

**IN THE MATTER OF A MEDIATION/ARBITRATION  
(PENSION GOVERNANCE)**

**BETWEEN**

**THE UNIVERSITY OF TORONTO FACULTY ASSOCIATION**

**-and-**

**THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO**

---

**Brief of the University of Toronto Faculty Association**

---

**November 15, 2008**

## INDEX

<b>KEY ISSUES</b> .....	<b>1</b>
<b>PART 1 – PROPOSED PLAN AND JOINT BOARD</b> .....	<b>8</b>
Composition of the Board.....	9
Rights of Governing Council.....	9
Administration of the Proposed Plan and Member Communications .....	9
Investment of Plan Assets.....	10
Delegation of Authority .....	10
Actuarial Reports and Other Advisors.....	11
<b>PART 2 – THE CURRENT PENSION PLAN</b> .....	<b>12</b>
Current Governance Model.....	12
Size of the Current Plan .....	13
Plan Membership .....	14
<b>PART 3 – MEMBERS BEAR SIGNIFICANT RISK IN THE CURRENT PLAN</b> .....	<b>16</b>
Risks in the Current Plan are Ultimately Borne by Plan Members .....	16
Other Methods of Shifting Costs and Risks to Plan Members .....	18
Plan Members Should Share Governance Because They Bear Risks.....	18
<b>PART 4 – PRINCIPLES OF PENSION GOVERNANCE AND PROBLEMS WITH     CURRENT GOVERNANCE</b> .....	<b>20</b>
Inherent Conflicts of Interest in the Current Plan Governance Structure.....	20
Inherent Conflict of Interest Faced by the Business Board .....	21
Lack of Effective Oversight and Monitoring.....	22
Lack of Effective Communication and Transparency .....	23
<b>PART 5 – THE ADMINISTRATION’S PROPOSAL</b> .....	<b>25</b>
Rationale for Rejecting UTFA Proposal.....	25
The Administration Proposal Contains No Effective Participation in Decision-Making..	25
The Administration Proposal Contains No Meaningful Accountability to Members .....	26
OTHER CONCERNS RAISED BY THE ADMINISTRATION .....	27

Length of Time to Implement Fundamental Changes .....	27
Transaction Costs and On-Going Costs .....	27
Separating Plan and Remaining Plan Members .....	27
Conclusions .....	27
<b>SCHEDULE A.....</b>	<b>29</b>
PRIOR AMENDMENTS AND GOVERNANCE PROPOSALS.....	29
<b>SCHEDULE B.....</b>	<b>32</b>
EXAMPLES OF SHARED CONTROL OF GOVERNANCE.....	32
<b>SCHEDULE C.....</b>	<b>34</b>
Breakdown of Actual and Notional Contributions to the Current Plan .....	34

## List of Supporting Documents

<b><u>Tab</u></b>	<b><u>Name of Document</u></b>
-------------------	--------------------------------

- |    |   |
|----|---|
| 1  | UTFA Proposal of April 25, 2008.  |
| 2  | University of Toronto Pension Plan Restated July 1, 2002.   |
| 3  | University of Toronto Pension Plans Annual Financial Report for the Year Ended June 30, 2007. <sup>1</sup>  |
| 4  | University of Toronto Pension Plan Financial Statements June 30, 2007.  |
| 5  | Canada Revenue Agency Actuarial Information Summary.  |
| 6  | Actuarial Report University of Toronto Pension Plan as of July 1, 2007.   |
| 7  | Unionized Employees.  |
| 8  | Organization Chart of the Governing Council, 2008-2009.   |
| 9  | Membership of the Governing Council's Boards and Committees 2008-2009 Business Board.   |
| 10 | Business Board.   |
| 11 | Business Board Calendar of Business.  |
| 12 | Governing Council and its Boards and Committees Meeting Schedule 2008-09.   |
| 13 | Memorandum dated April 28, 2008 re: Agenda Item 3: University of Toronto Asset Management (UTAM) and its Annual Report for 2007.                      |
| 14 | Memorandum dated December 17, 2007 re: Agenda Item 3: Pension Plans Annual Financial Report and Agenda Item 4: Pension Fund Master Investment Policy. |
| 15 | Memorandum dated November 19, 2007 re: Agenda Item 3: Relationship with UTAM [and the UofT Pension Plan].   |
| 16 | Memorandum dated April 11, 2007 re: Agenda Item 4: University of Toronto Asset Management Corp (UTAM) 2006 Annual Report.                             |
| 17 | Memorandum dated November 9, 2006 re: Agenda Item 3: University of Toronto Pension Plan and its Problems.   |
| 18 | Memorandum dated March 27, 2006 re: University of Toronto Asset Management Corporation (UTAM) 2005 Annual Report.                                     |
| 19 | Organization Chart and Business Board Terms of Reference with Respect to UTAM.  |
| 20 | UTAM Board of Directors (as of June 30, 2008) and UTAM Directors – Chronology.  |
| 21 | University of Toronto Asset Management Corporation – Performance (as of June 30, 2008).   |

---

<sup>1</sup> Appendix 3 (Actuarial Report) and Appendix 4 (Financial Statements) to this Annual Financial Report have been excluded because those documents for the University of Toronto Pension Plan have been included under Tab 6 and Tab 4.

