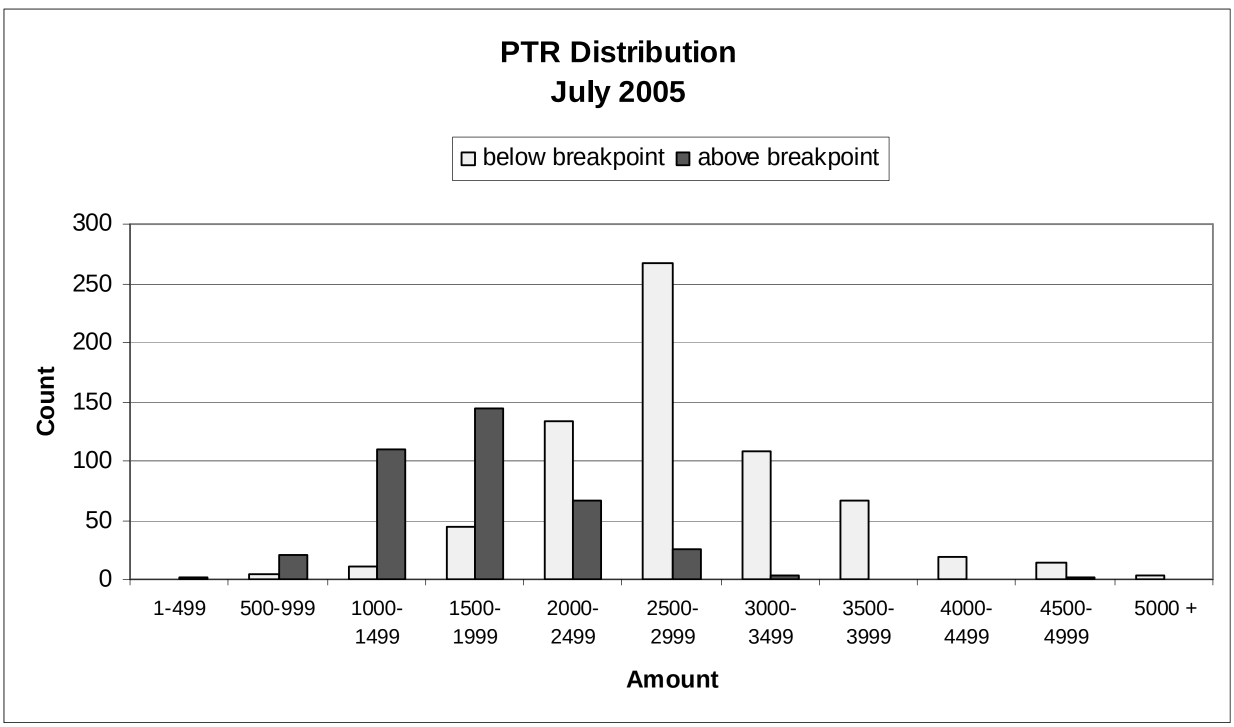
age	current plan	UofT proposal	UTFA proposal
35	85,000	85,000	85,000
36	87,793	88,293	88,741
37	90,586	91,086	92,482
38	93,379	93,879	96,223
39	96,172	96,672	99,964
40	98,965	99,465	103,705
41	101,758	102,258	107,446
42	104,551	105,051	111,187
43	107,344	107,844	114,928
44	110,137	110,637	118,669
45	112,930	113,430	122,410
46	115,723	116,223	125,422
47	118,516	119,016	128,434
48	121,309	121,809	131,446
49	122,905	123,405	134,458
50	124,501	125,001	137,470
51	126,097	126,597	140,482
52	127,693	128,193	143,494
53	129,289	129,789	146,506
54	130,885	131,385	149,518
55	132,481	132,981	152,530
56	134,077	134,577	155,542
57	135,673	136,173	158,554
58	137,269	137,769	161,566
59	138,865	139,365	164,578
60	140,461	140,961	167,590
61	142,057	142,557	170,602
62	143,653	144,153	173,614
63	145,249	145,749	176,626
64	146,845	147,345	179,638
65	148,441	148,941	182,650
Lifetime Dollars	3,750,604	3,765,604	4,221,475
Increased Lifetime Dollars	**0**	**15,000**	**470,871**

Note: UofT proposal = $500 one time addition to PTR pool
UTFA proposal = 1% permanent addition to PTR increment (below bkpt $3,741; above bkpt $3,012)
Current PTR amounts (including the 5% merit pool) = below bkpt $2,793; above bkpt $1,596
The breakpoint is $119,950

Any suggestion that PTR is not relevant to the proper assessment of the University's salary offer should be rejected. As explained, PTR is clearly relevant to the real economic choices which are made by the parties. This was accepted by arbitrator Shime in a dispute between the Laurentian University Faculty Association and The Board of Governors of Laurentian University (17 June 1981) (Tab 1, at page 6)[1]:

> Thus I conclude that some weight must be given to the manner in which the PTR increment is applied when evaluating the financial position put forward by both parties. It simply cannot be ignored; the increment is a cost to the Board and a benefit to the faculty and, like fringe benefits, must be weighed in any cost benefit analysis. It is not simply an amount that has been negotiated in other years which need not be considered or calculated in the present package. In the result and despite views to the contrary, some weight must be given to PTR as part of the general increase where the PTR is either granted almost universally or where it is rarely refused.

