



Information Report

UNIVERSITY OF TORONTO *faculty* ASSOCIATION

May 7, 2013

SJAC Information Report #2

In this report:

- Report on results of UTFA's March 2013 membership survey concerning the Special Joint Advisory Committee process
- **“Frozen Policies Versus Real Negotiating: What Difference Does It Make?”**
UTFA's capacity to advocate and negotiate on important non-monetary policies that shape the context for faculty and librarian work in the university contrasts sharply with the way we negotiate money. Here, we discuss this contrast and some of the differences it makes, and call into question whether or not those differences should persist.
- In March, UTFA Council approved a platform of proposals to take forward via the SJAC process aimed at revision of the current Memorandum of Agreement prescribing the role of UTFA and the relationship between UTFA and the Governing Council. One of the provisions of this proposal is to make use of a formal negotiating process (such as the one we now use for compensation) to address important non-monetary academic policies shaping the conditions of faculty and librarian work, e.g., appointments policies for faculty and librarians, academic freedom provisions, and a new policy dealing with the strictly procedural aspects of significant academic planning exercises. Important procedural aspects of our negotiations over monetary terms of employment not present in negotiations over non-monetary terms include specific timelines, notification procedures, information sharing language, agreement to engage in good faith negotiations, and perhaps most important of all, provision for mediation and arbitration by professional neutral third parties in the event that bilateral negotiations alone do not result in agreement.

Survey Results

First and foremost, thank you to the over 1,000 faculty and librarians – over one third of our total membership – who completed UTFA's membership survey in March. This report reviews some of the survey's findings that may be most significant in shaping our approach to the SJAC process. More detailed results may be found in the appendix to this report. A copy of the survey itself is on our [website](#).

It was gratifying to see that a robust, representative sample of the membership¹ completed the survey (i.e., the proportion of respondents of various types was generally in line with the composition of the total population). One third were Professors, 29 per cent were Associate professors, and 13 per cent were Assistant professors. Eight per cent were Senior Lecturers and over 10 per cent were Lecturers. Six per cent were Librarians. Respondents were quite evenly distributed across the humanities, social sciences, natural sciences, and professional schools. About 81 per cent named the St. George campus as their primary location, while ten percent reported being retired. Roughly 60 percent of respondents were male.

Summary and Overall Implications

Taken together, responses in the survey's first section reinforce much of what we have heard from outreach to members over the last several years. There is a strong and seemingly growing appetite for UTFA and the Governing Council to engage in formal collective bargaining over a broader range of issues, including the appointments issues for faculty that are currently under consideration and flagged in the survey, as well as a new policy for the procedural (i.e., rules and timelines, not the academic content) of significant academic planning exercises. The goal in expanding the range of issues UTFA and the Governing Council negotiate is to improve the conditions for collegial determination of important academic and other employment policies that shape the context of the work of faculty and librarians. The survey suggests that a majority of members want to see more accountability and rigour and an expanded role for UTFA in the determination of academic policies shaping the context of our work as scholars, teachers and professionals, in parallel with the way that compensation and workload matters are currently negotiated. Overall, the first section of the survey reinforces the original rationales for the SJAC process and confirms that faculty and librarians want UTFA and the Governing Council to work to reform the current framework and that they expect to see significant change resulting from the SJAC negotiations.

Frozen Policies Versus Real Negotiating: What Difference Does It Make?

Professional autonomy and self-determination for faculty and librarians, in some meaningful degree, is a pre-condition for academic freedom and academic excellence, and is a defining feature of a university. With this in mind, the SJAC process entails a dialogue on modernizing the current Memorandum of Agreement (MoA) prescribing UTFA's role, and as well, an examination of the role of faculty and librarians in academic planning. Two subcommittees of the SJAC are dealing with appointments policies for faculty that are currently included in a list of so-called frozen policies under Article 2 of the MoA.

In this context, it is important to understand the exact contrast between the negotiating process prescribed in Article 6 of the MoA, and the process (or complete lack thereof) prescribed in the MoA (including in Article 2) for dealing with important academic policies and other non-monetary conditions of our appointments as faculty and librarians.

