

UTFA Council Agenda

Wednesday, June 23, 2021

3:00 – 5:00 p.m.

Zoom

1. Approval of the Agenda
2. Minutes of the Previous Meetings
 - a. May 18, 2021*
 - b. June 10, 2021 - Special Council Meeting re: Association Grievance Protocols Working Group Report *
 - c. June 18, 2021 - Special Council Meeting re Pensions
3. Business Arising
 - a. From the Minutes of Council
 - b. From the Minutes of the Executive Committee
 - i. May 7, 2021*
 - ii. May 20, 2021*
4. Report of the Treasurer (15 min)
 - a. Draft budget*
5. Report of the President (55 min)
 - a. Summer Authority
 - b. Kaplan Equity Data Disclosure Award *
 - c. CAUT Censure (with R. Gillis) *
 - d. Concerns related to the Faculty of Music
 - e. Sexual Violence Policy LOU mediation
 - f. Health and Safety (with J. Nogami & A. Giacca)
 - i. Vaccinations
 - ii. Legionella
 - iii. Ventilation
 - iv. Asbestos
 - v. Return to in-person work
 - g. Workload update
 - h. Joint Committee meeting on Pay Equity Association Grievance (June 17)
 - i. Other Association Grievances
 - j. UTFA Pension Committee
 - k. OCUFA Service Award *

1. Thank you to members leaving Council and Executive.
 6. Timed break – 4:00 pm (5 min)
 7. Report of the Vice-President, Salary, Benefits, Pensions, and Workload (10 min)
 - a. SBPW Bargaining update (with T. Zorić)
 - b. Policy for Librarians (PFL) Negotiation Team * (Executive motion)
 - i. Approval of M. Attridge to PFL Negotiating Team
 8. Report of the Chairs of the Membership and University & External Affairs Committees (5 min)
 - a. Citizenship Award update
 9. Report from the Code of Conduct [Civility] Working Group (J. Nogami) (10 min)
 - a. Name of this working group
 - b. Next steps
 10. Report of the Chair of the Equity Committee (5 min)
 - a. Approval of E. Kim, Faculty of Architecture and N. Nifnaks, Music to the Equity Committee
 11. Report of the Chair of the Nominating Committee (5 min) (J. Nogami)
 - a. Housekeeping: Motion to approve the new members of Executive
 12. Report of the Chair of the Librarians Committee * (Written Report)
 13. Other Business
 14. Adjournment
- * materials attached



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UTFA Council Minutes

Tuesday, May 18, 2021

3:00 – 5:00 p.m.

Zoom

Executive: K. Adamson, M. Attridge, K. Banning, A. Braun, A. Giacca, R. Gillis, J. Macdonald, B. McDonagh, J. Nogami, D. Roberts, S. Rupp, H. Sonne de Torrens, M. Stapleton, T. Zorić

Present: V. Arora, J. Bale, E. Barbeau, C.H. Chen, L. Chen, E. Comelli, C. Desai, G. de Souza, S. Darnell, M. Dubber, A. Fenner, E. Fillion, D. Gastaldo, W. Ghobriel, G. Grasselli, P. Gries, C. Guberman, M.A. Guttman, R. Helms-Park, A. Hojatollah Taleghani, J. Jenkins, A. Keith, W. Kemble, E. Kim, T. Kirsch, R. Kluger, R. Kwong, R. Levine, C. Messenger, F. Murnaghan, N. Niknafs, M. O'Connor, M. Peski, J. Poë, H. Rodd, S. Ruddick, K. Scheaffer, A. Siddiqi, M. Spence, L. Stewart Rose, J Taylor, M. Vieta, S. Wagner, K. Weaver, A. White, Z. Zhang, A. Zilman

Regrets: N. Wiseman

Absent: R. Gomez

Also present: R. D'souza (Special Project Senior Strategic Communications Director and Policy Analyst)
S. Helwig (UTSC - Arts, Culture & Media)
M. Horban (Business Officer)
K. Johnson (Executive Director)
H. Nowak (General Counsel)
C. Penn (Notes and Senior Administrative Assistant)
S. Olexson (Counsel)
E. Phillips (Goldblatt Partners)
D. Puscas (Communications Officer)
J. Thiessen (Executive Assistant)

D. Roberts called the meeting to order at 3:02 p.m.

1. Approval of the Agenda

Motion by M.A. Guttman, seconded by S. Rupp, that the agenda be approved as distributed.
Carried.

2. Minutes of the Previous Meetings

a. April 20, 2021*

As there were no changes to the April 20, 2021 Council minutes, they were approved as distributed.

3. Business Arising

a. From the Minutes of Council

There was no business arising from the minutes of Council.

b. From the Minutes of the Executive Committee

- i. April 9, 2021 *
- ii. April 22, 2021 *
- iii. April 23, 2021 *
- iv. May 13, 2021 *

J. Bale said that he would like to know how two Council members obtained a confidential grievance document from UTFA to H. Boon, Vice-Provost, Faculty and Academic Life, and whether they were named.

T. Zorić said that Executive knows who the Council members are. She wrote to the two Council members asking where and how they accessed the document. One member replied saying that they would not provide that information as they had promised not to identify the person who called their attention to the document. The other member did not reply. She noted that the information in the document was also passed on to a reporter sympathetic to the Administration's position. The confidential document has also been posted on an anonymous site on the internet. She asked for Council's guidance.

The members discussed the issue of confidentiality, and what steps UTFA could take to ensure that this does not happen again.

Motion by J. Bale, seconded by J. Taylor, that the Council members who had access to confidential grievance information name themselves and say how they got that information.

The members discussed the motion.

D. Roberts called for a vote on the motion. The members requested a recorded vote. D. Roberts asked if there were any objections. There were none.

Carried. The result was 60% in favour (34), 14% against (8) and 26% abstained (15).

34 votes in favour: K. Adamson, M. Attridge, J. Bale, K. Banning, C.-H. Chen, S. Darnell, C. Desai, G. De Souza, A. Fenner, D. Gastaldo, W. Ghobriel, R. Gillis, C. Guberman, M.A. Guttman, R. Helms-Park, A. Hojatollah Taleghani, J. Jenkins, W. Kemble, E. Kim, R. Kwong, B. McDonagh, F. Murnaghan, N. Niknafs, J. Nogami, S. Ruddick, K. Scheaffer, A. Siddiqi, H. Sonne de Torrens, M. Spence, M. Stapleton, L. Stewart Rose, J. Taylor, S. Wagner, Z. Zhang

8 votes against: L. Chen, E. Fillion, R. Kluger, R. Levine, J. Macdonald, C. Messenger, H. Rodd, S. Rupp
15 abstained: V. Arora, E. Barbeau, A. Braun, E. Comelli, M. Dubber, A. Giacca, P. Gries, A. Keith, T. Kirsch, M. Pęski, J. Poë, M. Vieta, K. Weaver, A. White, A. Zilman

D. Roberts asked, in view of the fact that the motion passed, that the two Council members who had the confidential information make themselves known and say how they came to be in receipt of the confidential information.

T. Zorić said that there was no attribution of responsibility or culpability on these individuals.

One of the two members identified themselves and stated they would not reveal the source of the information because of having made a promise not to do so.

The second member in question did not identify themselves.

T. Zorić said that this situation is unprecedented. She said she also spoke to H. Boon about how this confidential correspondence could have been shared. UTFA is unable to go any further with an investigation without the two Council members sharing how they came to be in possession of the confidential information.

4. Report of the Chair of the Nominating Committee (5 min) (J. Nogami)

a. Nomination of the Chief Returning Officer * (Executive motion)

J. Nogami introduced the Executive motion nominating a Chief Returning Officer, who would work with the staff to verify the votes.

Motion: The Executive Committee recommends to Council that M. O'Connor be the Chief Returning Officer for the Executive elections at Council. **Carried.**

b. Report of the Nominating Committee *

J. Nogami presented the report of the Nominating Committee. On May 1, 2021, the Nominating Committee recommended the following candidates to Council.

Chair, Teaching Stream Committee – Sherri Helwig – Term ends 2023

Chair, Appointments Committee – Leslie Stewart Rose – Term ends 2023

Member-at-Large – Whitney Kemble – Term ends 2023

Member-at-Large – Nasim Niknafs – Term ends 2023

J. Nogami said that statements for the above noted candidates were circulated to Council on May 5. As of May 10, the committee had received two additional nominations from Council:

Chair, Appointments Committee – Giovanni Grasselli – Term ends 2023

Member-at-Large – Anton Zilman – Term ends 2023

J. Nogami said that at today's meeting there will be elections for the Chair, Appointments Committee (two candidates) and for the Member at Large seats (three candidates for two seats). He noted that the candidate statements for all the above candidates were circulated on May 11.

J. Nogami thanked the members of this year's Nominating Committee: Rena Helms-Park, Alison Keith, Azita Hojatollah Taleghani, and Kent Weaver, for their invaluable contributions.

5. Executive Committee elections (45 min)

D. Roberts outlined the procedure for the election and voting. Candidates would have three minutes to speak and then up to five minutes for questions from the floor. The vote would then take place by Zoom poll. D. Roberts said that we have a Chief Returning Officer to oversee these elections with the assistance of staff.

D. Roberts asked G. Grasselli and L. Stewart Rose to give their presentations for the position of Chair, Appointments Committee.

G. Grasselli and L. Stewart Rose gave their presentations. Each presentation was followed by questions from the floor.

M. Peski raised a point of order that according to Robert's Rules of Order any vote has to end in a report and asked that the report include the tally.

D. Roberts said that past practice was not to share that information, but if there are no objections that information will be shared. No objections were raised.

Election for Chair, Appointments Committee.

M. O'Connor announced the results of the election.

Chair, Appointments Committee:

Giovanni Grasselli 17 votes

Leslie Stewart Rose 41 votes

There were 58 eligible votes, and no ballots were spoiled.

D. Roberts asked W. Kemble, N. Niknafs and A. Zilman to give their presentations for the Member-at-Large position.

W. Kemble, N. Niknafs and A. Zilman gave their presentations. Each presentation was followed by questions from the floor.

D. Roberts set out that there are three names on the poll and members may vote for up to two candidates. Voting for all three names will spoil the ballot.

Election for two Member-at-Large positions.

M. O'Connor announced the results of the election.

Member-at-Large:

Whitney Kemble 42 votes

Nasim Niknafs 40 votes

Anton Zilman 17 votes

There were 57 eligible votes, and no ballots were spoiled.

M. O'Connor thanked M. Horban and D. Puscas for their assistance with the election process.

G. Grasselli congratulated the newly elected Executive members with a wish for them to be collaborative and equitable and do a great job for UTFa.

A. Zilman said that it was a pleasure and an honour to participate in the election and he hoped to work productively with the newly elected Executive members.

6. Report of the Association Grievance Protocol Working Group (25 min) (T. Zorić and B. McDonagh)

a. Report *

J. Nogami said that he is proposing having a separate Council meeting to discuss the report of the Association Grievance Protocol Working Group and the minority report.

There was no objection.

- b. Motions on recommendations * (Executive motions)

This item was deferred.

7. Timed Break: 4:00 p.m. (5 min)

8. Report of the Pension Committee (5 min)

- a. UTFA statement on the Statement of Investment Policies and Procedures *(SIPP)

This item was deferred.

- b. Special Meetings regarding Pensions

T. Zorić said that she is aware that Council needs time to hear and discuss the Report of the Pension Committee. A special Council meeting on Pensions will be arranged.

9. Report of the Vice-President, Salary, Benefits, Pensions, and Workload (15 min)

- a. Supplementary Account Plan (SAP) * (with T. Zorić) (Executive motion)

This item was deferred.

- b. SBPW Bargaining update (with T. Zorić)

T. Zorić said that a membership bargaining town hall meeting will be arranged in the coming months.

10. Report of the President (20 min)

- a. Sexual Violence LOU Negotiating Team* (Executive Motion)

Motion: The Executive Committee recommends to Council that Brian McDonagh and Kyla Everall be approved as members of the Sexual Violence Policy LOU negotiating team. **Carried.**

- b. Privacy Policy Negotiating Team * (Executive Motion)

This item was deferred.

- c. Confidentiality Breach * (Executive Motion)

This item was deferred.

- d. Health and Safety/Central Health and Safety Committee

- i. Legionella

- ii. Asbestos (with A. Giacca)

These items were deferred.

- e. CAUT Censure (with R. Gillis)

T. Zorić said that we are aware that CAUT censure is on members' minds and she is preparing an email to send to Council. We intend to have a follow-up education session on this issue.

- f. Ontario College of Art & Design University (OCAD U) termination of 6 librarians (with Harriet Sonne de Torrens)

H. Sonne de Torrens said that on May 5 the four senior librarians at OCAD U received notice that their positions were going to be terminated on June 1. The librarians belong to OPSEU. There was no collegial process involving faculty, librarians, or students around the decision. A collegial process does not involve just an executive committee and the governing board. She is working with colleagues in a large network, with the guidance of R. Gillis, K. Scheaffer, M. Attridge, and T. Zorić, to support these librarians. Letters of support are coming in from all institutions. This could be the beginning of a kind of dangerous creep that often spreads to other areas.

- g. Workload Policy (WLPP) and Unit Workload Policy (UWP) committee work

T. Zorić asked members to let her know if they are being pressured to do hybrid teaching in the fall. We are hearing that departments are giving members multiple options and she wants to know if people are being given a real choice or if they are being pressured.

- h. Association Grievances updates

This item was deferred.

- i. Joint Committee *

This item was deferred.

11. Report of the Vice-President, University and External Affairs (5 min)

- a. Update on the Laurentian University Solidarity Working Group

This item was deferred.