The University states that, in fact, the vast majority of faculty and librarians at the University of Toronto do receive PTR awards (see table below, with numbers included at Tab 2).



[1] All tabs refer to the University's Supplementary Book of Exhibits unless otherwise stated.

g. UTFA's 0.5 % adjustment fund proposal should be rejected

The Panel should reject UTFA's request for a 0.5% adjustment fund. The University does not believe there are significant salary inversions nor does it agree with UTFA's assertions that salary adjustments are "squeaky wheel" adjustments. Although individuals can and do initiate salary reviews, the University also conducts regular systematic reviews of salary distribution by Chairs and Deans in the departments and divisions as well as centrally in the Provost's office. As a result, anomalies are identified and brought forward by Chairs and Deans and many adjustments are made to groups and departments as well as to individuals where adjustments are warranted. However, it must also be emphasized that in a system which does reflect meritorious performance, there will be some salaries which fall behind based on performance issues, an indication that the merit system is functioning as it is intended.

UTFA has not demonstrated any need for an adjustment fund. It has suggested that the administration of retention and anomaly funds is unfair because it is not subject to the same approach that characterizes the administration of the PTR pools. Again, UTFA has failed to distinguish between increases based on merit (which require systematic evaluation of merit) and increases involving market considerations (in which the market determines the outcome). Indeed, it should also be noted that the University requires that merit also be taken in account in determining anomaly and retention adjustments. The University is exercising its discretion to participate in the market for academic talent fairly and effectively; with a turnover rate of 1.1% in 2004 – 05[2], the University has no retention problem that would indicate a need for additional retention funding.

h. UTFA's senior salary proposal should be rejected

The University does not agree with UTFA's description of the senior salary merit assessment process or that it is somehow unfair or unjustified.

The process followed for assessment of the senior salary group is similar to that followed for all PTR merit groups. It is based on the activity reports filed by the

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[2] Twenty out of 1863 tenure stream faculty members left in 2004 – 05 (excluding retirements).

individual which are reviewed and assessed at the departmental level. These assessments are then considered at the Decanal level on a faculty wide basis and recommendations are made to the Provost. The Provostial level reviews the recommendation across the University for consistency of application of criteria.

The University believes that this is a fair and thorough evaluation process based on departmental and decanal assessments and appropriate for those who have attained the senior salary level.

III REPLY TO PENSION ARGUMENT

PROPOSALS – PENSION BENEFIT	
University Proposal	**UTFA Proposal**
Status quo	All retirees shall receive augmentation to their pensions in an amount equal to full inflation catch-up as of July 1, 2005. This applies to all pensions from RPP, OISE and SRA. **[2(d)(i)]** At the time of retirement, individual faculty and librarians shall have the option of receiving a monthly pension or a lump-sum payment equal to the commuted value of the individual's pension. Those who opt to receive the lump-sum payment shall be eligible to receive benefits on the same basis as those receiving a monthly pension. **[2(d)(iii)]**

Augmentation

a. There is no past practice of agreeing to augmentation when the Plan is in a deficit position.

The University has agreed to augmentation in prior settlements where the Plan has been in a surplus position and in conjunction with contribution holidays. The University and UTFA have not agreed to augmentation where the Plan is in a deficit position as it is now. The cost of augmentation would be an increase in accrued liability of $4.6 million to be funded in annual special payments over 15 years equal to $475,000.

b. Making augmentation the "expected norm" will increase the Plan's accrued liability by $110 million

Augmentation as the "expected norm" amounts to indexation under the Plan at 100% of CPI.

If the actuarial valuation of the Pension Plan as of July 1, 2005 reflected a 100% of CPI indexation provision for faculty and librarians (active and retired members), the increase in accrued liability would be approximately $110 million, requiring an annual special payment of $11 million over 15 years. As well, there would be an increase in the ongoing current service cost equal to approximately $3 million per year as shown by the following table:

				Relevant Base	Annual Cost
				$	$
Enhanced indexation of pension be guaranteed for future years for all retirees (all figures in thousands).					
	Pension Plans	SRA	Total		
Increase in Accrued Liability:	$100,035	$7,810	$107,845		$11,141
Annual Special Payment:	$ 10,334	$ 807	$ 11,141		
Increase in Current Service Cost:	$ 2,868	$ 97	$ 2,965		$ 2,965

The funding of this obligation would create an enormous burden on future generations of Plan members. Any such change would have to be deducted against other possible improvements such as ATB.

c. Consistent with the Business Board's 2004 funding strategy, augmentation should not be provided when the Plan is in a deficit position.

UTFA refers to the Pension Strategy adopted by the Business Board in January 2004 in its Brief. That memo specifically addresses past augmentation and the issue of any future augmentation to the Plan:

> Over the past years, **augmentation has essentially represented a distribution of surplus**. In the absence of a pension surplus, provision of further augmentation is very uncertain. However any augmentations that might be provided in future would have to be funded, either by contributions to the plan or from any future pension surpluses. **The latter strategy [ie. funding from surpluses] makes the most sense given the rationale for making augmentations**.

The Business Board then adopted a strategy consistent with the funding of future augmentation from surplus:

> Make provision for funding any future augmentations that might occur by setting aside the corresponding amount **from pension surpluses existing at the time**.