¹ UTFA's membership includes the vast majority of faculty and librarians at the University of Toronto with appointments in excess of one year. Roughly three hundred people hired prior to 1998, of a pool of about one thousand, are not members and therefore were not included in the survey.

Recent history may be instructive here. When the Governing Council attempted to freeze our salaries in 2010, UTFA resisted and took the matter to arbitration. There was a pervasive climate of austerity, the provincial government placed pressure on universities not to agree to positive across the board salary increases, and our Administration went along with it. But we would not. Ultimately, the arbitrator awarded positive ATB increases over two years. But what if we had not had the right to go to arbitration? As committed as we may be to collegial, voluntary settlements, sometimes differences between the parties prevent convergence.

This episode and others like it raise the question: shouldn't negotiations over appointments policies and language on academic freedom and the like, be subject to a process that includes timelines, provision for good faith negotiations, and a dispute resolution mechanism for resolving issues in a timely and productive way? We are academics! To accept less rigorous ways of negotiating important academic policies suggests that we put money before policy in thinking about the terms of our employment at the University.

It would seem odd to accept a watered down capacity to shape the university workplace when it comes to the matters that, for many of us, are closer to our hearts than monetary compensation will ever be.

Superficially, it might be suggested that since the frozen policies cannot be changed without our consent, this gives us the capacity to shape those policies in a collegial way. And in fact, we have in the past engaged in periodic frozen policy negotiations that were productive, e.g., ending mandatory retirement. So one could argue that the frozen policy approach in the MoA can work and has worked.

But none of us would countenance the frozen policy approach being applied to negotiating our salaries and pensions, and it is no more acceptable when it comes to shaping and determining our other terms and conditions of employment. This is the position the UTFA Council has affirmed.

We need to be very clear about the differences, and understand the contrast between Article 2 (and other policies frozen in the MoA), and a constructive and mature negotiating process as provided under Article 6, currently used in relation to salary, benefits and workload. Article 2 of the MoA reads as follows:

“Article 2: No Change in Basic Policies and Practices

“The University agrees that, during the term of this Agreement, it will not change the following policies and practices except by mutual consent of the parties:

- (a) the Policy and Procedures on Academic Appointments including the "Haist Rules" relating to academic tenure;
- (b) the Policy and Procedures on Employment Conditions of Part-time Academic Staff;
- (c) the policy on Political Candidacy in the "Haist Rules";
- (d) the Policy on the Appointment of Academic Administrators;
- (e) the Policy on Conflict of interest: Academic Staff;
- (there shall be no mandatory retirement date for faculty members and librarians whose 65th birthday occurs on or after July 1, 2005;
- (g) the policy on sick leaves affecting faculty members and librarians;

- (h) the practices affecting faculty members and librarians relating to leaves of absence, short-term compassionate and emergency leaves;
- (i) the Policy and Procedures on Promotions;
- (j) the policy on maternity leave;
- (k) the policies on family care leave and parental leave.”

There is NO bargaining process prescribed in Article 2 at all. It is just a list of named policies that are not to be changed without mutual consent. By contrast, Article 6 of the MoA lays out how we negotiate salaries and benefits, including timelines, notification procedures, information sharing language, agreement to engage in good faith negotiations, and perhaps most important of all, provision for mediation and arbitration by professional neutral third parties in the event that bilateral negotiations alone do not result in agreement. Moreover, though the current range of issues Article 6 deals with is limited, all minimum salary, benefit and pension (and now workload) negotiations take place via an integrated process.

In contrast, negotiation over matters listed in Article 2 is entirely ad hoc, and usually takes place in isolation, one matter at a time.

Moreover, Article 2 is only a list of inclusions. There are other important policies listed elsewhere in the MoA that are de facto frozen policies, e.g., the language on academic freedom, and on sexual discrimination and harassment, listed in Articles 5 and 7 respectively. But anything not named in Article 2 or elsewhere is thereby left out entirely, including most prominently, any mention of the role of faculty and librarians in academic planning.