12. **Timed Item: 4:55 pm** Approval of members to UTFA Committees (5 min)

- a. Teaching Stream Committee
 - i. Ellen Katz, Faculty of Social Work
 - ii. Paul Gries, Department of Computer Science
- b. Equity Committee
 - i. Joseph Berkovitz, Institute for the History and Philosophy of Science and Technology
 - ii. Kyla Everall, Librarian
 - iii. Eve Tuck, OISE
 - iv. Yigal Nizri, Department for the Study of Religion
 - v. Judith Taylor, Department of Sociology
 - vi. Alejandro Paz, UTSC – Anthropology
 - vii. Jessica Hanley, UTM Library
- c. Librarians Committee
 - i. Manda Vrkljan, Industrial Relations and Human Resources Library

Motion by R. Kluger, seconded by R. Kwong, that the committee members be approved as listed.
Carried.

A. Zilman asked why there are so many new members on the Equity Committee.

K. Banning said that the members contacted her asking to join this committee. This reflects that the larger membership has an investment in contributing to changing equity issues.

13. Other Business

- a. Winter and Summer Term Council Meetings – 3:00–5:00 p.m.
 - i. Wednesday June 23, 2021

14. Adjournment

Motion by J. Poë, seconded by R. Kwong, that the meeting adjourn. **Carried.**

The meeting adjourned at 5:45 p.m.

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UTFA Special Council Minutes

Thursday, June 10, 2021

4:00 – 6:00 p.m.

Zoom

Executive: K. Adamson, M. Attridge, K. Banning, A. Braun, A. Giacca, R. Gillis, J. Macdonald, B. McDonagh, J. Nogami, D. Roberts, S. Rupp, H. Sonne de Torrens, T. Zorić

Present: V. Arora, J. Bale, E. Barbeau, L. Chen, E. Comelli, S. Darnell, G. de Souza, M. Dubber, A. Fenner, E. Fillion, D. Gastaldo, W. Ghobriel, G. Grasselli, P. Gries, C. Guberman, M.A. Guttman, R. Helms-Park, A. Hojatollah Taleghani, J. Jenkins, A. Keith, E. Kim, T. Kirsch, R. Kluger, R. Kwong, R. Levine, C. Messenger, N. Niknafs, M. O'Connor, M. Peski, J. Poë, H. Rodd, S. Ruddick, K. Scheaffer, A. Siddiqi, M. Spence, L. Stewart Rose, J. Taylor, S. Wagner, K. Weaver, Z. Zhang, A. Zilman

Regrets: R. Gomez, M. Stapleton, M. Vieta, N. Wiseman

Absent: C.H. Chen, C. Desai, W. Kemble, F. Murnaghan, A. White

Also present: R. D'souza (Special Project Senior Strategic Communications Director and Policy Analyst)
M. Horban (Notes and Business Officer)
K. Johnson (Executive Director)
H. Nowak (General Counsel)
E. Phillips (Goldblatt Partners LLP)
R. Schmelzer (Notes and Bookkeeper)
J. Thiessen (Executive Assistant)

1. Approval of the Agenda

D. Roberts called the meeting to order at 4:03. He spoke about the use of chat. He noted that as this was a special meeting. He also noted that the materials in the meeting package had been circulated previously.

Motion by S. Rupp, seconded by B. McDonagh, that the agenda be approved.

Motion to amend by J. Poë, seconded by R. Kruger, that agenda item 3.a.ii be removed.

The members discussed the motion to remove item 3.a.ii, Response of the Working Group Co-Chairs to the Minority Report.

T. Zorić called the question.

There were no objections and D. Roberts put the question.

Failed.

Motion to amend by G. Grasselli that the order of agenda items 2 and 3 be reversed.

The members discussed the motion to reverse the order of items 2, Workshop on UTFA's obligations related to privacy and confidentiality, and 3, Report of Association Grievance Protocol Working Group.

J. Bale called the question.

There were no objections and D. Roberts put the question.

Failed.

B. McDonagh called the question on approval of the agenda.

There were no objections and D. Roberts put the question.

Carried.

2. **Timed item: Workshop on UTFA's obligations related to privacy and confidentiality led by Emma Phillips of Goldblatt Partners LLP (40 min)**

E. Phillips gave a PowerPoint presentation.

a. Questions and answers

The members posed a number of questions and E. Phillips responded to them.

D. Roberts thanked E. Phillips for her presentation.

3. **Report of Association Grievance Protocol Working Group (AGPWG):**

a. Presentation of the Working Group Report (20 min)

T. Zorić introduced the speakers who would be joining her in giving a PowerPoint presentation on the Report of the Association Grievance Protocol Working Group (see Appendix A for the full text of the report): B. McDonagh, M.A. Guttman, and J. Nogami (drawing on notes compiled with H. Sonne de Torrens).

The speakers spoke in turn, commenting on the slides in the presentation.

D. Roberts indicated that questions of clarification could be posed after the presentation of the minority report.

i. Minority Report (5 min)

J. Poë gave the minority report (see Appendix B for the full text of the report).

ii. Response of the Working Group Co-Chairs to the Minority Report (5min)

T. Zorić, speaking for herself and B. McDonagh, thanked J. Poë for clarifying the minority position. She then responded to the points in the report.

iii. Questions of clarification (10 min)

The members discussed the role of Council, the Executive Committee, and the President with regard to specific past Association grievances.

Motion by A. Zilman, seconded by E. Barbeau, that the meeting adjourn. **Failed.**

b. **Timed item:** Motions regarding Association Grievance Protocolsi. Executive motions

D. Roberts opened the floor on the Executive motions related to the AGPWG recommendations.

AGPWG Recommendation #1 and 2

- 1. Both Executive and Council will be informed before an Association grievance is filed.*
- 2. If timing does not allow for this process to occur during regularly scheduled Executive and Council meetings, notice of the Association grievance will be communicated by email, and if necessary, special meetings of the Executive or Council will be held.*

Executive Motion:

The Executive Committee recommends to Council to approve recommendations #1 and 2 as distributed.

AGPWG Recommendation #3

Executive Motion:

The Executive Committee recommends to Council to approve the amended recommendation #3: Council will be offered the opportunity to provide feedback on the major contours of the Association grievance. Council may refer the Association Grievance back to the Executive for further discussion.

AGPWG Recommendation #4

- 4. The ultimate decision of whether or not an Association grievance is filed lies with the UTFA President and Vice-President, Grievances.*

Executive Motion: The Executive Committee recommends to Council to approve recommendation #4 as distributed.

The members began the debate.

Motion by J. Taylor, seconded by J. Bale, that the Executive motions be voted on together. **Carried.**

Motion by A. Braun, seconded by J. Poë, that the meeting adjourn. **Failed.**

The members continued their discussion of the motions.

Motion to amend by M. Peski seconded by A. Braun, as follows:

- strike the current Recommendation #3 and replace it with Recommendation #3 of the original working group report as distributed:
Council will have the option to endorse the Association grievance in principle, or not. It may also refer the Association grievance back to the Executive for further consideration.
and
- strike the current Recommendation #4 and replace it with:
Council to approve Recommendation #4 from the working group report [The ultimate decision of whether or not an Association grievance is filed lies with the UTFa President and Vice-President, Grievances.] with the addition "To clarify, an Association grievance can be submitted only if it is endorsed by Council in a vote."

The members discussed the amendments.

M. Attridge called the question on the amendments.

There were no objections and D. Roberts put the question.

Failed.

T. Zorić moved to call the question on the Executive motions.

D. Roberts put the question of whether to proceed to the question on the Executive motions.

Carried.

D. Roberts put the question on the Executive motions.

Carried.

4. **Adjournment**

Motion by T. Zorić, seconded by R. Gillis, that the meeting adjourn. **Carried.**

The meeting adjourned at 6:40 p.m.

Marta Horban
Business Officer

REPORT OF THE ASSOCIATION GRIEVANCE PROTOCOL WORKING GROUP

May 11, 2021

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EXECUTIVE SUMMARY

The Association Grievance Protocol Working Group (AGPWG) was formed following a Council motion. Its mandate was “to investigate and study past practices and bylaws concerning Association or policy grievances in UTFA, as well as approaches taken by similar organizations.” This Report summarizes the materials reviewed by the AGPWG and presents an overview of the working group’s key deliberations.

Beginning in mid-February 2021, the working group met on numerous occasions and reviewed the following materials: UTFA’s Constitution and Bylaws, a legal opinion on UTFA’s duty of fair representation, UTFA’s *Policy on the Provision of Advice and Representation* (the “Legal Representation Policy”) (approved by Council in 2010), UTFA’s *Privacy Policy* (approved by Council in 2008), UTFA Council motions on Association grievances since the approval of the Legal Representation Policy, a recent Grievance Review Panel decision related to UTFA’s interest in filing Association grievances, research conducted by CAUT and OCUFA on Canadian and Ontario Faculty Associations’ approaches to policy/Association grievances, and the Law Society of Ontario’s *Rules of Professional Conduct*.

A review of the CAUT and OCUFA research revealed that there is no uniform approach to governance and decision-making on Association grievances. The one consistency, however, is that none of the FAs with a council (or large body of representatives/stewards) place the decision-making authority to file Association grievances with their council.

The AGPWG determined that UTFA’s approach to Association grievances must be consistent with the following principles:

1. **Duty of Fair Representation:** UTFA’s approach must be consistent with our Legal Representation Policy (2010), which commits to representation that is in good faith, non-discriminatory, and non-arbitrary.
2. **Informed decision-makers:** Decision-makers must be fully informed of all relevant facts, jurisprudence, and documents.
3. **Confidentiality:** In keeping with our Privacy Policy (2008), UTFA must comply with the Law Society of Ontario’s requirement to maintain strict confidentiality and solicitor-client privilege.
4. **Timeliness:** Our approach must allow us to respond in a prompt, timely, and efficient way.
5. **Transparency/Clarity in Process:** Our process must be transparent and clear as relates to the rights, roles, and responsibilities of the member that may come forward; the Executive; the VP Grievances and President; and Council—even when people disagree on the substance. Individuals must be able to disagree on substance while also understanding the decision-making process.
6. **Accountability:** In keeping with the articulated roles and responsibilities found in the UTFA Constitution, Bylaws, and Legal Representation Policy, each of the individuals and groups with responsibilities for Association grievances must fulfill their obligations.

7. **Right to Representation:** The UTFA membership has a right to representation, in accordance with the Memorandum of Agreement (MoA). Consistent with the principles above, the interests of UTFA “as such” must be considered.

Recommendations

Following its review of the aforementioned materials, developing principles to guide its recommendations, and thorough debate among working group members, the AGPWG developed the following recommendations:

1. Both Executive and Council will be informed before an Association grievance is filed.
2. If timing does not allow for this process to occur during regularly scheduled Executive and Council meetings, notice of the Association grievance will be communicated by email, and if necessary, special meetings of the Executive or Council will be held.
3. Council will have the option to endorse the Association grievance in principle, or not. It may also refer the Association grievance back to the Executive for further consideration.
4. The ultimate decision of whether or not an Association grievance is filed lies with the UTFA President and Vice-President, Grievances.

1. Council Motions

The Association Grievance Protocol Working Group (AGPWG) was struck following a contentious discussion about process with respect to the filing of an Association grievance. It became evident that legal, ethical, and governance boundaries related to UTFa Association grievances needed to be reviewed and clarified.

January 19, 2021:

Motion: “The Executive Committee recommends to Council that T. Zoric and B. McDonagh co-chair and J. Nogami, M. A. Guttman, and Judith Poë be members of a grievance protocol working group to investigate and study past practices and bylaws concerning Association or policy grievances in UTFa, as well as approaches taken by similar organizations, and to submit a report with recommendations to Executive and then Council at or before the March Council meeting.”

February 18, 2021:

Motion: “That the timeline for the Grievance Protocols Working Group to report to Council be moved to the April 20 Council meeting.”

Motion: “The Executive Committee recommends to Council that H. Sonne de Torrens be added as a member to the Grievance Protocols Working Group.”

Motion: “To add A. Zilman to the Grievance Protocol Working Group.”

2. Meeting Dates of the Working Group

The Association Grievance Protocol Working Group met on the following dates:

- February 17, 2021
- March 9, 2021 (supplementary meeting with new committee member)
- March 15, 2021
- April 6, 2021
- April 9, 2021 (review of legal opinion)
- April 13, 2021
- May 11, 2021

3. Documents Reviewed: UTFA Constitution and Bylaws

- A. UTFA Constitution
- B. UTFA Bylaws

4. Document Reviewed: Legal Opinion on UTFA's Duty of Fair Representation to its Members

In 2001, UTFA sought a legal opinion on whether it owes a duty of fair representation to its members. Because UTFA is not a certified bargaining agent under the Ontario *Labour Relations Act*, it was unclear whether the duty of fair representation applied to UTFA.

Conclusions reached following the working group's reading of the 2001 Legal Opinion:

1. To avoid potential legal liability, UTFA ought to conduct itself as though it owed a duty of fair representation. (It seems this recommendation was taken up by UTFA Council in 2010 with the adoption of paragraph 6 of its Legal Representation Policy.)
2. While there is no obligation to take on all grievances, UTFA's discretion is not unfettered. UTFA is under an obligation to exercise its discretion in good faith, non-arbitrarily, and without discrimination.
3. Where a *critical interest* is at stake, including with matters involving academic freedom, discretion is substantially constrained. A good reason for not proceeding with a grievance involving academic freedom would have to be established and there would be a heightened burden to justify a decision not to proceed with such a grievance.
4. UTFA may also face obligations under the law of negligence or fiduciary law. For example, liability may arise where UTFA leads one or more members to believe that it will pursue grievances on their behalf but fails to do so without informing the member(s) and without preserving their rights to pursue alternative legal proceedings.

5. Documents Reviewed: UTFA Policies

- A. UTFA's *Policy on the Provision of Advice and Representation* (Approved by Council on April 15, 2010)

Duty of Fair Representation

In April of 2010, UTFA formally adopted the duty of fair representation into its *Policy on the Provision of Legal Advice and Representation* (Legal Representation Policy). The duty comprises three independent requirements:

- To not act in a manner that is arbitrary;
- To not act in a manner that is discriminatory; and
- To not act in bad faith.

(emphasis added)

These legal requirements mirror those set out in the Ontario Labour Relations Act, where a large body of jurisprudence has developed over time.