It would be inconsistent with the above funding strategy to agree to augmentation where no surplus exists (and contribution holidays are not being taken), as is currently the case. In this regard the University's funding strategy is consistent with and reflective of the current funding environment for defined benefit plans generally, as set out in the University's Brief and acknowledged in various actuarial papers, newspaper articles and government consultation papers as set out at Tab 3 - 9. In any case, augmentation must be negotiated in any particular settlement in the context of (and prioritized against) other requested improvements at that time.

d. UTFA's challenges to the Plan's funding and investment strategies do not change the fact that there is currently a deficit in the Plan.

Nevertheless,. in response to UTFA's submissions:

i. UTFA's billion dollar proposition is seriously flawed.

UTFA's submission that in "today's dollars", the "cumulative total" of the contribution holidays taken by the University exceeds one billion dollars is seriously flawed. Firstly, the money does not exist. Secondly, over half the amount is notional investment accumulation as if the money had been deposited into the pension fund, which it was not. Thirdly, the analysis set out at the table found at Tab B-2, page 44 of the UTFA Brief contains a number of inaccuracies and fails to take into account numerous relevant factors, such as those set out in the University's Brief, and further including the following six points:

1. Over the period from July 1, 1997 to June 30, 2003, the University directed $80 million of those contribution holidays to the SRA Fund, as per the agreement with the Faculty Association.

2. The $44.6 million of contribution holiday was taken during the social contract period in the mid-1990's with the specific agreement of the staff groups, including the Faculty Association.

3. Over the same period shown in the table, the increase in accrued liability from improvements to the Pension Plan (for all staff groups) was over $460 million as shown at Tab 10.

4. The Pension Plan improvements in 1996/1997 and 1999 resulted in significant increases in ongoing current service costs that were not charged against the cost of the agreements because there was a surplus to defray the additional current service costs. However, since there is no longer a surplus in the Plan, the University now must meet these increased current service costs from its operating budget. The present value of the increase in University ongoing current costs derived from these Plan improvements is approximately $100 million.

5. Under the University pension funding strategy, as noted in the University's Brief, in addition to the University current service cost, the University will be making annual special payments of $26.5 million over 15 years (a total of $398 million). These amounts are in effect an offset to previous contribution holidays.

6. The University has an unfunded liability of approximately $270 million for retiree health care benefits which is not accounted for in the UTFA table (see Financial Report 2004 – 05, University Book of Exhibits, Tab 6, page 16).

In any event, as noted at the outset, UTFA does not dispute the existence of the current deficit.

ii. The Plan's interest rate assumptions are appropriate and consistent with those of other large defined benefit plans.

The decrease in the nominal rate of interest from 7.0% to 6.5% had very little impact on the liabilities of the Pension Plan. As UTFA itself acknowledges the real rate of return used in the actuarial valuation remained at 4.0%. As nominal interest rates have decreased, so have the interest rates used to value pension plan liabilities.

At the same time, real rates of return have decreased significantly. Tab 11 shows the drop in real rates of return over the last 10 years, compared to the real rate of return used in the valuation of the Plan. There is no “apparent surplus” using a 4.0% real rate of return assumption.

Furthermore, the rate of return assumption is consistent with those of other large defined benefit pension plans. Tab 12 is taken from the Ontario Teachers Pension Plan Report and shows how both the nominal rates of return and the real rates of return used in valuing the Ontario Teachers Pension Plan have been decreasing. Also at Tab 12 are the rate of return assumptions for the Hospitals of Ontario Pension Plan and the Public Service Pension Plan as set out in the 2004 Financial Reports for these plans.

Finally, because pension payments are very much like fixed income obligations, the financial markets would value such liabilities by discounting future pension payments at market interest rates. The market interest rate for inflation-linked obligations would be based on the Government of Canada real return bond yield, which offers a real yield of well under 2.0%. The "market value" of the Plan liabilities valued at this rate would be approximately $700 million higher than the liability shown in the actuarial valuation of the Plan. By using a 4.0% real rate of return, the actuarial valuation is recognizing in advance the $700 million in risk premium that has yet to be earned.

iii. Any gains on the Plan’s indexing assumptions have been more than offset by losses on other actuarial assumptions.

The assumption found in the July 1, 2005 Actuarial Valuation for the Plan relating to indexing is one of 15 actuarial assumptions contained in that report. Gains and losses on actuarial assumptions are common. They do not provide a source of funding. Indeed, the indexing “gain” of $3.4 million which UTFA refers to in the July 1, 2005 valuation is more than offset by a loss of $12 million from retirees living longer than expected, resulting in a net increase in retiree liabilities of $8.6 million as at July 1, 2005. (See Tab 6 of the UTFA’s Book of Documents, Volume III).

In any event, it is noted that, as of July 1, 2006, the indexation is likely to be higher than the assumed rate of indexing but the University is not proposing that indexation be reduced commensurate with any loss that may result from the indexing rate assumption.

iv. Contrary to UTFA's assertion, the University's investment strategy through UTAM is directed towards greater return within the risk profile.

UTFA clearly disagrees with the University's investment strategy as it relates to active asset management. UTFA attributes part of the current deficit to higher Plan expenses which it believes result from that strategy.