**Tab   Name of Document**

- 22 University of Toronto Supplement to July 1, 1987 Actuarial Valuation Report.
- 23 Benefits Canada. “On Guard 2008 Top 100 Pension Funds”.
- 24 Benefits Canada. “Restricted Access 2007 Top 100 Pension Funds”.
- 25 Actuarial Valuation Results as of July 1, 2007 for University of Toronto Pension Plan and Actuarial Valuation Results as of July 1, 2007 for SRA (showing breakdown between faculty/librarians and administrative/unionized staff).
- 26 Baldwin, Bob. “Financing Defined Benefit Pension Plans”, *Canadian Labour Congress Research Paper #32*, November 2004.
- 27 Daniels, Ronald J. and Randall Morck. 1995. “Canadian Corporate Governance: Policy Options”, in Ronald J. Daniels and Randall Morck eds. *Corporate Decision-Making in Canada* (Alberta: University of Chicago Press, 1995).
- 28 Pesando, James. “Risky Assumptions: a Closer at the Bearing of Investment Risk in Defined-Benefit Pension Plans”, *C.D. Howe Institute Commentary*, No. 266, June 2008.
- 29 Excerpt from University of Toronto 2006 Performance Indicators for Governance.
- 30 Legacy of Prior Contribution Holidays and Interest Assumption Changes.
- 31 Buffett, Warren and Loomis, Carol. “Warren Buffett on the Stock Market,” Fortune Education Collection, December 10, 2001.
- 32 UTAM Asset Mix: Pension and Summary of Performance and Comparison to Benchmarks as at June 30, 2008.
- 33 University of Toronto Asset Management Corporation 2007 Annual Report.
- 34 Remarks of the Honourable Henry N.R. Jackman to the Class in Portfolio Management Rotman School dated March 30, 2006.
- 35 Agreement Arising from the Reports of the Pension Plan Task Force dated March 15, 1982 between the University of Toronto Faculty Association and the University of Toronto.
- 36 Agreement dated July 13, 1983 between the University of Toronto Faculty Association and the University of Toronto.
- 37 Teplitsky Report Re: 1987-88 and 1988-89.
- 38 UofT 1966 Pension Plan and its Actuarial Assumptions: How they changed from July 1, 1986 to July 1, 2007 (compiled by UTFA).
- 39 Appendix C – Contribution Holidays to the University of Toronto Pension Plan Restated July 1, 2002.
- 40 Letter dated November 29, 1985 from Michael Finlayson, President of UTFA, to Professor Connell, President of the University of Toronto with UTFA’s Salary and Benefit Proposals for 1986-1987.
- 41 Negotiation Report dated February 19, 1987 with UTFA’s Salary and Benefits Proposals for 1987-1988.

**Tab   Name of Document**

- 42    Proposal on Pension Plan Related Matters dated April 10, 1987.
- 43    Letter dated June 2, 1987 from Professor Connell, President of the University of Toronto.
- 44    Gillese E.E. *The Fiduciary Liability of the Employer as Pension Plan Administrator. Fiduciary Obligations: Implications for Financial Institutions and Funds.* (Toronto: Osgoode Hall Professional Development Program.

## **KEY ISSUES**

1. The University of Toronto Pension Plan (the “Current Plan”) belongs to plan members. They contribute substantial amounts annually to the Current Plan, and bear substantial risks associated with the funding of the Current Plan. Current Plan members should have a meaningful voice in decision-making affecting the governance and administration of their plan. The Current Plan is controlled exclusively by the University of Toronto administration and members have no input into any of the decision-making,
2. The University of Toronto Faculty Association (“UTFA”) proposes the establishment of a new plan specifically for faculty and librarians (the “Proposed Plan”). This plan shall be a continuance of the Current Plan, but will be governed and administered to reflect the unique characteristics and needs of faculty and librarians as a community of interest.
3. A new, independent Board of Trustees (the “New Board”) should be established to administer the Proposed Plan. The New Board should have equal representation of both plan members and the Governing Council of the University of Toronto (the “Administration”).
4. Under the Proposed Plan and New Board, the Administration shall retain the right to amend the Proposed Plan in whole or in part, or to terminate it altogether at any time, with the exception of four restrictions specified in our proposal.

## PART 1 – PROPOSED PLAN AND JOINT BOARD

### Introduction to the Proposal

1. UTFA has long sought greater voice and participation in their pension plan. Developments in the Current Plan over the past 20 years, and most particularly changes in its funding status in the past five years, require that members have a meaningful voice in the administration and investment of their pensions.
2. The Current Plan has changed since UTFA first proposed joint governance in the 1980s. The size of the Current Plan has grown from \$750 million in 1987 to \$2.9 billion in 2007. Mandatory retirement for faculty and librarians has been abolished and these plan members are working longer.
3. Labour market conditions have also changed. Since government funding of universities in Ontario reduced significantly in the late 1980s, universities must be increasingly vigilant in controlling and managing costs. Capital market conditions have changed radically since the late 1980s, and are challenging pension plans across Canada and around the world.
4. These changes, and others, have brought significant new challenges to the administration of the Current Plan. The risks facing pension plan members today are greater than ever. There is a greater awareness on the part of members and retirees of the importance of administrative decisions about the Current Plan. In order to meet these concerns, and participate responsibly in the administration of the Current Plan, UTFA and the Administration have agreed to explore methods to provide members a meaningful voice in decision-making.
5. UTFA proposes that a new Board of Trustees (the New Board) be established to govern a separate Faculty and Librarians Pension Plan (the Proposed Plan). The New Board shall be fiduciaries of the Proposed Plan and act in the interests of its beneficiaries. Key features of the New Board shall include:

**Shared Control:** UTFA and the Administration shall share control of the New Board.

**Governing Council:** The Governing Council shall retain the right to amend or terminate the Proposed Plan, subject to the provisions set out below.

**Independence:** The New Board shall act independently and have full power to interpret and administer the Proposed Plan subject to the rights of the Administration, as provided below.

**Accountability:** The New Board shall be directly accountable to Proposed Plan beneficiaries and to the Administration.

**Trusteeship:** The New Board shall have legal ownership of Proposed Plan assets, contributions and investments. A trust document shall transfer assets

associated with the Proposed Plan to the New Board and establish the New Board and administrator of the Proposed Plan under the *Pension Benefits Act*.<sup>2</sup>

**Integrated Plan Management:** The New Board's mandate shall include appointment of a chief executive officer (CEO) who shall oversee the setting of investment policy and the administration of benefits in order to achieve an integrated management approach.

### **Composition of the Board**

6. The New Board shall have nine (9) members, to be allocated as follows:
  - (i) four (4) members shall be designated by the Governing Council, at least one of whom shall be an active or retired member of the Proposed Plan;
  - (ii) four (4) members shall be designated by the UTFA Council, at least one of whom shall be a retired member of the Proposed Plan; and
  - (iii) a neutral chair shall be selected jointly by the Governing Council and UTFA.

In the event that the parties are unable to select a neutral chair, the chair shall be appointed by Martin Teplitsky. Failing such an appointment by Mr. Teplitsky, the chair shall be appointed by the Chief Justice of Ontario.

### **Rights of Governing Council**

7. The Governing Council shall have the right to amend the Proposed Plan in whole or in part, or to terminate it altogether at any time. However, no amendment shall:
  - (i) reduce any accrued benefits;
  - (ii) alter the contribution formula or funding formula without the consent of UTFA;
  - (iii) change the governance structure of the Proposed Plan or any future benefits without the consent of UTFA; or
  - (iv) be inconsistent with the provisions of any applicable collective agreement or memorandum between the Governing Council and UTFA.