Our recent experience negotiating the new workload policy using the formal collective bargaining process described in Article 6 of the MoA was very instructive. While an extensive bilateral negotiation over a new workload policy preceded mediation and arbitration in 2009 and 2010, both the pace and the quality of the proposals (from both sides) increased dramatically when the mediator/arbitrator became involved. This kind of logic is endemic to collective bargaining. Why would we undertake negotiations over important academic policies absent basic provisions for how the parties should engage one another and, crucially, how the negotiations may reach a timely and productive end by means of provision for breaking impasse when we cannot agree? And let's be clear, having access to mediation and arbitration does not mean relying exclusively on them in each round of negotiation, nor on each issue. Recall, we agreed to pension contribution increases voluntarily last June, in mediation, but not in arbitration. That does not mean we are prepared to give up our right to go to arbitration in the future!

Without some provision for breaking impasse, sharing information, scheduling meetings and working to a deadline, and getting a fair hearing for principled positions, we cannot guarantee fairness and accountability to our members in the way we represent them.

For all of these reasons, it is important to understand that even if we can reach agreement voluntarily on a new stream or on changes to our appointments and tenure policy in the SJAC subcommittee process, we will still need to return to these policies and others in the future, and we will want some understanding of how that might take place. We have an obligation to our successors to leave processes that are an improvement over the antiquated structure of the current MoA.

So the question remains, why should we settle for something less when it comes to negotiating academic policies and other terms and conditions of our employment? With these issues in mind, at its March meeting the UTFA Council once again endorsed making use of the negotiating process described in Article 6 of the MoA (or something like it) to establish the non-monetary as well as the monetary terms of faculty and librarian employment, including appointments policies and any policy dealing with the procedural aspects of academic planning. The goal in seeking this change is to enhance collegial governance and determination of the academic and other policies that shape the context of our work, and to make use of the collective, independent representation UTFA provides in pursuit of this goal.

We will continue to provide updates as the SJAC process unfolds. Talks will be continuing into the summer and may well extend into the next academic year. The team of UTFA representatives involved in the SJAC process is specified in [SJAC newsletter #1](#), available on our website.

If you have questions, comments, or suggestions pertaining to the SJAC process, write to bargaining@utfa.org. General inquiries are always welcome at faculty@utfa.org. Wishing you all the best for a productive, healthy and rewarding summer.

The UTFA SJAC Team

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Appendix A: Some Detailed Results of the March 2013 Membership Survey

The first section of the survey queried members about the state of collegial governance at U of T, and specifically the role that faculty and librarians would like UTFA to play in representing them.

The first question asked for responses to the following statement: *“I am concerned that my voice is not sufficiently heard at U of T and specifically that faculty and librarians do not have sufficient means by which to participate in deliberations shaping the conditions of our work as academics.”* 1032 people responded to this question, with 49 per cent agreeing or strongly agreeing, 34 per cent disagreeing or strongly disagreeing, and 17 per cent expressing neutrality.

The second question asked members to respond to the following statement: *“I support UTFA and the Governing Council negotiating a policy dealing with the procedural (i.e., not substantive) aspects of significant academic planning initiatives.”* Of the 1029 respondents, 64 per cent agreed or strongly agreed, 22 per cent disagreed or strongly disagreed, and 14 per cent expressed neutrality.

The third question asked for responses to the following statement: *“I would like to see UTFA’s role modernized and expanded in order to enhance the voice of faculty and librarians in decision-making and governance beyond compensation to include other nonmonetary issues, including for example the procedural aspects of academic planning.”* Of the 1027 respondents, 59 per cent agreed or strongly agreed, 30 per cent disagreed or strongly disagreed, and 11 per cent expressed neutrality. Note that this question by design asked in general terms about expanding and modernizing UTFA’s capacity, without specifying what form this expanded capacity might take.