The key objective underlying the University's funding and investment strategies is to ensure that the existing pension promise for current and retired members is fulfilled. The investment target return of 4.0% and the modest risk tolerance of 10% are in support of that key objective. UTAM has not been given a mandate to attempt to generate higher returns than the target. Rather, UTAM's active asset management is focused on attaining the targeted return with a reduced level of risk. Any increase in investment management fees as compared with a passive management strategy is not expended for the purpose of generating returns over the target, but rather to achieve the target returns within the acceptable risk profile.

v. Diverting money from the SRA to pay for augmentation is contrary to the pension funding strategy adopted by the Business Board in 2004.

The pension funding strategy approved by the Business Board provides for any pension contributions (current service and special payments) that cannot be put into the plan due to *Income Tax Act* restrictions to be added to the SRA fund and reserved for future investment return volatility. This reserving mechanism is very important in ensuring the prudent management and funding of the pension plan and the SRA which together support the pension promise. It is important to note that when looking at the Pension Plans and SRA together, there is still a large unfunded liability.

e. The USWA improvements must be viewed in their context and do not create a precedent for UTFA's augmentation proposal.

The USWA improvements were part of a three-year agreement and any increase in liabilities and current service cost, were costed against the USWA agreement. As well, member contributions under the USWA agreement were increased to cover 20% of the increased accrued liability of $9.7 million.

Faculty and Librarian retirees received augmentations in February and July of 2004 that were not extended to any other retiree group (the increase in liability resulting from those augmentations was $10.7 million). Had the augmentations been extended to the non-Faculty/Librarian retirees, the increase in accrued liability would have been approximately $4.2 million.

f. Augmentation at the present time will negatively affect the Plan's future.

The pension "deal" for a significant portion of the current retirees has in fact been a very good one. During their active membership in the Plan, there were a number of retroactive pension improvements. While future member contributions were increased in conjunction with theses improvements, there was no cost to the members for the past service improvement.

In addition, in conjunction with the contribution holidays given to active members, there were numerous augmentations given to retirees (at no cost to the retirees) and in 2002, there was a significant improvement in their pension benefits at a cost of $49 million. This improvement was directly related to the fact that active members had received contribution holidays.

Pensioner increases, once given, currently cannot be taken back. For a mature pension plan (i.e. a pension plan with significant retiree liabilities), it is very difficult for the active population to bear this risk, creating a potential intergenerational equity issue. This is a topic that is currently being openly discussed in light of the current funded status of pension plans.

Commuted Value at Normal Retirement Date

UTFA is correct that the Plan discourages a member from taking the commuted value at the normal retirement date (age 65). Indeed, such a transfer is not currently permitted under the Plan. Contrary to UTFA's submission, a member is not permitted to "resign" at age 65 and take the commuted value option.

There are a host of reasons why allowing a commuted value transfer at normal retirement date is not permitted under the Plan, not the least of which is the negative impact such a provision would have on the funding of the Plan. The funding implications of a change to the Plan in this regard are outlined in the University's Brief.

In addition to the submissions set out in the University's Brief, the University responds as follows:

1. The Plan is a defined benefit plan. Allowing a commuted value transfer on normal or postponed retirement essentially converts the Plan to a defined contribution plan at retirement for those members who elect the commuted value. This is not consistent with the pension philosophy of the University or the terms of the Plan. Nor is it required by minimum pension standards legislation.

2. The Plan has an indexation provision to protect retirees from inflation over the long-term. The commuted value of a pension must include – at the time the pension amount is transferred out of the Plan - the value of any inflation protection meaning that members who elect this option would receive all of their indexation up front in one lump sum. This is not the purpose of having inflation protection in a pension plan.

3. With a pension plan as rich as the University of Toronto Pension Plan, the commuted values are often in excess of the maximum amounts that can be transferred on a tax-sheltered basis to a registered retirement vehicle (currently the commuted values are well in excess of the maximum transfer values) resulting in a significant portion of the commuted value being taxed immediately.

4. As noted, this provision was requested by UTFA as part of the negotiations earlier this year on eliminating mandatory retirement. The final Agreement on Retirement Matters, which included a wide-range of changes to the retirement provisions under the Plan, including enhanced early retirement provisions, did not include the commuted value transfer option on normal or postponed retirement.

IV REPLY TO BENEFITS ARGUMENT

PROPOSALS - MEDICAL BENEFITS	
University Proposal	**UTFA Proposal**
A Health Care Spending Account ("HCSA") will be introduced effective July 1, 2006 as an alternative vehicle for funds available under the Professional Expense Reimbursement. Prior to July 1st of each University Year (the period from July 1st to June 30th), Faculty members and Librarians entitled to the PER will be able to elect the following allocation of the PER funds for that University Year: 100% to the PER (default election); 50% to the PER and 50% to the HCSA; 100% to the HCSA. The timing and form of the election will be as prescribed by the University, subject to consultation with the Faculty Association, and the election will be irrevocable.	The current benefit for massage therapy, physiotherapy, and chiropractic care shall be increased to $1000 maximum annually and shall be extended to include the services of a licensed optometrist. **[3(i)]** Orthodontics: Expenses shall be covered with the employer paying 50% of orthodontic expense costs up to $3,000 per person per lifetime for active and retired faculty and librarians and their dependent children. **[3(iv)]** The long-term disability plan shall be modified to enable disability pension recipients to return to work on a part-time basis for indefinite periods of time without financial penalty. **[3(iii)]** Faculty and librarians who retired before 1981 shall have the same benefits as those who retired during and after 1981, effective January 1, 2006. **[2(d)(ii)]** A new premium rate structure shall be introduced to provide the following options: Member; Member plus 1; Member plus 2 or more. **[3(v)]**

a. UTFA's extended health care argument ignores total compensation

The University again states that the replication model demands an analysis of total compensation because only total compensation drives real economic decision-making. UTFA has presented a very narrow picture of the University's total benefit package (and an even narrower picture of its total compensation package) in justifying its two proposals to improve the Green Shield plans. (See Green Shield plans for active and retired employees at Tabs 13 and 14.)