### **Administration of the Proposed Plan and Member Communications**

8. The New Board shall have the powers required to administer the Proposed Plan.
9. The New Board shall appoint a chief executive officer who shall be accountable to the New Board and who shall oversee and coordinate the administration of the Proposed Plan and the investment of its assets.

---

<sup>2</sup> R.S.O. 1990, c. P.8 (the "PBA").

10. The New Board shall develop and implement a communications strategy to ensure that members have access to information related to the Proposed Plan and their individual accounts and to service member queries and concerns.
11. In order to minimize disruptions to the Current and Proposed Plans, members of the Administration's Human Resources staff who are currently engaged in the day-to-day administration of the Proposed Plan shall initially continue administering the Proposed Plan. Further administration of the Proposed Plan will be determined by the New Board.
12. The Administration shall be reimbursed for full value of any services provided to the New Board on a cost-recovery basis.

### **Investment of Plan Assets**

13. The New Board shall establish an investment policy in accordance with the Proposed Plan's unique features and ensure the prudent investment of Proposed Plan assets in accordance with that policy. The investment policy shall take into consideration the special needs and characteristics of the Proposed Plan membership and be in compliance with the PBA and applicable law.
14. The New Board shall establish an Investment Committee to advise the New Board on matters relating to the investment of Proposed Plan assets. The Investment Committee shall consist of two members appointed by each of the Governing Council and UTFA, and four other persons selected by the New Board, one of whom shall act as the chair of the Investment Committee. The chair of the New Board shall also serve on the Investment Committee.
15. The New Board shall enter into an agreement with the University of Toronto Asset Management Corporation ("UTAM") to manage the Proposed Plan assets for a period that shall not exceed two years. This agreement shall only be renewed with the approval of the New Board.
16. The New Board shall engage UTAM or other investment managers or advisors as it determines to manage the investment of the Proposed Plan's assets contributed after the establishment of the New Board.

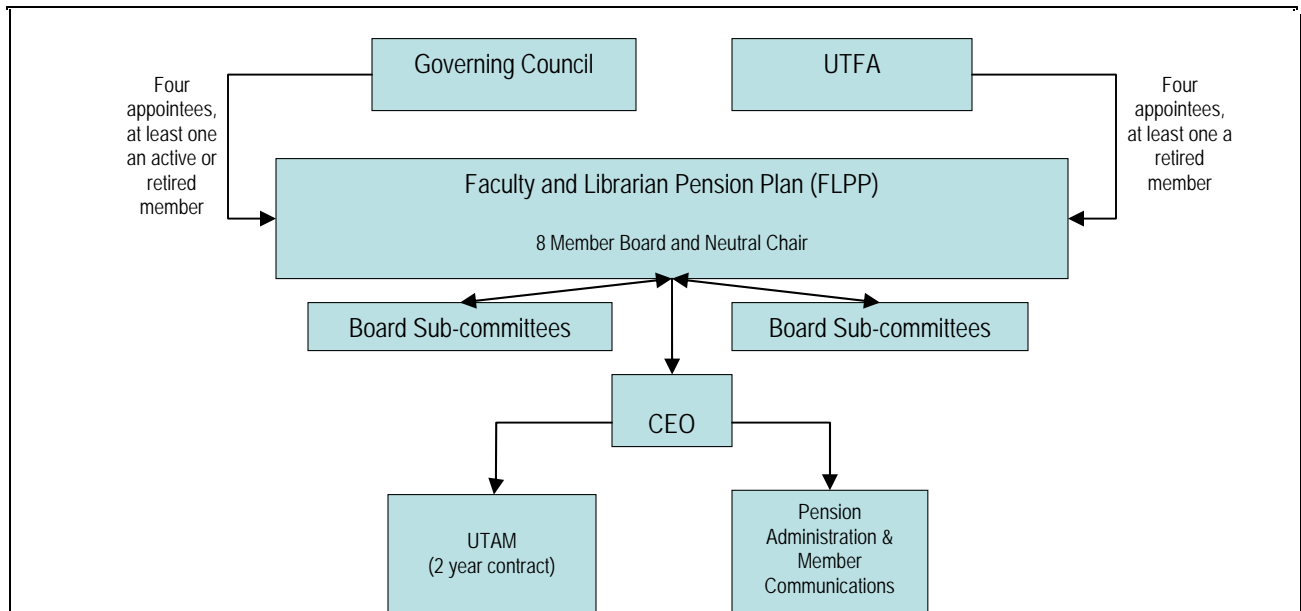
### **Delegation of Authority**

17. The New Board shall have the power to delegate its duties and responsibilities as it deems appropriate and as is compliant with applicable laws for the proper administration of the Proposed Plan and the investment of its assets.
18. The New Board shall conduct regular performance reviews of all delegates and agents, and make changes, as required, from time to time in the appointment or mandate of such firms or individuals.
19. Any services provided to the New Board or the Proposed Plan by the Administration shall be pursuant to the terms of an administration or cost sharing agreement and shall be on a cost recovery basis only.

## Actuarial Reports and Other Advisors

20. The New Board shall be responsible for preparing valuations of the pension plan as required for the administration of the Proposed Plan. The New Board shall determine the Proposed Plan's funding policy and actuarial assumptions which shall be subject to the consent of the Governing Council.
21. In the absence of agreement from the Governing Council, any dispute shall be resolved by arbitration. The arbitrator shall be Martin Teplitsky or the last person appointed to arbitrate the terms of any collective agreement between UTFA and the Governing Council. Failing such appointment, the arbitrator shall be appointed by the Chief Justice of Ontario.
22. This proposal was made to the Administration on April 25, 2008.<sup>3</sup>

**Figure 1: Chart of Proposed Plan Structure**



<sup>3</sup> See Tab 1.

## **PART 2 – THE CURRENT PENSION PLAN**

1. The Current Plan was established by the Governing Council on January 1, 1966 and has since been amended and restated several times.<sup>4</sup> The Current Plan is regulated by the PBA (Plan Registration No. 0312827) and the *Income Tax Act*.<sup>5</sup>
2. The Current Plan is a contributory defined benefit plan.
3. The Current Plan covers all staff at the University of Toronto including faculty and librarians, administrative and unionized staff. There are approximately 14,727 total participants in the Current Plan, including 7,894 active members, 4,421 retired members, 1,413 deferred vested members and 999 suspended members.<sup>6</sup>
4. UTFA is recognized by the Administration as the representative for faculty and librarians for salaries, benefits and pension negotiations. However, UTFA is not a certified union. UTFA represents 4,702 faculty and librarians (2,726 active members and 1,966 retired members). According to the Administration, about 20 union locals represent unionized staff.<sup>7</sup> However, the vast majority of unionized plan members belong to the United Steelworkers.