Our Legal Representation Policy states:

“6. In determining whether to provide or continue to provide advice or representation, UTFA, although not subject to the Ontario *Labour Relations Act*, shall not act in a manner that is arbitrary, discriminatory, or in bad faith and shall have regard to:

- a. the merits of the case and likelihood of success
- b. the interests of the members of UTFA as a whole
- c. whether UTFA has a conflict of interest in pursuing the dispute
- d. the employment-related interests of the member at stake in the dispute
- e. the financial cost to UTFA and its members
- f. whether the member has retained his or her own counsel
- g. whether the member has breached his or her obligations under this *Policy*
- h. any other relevant factors.

[...]

10. If UTFA decides not to provide advice or representation, or to discontinue advice or representation, the member may appeal the decision within fifteen working days to the President of UTFA. There shall be no further right of appeal.”

Privacy and Confidentiality

UTFA’s Legal Representation Policy also contains provisions regarding confidentiality and privacy. This language supplements the language adopted by Council in 2008 in the UTFA *Privacy Policy* (discussed further below):

14. UTFA collects its members’ personal information in order to comply with the requirements of the Law Society of Upper Canada and in order to provide its members with appropriate representation. Personal information shall be collected and handled in accordance with UTFA’s *Privacy Policy*.

15. All interactions with UTFA are confidential. Discussion among UTFA legal staff, external counsel, volunteer grievance officers, the Vice-President, Grievances, and the President, with regard to a particular member’s dispute, may occur in compliance with the terms of this *Policy* and UTFA’s *Privacy Policy*. Cases may also be discussed by the Grievance Committee, the Executive Committee, or Council in a manner which protects the confidentiality and, where possible, anonymity of the member.

B. UTFA's *Privacy Policy* (Approved by Council on February 13, 2008)

Standard of Privacy/Confidentiality

The UTFA *Privacy Policy* was approved in February 2008, following enactment of the *Personal Information Protection and Electronic Documents Act*. In this document, the standard of confidentiality that was adopted was that of the Law Society of Upper Canada (now the Law Society of Ontario):

“7. UTFA has adopted this policy as a minimum guarantee of confidentiality. Where information is collected, used or destroyed by members of UTFA’s legal staff in the course of providing legal services, such information will also be handled in accordance with the Law Society of Upper Canada’s Rules of Professional Conduct, including the observation of strict confidentiality and solicitor-client privilege.”

6. Information Reviewed: UTFA Council’s Motions with Regard to Association Grievances since 2010

A. UTFA Association Grievances – Inconsistent Governance

UTFA Council has had an inconsistent practice when it comes to passing motions in relation to Association grievances. Since 2010, there have been sixteen motions passed on Association grievances. Of these:

- 9 Association Grievances were “endorsed,” “supported,” or “supported in principle.”
- 4 Association Grievances were filed without Council approval.
- 3 Association Grievances were “approved” or “authorized.”

The following legend is used in the list below:

BLUE= endorsed/supported

PINK=filed without approval/support/endorsement

GREEN=approved/authorized

RED=not filed after Council motion

- Faculty of Forestry = Council **endorsed** but **NOT filed** by P/VP
- Faculty of Arts and Science Academic Plan = **filed without Council approval/support/endorsement** and resolved
- Equity of Tri-Campus Salaries = Council **approved** in principle but **NOT filed** by P/VP
- UTSC Chief Librarian Renewal = Council **approved**; filed and resolved
- 2012 Academic Continuity = Council **authorized** but **NOT filed** by P/VP
- Teaching Stream amounts = Council **supported** and resolved without filing?
- Asbestos = Council **supported in principle** but **NOT filed** by P/VP
- 2015 Academic Continuity = Council **expressed its serious concern/supported AG/called upon the UofT administration to commit to upholding academic freedom at all times/further called on the University administration to keep its prior commitment and to engage in good faith dialogue with UTFA...** but **NOT filed** by P/VP
- 2018 Academic Continuity = draft grievance **endorsed** by Council but **NOT filed** by P/VP
- 2019 Divisional Guidelines = Council **endorsed** but **NOT filed by P/VP for ~18 months** now in progress
- Librarian Pay Equity = **filed without Council approval/support/endorsement** in progress
- Teaching Stream Pay Equity = **filed without Council approval/support/endorsement** in progress
- SET/SCT = Council **supported** and now filed
- Salary Discrimination = **filed without approval/support/endorsement for full range of grounds of discrimination** in progress
- UTM shuttle bus = Council **supported in principle** and **ON HOLD**
- COVID Health & Safety and Covid Workload = Council **supported**: in progress

B. UTFA's Past Practice

i. Past Council Association Grievance Motions

The following motions demonstrate that varying language has been used by Council on motions related to Association grievances since the passing of the 2010 Legal Representation Policy. In none of the following cases was the language of the grievance itself presented to Council at the time of the vote.

- **2010** "UTFA Council **endorses** the launching of an Association Grievance regarding the termination of the Faculty of Forestry ..."
- **2010** "With the understanding that Council will be asked at a future meeting to **approve the final copy** of the Grievance before it is submitted: ...**Council approve in principle** the Association Grievance on the Equity of Tri-Campus Salaries."
- **2012** "That **Council authorize the Executive Committee to launch** an association grievance regarding the Administration's proposed new Policy on Academic Continuity"
- **2011** "Council **approve** an Association Grievance regarding the UTSC Chief Librarian Renewal."
- **2015** "UTFA Council **expresses its serious concern** regarding the attenuation of academic freedom UTFA Council **supports an Association Grievance** aimed at remedying these deficiencies. UTFA Council **calls upon the UofT administration to commit to upholding academic freedom at all times** UTFA Council **further calls on** the University administration to keep its prior commitment and to engage in good

faith dialogue with UTFA in a timely fashion in order to rectify the dangerous shortcomings of the current Academic Continuity Policy.”

- **2015** “Council **support** the Association Grievance regarding the Administration’s error in implementing the new Teaching Stream amounts.”
- **2017** “UTFA Council support **in principle** an Association Grievance that would seek to establish a task force to review the University administration’s handling of asbestos”
- **2018** “Council **endorse** the *draft* grievance on the Academic Continuity Policy.”
- **2019** “Council endorse **in principle** an Association Grievance on the UniForum benchmarking exercise...”
- **2019** “Council **endorse** the Divisional Guidelines Association Grievance.”
- **2020** “UTFA Council **give support for** the SET/SCT Association grievance.”
- **2020** “Council **give support in principle** for the UTM shuttle bus Association Grievance.”
- **2020** “Council **support** the Association Grievance on Safeguarding Policy and Academic Integrity during the COVID crisis.”

ii. Email from a former UTFA President to Council

Former President Scott Prudham’s email to Council of October 15, 2015, stated, “Association Grievances are not formally subject to Council approval.”

7. Information Reviewed: Research on Approaches Taken at Similar Institutions

To fulfill the Council motion, the working group compiled two separate data sets: one federal and one provincial.

A. CAUT Research Related to Grievance Governance at U15 Faculty Associations

At the request of the AGPWG, CAUT conducted research on the governance processes related to Association grievances at the U15 Faculty Associations. U15 refers to the group of Canadian research-intensive universities that came together in 1991 to speak to the federal and provincial governments.

The data collected on the practices of U15 faculty associations showed that there is no uniform approach to governance as it relates to Association grievances at Canada’s top-tier research-intensive institutions. There are, however, common principles that inform the policies and practices adopted by these faculty associations in the handling of Association or policy grievances.

The following is a summary of some observations made by working group members:

Site of Decision-Making Authority

- Many FAs have a grievance officer authorized to file grievances when members come forward with a set of facts that support individual, group, or Association grievances.
- The grievance officer may be an appointed member of executive, elected member of executive, or ex officio to the executive.
- In some instances, a small (elected) committee or group of individuals determines whether an Association grievance will be filed.
- In many cases, the executive makes the determination about whether an Association grievance will be referred to arbitration, but earlier decisions about filing grievances remain with the grievance officer or committee.

Faculty Associations with a Council Structure

For faculty associations with a council structure, there are various models of governance for Association grievances. The one consistency, however, is that none of the FAs with a council (or large body of representatives/stewards) place the decision-making authority to file Association grievances with the council.

For example:

- University of Alberta: There is a Council of up to 70 members. Grievance decision-making powers rest with the Executive.
- University of Waterloo (non-certified): Has a Council of 49 representatives currently. The Executive authorizes the filing of Association grievances.
- University of Western Ontario: Has a Council of 48 members. The Grievance Committee determines whether to file a grievance and makes a recommendation to the Executive about proceeding to Arbitration. However, the grievance can be forwarded to Arbitration before a decision is rendered by the Executive in order to preserve the grievance timeline.
- York University: The Chief Steward and President bring recommendations to the Executive. Stewards or the Stewards' Council may also bring grievances to the Executive. Decisions to proceed to arbitration remain with the Executive.
- McMaster University (non-certified): Has a Council (number unknown) that has no formal role in filing grievances.
- Queen's University: Council of 48 members. Decisions on filing grievances remain with the Grievance Committee and decisions to move the grievance to arbitration are determined by the Executive.
- McGill University: MAUT does not file policy or Association grievances.
- Laval University: Council with 62 members. The language is a bit unclear, but it appears that the Grievance Committee and Executive make decisions on filing grievances.

B. OCUFA Research Related to Grievance Governance of Ontario's Faculty Associations

OCUFA provided summary information on governance processes at twelve certified faculty associations in Ontario. Similar variation across the sector exists among the universities studied.

Not all of the governing documents of these organizations spell out the decision-making process for policy or Association grievances. The following are examples where governance is clearly spelled out in either the faculty association's governing documents or the collective agreement:

- Ryerson University:
 - o (per the Collective Agreement) policy grievances initiated/conveyed by Grievance Officers.
 - o (per the bylaws) "In considering whether, and to what extent, the Association shall support a grievance, the Grievance Committee shall fairly consider and weigh the interests of all Members. Where a decision must be made as to whether to pursue a grievance to formal arbitration, the Grievance Committee shall forward its recommendation to the Executive..."
- Lakehead University:
 - o (per Grievance Committee Policy and Practice) "In grievances with ramifications for association policy or of general concern to the faculty, interpretations of policy must be referred to the LUFA members of the Joint Committee for prior approval." Note – there are four LUFA members on the Joint Committee.
- Guelph University:
 - o (per the Collective Agreement) Policy grievances must be signed by UGFA President.

The AGPWG would be remiss not to point out one important factor that must be kept in mind when one considers the approaches taken at unionized faculty associations. An important distinction between a unionized FA and UTFA is the background knowledge that a grievance decision-maker at UTFA requires in order to be effective. For example, a certified faculty association grievance officer would only need to consider one document when determining the merits of a grievance in a manner that fulfills the association's duty of fair representation. At UTFA, conversely, the grievance decision-maker must have significant experience with and knowledge of UTFA's negotiations and a wide array of University policies, practices, and procedures. Without this knowledge, which undoubtedly is complex and requires time to learn in a substantive way, there is a real risk of making decisions contrary to the Association's duty of fair representation.

The AGPWG weighed this factor significantly in its recommendations below. **The majority of members of the AGPWG agreed that in order to be an informed decision-maker on all grievances, including Association grievances, and to fulfill UTFA's duty of fair representation to its members, the decision-maker must have significant knowledge of these policies, practices, and procedures and have access to the confidential information about the particular members affected.**

8. Law Society of Ontario *Rules of Professional Conduct* for Lawyers

The AGPWG considered some of the rules that govern the professional conduct of lawyers. These rules affect how UTFA lawyers maintain member confidentiality in the context of representing UTFA members. While UTFA lawyers, who work in-house, have a direct lawyer-client relationship with UTFA, and a corresponding professional obligation to maintain confidentiality to UTFA, they also provide legal advice to UTFA members. As is explained above, in the section on the UTFA policies, UTFA lawyers and UTFA itself also owe a duty of confidentiality toward UTFA's members in the grievance process "in a manner which protects the confidentiality and, where possible, anonymity of the member." (*Legal Representation Policy*, paragraph 15).

The following are relevant sections of Law Society of Ontario rules on professional conduct for lawyers in maintaining confidentiality.

Confidentiality:

3.3-1 A lawyer at all times shall hold in strict confidence all information concerning the business and affairs of the client acquired in the course of the professional relationship and shall not divulge any such information unless:

- (a) expressly or impliedly authorized by the client;
- (b) required by law or by order of a tribunal of competent jurisdiction to do so;
- (c) required to provide the information to the Law Society; or
- (d) otherwise permitted by rules 3.3-2 to 3.3-6.

Commentary

[1] A lawyer cannot render effective professional service to the client unless there is full and unreserved communication between them. At the same time, the client must feel completely secure and entitled to proceed on the basis that, without any express request or stipulation on the client's part, matters disclosed to or discussed with the lawyer will be held in strict confidence.

[...]

[5] Generally, unless the nature of the matter requires such disclosure, a lawyer should not disclose having been:

- (a) retained by a person about a particular matter; or
- (b) consulted by a person about a particular matter, whether or not the lawyer-client relationship has been established between them.

Quality of Service

When Client is an Organization

3.2-3 Notwithstanding that the instructions may be received from an officer, employee, agent or representative, when a lawyer is employed or retained by an organization, including a corporation, in exercising the lawyer's duties and in providing professional services, the lawyer shall act for the organization.

Commentary

[1] A lawyer acting for an organization should keep in mind that the organization, as such, is the client and that a corporate client has a legal personality distinct from its shareholders, officers, directors, and employees. While the organization or corporation will act and give instructions through its officers, directors, employees, members, agents, or representatives, the lawyer should ensure that it is the interests of the organization that are to be served and protected. Further, given that an organization depends upon persons to give instructions, the lawyer should ensure that the person giving instructions for the organization is acting within that person's actual or ostensible authority.