To demonstrate the flaw in UTFA's narrowly focussed approach, the University provides two examples of where its coverage is arguably best in class below: drug coverage and dental coverage.

Drug Coverage

Drug coverage is a highly utilized benefit at the University of Toronto, with over $2.8 million in claims paid to active faculty and librarian plan members in 2004 – 05 (Tab 15). The University's drug plan is among the best in the G10, as shown by the table below: it features no co-pay and has a dispensing fee that is capped at $6.50; it has an open formulary which covers most prescription drugs; and there is no generic substitution under the plan, unlike other plans which only reimburse at the generic drug price.

G10 DRUG PLAN COMPARISON	
University	**Drug Plan Features**
University of Toronto	No co-pay ($25 deductible on extended health plan payments) Dispensing fee capped at $6.50 Unrestricted drug card use No plan caps, coverage determined by usual and customary prescribing No lifetime maximum on fertility drugs
McGill University	80/20 co-pay (100% paid after $750 for single/$1,500 family) Unrestricted drug card use Cap on fertility drugs ($2,400 lifetime max) No anti-impotence drugs
McMaster University	No co-pay Dispensing fee capped at $6.50 Drug card restrictions Quantity restrictions Caps on fertility drugs ($2,400 lifetime max) and erectile dysfunction ($1,200 per person per benefit year)
Queen's University	No co-pay ($25 deductible on extended health plan payments) No drug card
University of Alberta	No co-pay Unrestricted drug card use Reimbursement capped at price of generic substitution Quantity restrictions (Note: description of formulary unavailable)
University of British Columbia	80/20 co-pay Drug card restrictions Quantity restrictions No fertility drugs, erectile dysfunction drugs and others
University of Laval	n/a
University of Montreal	n/a
University of Waterloo	80/20 co-pay (capped at $111 single/$222 family) Dispensing fee capped at $6.60 Unrestricted drug card use Reimbursement capped at price of generic substitution
University of Western	No co-pay Dispensing fee capped at $6.11 Unrestricted drug card use Reimbursement capped at price of generic substitution Caps on fertility drugs and contraceptive devices

Dental Benefits

The value and cost of dental coverage is highly driven by the level of co-insurance offered in the plan. Dentists provide three categories of service: preventative services are the least costly but most common claims (e.g. x-rays, consultation, polishing…); basic restorative dental procedures are more costly (e.g. periodontics[3], endodontics[4], fillings and extractions…); major dental procedures are the most costly (e.g. crowns, bridges, dentures…). Co-insurance levels are typically higher for the more expensive levels of service. If orthodontics are covered at all, they are typically covered at a 50% co-insurance rate and are subject to lifetime caps.

UTFA has included a chart at Tab B3, page 13 of its Brief that shows the orthodontic coverage offered by Ontario universities. This chart is misleading because it does not show the overall dental coverage offered by these universities. When one compares the total dental coverage offered, which affects all members of the plan and not just those requiring orthodontic treatment, the University's dental plan compares well. The plan insures preventative services and basic restorative dental procedures at 100% of the current Ontario Dental Association fee guide for general practitioners. Major dental procedures are insured at 80%. This level of co-insurance is best in class.

UTFA members derive significant value from the plan given these co-insurance rates. For example, the highest claim cost in 2004 – 05 was for periodontal scaling, a basic restorative dental procedure. Claims for this procedure cost over $570,000 in one year (and were paid at 100% of the ODA fee schedule). Had the university offered 80% co-insurance (as many other Ontario universities do), UTFA members would have paid approximately $104,000 out-of-pocket for periodontal scaling in 2004 – 05. Any co-insurance paid by plan members is from after tax dollars, so the value of 100% coverage is significantly higher than $104,000. (For a breakdown of dental claims for 2004 – 05 see Tab 16.)

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[3] Relating to treatment of gum disease.

[4] Root canal therapy, root canal fillings and related procedures.

c. Broadly examined, the University offers excellent benefits

The University further submits that UTFA's comparison of individual benefits is a less valid indicator of total compensation than the University's recent ranking as one of the top 100 employers in Canada. This success is based on the University's *overall* performance in seven areas: physical workplace; work atmosphere and social; health, financial and family benefits; vacation and time off; employee communications; performance management; and training and skills development. The study, for example, recognized the University's excellent maternity and parental leave benefits: mothers receive maternity and parental leave top-up to 95% of salary for 17 to 20 weeks; fathers receive parental leave top-up to 95% of salary for up to 10 weeks; and adoptive parents receive parental leave top-up to 95% of salary for 12 to 27 weeks. Other "family friendly" features of the University's total benefit package that were recognized include day care (four on-site day cares and employee access to emergency back up daycare services), flexible work arrangements, tuition waivers, and confidential referral and counselling services.