### **Current Governance Model**

5. The University of Toronto is a large and complex institution and has a correspondingly complex organizational structure.<sup>8</sup>
6. The Governing Council is the sponsor and legal administrator of the Current Plan. Plan advisors are State Street Trust Company (custodian of assets), Hewitt Associates (actuaries and consultants), Ernst & Young (external auditors) and UTAM (investment manager). The Vice-President, Human Resources and Equity, is responsible for formulating pension policy, member communications, benefits administration and negotiation of benefits. The Vice-President, Business Affairs, is responsible for the financial administration of the Current Plan, including liaising with the advisors listed above.<sup>9</sup>
7. The Governing Council delegates the administration of the Current Plan to the Business Board. The Business Board has a total of 31 members, two of whom are faculty members elected to the Governing Council and then appointed to the Business Board.<sup>10</sup>

---

<sup>4</sup> See Tab 2.

<sup>5</sup> R.S.C. 1985, c. 1 (5<sup>th</sup> Supp.) as amended.

<sup>6</sup> See Tab 3 and Tab 6.

<sup>7</sup> See Tab 7.

<sup>8</sup> See Tab 8.

<sup>9</sup> See Tab 3, p.4.

<sup>10</sup> See Tab 9.

8. In addition to the administration of the Current Plan, the Business Board is responsible for determining a wide range of policies and for monitoring matters affecting the business affairs of the University of Toronto.<sup>11</sup>
9. The Business Board has approximately seven public meetings during the academic year. In addition to other items on its agenda for each meeting, it receives UTAM's semi-annual report at two of these meetings and the Current Plan's annual actuarial report at one of these meetings. The Business Board's full schedule allows it to attend to the administration of the Current Plan only at these three meetings, and as a result, many key decisions are left to staff or UTAM.<sup>12</sup>
10. Since 2000, the investment of the Current Plan assets has been managed by UTAM. UTAM's Board of Directors has 12 directors, all of whom were selected by the Administration.<sup>13</sup> In addition to \$2.9 billion in pension assets, UTAM also manages \$2.0 billion in endowment funds and \$0.7 billion in working capital.<sup>14</sup>
11. The President of UTFA has made many presentations to the Business Board regarding UTFA's concerns about the Current Plan, particularly regarding the Current Plan's investment policy, actuarial issues and funding policy. The Business Board's rules allow for a maximum of five minutes per presentation on these complex matters. As a result, UTFA has also distributed written submissions to the Business Board. A sample of these submissions is attached.<sup>15</sup>

### **Size of the Current Plan**

12. Since 1987, the Current Plan has grown over four times, from \$725 million in assets in 1987<sup>16</sup> to \$2.9 billion in 2007.<sup>17</sup>
13. The Current Plan is the largest university pension plan (by size of assets) in Canada. According to Benefits Canada, the Plan was the 58th largest in Canada in 2007<sup>18</sup> at \$2.9 billion in assets, and the 61st largest in 2006<sup>19</sup> at \$2.7 billion in assets.
14. A separate faculty and librarian pension plan would have about \$1.7 billion in assets and would be the 80th largest pension plan in Canada. The Proposed Plan would be larger by asset size than McGill University's, Queen's University's and York University's pension plans. McGill University's pension plan is jointly governed, and provides a significant voice and participation for members in the governance and administration of their plans. A summary of university plans where members participate in governance is set out in Schedule B.

---

<sup>11</sup> See Tab 10.

<sup>12</sup> See Tab 11 and Tab 12.

<sup>13</sup> See Tab 19 and Tab 20.

<sup>14</sup> See Tab 21, p. 2.

<sup>15</sup> See Tab 13, Tab 14, Tab 15, Tab 16, Tab 17 and Tab 18.

<sup>16</sup> See Tab 22.

<sup>17</sup> See Tab 6.

<sup>18</sup> See Tab 23.

<sup>19</sup> See Tab 24.

## Plan Membership

15. As of July 1, 2007, the total number of active, retired, deferred vested and suspended members is 14,727, of which 4,702 (32%) are active and retired faculty and librarians represented by UTFA and 7,613 (52%) are active and retired administrative and unionized staff.<sup>20</sup>
16. Table 1 below shows that for active and retired faculty and librarians, the average accrued going concern liability per participant is \$361,261 (or about 64% of total liabilities). For other active and retired members, the average accrued going concern liability is \$125,843 (or 36% of total liabilities). UTFA members represent 32% of all members, but 64% of all liabilities of the Current Plan. This is one significant difference between UTFA and non-UTFA members of the Current Plan.
17. In Table 1 below, actuarial valuation results have been broken down to show this and other differences between active and retired faculty and librarians on the one hand and active and retired administrative and unionized staff on the other.<sup>21</sup>
18. Faculty and librarians form a distinct community of interest in many other ways. Faculty and librarians have distinct demographic profile, share similar working conditions, such as salary and job tenure, and have different qualifications, employment experience and history, as compared to administrative and unionized staff members in the plan.

---

<sup>20</sup> See Tab 25.

<sup>21</sup> See Tab 25. One might note the \$700 million difference between the total accrued liability of \$2.7 billion and the total wind-up liability of \$3.4 billion. The different interest rate assumptions in the two calculations are the major cause of the difference. This important issue will not be discussed in any detail in this brief.