[2] In addition to acting for the organization, the lawyer may also accept a joint retainer and act for a person associated with the organization. An example might be a lawyer advising about liability insurance for an officer of an organization. **In such cases the lawyer acting for an organization should be alert to the prospects of conflicts of interest and should comply with the rules about the avoidance of conflicts of interest (Section 3.4, Conflicts).**

9. Principles

Seven key principles emerged from the AGPWG's discussions. These have guided the recommendations put forth below. The following text was approved by a majority of the members of the AGPWG on April 6, 2021.

Our approach to Association grievances must be consistent with the following principles:

- A. Duty of Fair Representation:** UTFA's Legal Representation Policy was adopted by Council in 2010.
- B. Informed decision-makers:** Decision-maker(s) must be fully informed of all relevant facts, jurisprudence, and documents.
- C. Confidentiality:** In keeping with UTFA's Privacy Policy (2008), maintain consistency with the Law Society of Ontario's maintenance of strict confidentiality and solicitor-client privilege.
- D. Timeliness:** Our approach must allow us to respond in a prompt, timely, and efficient way.
- E. Transparency/Clarity in Process:** Our process must be transparent and clear – even when people disagree on the substance. People must be able to disagree on substance while also understanding the decision-making process.

- F. Accountability:** In keeping with the articulated roles and responsibilities found in the UTFA Constitution, Bylaws, and Legal Representation Policy, each of the individuals and groups with responsibilities for Association grievances must fulfill their obligations.
- G. Right to Representation:** The UTFA membership has a right to representation, in accordance with the Memorandum of Agreement (MoA). Consistent with the principles above, the interests of UTFA “as such” must be considered.

The following further develops the principles above:

A. Duty of Fair Representation/Legal Representation Policy

In 2010, UTFA Council adopted its new *Policy on the Provision of Advice and Representation*. In doing so, it chose to adopt an obligation to act in good faith, without discrimination, and without arbitrariness when making decisions regarding grievances. These terms have been well developed in labour jurisprudence, including at the Supreme Court of Canada. Any process adopted by UTFA on grievance-related governance must fulfil this obligation.

B. Fully Informed Decision-Makers

Grievance decision-making requires that decisions whether to pursue a grievance be made with the requisite expertise. Therefore, any grievance-related governance processes must ensure that the decision-maker(s):

- Be informed of all facts relevant to the matter (maintaining confidentiality, as per the discussion below);
- Understand relevant U of T policies, practices, and procedures, as well as ongoing negotiations between the Administration and UTFA, and how each affects and relates to grievances;
- Be knowledgeable about GRP decisions as well as the larger body of labour jurisprudence; and
- Make decisions on grievances that maintain consistency with UTFA priorities and practices.

C. Confidentiality

Members who seek assistance from UTFA are promised that the information they provide is kept confidential and, where possible, their identity will remain anonymous. This is consistent with the intent of UTFA’s Privacy Policy, UTFA’s Legal Representation Policy, and the lawyers’ professional obligations under the *Rules of Professional Conduct*.

Any process adopted by UTFA for the purposes of processing grievances must seek to maintain confidentiality to the greatest extent possible. This includes keeping the number of people who are entitled to disclosure of material facts, particularly those facts that might threaten confidentiality or limit a member’s willingness to reveal confidential information, as small as

possible. In addition, the process must consider the potential for conflicts of interest; conflicts of interest become more likely when more individuals are tasked with decision-making.

D. Timeliness

The grievance timeline set out in the Memorandum of Agreement (MoA) is important to consider when developing procedures for Association grievance decision-making. For prompt responses to time-sensitive matters, the AGPWG recommends an efficient decision-making process.

Timeline for Association grievances (MoA):

“An Association grievance is any complaint by the Association that any of the undertakings or provisions in this Agreement that directly relate to the Association as such has been breached. If the Association considers that any of the undertakings or provisions in this Agreement that relate to the Association has been breached, the Association may give written notification to the Vice-President and Provost. The matter shall then be placed in written form on the agenda of a Joint Committee meeting which shall be held within twelve (12) working days of the notification to the Vice-President and Provost. The parties agree that every effort should be made to resolve an Association grievance in the Joint Committee. In the event that the matter is not resolved at the meeting, the Association shall be deemed to have filed a grievance. The Vice-President and Provost shall respond in writing to the grievance within seven (7) working days of the meeting. The Vice-President and Provost’s response shall constitute the Step No. 3 response. If the Association grievance is not resolved at Step No. 3, it may proceed further in the manner described above.

Lawyers responding to members’ concerns and drafting grievances must have the ability to obtain instructions from *one point person* in order to move forward efficiently. The practical reality of the work involved in filing grievances means that, at times, a quick turnaround time is required. The AGPWG recommends that timeliness be a central consideration for the development of a procedure for approval of Association grievances. In other words, the AGPWG recommends that the decision-maker be conscious of grievance timelines and be in a position to provide instructions quickly and with sufficient knowledge about the members involved, UTFa and U of T policies, practices, and procedures, and relevant jurisprudence to make decisions (while maintaining consistency with UTFa priorities and practices, as mentioned above).

E. Transparency/Clarity in Process

All UTFa members including UTFa Council should have a clear understanding of how Association grievances should proceed. Transparency/clarity in process should include a clear setting out of rights, roles, and responsibilities for each of: the member that may come forward; the Executive; the Vice-President, Grievances and President; and Council.

The principle of transparency/clarity relates to the process itself and not the contents of an Association grievance. Particulars of a grievance, especially where they come from UTFa

members who have an expectation of confidentiality, are not a process question. Grievance particulars are governed by the representation and privacy policies of UTFA.

F. Accountability

In keeping with the articulated roles and responsibilities found in the UTFA Constitution, Bylaws, and Legal Representation Policy, each of the individuals and groups with responsibilities for Association grievances must fulfill their obligations.

UTFA Association grievance decision-makers are identified in the UTFA Bylaws and the Legal Representation Policy adopted by UTFA Council in 2010.

There has been inconsistency in the practice at UTFA of informing Council of the filing of an Association grievance. In many cases, Council was asked to endorse Association grievances or to express its support or support in principle for them. We address the issue of inconsistency in the recommendations below.

Association grievances are presented at Joint Committee meetings of UTFA's president and vice-presidents and the senior U of T Administration. There "every effort [is] made to resolve an Association grievance" (see MoA).

UTFA's Vice-President, Grievances is appointed by Council. The President is elected by the UTFA membership as a whole.

G. All Members Have a Right to Representation

This right exists in accordance with the MoA and is further articulated by UTFA's Legal Representation and other related policies. When filing Association grievances the interests of UTFA "as such" must be considered.

In the award of the Grievance Review Panel in a matter where the Administration challenged UTFA's ability to bring forward its Salary Discrimination Association grievance, Arbitrator Kaplan elaborated on the "interests of UTFA 'as such'":

"Article 9 of the Memorandum of Agreement states: "The parties agree that there shall be no discrimination...practised toward any faculty member or librarian with respect to salaries...by reason of age, race, creed, colour, disability, national origin, citizenship, religious or political affiliation or belief, sex, sexual orientation, gender identity, gender expression, marital status or family status, place of residence...as well as any other ground included in or added to the *Ontario Human Rights Code*." The obligations are quasi constitutional. They directly engage the Association. Assertions of breach directly relate to the Association as such." (emphasis added)

10. Recommendations

1. Both Executive and Council will be informed before an Association grievance is filed.

2. If timing does not allow for this to occur during regularly scheduled Executive and Council meetings, notice of the Association grievance will be communicated by email, and if necessary, special meetings of either the Executive or Council will be held.
3. Council will have the option to endorse the Association grievance in principle, or not. It may also refer the Association grievance back to the Executive for further consideration.
4. The ultimate decision of whether or not an Association grievance is filed lies with the UTFA President and Vice-President, Grievances.

16 May 2021

MINORITY REPORT

We the undersigned, a minority of the Association Grievance Protocol Working Group (AGPWG) appointed by UTFA Council on 19 January 2021, and not agreeing with some of the recommendations of the majority, desire to share our views on the protocol for handling Association Grievances. We think that the official report of the committee is an outcome of very hard work of all committee members and UTFA legal counsel. However, we feel it prudent to share additional collegial approaches to some of the points, so that the Council can be more fully informed and the perspectives of more of its members represented. We hope this make it easier for the Council members to come to an informed decision.

While the UTFA Constitution and By-laws are silent on the decision making responsibility for approval of Association Grievances, the primacy of UTFA Council in many areas, some of which are listed below, appears throughout these documents. The By-laws and the Constitution are very clear in that the Executive Committee is directed by the Council and is accountable to the Council. Although there can be legitimate arguments as to what this means in practice, we are concerned that the recommendations of the AGPWG carve out a role for the Executive that is not explicitly granted to it by our Constitution and By-laws. We are concerned that they may amount to an *ad hoc, de facto* interpretation of the Constitution and By-laws, something the committee was not authorized to do.

UTFA Constitution

4.1 There shall be a Council of the Association, consisting of the elected members and the Officers (who may or may not be elected members), responsible for establishing and carrying out the Association's policies, and for carrying on its business subject to the provisions of this Constitution and to such directions as may be given at any Annual or other General Meeting of the Association.

7.7 The Executive Committee shall carry out such duties as may be delegated to it by the Council.

8.1 There shall be Standing Committees of the Council on (i) Salary, Benefits, Pensions and Workload, on (ii) Grievances, on (iii) University and External Affairs, and such other standing and special committees as the Council may establish from time to time.

8.2 The committees shall have such duties and powers as may be assigned to them by the Council.

8.3 The Council, from the regular membership of the Association, shall confirm the members of each committee.

9.1 (iii) Council, by regulation, shall establish guidelines for conduct of the election.

12.1 The Council shall have charge of the finances of the Association, and, subject to such directions as may be given at the Annual or any General Meeting, all expenditures shall be authorized or approved by the Council.

12.2 Both the Treasurer and the President shall exercise day-to-day financial oversight. Council must be informed of any anticipated or actual financial income shortfall or expenditure overrun as soon as is known to the Treasurer or President.

UTFA By-laws

2.3 The Executive Committee is charged with carrying out the responsibilities of the Association, as formulated by Council, under the leadership of the President and put into effect by the Vice-Presidents and committees of the Association.

2.4 The Executive Committee solicits advice, when necessary, from committees and members, considers resolutions passed by committees, and makes recommendations to Council.

2.7 The Executive Committee is accountable to the President of the Association and to Council.

12.1 Council has responsibility for management of the Association, subject to any relevant provisions in the Constitution and By-laws.

12.2 Council shall normally approve Association positions, goals and objectives of all matters applicable to the membership concerning: salary, benefits, pensions and workload, appointments, and conditions of employment requiring negotiation with the University of Toronto Administration.

12.3 Council shall ratify all agreements made between the Association and the University of Toronto Administration, subject to Article 4.1 of the Constitution. The terms of all salary, benefits, pensions and workload agreements between the Association and the University of Toronto Administration shall be communicated to all members of the Association at least two weeks prior to Council's ratification meeting.

12.4 Council shall appoint all non-Presidential members of the Executive Committee (the three Vice-Presidents, the Treasurer, the Chairs of the Standing Committees, and the three members-at-large), and approve the membership of all Committees and Negotiating Teams.

In addition, the UTFA website confirms the authority of the Council where it says, "UTFA ensures that retired members are represented on our main decision-making body, the UTFA Council, and on the Executive Committee."

The minority members of the AGPWG offer the following recommendations for the consideration of UTFA Council.

1. The first UTFA body to consider the formulation of an Association Grievance shall be the Grievance Committee. Recommendations of the Grievance Committee would proceed to the Executive Committee. If the Executive Committee deemed an Association Grievance to be in the interests of the Association and its members, its recommendations would be forwarded to the UTFA Council.
2. If timing does not allow for this process to occur during regularly scheduled Grievance Committee, Executive Committee and Council meetings, notice of consideration of the Association Grievance will be communicated by email, and if necessary, special meetings of the appropriate body shall be held.
3. Council will have the option to endorse the Association grievance in principle, or not. It may also refer the Association grievance back to the Executive Committee or the Grievance Committee for further consideration and/or additional information
4. The ultimate decision of whether or not an Association Grievance is filed lies with the UTFA Council.

The principal arguments against our recommendations that were made in the AGPGW were twofold:

1. that the UTFA Council was too large of a body to be trusted to maintain confidentiality where required, and
2. that UTFA Council could not be made sufficiently informed to be entrusted with decision making.

With regard to the former, and based upon the considerable number of documents that we have studied and that outline UTFA's duties with regard to confidentiality and privacy of the grievors, we don't see why the grounds, the merit and the contours of an association grievance cannot be presented to the Council *in camera*, with a minimum of, if any, confidential material included. As an example, one of us (JCP) served as UTFA's Vice President–Grievances for six years during which time grievance matters were regularly brought to the UTFA Council without any breaches of confidentiality having occurred.

With regard to the latter, we are in total agreement with the other members of the AGPGW with regards to the importance of informed decision making. Unfortunately, as above, we do not feel that the AGPGW's conclusion is sufficiently evidence based. We believe that the pervasive, systemic, repeated, and/or egregious violations of the Memorandum of Agreement, or negotiated university policies, which lead to Association Grievances can be readily understood by UTFA Council members, particularly if they are directed to the particular documents of relevance. In the past UTFA Council members have taken their responsibility regarding Association Grievances very seriously and have normally approved/authorized/supported/endorsed the Association Grievances brought to them, although a few of them generated vigorous debate as is appropriate in collegial governance.

A successful, working example of our recommendations can be seen in the CAUT governance model and its process for considering censure of a university (which could be seen as the ultimate form of an association grievance). That process was described by David Robinson, CAUT Executive Director, at the 6 May 2021 UTFA information session and is verified in the CAUT by-laws. (CAUT By-Law Number 1, section 8.2 d.) Such matters are first considered by the CAUT Academic Freedom and Tenure Committee whose recommendations go to their Executive Committee and then to the CAUT Council. CAUT Council is the ultimate decision-making body for both imposing and removing censure. Although CAUT Council is significantly larger than that of UTFA, confidentiality is maintained when required and the Council members consider themselves to be appropriately informed before making decisions. In fact, in her 14 May 2021 e-mail message to "UTFA Colleagues," the UTFA President wrote "It is clear that CAUT Council came to its censure decision by way of an informed process."