The annual survey has not yet been printed but is explained in further detail in the press release and articles included at Tabs 17 and 18.

d. No need to change benefits given to pre-1981 retirees

The University rejects UTFA's suggestion that the group of pre-1981 retirees are now or have ever been treated as "second class retirees". Given the cost of providing retiree medical benefits, the overwhelming trend is away from improving or offering new or improved retiree health care benefits (see Tabs 19 and 20). UTFA has made no submissions that demonstrate a specific need for this change.

As the University has submitted, in addition to the $156,000 premium cost, giving this group of retirees full health care benefits instead of the HCSA benefit that they currently enjoy would likely result in a significant long-term cost as a result of changes in claims experience. This is clearly inappropriate in light of the University's current fiscal constraints and its $271.3 million liability for unfunded retiree benefits.

e. Change to premium rate structure inappropriate and unnecessary

The demonstrated need principle – and the related idea that an interest arbitration panel should respect the parties' bargaining relationship as much as possible – weighs particularly against UTFA's proposal to change the premium rate structure from a two-category structure (single rate and family rate) to a three-category structure (member rate, member plus one rate, member plus two or more rate). The University and UTFA met in August 2004 and discussed this change to the premium rate structure. The University submits that changing the premium rate is a complex matter which requires further discussion between the parties. Changing the premium rate structure in the way suggested ought not to be done in isolation but must be done in the context of considering the benefits package as a whole and providing flexibility and choice for a range of employee needs.

There is simply no need that justifies a recommendation to implement the premium rate structure proposed by UTFA despite the existence of a number of complexities, the impact of which the parties have not yet fully assessed or discussed.

f. Partial LTD inappropriate

The LTD Plan currently provides a rehabilitation provision by which an individual's disability may be accommodated during the first 24 months of disability – i.e. the "own occupation" period. Employees who can return on a reduced workload or a part-time basis during this period continue to receive LTD benefits, reduced in a manner that enables them to earn more than the normal 70% LTD rate but not more than 100% of their pre-disability salary. This mechanism ceases to be available after the initial 24 months of disability because the Plan's eligibility requirements change – i.e. after 24 months coverage is limited to those who are unable to engage in "any occupation", so those engaged in alternative work are no longer eligible. (See Tab 21 for the Plan description.)

UTFA has proposed "Partial LTD" – coverage in which employees are guaranteed their pre-disability salary beyond the initial 24 months of disability (and indefinitely) so long as they can engage in alternative work. There is a significant cost to this type of coverage, which removes the incentive to return to the pre-disability position. There is also no principle in human rights law that requires an individual to be compensated for work not performed: *Ontario Nurses Association v. Orillia Soldiers' Memorial Hospital* (1999), 42 O.R. (3d) 692 (C.A.) (Tab 22).

V REPLY TO PER ALLOWANCE ARGUMENT

PROPOSALS – PER ALLOWANCE	
University Proposal	**UTFA Proposal**
A Health Care Spending Account ("HCSA") will be introduced effective July 1, 2006 as an alternative vehicle for funds available under the Professional Expense Reimbursement. Prior to July 1st of each University Year (the period from July 1st to June 30th), Faculty members and Librarians entitled to the PER will be able to elect the following allocation of the PER funds for that University Year: 100% to the PER (default election); 50% to the PER and 50% to the HCSA; 100% to the HCSA. The timing and form of the election will be as prescribed by the University, subject to consultation with the Faculty Association, and the election will be irrevocable.	The PERA shall be increased from $775 to $1000 per year effective July 1, 2005. **[3(vi)]** All part-time faculty represented by UTFA shall receive expense reimbursement pro-rated at 33% per full-course equivalent of the PERA rate effective July 1, 2005. **[2(c)(ii)]**

The University's position is that there is no demonstrated need for a PER increase. As indicated in the University's Brief, no increase should be granted in light of the significant underutilization of PER allowances. The University agrees with UTFA's assertion that it is the premier research university in Canada, but states that the comparisons UTFA has raised are not valid in light of the significant support faculty members receive in addition to the PER benefit.

UTFA's proposal to change the PER part-time benefit is illustrated by the table on the following page. The University disputes the general proposition that part-time benefits should be pro-rated at 33% for each full-course equivalent. It also submits that the proposal is not a clear improvement over the current benefit, nor has UTFA shown any demonstrated need for a change. The proposal should be rejected.