**Table 1: Summary of UTFA Members versus non-UTFA Members<sup>22</sup>**

	<b>Faculty and Librarians</b>	<b>Administrative and Unionized Staff</b>	<b>Total Count</b>
<b>Number of participants</b>			
Active	2,736	5,158	7,894
Retired	1,966	2,455	4,421
Total active and retired	4,702	7,613	12,315
<b>Percentage of total faculty, librarian, administrative and unionized participants (12,315 total)</b>			
Active	22%	42%	64%
Retired	16%	20%	36%
Total active and retired	<b>38%</b>	<b>62%</b>	100%
<b>Total accrued going concern liability (thousands of dollars)</b>			
Active	\$752,271	\$551,253	\$1,303,524
Retired	\$946,378	\$406,792	\$1,353,170
Total active and retired	\$1,698,649	\$958,045	\$2,656,694
<b>Percentage of total accrued going concern liability (\$2.7 billion total)</b>			
Active	28%	21%	49%
Retired	36%	15%	51%
Total Active and Retired	<b>64%</b>	<b>36%</b>	100%
<b>Average going concern liability per participant</b>			
Per Active	\$274,953	\$106,874	\$165,128
Per Retired	\$481,372	\$165,699	\$306,078
Per Total	\$361,261	\$125,843	\$215,728

<sup>22</sup> Source: Hewitt, Actuarial Valuation as of July 1, 2007. See Tab 25. The ‘terminated vested’ and the ‘suspended, exempt or pending’ members are not included in this summary table. The liability associated with those members is minimal. Although they represent 16% of all plan members, the total accrued going concern liability for those members is only 3.2% of the total accrued going concern liability of the Current Plan.

## **PART 3 – MEMBERS BEAR SIGNIFICANT RISK IN THE CURRENT PLAN**

### **Risks in the Current Plan are Ultimately Borne by Plan Members**

1. In a typical contributory defined benefit plan, the employer commits to provide a pension benefit according to a specific formula that takes into account the employee's number of years of service and exit salary. Both the employee and the employer contribute money to a pension fund that is invested in stocks, bonds, real estate, or other assets to provide for the pension benefit.
2. The Administration's argument claims that the employer is at risk for the amount of the pension benefits promised to the employee because if there are insufficient funds to pay the accrued pension benefits, the employer is legally obligated to make up the difference.
3. The Administration's position is that it should control the administration of the Current Plan because it is responsible for any unfunded liabilities and solvency deficiencies. This is an unreasonable assumption for two reasons.
4. First, members contribute significant amounts to the Current Plan. In 2007, members contributed \$32 million to the Current Plan. Schedule C provides a breakdown of actual and notional contributions to the Current Plan over the past 20 years. Over that period, the total cash contributions by active members (\$750 million) were 33% greater than that of the Administration (\$580 million).
5. Current and future members face the risk a reduction in pension benefits going forward and the risk of other reductions in their compensation packages if pension costs escalate.
6. Second, pension plans at non-profit public institutions like universities are unlike plans in the private commercial sector. University plan sponsors do not have the same recourse to shareholders, retained earnings or capital markets as commercial plan sponsors do to meet funding requirements. Instead, university administrations must seek increased contributions or other compensation concessions from plan members.
7. Non-profit public institution pension plans are also unlike plans in the government sector. Unlike government bodies, university administrations cannot raise taxes or print money. They do not have the same access to taxpayer pockets. Unless universities are able to obtain more funding from the province (in which case they do not directly bear the cost of under-funding), or unless they sell other assets (an unlikely option), they have few or no other means to increase contributions except through reductions to employee salaries and benefits.
8. The PBA does require that a plan sponsor take steps to ensure plans are fully funded on a going concern and solvency basis (e.g., which assumes termination of the plan but does not account for indexation). However, this legal requirement does not address the economic reality of non-profit public institution plans. In effect, the cost of funding a pension plan of this type is shifted, at least in significant part, to employees.

9. This economic reality is well-recognized. Bob Baldwin of the Canadian Labour Congress explains:

“[i]n context, if the need for special payments arises, the employer will do everything possible to recover the amount of the special payments in any one of a variety of ways: lowering wage and salary offers, or postponing or dropping improvements to the pension plan or other benefits. To the extent that an employer successfully offsets the amount of special payments by making a downward adjustment to some other part of the compensation package, the employer has effectively shifted the risk back to the plan members.”<sup>23</sup>

10. Further, in a contributory plan such as the Current Plan, an employer may push for increased employee contributions to meet funding shortfalls. Former University of Toronto Law School Dean Ron Daniels and Professor Randy Morck support this view:

“Theoretically, both the investment strategy and the responsibility for shortfalls rest with the employer only. In practice, when a defined benefit plan becomes seriously underfunded, the employees are usually asked for higher contributions or given lower defined benefits -- or both as has occurred recently for public sector employees in Alberta. Even when the contributions come solely from the employer, those contributions (and benefits they pay for) are part of labour contract negotiations and are subject to change. It is arguable that there is really no such thing as a “pure” defined benefit plan, that in all pension plans employees potentially pay some costs for poor investment performance.”<sup>24</sup>

11. University of Toronto Professor James E. Pesando also supports this argument by pointing out the dynamic bargaining relationship between employer and employee and how the negotiation of salary and benefits, including pensions, take into account any special payments made by the employer. In other words, these special payments become part of the total compensation package that employers pay to employees for their work. He writes:

“... members of DB plans may bear substantial investment risk. The key issue is the extent to which members of DB plans grant wage or other concessions based on the contributions made by the plan sponsor, including any additional contributions required as a result of investment shortfalls.”<sup>25</sup>

12. UTFA takes the position that all contributions made to the Current Plan, whether by members or by the Administration, belong to Current Plan members. Jack Selody of the Bank of Canada explains:

---

<sup>23</sup> Baldwin, Bob. “Financing Defined Benefit Pension Plans”, *Canadian Labour Congress Research Paper #32*, November 2004, 13. See Tab 26.

<sup>24</sup> Daniels, Ronald J. and Randall Morck. 1995. “Canadian Corporate Governance: Policy Options”, in Ronald J. Daniels and Randall Morck eds. *Corporate Decision-Making in Canada* (Alberta: University of Chicago Press, 1995). See Tab 27.

<sup>25</sup> Pesando, James. “Risky Assumptions: a Closer at the Bearing of Investment Risk in Defined-Benefit Pension Plans”, *C.D. Howe Institute Commentary*, No. 266, June 2008, 2. See Tab 28.