In conclusion, we believe that we have presented a set of recommendations that are a viable alternative to those presented by the AGPGW (and the amendment made by the Executive Committee). These recommendations are in close keeping to past practices at UTFA and are not incompatible with the UTFA Constitution and By-laws. We hope that you will give them your serious consideration.

Respectfully submitted,

Judith Poë
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Department of Chemical and Physical Sciences
UTFA Council Constituency 204 Representative

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UTFA Council Constituency 113 Representative

Council Summary

UTFA Executive Minutes

Friday, May 7, 2021

Zoom Conference Call

1:00 p.m.- 3:00 p.m.

Chair – T. Zorić

Present: K. Adamson, M. Attridge, K. Banning, A. Giacca, R. Gillis, J. Macdonald
B. McDonagh, J. Nogami, D. Roberts, S. Rupp, H. Sonne de Torrens, M.
Stapleton, T. Zorić

Regrets: A. Braun

Also present: R. D'souza (Special Project Senior Strategic Communications Director and Policy
Analyst), M. Horban (Business Officer), K. Johnson (Executive Director),
H. Nowak (General Counsel), C. Penn (Senior Administrative Assistant)
D. Puscas (Communications Officer), J. Thiessen (Executive Assistant)

T. Zorić called the meeting to order at 1:05 p.m.

1. Approval of the agenda: The agenda was approved as distributed.
2. Minutes of the previous meeting
 - a. April 9, 2021
 - i. Council summary *

As there were no changes to the April 9, 2021 Council summary, they were approved as distributed.

- b. April 22, 2021 *
 - i. Executive minutes
 - ii. Council summary

As there were no changes to the April 22, 2021 Executive minutes and Council summary, they were approved as distributed.

- c. April 23, 2021*
 - i. Executive minutes
 - ii. Council summary

As there were no changes to the April 23 Executive minutes, they were approved as distributed.

3. Business arising (not elsewhere on the agenda)

There was no business arising.

4. Report of the Chair of the Nominating Committee (10 min)

a. Update and next steps

J. Nogami noted that the report of the Nominating Committee with the slate of candidates for the Executive Committee was sent out May 1 and the candidate statements were sent out May 4.

Motion by J. Nogami, seconded by K. Adamson, that the meeting go in camera. **Carried.**

Motion by J. Nogami, seconded by K. Adamson, to return to the regular meeting. **Carried.**

Motion by M. Attridge, seconded by K. Adamson, that the Executive Committee recommend to Council that Kent Weaver be nominated to serve as the Chief Returning Officer for the upcoming Executive elections at the May Council meeting. **Carried.**

It was agreed that D. Roberts would contact K. Weaver to ask if he would serve in this position.

5. Report of the Vice-President, Salary, Benefits, Pensions, and Workload (15 min)

Motion by J. Nogami, seconded by K. Adamson, that the meeting go in camera. **Carried.**

a. SBPW Bargaining (with T. Zorić)

b. Supplementary Account Plan (SAP) (with T. Zorić)

Motion by J. Nogami, seconded by K. Adamson, to return to the regular meeting. **Carried.**

Motion by J. Nogami, seconded by K. Adamson, that the Executive Committee recommend to Council that Council approve the SAP agreement in principle. **Carried.**

J. Nogami assumed the chair.

6. Report of the President (60 min)

a. AGM

i. What worked well?

T. Zorić asked the members what they thought worked well at the AGM. Some responses:

- It was well organized and well received, including the panel.
- We identified successfully what the members wanted to discuss and receive information on.
- There seemed to be a lot of interest in the CAUT censure.
- Members who got off track in chat were steered back to the conversation by other members.
- We may have to combine Zoom with in-person meetings in the future.
- Meeting with constituencies before the AGM and encouraging them to attend probably helped to increase attendance.

T. Zorić said that UTFA could not do all that it is doing without an Executive Director and thanked K. Johnson, as well as D. Puscas and J. Thiessen, who played key roles in pulling together the AGM. She also thanked C. Penn, M. Horban, H. Nowak, H. Diggle, S. Olexson, R. Chang and R. D'souza for their work in making the AGM a success. It was a massive team effort.

ii. What needs improvement?

The members suggested the following:

- We should not try to attract members to the AGM by having guest speakers unless they are speaking on an issue that affects the members in their employment.
- Ensure that the closed captioning is working.
- Look at what our members are concerned about and what they are not aware of but should be.
- We should be proactive and generate positive energy instead of defensively reacting to issues.

iii. Follow-up

b. CAUT Censure (with R. Gillis)

- i. CAUT censure motion
- ii. Censure information meeting
- iii. Next steps

T. Zorić reported that about 300 people registered for this meeting. In the meeting we addressed many questions received in advance and as many questions received in chat as we could.

T. Zorić said that she would send out an update email on the CAUT censure and another planned meeting, on how the U of T Administration came to be censured.

Motion by T. Zorić, seconded by K. Adamson, that the meeting go in camera. **Carried**

c. Health and Safety (with J. Nogami & A. Giacca)

- i. Return to in-person work
- ii. Legionella
- iii. Ventilation
- iv. Vaccinations

d. Workload

- i. Checklist
- ii. Workload Committee workshops
- iii. Planning for a campaign

e. Joint Committee Update

f. Culture Reviews

g. Employee Sponsor Committee (ESC) funding

Motion by J. Nogami, seconded by K. Adamson, to return to the regular meeting. **Carried.**

h. Association grievances

i. Sexual Violence mediation

T. Zorić said that H. Nowak is the staff counsel lead on the Sexual Violence grievance, with advice from E. Phillips. The original team consisted of M. Allen, R. Gillis, A. Hojatollah Taleghani and T. Zorić. M. Allen is no longer an UTFA member. As we are heading into mediation, she will ask R. Gillis and A. Hojatollah Taleghani to continue and two more members to join.

Motion by T. Zorić, seconded by K. Adamson, moved that the Executive Committee recommend to Council that Brian McDonagh and Kyla Overall be approved as members of the Sexual Violence Policy LOU negotiating team. **Carried.**

7. Break: timed item 2:00 p.m. (10 min)

T. Zorić assumed the chair.

8. Report of the Vice-President, University and External Affairs (10 min)

a. Laurentian University (with T. Zorić and J Nogami)

R. Gillis updated the members on the campaign in support of Laurentian University. J. Nogami and T. Zorić rode their bikes in a rally. R. Gillis and T. Zorić spoke on an online program. UTFA approved \$300 to support the rally.

Over 150 programs have been closed and over 100 people have been laid off. The Laurentian administration is moving ahead with restructuring. The government has shown support for keeping the midwifery program in some form at some other university.

The working group continues to meet. R. Gillis will contact OCUFA and CAUT about their plans and will keep UTFA members informed about what they can do to support Laurentian.

T. Zorić said that the organizers of the rally did not need UTFA's \$300 and asked UTFA if they could donate it to Scholar Strike Canada. The members agreed.

9. Other Business

a. UTFA Executive Meetings

- i. Thursday, May 13 – 3:00 – 4:00 p.m
- ii. Thursday, May 20, 1:00 – 3:00 p.m.
- iii. Thursday, June 10 – 1:00 – 3:00 p.m.
- iv. Tuesday, June 29 – 1:00 to 3:00 p.m.

b. UTFA Council Meetings – 3:00 to 5:00 p.m.

- i. Tuesday May 18, 2021
- ii. Wednesday June 23, 2021

10. Adjournment

Motion by T. Zorić, seconded by K. Adamson, that the meeting adjourn. **Carried.**

The meeting adjourned at 3:00 p.m.

Chris Penn
Senior Administrative Assistant

Council Summary**UTFA Executive Minutes**

Thursday, May 20, 2021

Zoom Conference Call

1:00 p.m.- 3:00 p.m.

Chair – T. Zorić

-
- Present: K. Banning
A. Giacca
R. Gillis
J. Macdonald
B. McDonagh
J. Nogami
D. Roberts
S. Rupp
H. Sonne de Torrens
M. Stapleton
T. Zorić
- Regrets: K. Adamson
M. Attridge
A. Braun
- Also present: R. D'souza (Special Project Senior Strategic Communications Director and Policy Analyst)
M. Horban (Business Officer)
K. Johnson (Executive Director)
H. Nowak (General Counsel)
C. Penn (Senior Administrative Assistant)
J. Thiessen (Executive Assistant)

T. Zorić called the meeting to order at 1:06 p.m.

1. Approval of the agenda

Motion by T. Zorić, seconded by H. Sonne de Torrens, that the agenda be approved as distributed. **Carried.**

2. Minutes of the previous meeting

a. May 7, 2021 *

i. Executive minutes

As there were no changes to the minutes of the May 7, 2021 Executive meeting, they were approved as distributed.

3. Business arising (not elsewhere on the agenda)

There was no business arising.

4. Report of the Treasurer (15 min)

a. Year to date *

M. Stapleton reported that our fiscal year to date shows is a positive cash flow of \$290,000. This number compares with a deficit of \$110,000 at this time last year. The number will change as we are waiting for a number of invoices but every indication is that our deficit will be less than budgeted. She thanked M. Horban, K. Johnson, R. Schmelzer, and B. McDonagh. Sha also thanked for T. Zoric for her support.

T. Zorić expressed her thanks and appreciation to the UTFA legal staff for working hard to keep more grievances and other work in house.

M. Stapleton reviewed the rest of the year-to-date information with the members and reported that she is working the 2021–2022 draft budget.

T. Zorić said that the goal is to give value to membership and to be fiscally responsible. UTFA is doing more on more issues for more people than ever before. We need to realize that the demands on the upcoming budget will be considerable.

b. Draft budget discussion

J. Nogami assumed the chair.

5. Report of the President (60 min)

a. New Executive Member Orientation/Transition

T. Zorić asked the members what they thought would be the most important things for new Executive members to know in preparing for their new roles. Usually the last meeting in June is a combined meeting of old and new Executive, where we thank those members who are leaving and let new members see how the Executive works.

b. Confidentiality Breach

Motion by D. Roberts, seconded by H. Sonne de Torrens, that the meeting go in camera. **Carried.**

c. CAUT Censure (with R. Gillis)

i. Censure information meeting

ii. Next steps

d. Health and Safety (with J. Nogami & A. Giacca)

- i. Vaccinations
- ii. Legionella
- iii. Ventilation

Motion by T. Zorić, seconded by H. Sonne de Torrens, to return to the regular meeting. **Carried.**

T. Zorić reported that UTFA is receiving a high volume of reports to the Central Health and Safety Committee. We have received results of testing for Legionella in water, asbestos testing, workplace inspections, and minutes from the University's various JHSC meetings. With this amount of information being received, UTFA may need to consider having a Health and Safety Officer.

T. Zorić said that S. Olexson is analyzing the urgent health and safety issues and related documents. We need to look at ways to streamline the review and analysis process.

T. Zorić said that U of T is testing for Legionella in U of T buildings but we have concerns about the testing methodology and the pattern of results.

T. Zorić said that we have received some information from U of T on its ventilation strategy. UTFA continues to have concerns about U of T policy, protocols, and the safety of buildings on U of T campuses.

iv. Return to in-person work

T. Zorić said that we have not received enough information to determine if it would be safe for members to return to in-person work in the fall.

e. Workload update

T. Zorić said that we need to do more work on unit workload policies.

f. Update on Pension Follow-up (T. Zorić and J. Nogami)

- i. Special Meeting of Council
- ii. Other matters

T. Zorić said that the UTFA Pension Committee discussed having a special meeting of Council on pensions. This meeting would deal with the UPP's SIPP, U of T's SAP, other pension issues and the election of committee members.

g. Sexual Violence LOU mediation

T. Zorić said that the UTFA Sexual Violence LOU negotiating team met to prepare for the Sexual Violence LOU mediation. Mediation has been set for June 15.

T. Zoric assumed the chair.

6. Break: timed item 2:00 p.m. (10 min)

7. Report of the Chair of the Librarians Committee (10 min)

a. Update on the OCAD U situation

H. Sonne de Torrens reported that there is shock in the community about the elimination of six librarian positions at OCAD U. Letters of support are coming in and the senate at OCAD U have rebelled and are asking for a review of the restructuring, but that does not necessarily mean that these colleagues would be reinstated. Faculty and student voices have been raised.

H. Sonne de Torrens said that she is working with R. D'souza, R. Gillis, M. Attridge and T. Zorić on a short campaign. A digital day of action is being planned for May 31 along with a media blitz. An op-ed piece for NOW magazine has been drafted, incorporating broader concerns in post-secondary education, such as Laurentian University's funding issues, corporatization of our institutions, and so on. Media packages will go out nationally on May 27.

T. Zorić said that if it becomes normal for librarians to lose jobs at one institution then they can more easily be threatened at others. We all need to work to protect each other. T. Zorić acknowledged that R. D'souza has played a terrific role on this special project.

8. Report from the Civility Working Group (J. Nogami) (15 min)

- a. Name of this working group (K. Banning)
- b. Next steps

J. Nogami said that the Civility Working Group is coordinating its work with the Equity Committee.

K. Banning said that the Equity Committee discussed the word "civility." They found the term extremely loaded and request a renaming of the working group.

J. Nogami said that the working group could be renamed, and within that they could talk about a code of conduct, but there is also the related issue of harassment guidelines, and the working group would have to work closely with the Equity Committee on these issues.

9. Report of the Vice-President, Salary, Benefits, Pensions, and Workload (10 min)

- a. SBPW Bargaining (with T. Zorić)
- b. Supplementary Account Plan (SAP) (with T. Zorić)

Motion by J. Nogami, seconded by H. Sonne de Torrens, that the meeting go in camera. **Carried.**

Motion by J. Nogami, seconded by H. Sonne de Torrens to return to the regular meeting. **Carried.**

10. Other Business

The Executive and staff thanked Darren Puscas for his work at UTFA and wished him well in his future endeavours.