Course Load	PER Benefit Current	PER Benefit UTFA Proposal
1	50% ($387.50)	33.0% ($247.50)
1.5	50% ($387.50)	49.5% ($371.25)
2	80% ($620.00)	66.0% ($495.00)
2.5	80% ($620.00)	82.5% ($618.75)
3	80% ($620.00)	99.0% ($742.50)
3.5	80% ($620.00)	100% ($750.00)

VI REPLY TO RESEARCH AND STUDY DAYS ARGUMENT

PROPOSAL – LIBRARIAN RESEARCH AND STUDY DAYS	
University Proposal	**UTFA Proposal**
Status quo	The annual number of Research and Study Days for librarians shall be increased from 5 to 20. **[3(vii)]**

a. Librarian and faculty research is different

The University does recognize that Level III and Level IV Librarians to engage in research, but this expectation is far more limited than the expectation it has of the professoriate. Paragraphs 11 and 12 of the University's Policies for Librarians (at Tab 23) define the criteria for promotion to the Level III and Level IV ranks. These paragraphs establish research as "one or more" of the criteria which may justify promotion:

> Librarian III
>
> 11. In being considered for appointment or promotion to the rank of Librarian III, the candidate must submit evidence of continuing effective performance. There should be clear promise of continuing professional development and demonstrated ability to handle increased responsibilities in areas of specialization and/or in an administrative capacity. *With less weighting one or more of the following criteria should also be considered*: academic achievement and activities, including additional formal degrees, programmes of continuing education, teaching, research, publication; involvement in professional activities and participation in professional organizations, including serving on committees, the presentation of papers, organization and participation in conferences, seminars, workshops; service to the Library and the University. This rank is the normal career rank for librarians.
>
> Librarian IV
>
> 12. A librarian may not be considered for appointment or promotion to the rank of Librarian IV until he or she has had a minimum of five years' library experience as a Librarian III or has had equivalent experience. Appointment or promotion to this rank requires evidence of a record of excellent performance with demonstrated initiative, leadership and creativity. *As well as making an outstanding contribution to the Library and to the University the candidate must submit evidence of substantial achievement in one or more of the following areas*: academic activities including research, publication and teaching; professional endeavours including significant involvement in professional organizations; service to the Library and/or the University community. Besides having attained a high level of professional expertise, the candidate should be considered likely to continue to fulfil a vital role in the institution. [emphasis added]

In short, research is relevant to the promotion of Level III and Level IV librarians, but it is not a requirement. To the contrary, faculty members are required to engage in teaching, service *and* research. The following illustrative text is from the Policy and Procedures Governing Promotions, which establishes the promotions criteria for members of the faculty (Tab 24):

> Promotion Criteria
>
> 10. Promotion decisions will be based on the candidate's accomplishments in scholarship, teaching and service to the University. These criteria are discussed below in paragraphs 11a, 12a and 13a and recommendations on their assessment are set forth in paragraphs 11b, 12b and 13b.
>
> Attributes of Scholarship
>
> 11a. Scholarly Activities to be considered in promotion decisions include research work and certain kinds of professional or artistic activity. Successful research leads to the advancement of knowledge through contributions of an original nature. It is expected that it will be communicated through the publication of books, articles, papers, reviews and other scholarly work. Creative work in professional and artistic fields may be expressed in other ways: these may include, for example, original architectural or engineering design, important artistic contributions and original techniques in clinical or professional areas. In every case, evidence of originality and importance to the field is sought.
>
> Assessment of Scholarship
>
> 11b. To asses his or her scholarly activity, the candidate's publications or other evidence must be evaluated. The evidence of scholarship will be listed in the candidate's curriculum vitae (see paragraph 16). The candidate is responsible for providing copies of his or her published work, and giving information about non-written work in an appropriate form, to the Chair or Dean, who should arrange for its assessment by specialists in the candidate's field. The candidate may choose to provide unpublished work and work in progress for consideration but such work will not be communicated without the candidate's permission to those not involved within the University in the promotion decision. Confidential written assessments of the candidate's work should be obtained from specialists in the candidate's field from outside the University and whenever possible from inside the University. When a faculty member is or recently has been cross-appointed to another division, assessments of scholarship should be sought from the other division. The candidate will be invited to nominate several external referees. The Dean or Chair and the Promotions Committee (see paragraph 18) will whenever possible add to the list of referees. The Dean or Chair will solicit letters from at least three external referees and where possible these should include at least one referee suggested by the candidate and one referee suggested by the Promotions Committee. Where the Chair solicits the letters, the referee should send a copy of the response to the Dean. The external referees will be asked to compare the candidate's contributions with those of persons at a comparable stage in their careers. All referees' letters will be transmitted to the Promotion Committee and held in confidence by its members.

Based on these differing expectations, librarians spend less time engaged in research than do members of the professoriate, and UTFA's comparison is simply not valid. Librarians are nonetheless given an opportunity to engage in a significant research project by taking a research leave on the same terms available to faculty members.

b. York, Brock and St. Mary's are not valid comparators

UTFA has indicated that York University, Brock University and St. Mary's University offer their librarians a substantial number of research and study days. This small sample does not demonstrate that an annual research and study day benefit of any magnitude is normative. The University further submits that York, Brock and St. Mary's are not valid comparators: none of these universities is a research-intensive university nor is any a member of the G10. UTFA's own submissions also acknowledge that the University's library system is the "foremost" in Canada (see Tab A2, page 6).

c. There is a real cost to the proposal

UTFA has indicated that research and study leave is a "no cost item" at York University because workload is redistributed flexibly. The University first notes that its flexibility in scheduling librarians is limited because its librarians (unlike those who work at York) work in more than 32 different libraries which are spread across the University's three campuses. More importantly, however, the University submits that UTFA's argument rests on presumed unproductivity. The most reasonable and appropriate presumption is that librarians are 100% productive, and given this assumption, removing one FTE librarian from the productive workforce will either cost one FTE or reduce the level of service provided at the University's libraries. These reference services are important to the University's mission.

d. Utilization data illustrates limited need, not limited cost

UTFA has also raised moderate utilization of the current research and study day benefit as an indication that the proposal will not have "a 100% take up cost". The University submits that a non-discretionary leave should always be costed at its full utilization rate and further submits that the current utilization rates acknowledged by UTFA demonstrate that there is no need for its proposal.