“Contributions can be made either directly by members or indirectly by employers on behalf of members. Conceptually, it does not matter who makes the contributions, since all contributions are part of members’ total compensation and are earned by members.”<sup>26</sup>

### **Other Methods of Shifting Costs and Risks to Plan Members**

13. In the university environment, there are indirect methods of passing on pension costs and total compensation costs to faculty and librarians. These include changes to working conditions or terminating non-tenured faculty and refraining from hiring new faculty. These methods of cost reduction pass on costs to faculty by increasing workload through higher student-faculty ratios and larger class sizes. In fact, student-faculty ratios and class sizes are greater at the University of Toronto than at comparable Canadian and US universities and make workload an important issue for UTFA members.<sup>27</sup>
14. University faculty and staff are more disposed to bearing these extra costs because of the low turnover rate in academic positions. Some employers may argue that they are unable to shift the cost of funding shortfalls to employees because of market forces that dictate compensation rates. However, we point out that this argument assumes that employees are willing and able to change jobs if their compensation packages fall below the market standard. Academic faculty and staff are less likely to change jobs in response to changes in their compensation packages for several reasons. First, job loyalty is high among academic faculty because they are committed to their teaching and academic scholarship. Second, the academic job market has far fewer opportunities within a given geographical area compared to other job markets. As a result, the turnover rate is lower in academic jobs. Thus, when the Administration reduces its costs by not hiring new faculty, or by terminating non-tenured staff, and workload increases because of larger class sizes, the Administration is less likely to be deterred by these negative consequences.
15. A third important method to hide or shift costs in defined benefit pension plans is to manipulate actuarial assumptions. The sponsor costs of any defined benefit plan are determined by the triennial or annual actuarial valuation required by the PBA. Varying actuarial assumptions by very small amounts can have profound effects over the life-time of a pension plan. Varying actuarial assumptions – within the limits prescribed by the PBA and accepted actuarial practice – can have the effect of temporarily disguising a funding shortfall, creating a surplus or enhancing a modest surplus, thus shifting costs to future generations. Manipulated improperly, varying these assumptions can jeopardize the funding and viability of a pension plan.

### **Plan Members Should Share Governance Because They Bear Risks**

16. Plan members should be able to participate in plan governance because they bear or at least share the ultimate cost of any funding shortfalls. They face contribution risk, benefit risk and investment risk.

---

<sup>26</sup> Selody, Jack. “Vulnerabilities in Defined-Benefit Pension Plans,” *Bank of Canada Discussion Paper 2007-3*, 3.

<sup>27</sup> Tab 29.

17. In the past, the Administration has had full control over the Current Plan's administration. It has not allowed meaningful opportunities for plan members to participate in decisions affecting the Current Plan. UTFA has become increasingly alarmed by how the current plan administrator has been managing the Current Plan. These concerns include investment management policy, selection and oversight of advisors, use of contribution holidays, a lack of timely information or consultation, a lack of transparency and openness in the financial reporting of the Current Plan, among other concerns.
18. For example:
  - (i) UTAM has invested the pension fund in alternative investments (such as hedge funds) and other potentially high risk investments in pursuit of returns that have exposed the Current Plan to uncertain risks. There is a potential that these investments have exposed the Current Plan to significant asset-liability mismatch risk.
  - (ii) Contribution holidays taken by the Administration have totalled \$1.5 billion (in today's dollars) and, we believe, have undermined the Current Plan's long-term funding status.<sup>28</sup>
  - (iii) Lack of transparency and difficulty in obtaining information has made it nearly impossible for Current Plan members to fully understand decisions of the Administration.
19. The Administration's position incorrectly presumes that it alone bears the investment risk and associated contribution risks. We believe that the Current Plan's members are exposed to a significant level of risk without any commensurate voice or participation in decision-making affecting that risk. The economic reality is that members ultimately bear these costs through compensation packages, workload increases, contribution increases, lower benefits or fundamental changes to a plan.
20. Plan members should have a voice in important decisions made for the Current Plan. It is unacceptable that Plan members should have no voice or control over pension administration and a significant pool of assets that represents a key source of income security in retirement.

---

<sup>28</sup> See Tab 30.

## PART 4 – PRINCIPLES OF PENSION GOVERNANCE AND PROBLEMS WITH CURRENT GOVERNANCE

### Inherent Conflicts of Interest in the Current Plan Governance Structure

*“Pension plans must represent the beneficiaries and no one else. They have to be autonomous institutions. They must be accountable. They must be able to communicate with their constituencies – the people for whom they are trustees. ... [They] must be free from any suspicion of conflict of interest.” - Peter Drucker<sup>29</sup>*

1. The PBA provides that the administrator of a pension plan has statutory fiduciary duties to plan members and beneficiaries.<sup>30</sup> These fiduciary duties include a duty to act in the best interests of plan members. In the administration of the pension plan, administrators must not act in their personal or corporate interests, or in the interest of other beneficiaries to whom they might owe a separate duty.<sup>31</sup>
2. When employers are at the same time administrators of a pension plan, there is a recognized and inherent conflict of interest. Although all board members, including those appointed by employers, have a fiduciary duty to the pension plan members, an employer’s interests will often conflict with those of employees and pension plan members. An employer may find it difficult if not impossible to avoid acting in its own interest, while at the same time being required by law to act in the best interest of plan members. This is known as the “two hat” problem. This problem is a widely recognized agency problem, and has been the subject of criticism.<sup>32</sup>
3. To minimize and manage conflicts of interest, pension plan administrators should be independent and autonomous of the sponsoring employer. The inherent conflict of interest is effectively managed when plan members and employers jointly govern a pension plan. When members and employers elect representatives to participate in plan administration, they can meaningfully participate in decisions affecting the interests of both parties.
4. In a jointly-governed board the potential for conflict of interest remains. However, a jointly-governed board effectively manages this conflict by facilitating the exchange of views and information, ensuring the relevant interests are considered, and permits those with an interest in decisions of the pension plan to meaningfully participate in decision-making.

---

<sup>29</sup> Drucker, Peter. “The Unseen Revolution: How Pension Fund Socialism Came to America,” 1976, p. 86.

<sup>30</sup> PBA, s. 22.

<sup>31</sup> PBA, s. 22(4).

<sup>32</sup> See Gillese, E.E. *The Fiduciary Liability of the Employer as Pension Plan Administrator. Fiduciary Obligations: Implications for Financial Institutions and Funds.* (Toronto: Osgoode Hall Professional Development Program, 1996). See also, Ambachtsheer, K., *Pension Revolution: A Solution to the Pension Crisis* (Toronto: John Wiley & Sons, 2007) at pp. 37, 72, 93 and 302. See Tab 44.

5. The Current Plan structure is an example of this inherent conflict of interests. There are several aspects of the Current Plan's governance that require management through a joint board.