- a. UTFA Executive Meetings
 - i. Thursday, June 10 – 1:00 – 3:00 p.m.
 - ii. Tuesday, June 29 – 1:00 to 3:00 p.m.
- b. UTFA Council Meetings – 3:00 to 5:00 p.m.
 - i. Wednesday June 23, 2021

11. Adjournment

Motion by J. Nogami, seconded by H. Sonne de Torrents that the meeting adjourn. **Carried**

The meeting adjourned at 3:05 p.m.

Chris Penn
Senior Administrative Assistant

UTFA Budget Summary – 2021/2022

	Jul '19 - Jun 20		Jul '20 - May 21		Jul '21 - Jun 22
	Actual	Budget	Actual	Budget	Budget
Total 4000 · Membership Dues	3,695,069	3,667,500	3,538,646	3,796,550	4,014,700
Total Income	3,885,317	3,817,500	3,538,646	3,974,483	4,218,700
Expense					
Total 5000 · External Fees	1,019,548	1,019,573	975,359	1,030,055	1,124,500
Total 5050 · External Legal & Consulting	1,140,389	791,000	524,912	911,000	807,000
6000 · Administration					
Total 6001 · Staffing	1,211,920	1,337,000	1,401,235	1,315,000	1,760,800
Total 6100 · Office Expenses	60,862	64,700	33,768	55,200	57,000
Total 6300 · Office Equipment	69,105	73,000	36,099	74,250	48,000
Total 6500 · Insurance	9,916	10,032	11,237	10,350	13,160
Total 6000 · Administration	1,364,184	1,494,732	1,486,738	1,464,800	1,889,960
Total 7000 · Stipends - Exec	104,051	105,000	79,345	105,000	106,150
Total 7100 · Stipends - UPP	40,743	46,660	34,598	46,660	46,150
7200 · Outreach & Communications	10,376	15,000	8,970	15,000	10,000
Total 7300 · Member Services	45,236	75,000	2,243	15,000	65,000
Total 7500 · Committee Expenses	20,939	35,000	300	18,700	9,350
7700 · Office Rent	268,217	250,000	98,030	283,883	322,000
Total 8000 · Special Expenses	186,292	309,000	44,703	326,500	178,500
Total Expense	4,205,213	4,146,415	3,259,140	4,221,853	4,563,870
Net Income	(319,896)	(328,915)	279,506	(247,370)	(345,170)

IN THE MATTER OF A DISPUTE BETWEEN:**The University of Toronto****and****The University of Toronto Faculty Association****(Association Grievance: Discrimination in Salary)****Before:** William Kaplan**Appearances****For the University:** Catherine Peters
Hicks Morley
Barristers & Solicitors**For UTFA:** Emma Phillips
Mary-Elizabeth Dill
Goldblatt Partners
Barristers & Solicitors

The matters in dispute proceeded by written submissions.

Background

On June 4, 2019, the University of Toronto Faculty Association (the Association), filed an Association Grievance alleging, among other things, a violation of Article 9, the no-discrimination provision of the *Memorandum of Agreement*:

Specifically, UTFA grieves that there exists a systemic, persistent, pervasive and significant gender pay gap at the University of Toronto, as well as a pay gap on the basis of other equity grounds such as racialization, creed, Indigenous identity, gender expression, gender identity, ability, and/or sexual orientation. This discrimination in compensation affects faculty and librarians who identify as female and non-male (hereinafter “female members”), and who identify as members of other equity-seeking communities. The affected groups include full-time and part-time faculty and librarians, including those who are in the tenure stream and teaching stream, as well as those with Contract Limited Term Appointments (CLTAs).

This grievance proceeded to mediation. An agreement was reached that partially resolved the grievance – as it affected Librarians (subject to a caveat in the Minutes of Settlement not relevant to this award). However, the remaining matters in dispute will proceed to hearing before the Grievance Review Panel (GRP).

In the meantime, the Association made an extensive production request. The University objected and that objection proceeded to mediation following which the parties entered into a November 12, 2019 *Framework Agreement Regarding Production Issues*. Among the production being sought was employment equity survey data (the data – as is set out in more detail below).

On December 13, 2019, the University advised the Association that the data was privileged for various legal reasons including that in collecting this information, undertakings of confidentiality and anonymity were extended to participating faculty

members. In addition, the value of the data, even if disclosed, was questionable given methodological issues that would inevitably arise should an attempt be made to analyze it to determine whether there was compensation discrimination and, if so, what the appropriate remedy for that might be.

The Association disagreed and another mediation was convened on May 19, 2020. On July 3, 2020, a *Memorandum of Agreement* was signed. Some further disclosure followed while discussions ensued, including about whether a purpose-built survey should be undertaken to resolve outstanding production requests: in particular, for the data. In mid-November 2020, the Association informed the University that it did not agree that a purpose-built survey would resolve the production request. The Association renewed its production request:

All existing demographic data ... including gender identity, Indigenous identity, race, sexual orientation, disability and any other data collected, and;

The data underlying the University of Toronto Employment Equity Report 2016-2017 (with respect to UTFA members) using the same identifiers as in the A1 data.

The Question to be Answered

Stated somewhat simply, the question to be answered is whether the Association is entitled to the data identified in this production request: self-identification data that has been collected through the University's employment equity survey linked to faculty members' unique individual identifiers in the A1 data. The Association is not seeking the actual survey responses or the names of any faculty members. What the Association is

asking for is the demographic data, including gender identity, indigenous identity, race, sexual orientation, disability and any other information, gathered together as a field in the spreadsheet of salary data that it receives, and has received for decades. The Association says this material should be disclosed while the University says it should not, for a variety of reasons including, most prominently, the commitment it made to faculty members when it requested the data from them, a commitment that the faculty members relied upon when they disclosed their personal information and one that the University wishes to honor.

It should be noted that this outstanding issue has been put before me pursuant to a January 20, 2021 agreement between the parties. Also worth mentioning is that the parties are in complete agreement that faculty members should be equitably compensated without regard to their gender identity, sexual orientation, ability, indigeneity, race and ethnicity. This dispute is not about shared values; it is over the scope of production.

The Commitment

Before turning to the submissions of the parties, it is useful to set out what survey participants are told before they complete, or not, the survey; in other words, what the University describes as the commitment it is making to them:

Our commitment to confidentiality is foundational to the integrity of the survey data and you can be assured that:

1. The Employment Equity information you provide will be stored in a strictly confidential Employment Equity database and will not be used for any other purpose.
2. The information you provide on the questionnaire is accessible only to those individuals whose job it is to enter the data and / or to produce the Employment Equity reports. No one else can access this information.
3. The data you provide will be stored in a strictly confidential employment equity database and will not be used for any other purpose.
4. The only identification on the questionnaire is your personnel number. This is required by legislation. The personnel number will only be used to track completion and return rates and to link your response to other data about your position in order to be able to report on trends over time in various employment groups – for example, the proportion of Sessional Lecturers in the various designated groups.
5. Reporting is done by 14 broad designated employment equity occupational groups across all three campuses.
6. No information about groups of three or less is reported to ensure anonymity. Only summary reports will be released. No individual will be identified.
7. You may update your information at any time by submitting a new survey response on Employee Self-Service (ESS).

This Commitment to Confidentiality applies to and binds anyone who may be dealing with the survey information or process.

...

The data collected in the Employment Equity Survey ... will only be reported upon in aggregate and it will be aggregated in a way that ensures no individual can be identified.

Association Submissions

In the Association's view, its proportionate and measured production request needed to be considered in context: the context of a grievance where the Association has alleged that the University violated Article 9 of the *Memorandum of Agreement* by engaging in a pattern of systemic and pervasive discrimination in compensation that has negatively impacted faculty who identify as female and/or as a member of an equity-seeking group. The data was required to determine whether faculty members were being

underpaid based on their membership in an equity-seeking group, and to then remedy that discrimination based on the results of the analysis.

When it received the data, the Association intended to provide it to its expert witness, a statistician, who would prepare an expert report for consideration by the GRP. Any data referred to in the expert report would be presented in an aggregated and anonymized fashion that would preclude individual identification. All necessary and appropriate confidentiality measures would be put into place to ensure the data was kept strictly confidential. The Association was perfectly able, and obviously willing, to ensure that confidentiality was maintained.

Indeed, the Association had strict policies and an established track record of keeping confidential what was to be kept confidential including A1 salary data.

There was virtually zero risk that the data could be used to identify particular faculty members. For such a breach to occur, an unauthorized individual would have to obtain access to the raw data, and then carefully comb through it to either determine whether they could identify a faculty member based on their personal pre-existing knowledge, or they would have to conduct laborious research to determine who an anonymized individual might be.

The Association also took issue with the University's claim that the data was somehow, and in some way, legally privileged. To make out that claim, the University had to establish certain preconditions of a governing legal test (the test):

the communications must originate in a *confidence* that they will not be disclosed;
the element of *confidentiality* must be essential to the full and satisfactory maintenance of the relation between the parties;
the *relation* must be one which in the opinion of the community ought to be sedulously *fostered*;
and
the *injury* that would inure to the relation by the disclosure of the communications must be *greater than the benefit* thereby gained for the correct disposal of the litigation.
(emphasis in the original: *Slavutych v. Baker* [1976 1 SCR 254 at 15])

In the Association's view, the University could not meet the requirements of the test.

To be sure, the Association agreed, the information was confidential: it originated in confidence. There was an expectation that it would not be disclosed. However, the element of confidentiality must be essential to the full and satisfactory maintenance of the relationship between the parties, and it was not. Unlike the types of relationships where this privilege generally arises (doctor-patient, for example), the employer-employee relationship was not premised on confidentiality, especially so where the employee was represented by a representative, in this case, the Association. There was no "public good" to be had in sedulously fostering this employer-employee relationship, particularly in a context where the Association needed access to the data to right

longstanding wrongs for faculty members: salary anomalies based on prohibited grounds that violated the no-discrimination provision of the *Memorandum of Agreement*, generally applicable law and public policy.

Likewise, when the interests were balanced, in terms of the injury that would inure to the relation by the disclosure assessed against the benefit to be gained for the correct disposal of the litigation, there really was no contest. The Association did not agree that disclosure would cause injury; it actually disagreed. Confidentiality could be maintained. Besides, whatever injury might occur to the relation by ordering disclosure would pale in comparison to the deleterious consequences of not doing so. The benefit to be gained was enormous: for individual faculty members, for the faculty as a whole, for the University community and for advancing employment equity more generally. Any claim that the data would be of little probative value could, likewise, not be sustained: data linking faculty compensation with equity-seeking identity was clearly relevant. Whether small sample sizes might limit the reliability of a regression analysis of the data was a different question, but it was one that was separate and apart from arguable relevance and the Association's legal entitlement to disclosure. At the end of the day, the matter had to be addressed by applying the test in a commonsense fashion, and that led to a disclosure order, together with the imposition of appropriate safeguards.

Such a result, the Association observed, was hardly anomalous: adjudicators regularly order the disclosure of confidential records together with any necessary safeguards. The

Association noted that it was the representative of faculty, and it was seeking information about its own members in an Association grievance alleging a breach of Article 9 – the no-discrimination provision. Disclosure was necessary for effective representation: to ensure that the Association was able to advance and defend the equality rights of historically marginalized members. The Association was entitled to the information it needed to do its job: representing faculty members.

The fact of the matter was that various tribunals have regularly ordered production of confidential records where the records are arguably relevant and where their probative value outweighed any privacy interests said to be at stake. While the University communicated various assurances about purpose, confidentiality, anonymity, access and use of the data, those assurances were always subject to law and to the authority of the GRP to issue appropriate orders. This was also not a case of first impression. The Ontario Human Rights Tribunal and other tribunals and courts across the country have repeatedly made it clear that broad disclosure is both necessary and appropriate in cases of systemic discrimination – which was exactly this case.

The Association, it submitted, was entitled to present its case with adequate information and documentation, and this was nowhere more important than in a human rights case. The mere assertion that personal or confidential information was contained in records was not a bar to the otherwise governing law requiring disclosure of everything that was arguably relevant. To be sure, a confidentiality commitment had

been made – but that situation was not unique and if privilege was asserted to prevent disclosure, all of the elements of the test had to have been met, and failing that, disclosure had to be granted unless precluded from some other reason not present here. Disclosure of the data was actually necessary to give effect to the primary purpose underlying its collection: advancing employment equity at the University of Toronto – a shared goal – and one that was required by the case law. For all these reasons and others, the Association asked that its request be granted.

University Submissions

What Was Being Sought?

In the University's submission, the appropriate starting point was understanding what was being sought. Although the two production requests were stated somewhat differently, the target was the same: employment equity survey data (the data). The data consists of self-identification data that the University collects from faculty members through the employment equity survey process (the survey): it is the data used by the University to prepare its annual Employment Equity Reports; the actual individual survey results, which, while not linked by name, are linked to an individual unique identifier and to other employment data about individual faculty members.

The data was obtained from faculty members who are periodically asked to fill out the survey responding to a number of questions about whether they self-identify as a member of one or more equity-seeking groups. While the questions have varied over

time, faculty members are asked to disclose information about their gender identity, sexual orientation, visible and non-visible disabilities, Indigenous/Aboriginal identity, and racial and ethnic origin. Employers may ask questions like these only for specific and limited equity-advancing principles. Participation in the survey, in whole or in part, was completely voluntary. As the survey questions make clear, faculty members are asked to disclose their most personal information, including information that would not be visible to others (non-visible disabilities and sexual orientation, to give two examples).

When a faculty member is asked to complete the survey – and before deciding whether to participate or not – they are told about the following:

the purpose for which the data are collected;

the confidentiality of the data collected;

the anonymity of the data collected;

who will have access to employees' individual survey responses; and

the permitted use and disclosure of the data collected.