VII REPLY TO INFORMATION EXCHANGE PROPOSALS

The University has briefly replied to the following issues notwithstanding its position that they are beyond the Panel's jurisdiction.

PROPOSAL – INFORMATION EXCHANGE	
University Proposal	**UTFA Proposal**
Status quo	UTFA shall receive full and complete access to the rules, regulations, and guidelines that Green Shield follows in determining whether or not to pay claims made through the medical and dental insurance plans. **[3(ii)]** UTFA shall be informed annually on a non-nominal basis of the salaries for all faculty and librarians, set out by department and identifying the date of hire, gender, age and date of Ph.D. or qualifying degree. **[4(ii)]** UTFA shall be informed annually of the names and contact information of faculty members and librarians who have given notice of their intention to retire. **[4(iii)]**

a. No need for access to Green Shield's rules, regulations and guidelines

The University submits that UTFA members do not need "algorithms" and other similar information to understand how Green Shield Canada administers their claims.

After consulting with UTFA, the University hired Green Shield to administer its benefit plans in a cost effective, consistent and efficient manner. As a Plan Administrator, Green Shield is required to explain why a claim is denied or reimbursed at a lower level than a member may have expected.

Green Shield provides employees with information through its website, which includes claiming instructions and claim submission guidelines. Should they have any questions about why a claim was denied or should they wish to dispute their claim, after receiving an Explanation of Benefits statement that shows the initial reason for declination, members may contact Green Shield's customer support centre. If still not satisfied, members may write Green Shield for a more detailed explanation or contact the University's benefits section if there is a significant concern regarding a denied claim they feel ought to be covered.

The University's contract with Green Shield does not require Green Shield to share its claims administration guidelines and cost containment controls with plan members and, in general, Green Shield treats this information as confidential and proprietary.

b. Salary information should not be disclosed in an identifiable form

UTFA currently receives information on individual salaries, with each individual's rank, gender, year of hire and year of Ph. D. or other qualifying degree. This information is disclosed on a non-nominal basis and is broken down by division.

The University submits that the current scope of salary disclosure is sufficient to allow UTFA to effectively engage in bargaining. Article 11 of the Memorandum of Agreement obligates the University to provide UTFA with "such documents as may be necessary for the negotiation of salaries and benefits pursuant to [the Memorandum]". Hence, UTFA's right to information is tied to its obligation to negotiate the "minimum rights, privileges and benefits" of *all* faculty members and librarians pursuant to Article 6 of the Memorandum. There is nothing in the Memorandum that entitles UTFA to bargain on behalf of individuals. Accordingly, UTFA's claim that it needs information broken down to the departmental level in order to assist members who seek advice regarding individual negotiations with the Association should be rejected.

The current scope of salary disclosure is also consistent with the Governing Council policy on Access to Information and Protection of Privacy, which begins by stating, "The University is also committed to the protection of the privacy of those who work and study at the University" (Tab 25). Under the Policy, the University has made a general commitment to refrain from disclosing personal information without an individual's consent. There are exceptions to this commitment, but the only applicable exception in the circumstances is one which allows the University to disclose personal information "for the purpose of complying with a requirement to provide information lawfully imposed on the University by a federal or provincial government authority." This is the exception which allows the University to disclose salary information for faculty members, librarians and other employees who earn more than $100,000 per year as required by section 3 of the *Public Sector Salary Disclosure Act* (Tab 26).

The University rejects UTFA's suggestion that the disclosure of salary information by department would not result in a disclosure of personal information. Given the size of many departments, if salary information is provided at the departmental level along with rank, gender, year of hire and year of Ph. D. or other qualifying degree, the University submits that UTFA will be able to identify the salaries of a substantial number of the individuals who are not already reported as earning more than $100,000 per year.

UTFA has correctly noted that a large proportion of its members are included on the Public Sector Salary Disclosure Report; in fact, more than half of the University's faculty and librarians are on this list. The University submits that the statutory requirement to disclose the University's highest salary earners is no justification for interfering with the privacy interests of individuals who are not subject to the requirement. It also submits that the high proportion of UTFA members who are subject to public sector salary disclosure reduces the need (if there is any need at all) for UTFA's proposal.

c. Disclosure of contact information neither necessary nor appropriate

The University disputes UTFA's proposal to disclose the "contact information" (which it presumes to mean home addresses and telephone numbers…) of individuals who have given notice of their intention to retire. UTFA currently communicates with active and retired members through its website. If UTFA would like to communicate with members at home, it should collect members' contact information directly, by asking them. As is the case with UTFA's salary information proposal, providing UTFA with home addresses, telephone numbers and information on individual retirement choices would be inconsistent with the Governing Council Policy on Access to Information and Protection of Privacy.

d. No need for information officer arbitration scheme

The University has exercised its duty to share information with UTFA in good faith. There is no need to install a new process that will encourage a more adversarial relationship between the parties.