### **Inherent Conflict of Interest Faced by the Business Board**

6. The Business Board faces a conflict of interest between its duty to Current Plan members and its responsibility as an employer and for the broader financial governance of the University of Toronto. The Administration currently selects all members of the Business Board, which in turn has total control over the administration and investment of the Current Plan. Because the Current Plan's administrators are thus ultimately appointed by and accountable to the Administration, there is an inherent conflict of interest facing the Business Board as the administrator of the Current Plan.
7. The Business Board has historically resolved this conflict of interest in favour of the Administration. Members have made submissions to the Business Board and to the Administration in bargaining for over 20 years. The Business Board and Administration have not adopted member proposals without the intervention of an arbitrator. There is a consistent pattern of decision-making that favours the Administration's financial interests.
8. For example, following the 1987 Amendment that eliminated the fixed contribution ratios that had been in place<sup>33</sup>, the Business Board approved an increase in the interest rate assumption that is used in actuarial valuations. This change in the interest rate assumption had the effect of creating a notional funding surplus, enabling the Administration to avoid making direct contributions for 14 years. The total value of all those contribution holidays, in today's dollars, is about \$1.5 billion.<sup>34</sup>
9. While these changes in the interest rate assumption were not prohibited by the PBA, they had the effect of allocating plan resources to contribution holidays rather than creating larger prudential reserves. As a result, fewer contributions were made to the Current Plan, and the risk of a funding shortfall was increased. As explained in Part 3, the burden of such risks is ultimately borne by members.
10. Indeed, in 2003, the Current Plan moved to a market deficit position and forced the Administration to reverse its contribution policy. Under the new policy, the Administration will make special payments to pay off the deficit, and, regardless of whether there is a notional surplus, will contribute 100% of the required current service cost. The Administration finally acknowledged the necessity of making "provision for future periods of poor investment returns."<sup>35</sup> If the Administration had taken this position between 1987 and 2004, the Current Plan would likely not have the wind-up deficit of over \$500 million that it has today.<sup>36</sup>

---

<sup>33</sup> See Schedule A.

<sup>34</sup> See Tab 30.

<sup>35</sup> See Tab 3, p. 47.

<sup>36</sup> See Tab 6.

11. This inherent conflict of interest faced by employer-administrators and its impact on actuarial decisions is recognized. Warren Buffett warns:

“The actuaries who have roles in this game know nothing special about future investment returns. What they do know, however, is that their clients desire rates that are high. And a happy client is a continuing client.”<sup>37</sup>

### **Lack of Effective Oversight and Monitoring**

12. The PBA provides that administrators of a pension plan have a duty to monitor agents.<sup>38</sup> An essential element of good governance is the periodic evaluation of performance against objective and established benchmarks.
13. The Business Board has a wide-ranging mandate. It is concerned with an array of other university responsibilities and is unable to give sufficient time and attention to the administration of the Current Plan. The Business Board’s Calendar of Business shows that the Business Board only considers the Current Plan’s administrative matters at three meetings per year.<sup>39</sup> It has scarce time to effectively instruct, monitor or evaluate its outside advisors, such as its actuaries and its investment manager. By comparison, dedicated pension boards, such as jointly-governed boards, can meet up to 12 times per year and more frequently by committee.
14. A particular concern of oversight is the rapid recent increase in management fees charged by UTAM, the Current Plan’s investment manager. The overall annual investment costs have increased by 500% since UTAM took over the investment of pension funds in 2000. Investment fees exceeded \$22 million in 2008.<sup>40</sup>
15. UTAM also faces a conflict in its investment activities. UTAM manages the Administration’s endowment funds as well as the Current Plan’s assets. Defined benefit plans make long-term promises to pay benefits to their beneficiaries. Accordingly, their investment policy should be to manage risk so that they can meet these long-term obligations. Endowment funds should have their own investment policy. The two funds have different risk tolerances, objectives and legal obligations. In particular, pension plans have legal obligations to pay accrued benefits to pensioners. However, UTAM implements the same asset allocation for both funds.<sup>41</sup> It is of great concern to UTFA that UTAM invests both funds in the same assets and does not have a separate investment strategy for the pension fund that matches its assets to its long-term liabilities.
16. UTAM defends its fees by undertaking an investment program that favours alternative investments, such as hedge funds.<sup>42</sup> Pension plan members were not consulted when UTAM made this important shift to alternative assets, with their attendant risks. UTAM

---

<sup>37</sup> Buffett, Warren and Loomis, Carol. “Warren Buffett on the Stock Market,” *Fortune Education Collection*, December 10, 2001, 6. See Tab 31.

<sup>38</sup> PBA, S. 22(7).

<sup>39</sup> See Tab 11.

<sup>40</sup> See Tab 13, p. 3, for a graph of UTAM’s increasing expenses.

<sup>41</sup> See Tab 33, p. 15.

<sup>42</sup> See Tab 33, p. 16.

currently has exposure to over 200 hedge funds.<sup>43</sup> While simple hedging may be a prudent activity, hedge funds lack transparency and their risk exposure is often not well understood. Up to 2007, the increased risk exposure had not been justified by higher returns. A simple passive investment policy outperformed UTAM by an aggregate amount of about \$206 million from 2000 to 2007.<sup>44</sup>

17. More importantly, Current Plan members have not had a voice in the decision to adopt this investment strategy, or had the risks and rewards of this decision outlined for them.
18. This lack of effective monitoring and control contributes to increased risks to the Current Plan. The Honourable Henry N. R. Jackman took an interest in the Business Board when he was Chancellor of the University of Toronto. In a presentation at the Rotman School of Management on March 30, 2006, he stated:

“Furthermore no proper mechanism was put in place to change the benchmarks or to otherwise ensure that the investment manager would vary from the benchmarks to preserve the fund’s capital. The additional losses to the University’s Endowment and Pension Funds in the 2001-2002 period, over and above the median performance of the RBC balanced universe, totalled over \$200 million – not an insignificant figure. ... I mention the UTAM experience as it shows what can happen if there is a miscommunication between the investment manager and the client. In this case both parties felt that changes in asset allocation were the other’s responsibility. As a result nothing was done.”<sup>45</sup>

### **Lack of Effective Communication and Transparency**

19. In order to have effective accountability and oversight, it is essential that a pension plan produce timely and relevant information for plan members. Although the PBA requires some disclosure of information to plan members<sup>46</sup>, these are minimum standards and are insufficient for members to effectively understand and participate in decision-making. The ability of Current Plan members to communicate their interests and participate in decision-making is severely limited.
20. The Business Board provides inadequate disclosure about the Current Plan to members. There is no website dedicated to the Current Plan and information is difficult to find. Members are not consulted on crucial decisions, such as the adoption of actuarial reports or changes in the investment policy. No copies of the annual or summary reports are provided to Current Plan members. There is no separate or special annual report for members. By comparison, most other university plans in Canada and the US have annual reports and a dedicated website for their pension plans where plan members may download financial reports and other information. UTFA and UTFA members’ experience obtaining information from both the Current Plan and its service providers, including UTAM, has been unsatisfactory.

