

PART A – INTRODUCTION

1. The Legal Framework for this Arbitration

1. The University of Toronto Faculty Association (“UTFA” or the “Association”) is the professional organization of the faculty and librarians of the University of Toronto and affiliated institutions (St. Michael’s College, Trinity College, and Victoria University). It originated as the Committee to Represent the Teaching Staff in about 1940. In 1954, it was reorganized as the Association of the Teaching Staff, and, in 1972, it became UTFA. As stated in its Constitution, “the purpose of the Association is to promote the welfare of the current and retired faculty, librarians and research associates at the University of Toronto.” The Association is thus concerned with the economic well-being and terms and conditions of employment of its members, as well as with maintaining the quality and integrity of the University as an academic institution.
2. In 1977, UTFA negotiated the Memorandum of Agreement (the “Memorandum”) with the University of Toronto, which guarantees the minimum rights, privileges and benefits to which the members of the academic staff and librarians are entitled. By means of the Memorandum, the University’s Administration (the “Administration”) recognizes UTFA (outside the framework of the Ontario *Labour Relations Act*) as the representative of the faculty and librarians for the purposes of negotiation for salaries, benefits and pensions, and the Memorandum provides a process for those negotiations. The Memorandum also provides that certain important policies governing terms and conditions of employment for faculty and librarians cannot be changed without the mutual consent of the Association and the Administration (commonly referred to as the “frozen policies”). In addition, the Memorandum enshrines the principle of academic freedom, sets out the rules governing sabbatical leave and personnel files, provides protection against

discrimination and harassment, and establishes a grievance and arbitration process for breaches of the Memorandum and University policies.

See Appendix at C-2 of this book, or Book of Documents, Volume I, Tab 1.

3. Article 6 of the Memorandum governs negotiation, mediation and dispute resolution with respect to salaries, benefits and pensions, including the instant proceeding. The 2003-2005 agreement between the parties expired on June 30, 2005, but the parties have been unsuccessful in reaching a new agreement. As mediation failed to produce a settlement, the parties have now appointed a Dispute Resolution Panel. The powers of the Dispute Resolution Panel are set out in Article 6 as follows:

16. 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. In endeavouring to reach a unanimous report the members of the Panel may confer with their appointing parties. The members of the Panel shall make their decision without taking into account the possibility that it may be repudiated by the Governing Council.

17. The Dispute Resolution Panel shall prepare a report setting out recommendations for terms of settlement together with reasons in support thereof.

18. Before preparing a report, the Dispute Resolution Panel shall hold a hearing after giving both parties appropriate notice. The Dispute Resolution Panel shall determine its own procedure but shall allow each party to:

- (a) be represented by counsel or an agent;
- (b) call evidence and make submissions and arguments, oral and written; and
- (c) conduct cross-examination of witnesses at the hearing.

19. The jurisdiction of the Dispute Resolution Panel shall encompass only those unresolved matters relating to salaries and benefits that have been referred to it by the parties. The Dispute Resolution Panel shall, however, take into account the direct or indirect cost or saving of any change or modification of any salary or benefit agreed to by the parties in making its recommendation for terms of settlement.

20. The report of the Dispute Resolution Panel together with any minority report shall be issued to the parties no later than twenty (20) days after conclusion of

the proceedings before the Dispute Resolution Panel. It is agreed that neither the Panel nor either of the parties will publish such report for the period of ten (10) days after the receipt thereof.

21. If the parties fail to reach agreement within ten (10) days after delivery to them of the report of the Dispute Resolution Panel, the report shall be made public. Publication shall be made jointly by the parties in the University of Toronto Bulletin.

22. In the event the report of the Dispute Resolution Panel is unanimous on all matters referred to it by the parties, the recommendations for terms of settlement contained in the report shall be binding on the parties.

23. If the report of the Dispute Resolution Panel is not unanimous on all matters referred to it, the recommendations for terms of settlement of the majority of the Panel, or in the event there is no majority report, in the report of the Chair (hereinafter referred to as a "non-unanimous report"), shall be binding on the parties unless repudiated within fifteen (15) days after the date of publication of the report in the University of Toronto Bulletin by a majority vote of the Governing Council. Repudiation of a non-unanimous report by the Governing Council shall be only on the recommendation of the President.

24. In the event of repudiation by the Governing Council of a non-unanimous report and in the event no agreement is reached by the parties after the issuance by the Dispute Resolution Panel of a non-unanimous report, the matters in dispute shall be determined by the Governing Council on the recommendation of the President of the University. The President's recommendation shall not be less favourable to faculty members and librarians than the administration's position before the Dispute Resolution Panel on all matters in dispute and shall incorporate:

(a) all matters agreed upon by the parties both before and after the issuance by the Dispute Resolution Panel of its non-unanimous report, and

(b) all matters upon which the Dispute Resolution Panel is unanimous.

25. If the settlement for any academic year is determined by decision of the Governing Council following repudiation of a non-unanimous report of the Dispute Resolution Panel, negotiations for the next academic year shall follow the procedure contained herein except that the report of the Dispute Resolution Panel shall be final and binding if unanimous, and if non-unanimous, the report of the majority of the Dispute Resolution Panel, or in the event there is no majority, the report of the Chair shall be final and binding on both parties and there shall be no right to repudiate. The procedure contained in this paragraph 25 is subject to the Arbitration Act. The Chair of the Dispute Resolution Panel under this paragraph 25 shall not be the same as the Chair of the Dispute Resolution Panel established in the previous year.

26. If negotiations in any academic year are resolved without repudiation of the report of the Dispute Resolution Panel by the Governing Council, the negotiating procedures contained herein, including the right to repudiate a non-unanimous report of the Dispute Resolution Panel, shall apply for the next academic year, and thereafter, unless repudiation of a non-unanimous report occurs again, in which case, the procedure outlined in paragraph 25 will apply.

27. The fees and expenses of the Mediator/Fact Finder and of the Chair of the Dispute Resolution Panel and the costs of publication of any reports contemplated by this Article shall be borne equally by the parties.

28. No person shall be appointed as Mediator/Fact Finder or member or Chair of the Dispute Resolution Panel who is an employee or officer of the University or a member of the Governing Council or who has a direct pecuniary interest in the matters coming before him or her, or, within the period of six (6) months immediately before the date of his or her appointment, has acted as a negotiator for either of the parties.

29 For greater clarity "days" as used herein means calendar days.

30. This Article 6, being part of the Memorandum of Agreement, shall continue in full force and effect as part of the Memorandum of Agreement; however, this Article 6 is severable from the Memorandum of Agreement and may be terminated by either party notifying the other in writing by no later than November 1 following the issuance of a final and binding non-unanimous report pursuant to paragraph 25.