The data, albeit stated extremely broadly, was collected for use by the University so that it can diversify its workforce and address the under-representation of women and other equity-seeking groups by the collection of information that informs the development and implementation of programs and initiatives to increase representation and foster employment equity. Survey participants are promised confidentiality. The data would be carefully stored, made available under strict conditions to a very limited cohort – people

who have the job of entering the data and/or to produce the Employment Equity Reports – and would not be used for any other purpose. An express undertaking was made to employees that while their survey responses would be linked to their personnel number, that their personnel number would only be used to track completion and return rates and to link their response to their position and broad employment groupings to enable reporting on trends within those groupings. Not only was confidentiality promised, so too was anonymity: “no individual will be identified.” The data was reported in the annual Employment Equity Report but aggregated in a manner that did not allow for individual identification. That aggregated information was also made available to the University community and general public.

Principled Reasons Why The Data Should Not be Disclosed

In the University’s submission, survey participants were made a promise – the commitment – and based on that promise they disclosed their most personal information. Disclosing the data, the University pointed out, meant breaking the promises – and they were plural – concerning purpose, confidentiality, anonymity, access and use – the very promises that were extended to secure the informed consent that led the faculty member to answer the questions in the first place

Quite clearly, the data consists of highly sensitive personal information collected from faculty members – faculty members who were given undertakings that the information they provided would be confidential, anonymous and used only for specific purposes.

Faculty members who participated in the survey provided their voluntary and informed consent based on the representations that were made to them. Faculty members were not told at the time they provided their consent that the data would be available to or used by the Association. Notably, the Association's representative role was somewhat less than what was advanced in its submissions. While the Association had specified information entitlements under the *Memorandum of Agreement*, those entitlements did not include the data.

The danger of a confidentiality breach, while minimized by the Association, was also significant. The University did not doubt that the data would be handled carefully and professionally by the Association and its representatives. However, if the A1 data – already significantly augmented because of previous productions – was linked with the data, some faculty members would become readily, if not immediately, identifiable. And once a person – someone who agreed to disclose their most personal information because of a confidentiality promise that was made and someone who was quite possibly already vulnerable and marginalized – was identified, or easily identifiable, their most sensitive personal information would be accessible to others without their consent and in breach of the commitments that were made. This outcome was possible in small units and in large departments, as numerous University examples illustrated. In this circumstance, not only would the University have broken a promise, but that broken promise could easily cascade with faculty members and others in the University community refusing to participate in the survey in the future, thereby depriving the

University of the information it needed to dismantle barriers and improve employment equity. This chilling effect of ordering disclosure needed to be borne in mind.

The University was also of the view that the data, if disclosed, would not meaningfully assist in determining whether discrimination in compensation existed and what remedies should be implemented. Disclosure would be harmful, but would also serve no useful purpose because the data could not be effectively used for conducting a comparative analysis to determine whether members of equity-seeking groups were subject to discrimination, and moreover, to provide information on how to remedy it.

The data was obtained from a voluntary census requiring self-identification: the survey. The data could not be used to conduct a meaningful multivariate analysis, which was required to uncover compensation discrimination. The data was not a full data set. The data was not generalizable to the faculty population as a whole. The sample sizes were too small to support a meaningful comparative analysis. The survey questions themselves provided multiple options allowing for self-identification in multiple categories, making interpretation problematic. And even when assuming for the sake of argument that the data did provide some useful comparative information, and further assuming that some evidence was found of differences in compensation attributable to membership in an equity-seeking group, the data would be of virtually no use in designing and implementing an effective remedy for affected faculty members. This was

true for a number of reasons, including the response rate possibly limiting the cohort in any remedial pool, among other issues identified by the University in its submissions.

Legal Reasons Why The Data Should Not Be Disclosed

The law, the University submitted, was clear.

The University carefully reviewed numerous authorities, all of which stood for the principle that in cases where the production was being sought to enable the party seeking it to determine if the records requested could have some potential relevance to the case at hand – which was what was happening here – the application of the governing criteria led to an order rejecting the production request, which, the University argued, should also happen here. In marked contrast, the University pointed out that none of the Association authorities, while purportedly applying principles of general application, had anything to do with the production of employment equity data where confidentiality promises had been made and where disclosure could readily lead to the identification of specific individuals and consequent harm: actual harm could be caused by disclosure. The University urged me to follow the cases that it advanced.

The data was also privileged, as application of the test established. The communications originated in a confidence that they would not be disclosed. It was crystal clear that the University made a commitment of confidentiality about what (limited) uses could and

would be made of the data and how it would be carefully protected. Faculty members relied on this and related commitments. There was a relationship of trust and confidence between the University and faculty members. Confidentiality was essential to the maintenance of that relationship. Notably, the Association was not a party to that relationship. If faculty members lost trust in the University, and its confidentiality commitments, the University would not be able to effectively collect the data and pursue its employment equity initiatives, not to mention the harm that would inure to the relationship itself.

This relationship of trust and confidence was, moreover, one that needed to be sedulously fostered. A disclosure order setting aside the commitments that were made could, and likely would, cause irreparable harm to the relationship and undermine the central goal of the data collection. The injury that would inure to the relationship if disclosure were to occur was demonstrably greater than any benefit that might be gained, bearing in mind the possible exposure of the most confidential of individual information in circumstances where the data would serve no useful purpose in advancing the case and/or any remedy. Any fair balancing of interests in the application of this test favoured rejecting the Association request.

At the end of the day, in assessing the evidence and arguments, the University urged me to bear in mind what exactly was taking place: the Association was seeking production of the data so that it could conduct an exploratory analysis directed at determining

whether there was evidence of discrimination. The context was a case where the Association had no tangible evidence that there was discrimination in compensation affecting members of equity-seeking groups. Nevertheless, the University was being asked to hand over information that was gathered only after it made strict promises about its confidentiality. This was a clear case where production was being sought to find evidence, but doing so required the complete breach of confidentiality undertakings that were made. In any balancing of interests, and in these circumstances, disclosure should not be permitted. Add to that the methodological deficits in the data – as earlier identified – and the case against the Association’s request became even more compelling.

Decisiona

Having carefully considered the submissions of the parties, it is my view that the data must be disclosed.

This is a production motion. It has nothing to do with the merits, which will, in due course, proceed before the GRP. There is no doubt that the data is arguably relevant. But for the University’s claim of privilege, disclosure would, absent exceptional circumstances not present here, be almost routine even though the information is highly personal and confidential and only given following a confidentiality commitment.

There is no privilege preventing disclosure.

While the information is confidential, that is not a conclusive barrier to production.

Confidential information is regularly ordered produced. To serve as a bar to production, the information must not only be confidential – which it clearly is – but the element of confidentiality must be essential to the relationship between the parties, which it is not. Doctor-patient, priest-parishioner, lawyer-client, are types of relationships in which this privilege normally applies. The employer-employee relationship is important; sometimes it is even fiduciary, but it is not normally one in which confidential communications attract legal privilege. There is nothing here to “sedulously foster” from a community perspective or otherwise.

However, even if it were determined that the information was confidential and that the element of confidentiality was essential to the full and satisfactory maintenance of the relation between the parties, and if the relationship were one that in the opinion of the community ought to be sedulously fostered, the privilege claim would still fail under the test because any harm to the relationship – the employer-employee relationship – must be considered against the benefit to be gained from the correct disposal of the litigation.

Article 9 of the *Memorandum of Agreement* is as follows:

No Discrimination

The parties agree that there shall be no discrimination, interference, restriction, or coercion exercised or practised toward any faculty member or librarian in respect to salaries, fringe benefits, pensions, rank, promotion, tenure, reappointment, dismissal, research or other leaves, or any other terms and conditions of employment by reason of age, race, creed, colour, disability, national origin, citizenship, religious or political affiliation or belief, sex, sexual orientation, gender identity, gender expression, marital status or family status, place of residence, membership or activity in the Association, or any activity pursuant to the principles of academic freedom set out in Article 5, as well as any other ground included in or added to the Ontario *Human Rights Code*.

This provision memorializes a shared value. The grievance may be successful. It may be partially successful. It may fail. But there is no doubt about the benefit to be gained by the correct disposal of the litigation. That can only happen if the disclosure request is granted. The necessary balancing leads to only one result: ordering disclosure, especially since there is no other legal bar, or over-riding reason, not to do so. Certainly, the fact that individuals have the right to pursue individual claims of salary discrimination, while true, ignores the objective reality of the resources that would be required that effectively bars such proceedings. Moreover, and more importantly, the allegation of discrimination is systemic and that requires the Association to bring it forward.

In reaching this result, there is no intention to be cavalier about the interests involved, including the University's understandable desire to keep its promises. Faculty members disclosed the information having been promised confidentiality. One can readily understand the University's desire to stand by its commitment; however, it cannot prevent disclosure where the data is arguably relevant and fundamental human rights

issues are in play. Disclosure is part of ensuring a full and fair hearing on the question of whether there is discrimination in compensation. Getting to the truth is paramount and actually advances shared goals. Facilitating that process with a normative production order far outweighs any individual interests that might possibly be at stake. Speculative harm, when muscular measures can be put into place to minimize risk, is simply not sufficient to decline the request separate and apart from whether a case for privilege has been established (which it has not).

Voluntary informed consent, as a legal construct, is factually and legally irrelevant to this part of the proceeding. The Association represents the faculty in this Association grievance. It is clearly arguing a case on their behalf and for their benefit. Considerations of privacy and confidentiality must be seen through this applicable lens: the Association, by definition, is acting in the interests of its membership. The Association has an incontrovertible interest in ensuring that compensation, which it negotiates, is equitable and non-discriminatory. The grievance alleges systemic discrimination. It would be an extraordinary outcome to deny the Association access to demographic information about faculty members when that information is being sought for the singular purpose of redressing salary inequities.

I do not accept that disclosure will cause irreparable harm. There is no reason to believe that the order in this award, with its stringent and granular requirements, will chill or otherwise inhibit any future faculty participation in the survey (or that of any other

member of the University community). It is not imaginable that any faculty member will consider the University culpable for a breach of trust in the circumstances of this case. Disclosure has been ordered by operation of law together with strong safeguards to ensure confidentiality. It is equally hard to imagine, again subject to the specific terms of this order, how anonymized aggregated data in an expert report could or would impair the confidence of any faculty member in the University, especially when the purpose of the expert report, and the future GRP proceeding, is to remedy faculty salary discrimination.

Cases of this kind are quasi-constitutional; they are as important as they are complex. The data analysis is extremely sophisticated, requiring a review of patterns in the aggregate and over time. All relevant information needs to be considered and should be considered unless there is a legal reason not to do so. In this case, having examined all of the submitted materials – the written briefs, the attachments and the authorities – I am left concluding that there is no legal bar to the production request. Indeed, the request is normative and appropriate.

The University may turn out to be correct. It is within the realm of possibility that the data ordered disclosed will not support a robust and meaningful comparative analysis capable of determining whether any discrimination in compensation exists, and if it does, what remedy should be granted. The University pointed to some methodological issues, but that is a matter for the Chair and panel of the GRP hearing the case to decide

after they have considered the evidence, not a matter that could possibly be fairly determined at this stage in the process. The concerns may be valid, but they are premature.

A related comment is in order. While the University has expressed the view that the Association was seeking the data to see whether it had a case, that is not a submission I can accept. We know that there is a case. How do we know this? Because the University, unilaterally, when agreement with the Association could not be reached, and following its own equity study, adjusted the salaries of tenured female professors. The adjustment was not satisfactory to the Association, but the adjustment establishes that there was a wrong that needed a remedy. Likewise, the parties agreed at mediation to significant adjustments in the female Librarian ranks. The Association may or may not succeed – but this not a fishing expedition.

As the University notes in its submissions, the data being sought “could jeopardize the confidentiality and anonymity of their responses.” Stated somewhat differently, by linking the data to the A1, it becomes easier to identify individuals, but the fact is, as the University also notes, “the Association is not seeking to have individual faculty members’ survey responses produced in a form which expressly identifies by them.” Add to that the Association’s commitment not to do so – as is reflected in decades of experience where when the Association agreed to keep something confidential it kept it confidential – the case for ordering disclosure becomes even more compelling.

There are other reasons for ordering the disclosure. Doing so may actually advance the primary purpose for which the data was collected: to provide for the design and implementation of measures to ensure that there is no salary discrimination among faculty by understanding the scope of the problem – assuming for the sake of argument that the Association is successful in establishing that salary discrimination exists – and then designing an appropriate and carefully calibrated remedial response. While the commitment made to faculty members is being disturbed by this order, the architecture that is being put into place has been deliberately designed to ensure the highest possible degree of confidentiality.

Accordingly, and for the foregoing reasons, the Association's disclosure request is granted subject to the following:

1. Production is ordered for the sole purpose of this litigation before the GRP and may not be used or disclosed for any other purpose (the implied undertaking rule).
2. This production order is reciprocal.
3. Both parties must specify in writing before production takes place the names of their representatives including legal counsel and experts to whom the data will be produced and the measures that they will be putting into place, both electronic and otherwise, to ensure security and confidentiality. Representatives, including legal counsel and experts, will sign a confidentiality agreement as

mutually agreed. This agreement will include their contractual commitment and undertaking to keep the data secure and strictly confidential, their agreement not to copy, reproduce or transmit the data except for the purposes of this litigation, and their agreement not to disclose the data except as is strictly necessary for the purposes of this litigation. All data that is put before the GRP must be in aggregate form and the parties are directed to have a case conference prior to either party introducing such evidence to ensure this order is complied with.

4. Should either party become aware of any action by anyone that might affect the strict confidentiality that accompanies this order, it must be immediately and fully disclosed to the other party.
5. Following the conclusion of this litigation all of the disclosed data must be destroyed or returned according to a protocol to be agreed upon by the parties.
6. This order may be amended by the GRP or as agreed upon by the parties.

Conclusion

Accordingly, and for the foregoing reasons, the production order is granted.

DATED at Toronto this 14th day of June 2021.