The fourth question was more specific, asking for responses to the following: *“I support UTFA and the Governing Council of the U of T engaging in full scope collective bargaining to negotiate all terms and conditions of employment applicable to faculty and librarians, including the use of independent neutral mediation and interest arbitration on matters where the parties fail to agree.”* Of the 1023 respondents, 53 per cent agreed or strongly agreed, 34 per cent disagreed or strongly disagreed, and 13 per cent expressed neutrality. Though the sample size is smaller than when we asked a similar question in January of 2012, the margin of support for full scope collective bargaining (including over important academic policies) is higher, suggesting that support for a change of this sort is both strong and growing. That is consistent with what we are hearing in unit-level conversations.

A series of questions then followed about member disposition toward the SJAC process, including asking for views on union certification. In retrospect, and judging from some of the comments received, these questions as a group were not well crafted. However, the responses to this group of questions certainly reinforce that the overall preference of faculty and librarians is reform and modernization of the current framework.

The two remaining sections of the survey dealt with appointments-related matters for faculty, the first specific to the tenure stream and the second specific to a new faculty stream to be composed of teaching intensive appointments and appointments emphasizing the integration of teaching and professional or creative expertise.

Tenure Policies

The survey found support (i.e., 54 per cent agreement or strong agreement compared to 30 per cent disagreement or strong disagreement) for changing the current practice involving chairs writing summaries of evidence pertaining to external reviews, and instead passing on those review letters to candidates with identifying information removed.

There was also strong support for making it clear to tenure committees that recommendations and decisions regarding tenure candidates are subject to appeal if “[T]he decision is unreasonable in the light of the evidence which was available or should have been available to the committee and in light of the standards that were generally applied in the division in recent years.” Slightly less than 60 per cent of respondents agreed with this suggestion.

The survey also asked about a proposal that UTFA made in 2011 to appoint a neutral, legally trained person with knowledge of academia as the chair of the University Tenure Appeals Committee (UTAC). The idea was controversial when first proposed, in part due to a misperception that our proposal would result in a third party gaining the authority to award tenure. The survey confirms that there is some considerable support for this proposal (see summary slides), but we have decided not to pursue it at this juncture and instead look to implement a 2010 agreement to ensure that professional legal advice provided to the UTAC is neutral.

We also asked for input on the possible introduction of a new, second level of tenure review, between the so-called “local” unit-level tenure committee and the Office of the President. Such a committee could review substantive and/or procedural elements of the first committee’s recommendation, and could be composed largely of academic administrators or of non-administrative faculty with cognate expertise. While some form of second-level collegial review is commonplace at research-intensive universities in North America, it is clear from the survey that we are not in a position to propose any second level of review at this time in the absence of more deliberation and input from faculty.

We also queried members on the question of the time to tenure. Many if not most research-intensive universities in North America have longer time to tenure than our five-year clock (particularly when one considers that, under our policy, candidates are actually evaluated on four years worth of evidence). The responses to the survey show that some members do have an appetite for lengthening the tenure clock, with 44 per cent of respondents indicating some degree of support. However, a combined 50 per cent of respondents indicated either opposition or conditional support provided any extension in the clock does not significantly alter the success or denial rate. In addition, over 60 per cent of the 760 respondents to this question attributed some importance to an extension in the time to tenure coming with provision for a six-month pre-tenure research and sabbatical leave. We expect the tenure clock issue to be raised in the negotiations. We will listen to any proposal carefully with the results of the survey in mind.

Teaching and Professional Faculty Stream

The survey’s third section focused on negotiations over appointments policies that will pertain to the current teaching stream as well as faculty who will emphasize the integration of professional and/or creative expertise and practical experience in their teaching. In general, the survey showed strong support for appointments in this stream featuring not only service

and teaching components, but also a “scholarly” component broadly understood. There is strong support for UTFA’s ongoing initiative to shore up the job security language found in the current teaching stream appointments policy so that appointees in the new stream may enjoy academic freedom in their teaching as well as in their creative and professional work at the University. There is also support for securing titles and ranks in the new stream parallel to those used in the tenure stream. We continue to hear that the current titles used in the teaching stream (i.e., Lecturer and Senior Lecturer) are viewed as impediments to faculty recruitment and retention in some parts of the University (including some of the professional units).