"William Kaplan"

William Kaplan

June 10, 2021

SENT BY EMAIL

Open Letter to President Gertler:

Re: Town Hall on the CAUT Censure of the University of Toronto Administration

In the wake of the CAUT censure, UTFA has hosted two all-member events. Our first information session, on May 6, answered our members' questions about the CAUT censure process and what the censure entails. The second, on May 27, examined the events that led the U of T Administration to be censured by CAUT. Both events were well attended, interactive, and informative.

A series of important questions about the University Administration's own perspective on the CAUT censure and the principles at stake remain unanswered. These questions encompass both the Administration's response to the IHRP hiring controversy and the positions the Administration has communicated via official channels on the controversy—including how best to resolve it.

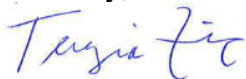
U of T faculty and librarians are deeply invested in the issues at the heart of the censure—academic freedom, collegial governance, non-discrimination, due process, and freedom from external interference.

I am therefore writing to request that the University Administration itself host a town hall meeting with faculty and librarians to directly address our members' questions and concerns. I further encourage you to consider that such a meeting be formatted to allow for interactive dialogue amongst colleagues.

If you wish, UTFA would be pleased to provide a series of questions in advance of the town hall to begin the discussion. In our experience, an open-ended Q&A is most helpful in facilitating productive dialogue.

We look forward to receiving your reply.

Sincerely,



Terezia Zorić
UTFA President

c.c. Heather Boon, Vice-Provost, Faculty & Academic Life
Kelly Hannah-Moffat, Vice President, Human Resources & Equity
Cheryl Regehr, Vice-President & Provost

Item 5j

The Executive Committee recommends that Council extend the terms of the members of the UTFA Pension Committee to September 2021.

Professors from Guelph, Queen's, Toronto, and Western honoured with OCUFA service awards

May 27, 2021



TORONTO, May 27, 2021 – The Ontario Confederation of University Faculty Associations (OCUFA) is pleased to announce this year's recipients of the OCUFA Service Award: Herb Kunze of the University of Guelph Faculty Association (UGFA), Robert Hickey and Paul Young of the Queen's University Faculty Association (QUFA), and Cynthia Messenger of the University of Toronto Faculty Association (UTFA) for their collective efforts to create the University Pension Plan (UPP); and Jeff Tennant of the University of Western Ontario Faculty Association (UWOFA) for his inspiring leadership and advocacy on behalf of Ontario's faculty and academic librarians.

"The OCUFA Service Award was established to honour individuals who have done, or continue to do, exceptional work on behalf of OCUFA and faculty across Ontario," said Rahul Sapra, President of OCUFA. "We are thrilled to bestow this award on five individuals who so clearly deserve this recognition."

The UPP, which will see its inception this July, is a jointly-sponsored pension plan for the university sector in Ontario. Current members include the University of Guelph, Queen's University, and the University of Toronto. Herb Kunze, Robert Hickey, Paul Young, and Cynthia Messenger spent years working days and nights to make the UPP a reality. The new pension plan is a remarkable achievement, as it will provide a stable defined-benefit option for Ontario university faculty, academic librarians and staff for decades to come.

"The UPP would not be a reality without the dedication and hard work of Herb, Robert, Paul, and Cynthia," said Sapra. "These four individuals were instrumental in pushing the UPP project forward and ultimately bringing it to fruition. Because of their work, tens of thousands of faculty, academic librarians, and staff now have a better pension plan."

Jeff Tennant has demonstrated a steadfast commitment to building a stronger academic labour movement through his contributions to OCUFA. As Vice-Chair and then Chair of OCUFA's Collective Bargaining Committee between 2015 and 2020, Tennant provided a compelling vision for faculty association bargaining that ensures all members are engaged and have a voice at the bargaining table. He was also an integral member of the OCUFA Working Group on Student Questionnaires on Courses and Teaching, which published a landmark report on the misuse of student questionnaire results and their role in enabling harassment of faculty through anonymous comments.

"Jeff has been a tireless advocate for all Ontario faculty association members, including precariously employed faculty and librarians," said Sapra. "With this award, we recognize his selfless commitment and strong leadership."

Kunze, Hickey, Young, Messenger, and Tennant will receive their awards at a virtual ceremony on May 28, 2021.

Founded in 1964, OCUFA represents 17,000 professors and academic librarians in 30 faculty associations across Ontario. It is committed to enhancing the quality of higher education and recognizing the outstanding contributions of its members towards creating a world-class university system. For more information, please visit the OCUFA website at www.ocufa.on.ca.

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To arrange interviews or for more information, please contact:
Ben Lewis, OCUFA Communications Lead

Item 7b(i)

The Executive Committee recommends to Council that M. Attridge be approved to sit on the Policies for Librarians Negotiating Team.

Council Report
Report of the UTFA Librarians' Committee
June 23, 2021

Ontario College of Art & Design University (OCADU)

The termination of four senior librarians (members of OPSEU) at OCADU on May 4, 2021 (effective June 1, 2021) with more than sixty committed years to the OCADU community, in addition, to the elimination of two additional library positions by the new University Chief Librarian, [Tony White](#), resulted in a provincial and national outcry from librarians across Canada.

[Open letters condemning OCADU actions](#) from universities in Canada, CAUT, CAPAL and [UTFA](#) (see attached) were sent to the president of OCADU, Ana Serrano, and [Jaime Watt](#), Chair of the OCADU University Board of Directors; a [petition](#) was launched; a digital action day was organized for May 31, 2021, [#weloveOCADUlibrarians](#); and in the Toronto newspaper, [Medium](#), a op-ed was written by UTFA and the OCADU faculty association (see attached). On June 8 four new library positions were posted. Similar to what occurred at Laurentian University, it was suggested that the terminated librarians could apply for the new posted positions. These actions are not appropriate for Canadian academic institutions.

Academic Status - Librarians of Université Laval

Librarians in Quebec have not traditionally had academic status. Librarians at Laval are seeking academic status and requested support from colleagues at other Canadian universities. In response, the Terezia Zoric and members of the UTFA Librarians Committee drafted an open letter of support explaining the importance of librarians having academic status and academic freedom as partners with faculty at post-secondary institutions (see attached).

Thank you.

On behalf of the UTFA Librarians Committee,

H. Sonne de Torrens, Chair

June 8, 2021

To: The Librarians at Université Laval

We are writing to support your efforts to secure full academic status in your terms and conditions of employment at the Université Laval. We (UTFA) and the members of the University of Toronto Librarians Committee recognize that it is absolutely vital for academic librarians to have full academic status in their terms and conditions of employment.

The denial of academic status to academic librarians at Canadian post-secondary institutions is a lengthy and dishonorable legacy that needs to change. The following statements from professional associations collectively affirm the need for academic librarians to have academic status: [CAUT Statement on Academic Status and Governance for Librarians](#) (2018), [Canadian Association of Professional Academic Librarians](#) (2020) and [ACRL Standards for Faculty Status for Academic Librarians](#) (2021).

We collectively declare our support for the vital role of academic librarianship at post-secondary institutions in Canada:

- Academic librarians provide a unique form of professional guidance, expertise, and leadership in specialized areas that only academic librarians can provide
- Academic librarians offer invaluable expertise to faculty and students in support of teaching and research in a rapidly changing environment

Therefore, we affirm that academic librarians must be recognized as full partners in the research and teaching mission of your institution, with terms and conditions of employment analogous to those of faculty. Academic librarians need to be embedded into the governance structures of your institution and your library to ensure that the expertise of librarians has a voice and is considered in decision-making processes in meaningful ways.

In addition, academic librarians have the right to academic freedom, to share openly their opinions, ideas, and concerns regarding their professional practice, service, and scholarship, without fear of reprisal or recrimination by their supervisors and administrators. This is for the good of your community and the long-term sustainability of your resources and library.

We fully endorse your efforts to secure academic status.

Yours sincerely,



Terezia Zorić, President of UTFA



Harriet Sonne de Torrens (Chair), on behalf of the UTFA Librarians Committee

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University of Toronto Faculty Association

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OCADU's decision to terminate four librarians reflects a troubling trend in the post-secondary sector



University of Toronto Faculty Association May 27 · 3 min read

Op-ed: **Min Sook Lee (OCADU Faculty Association President), Harriet Sonne de Torrens (UTFA Librarians Committee Chair) & Terezia Zorić (UTFA President)**

On May 4th, the Ontario College of Art & Design University (OCADU) administration unceremoniously announced its decision to eliminate six library positions (effective June 1st, 2021). As a result, four senior librarians — with a combined seven decades of experience — were given a month's notice of their job termination.

The librarians found out that their services were no longer required following a virtual meeting where OCADU's new University Librarian informed staff that the university was planning to re-structure the library.

From time to time, the re-structuring of academic libraries may be necessary to support the evolving pedagogical, curricular, and other needs of students and faculty members. Central to any academic restructuring is a collegial and transparent process where those involved with relevant expertise have a real voice. The principle of collegial governance ensures that members of university communities who contribute to its well-being and accomplishments are part of a shared decision-making process.

OCADU's administration and Board of Governors disregarded these fundamental principles. Students, staff, faculty, librarians, and the broader community all stated that OCADU's Administration did not hold *substantive and meaningful consultations* before issuing layoff notices. Deeply concerning is OCADU's statement and attempts to justify and conceal a failed restructuring process by utilizing de-colonization as an explanation.

The loss of the expertise and historical knowledge of the four most senior librarians will have a profound impact on the OCADU community that relied on their services.

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secondary institutions. Academic librarians support students and faculty in research and knowledge translation. Gutting libraries is a bad move for any educational institution.

It should not be lost on anyone that librarian services rely on a mostly feminized workforce. The pandemic has devastated the monumental gains that women have made after years of hard-fought battles for equity in the workplace. Academic librarians have been among the leaders in the fight for equity in the post-secondary sector for decades. It is unsurprising that these more vulnerable members of the academic workforce are some of the first to face the consequences of bad governance decisions.

What is happening to OCADU's senior librarians reflects a disturbing trend that has emerged with greater force in the university sector during the pandemic. Administrators are operating more like corporate CEOs in the private sector and are making arbitrary decisions without respecting principles of collegial governance. Decisions that jettison the interests of students, faculty, and staff are being made in favour of the bottom line.

This should be familiar to anyone who is following the crisis at Laurentian University. Students, staff, and faculty there are paying the price following years of financial and governance mismanagement by Laurentian's administration. Then there is also the situation at the University of Alberta, where its administration revealed plans for a massive re-structuring process after experiencing a \$120 million shortfall in funding. Students, especially those who are most vulnerable and face the highest equity barriers, are the ones who are suffering the most because of university mismanagement.

The widening collegiality gap is the result, in part, of the ongoing failure of provincial and federal governments to adequately invest in post-secondary education. The starving of higher education has gone hand-in-hand with the increased corporatization of universities and the re-positioning of universities as public burdens rather than public investments. Unstable public funding emboldens university administrations to act with near impunity in the name of 'tough financial decisions'. Publicly-funded post-secondary institutions must not be managed as corporate businesses but rather governed as irreplaceable social goods.

Recent events demonstrate again how the corporatization of academic institutions suppresses academic freedom, innovation, creativity, and collegial governance. Healthy democracies rely on public sites of knowledge-building that are free from political interference, protect academic freedom within a human rights framework, and are free from corporate profiteering. This requires government commitment to stable and adequate funding of our colleges and universities.

Provincial and federal levels of government need to work together to build a national plan on post-secondary education. Without this, we will see more libraries being

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Post Secondary Education

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E faculty@utfa.org / www.utfa.org

OPEN LETTER

May 13, 2021

Ana Serrano, President and Vice-Chancellor

Email: aserrano@ocadu.org

Dear President Ana Serrano,

On behalf of the members of the University of Toronto Faculty Association (UTFA) Executive and the UTFA Librarians Committee, we are writing to urge you and senior OCADU Administration to reconsider the decision to eliminate six librarian positions. We call on you to adopt and respect a collegial process that involves librarians, faculty, students, and the broader community.

We have serious concerns about the radical elimination of six professional librarian positions under the guise of a structural re-organization that has occurred without a collegial process of consultation with faculty, students, or the librarians who have lost their jobs. We are disappointed that the University Librarian, Tony White, and the OCADU Administration have decided to terminate the employment of four academic librarians. Combined, the four librarians have more than six decades of expertise and knowledge – a loss that is irreplaceable. Despite years of exceptional service, they were given their layoff notices on May 5, 2021 and will officially lose their jobs as of June 1, 2021. We are also concerned about the decision to eliminate two unfilled librarian positions at OCADU.

We recognize that the need to restructure academic libraries is a continual norm in response to changes in research, curriculum, and evolving technology. However, UTFA believes that this unilateral move to eliminate six professional librarian positions is contrary to practices in Canadian academic libraries and violates several academic principles, including collegial governance.

Short-term gains can result in long-term irrevocable losses.

Any successful re-structuring of academic libraries must value the expertise of professional librarians and include them meaningfully in the process. It must ensure there is continuity and growth without disrupting academic support for the community. Collegial governance must form the basis of a successful re-structuring because everyone involved can be informed, share expertise and ideas, and ultimately produce the best results.

Libraries are at the core of any post-secondary institution. They are a necessity for academic support for students, accreditation, and the public purposes of the University.

We urge you to re-consider your decision. Embrace the higher principles and values that OCADU supports as an academic community, as per your mission statements and the terms of employment in the Collective Agreement with OPSEU Local 576, Unit 1.

Sincerely,



Terezia Zorić
President, University of Toronto Faculty Association



Harriet Sonne de Torrens
Librarians Committee Chair, University of Toronto Faculty Association

Cc:

Jamie Watt, Chair, OCAD University Board of Governors (jwatt@navltd.com)
Caroline Langill, OCAD Vice-President, Academic & Provost (clangill@ocadu.ca)
Tony White, OCAD University Librarian (twhite@ocadu.ca)
Min Sook Lee, President, OCAD University Faculty Association (minsooklee@faculty.ocadu.ca)
Chris Thompson, President, OPSEU Local 576 (cthompson@ocadu.ca)