---

<sup>43</sup> See Tab 4, p. 9.

<sup>44</sup> See Tab 13, p. 4 for charts showing Passive Index Performance, UTAM Performance and their difference.

<sup>45</sup> Remarks of the Honourable Henry N.R. Jackman to the Class in Portfolio Management Rotman School dated March 30, 2006, 29 to 33. See Tab 34.

<sup>46</sup> PBA, s. 25.

21. UTFA's proposal establishes a Pension Administration and Member Communications body to be charged with managing the day-to-day administration of pension benefits and with setting up systems for maintaining regular communication with Proposed Plan members.
22. Opportunities for members to express their concerns to the Business Board is inadequate. The Business Board attends to the administration of the Current Plan at only three meetings per year, and during such meetings, presentations are limited to a mere five minutes with no right to respond to the Administration's replies to such presentations.
23. UTFA's proposal of a joint board with plan member appointees provides a channel for plan members to voice their concerns through their representatives.

## **PART 5 – THE ADMINISTRATION’S PROPOSAL**

### **Rationale for Rejecting UTFA Proposal**

1. The Administration communicated a proposal to UTFA dated June 9, 2008 (the “Administration Proposal”). The Administration’s rationale for rejecting the UTFA proposal was that it “fails to acknowledge the role of the University as Plan Sponsor and Administrator”.
2. The UTFA proposal explicitly recognizes the role of the Administration as plan sponsor but also recognizes that continuing its role as administrator is rife with conflicts and is not working for the beneficiaries of the plan.
3. The UTFA proposal does not seek to change the Administration’s role as plan sponsor. The UTFA proposal explicitly provides that the Administration remains the plan sponsor.
4. The UTFA proposal also acknowledges the Administration as an essential part of the plan’s administration by seeking to include the Administration as a joint administrator of the pension plan.
5. The UTFA proposal does, however, seek to provide a meaningful voice plan members in decision-making for the governance and administration of the Current Plan. The Administration Proposal fails to provide any meaningful voice or participation in decision-making for the Current Plan.

### **The Administration Proposal Contains No Effective Participation in Decision-Making**

6. The Administration proposes establishing a Pension Committee with a mandate to assist and make recommendations to the Administration.
7. However the proposed Pension Committee would not be the “administrator” as defined in section 8 of the PBA. Its role would be akin to that of an “advisory committee” as contemplated by section 24 of the PBA, except that it would still be controlled by the University administration rather than chosen by the members.<sup>47</sup>
8. Pension advisory committees may monitor the administration of a pension plan, make recommendations to the administrator, and promote awareness and understanding of the pension plan.<sup>48</sup> They may also inspect the records of a pension plan.<sup>49</sup>
9. However, these advisory committees have no statutory authority to participate in decision-making for the pension plan. None of the statutory purposes provides a pension advisory committee with any substantive influence on decision-making for the plan, or any meaningful voice in participation in decision-making. An administrator may ignore

---

<sup>47</sup> PBA, s. 24.

<sup>48</sup> PBA, ss. 24(4)(a),(b) and (c).

<sup>49</sup> PBA, s. 25(5).

the recommendations of the pension advisory committee and remain compliant with the PBA.

10. The Administration's mandate for the Pension Committee is limited to the power to "review and comment" on the following administrative tasks and items:
  - Actuarial reports;
  - Investment policy;
  - Annual financial statements;
  - Communication and disclosure to members;
  - Funding policy, and
  - Interpretation of the plan.
11. These "responsibilities" are not explicit powers to act or to meaningfully influence decision-making by the Administration. Further, the opportunity to discharge these responsibilities is potentially limited to two meetings per year.
12. UTFA already has the power to "review and comment" on each of these items, and has done so before the Business Board up to three times per year. Powers to review and comment are desirable, but effectively meaningless unless backed by a substantive power to influence decisions.
13. The proposed Pension Committee is little more than an incremental improvement in access to information. It does not address the inherent conflicts of interest facing an employer-administrator of a pension plan, or provide members with a meaningful voice in the decision-making of the plan. The members of the Current Plan contribute over \$32 million per year and have no substantial influence on its management.

#### **The Administration Proposal Contains No Meaningful Accountability to Members**

14. The Administration Proposal contained four other features:
  - The Administration shall appoint members to the Pension Committee for three year terms.
  - The Administration shall appoint six members of the Pension Committee who represent plan members, no more than three of whom represent retirees.
  - The Administration will appoint seven members of the Committee who represent the Administration, three of whom may be ex-officio.
  - Meetings shall be held a minimum of twice annually.
15. The Administration Proposal provides that the Administration appoints all members of the Pension Committee, whether they represent the employer or the members of the

pension plan. Members of the Pension Committee appointed by the Administration are accountable primarily to the Administration, or are at least face the same inherent conflict of interest as the Administration.

16. The Administration Proposal fails to provide accountable representation to members and reinforces the inherent conflict of interest in the current governance model.

## **OTHER CONCERNS RAISED BY THE ADMINISTRATION**

### **Length of Time to Implement Fundamental Changes**

17. The Administration claims that it could take several years to complete the transfer of assets and liabilities to a newly-established plan.
18. UTFA agrees that it may take time to establish a separate plan. However, the negotiation of pension governance issues has already taken several years and the time required to obtain the Superintendent's approval would likely have little impact on the implementation of any negotiated governance structure.
19. UTFA will cooperate to reduce the amount of time it takes to establish the new plan by assisting in the coordination required and, given meaningful opportunity to participate in establishing the plan, to consenting to and jointly proposing amendments to the Current Plan filed with the Financial Services Commission of Ontario.

### **Transaction Costs and On-Going Costs**

20. The Administration has expressed concern that establishing two separate plans will involve transaction costs and a new set of on-going administration costs.
21. UTFA acknowledges that establishing a new plan will involve one-time expenses and agrees that the Proposed Plan assume such expenses.
22. UTFA agrees that the Proposed Plan will also have on-going administration costs, including actuarial and advisory services. However, services provided by the Administration will be obtained on a cost-recovery basis. In addition, there may be opportunities for cost savings in administration. UTFA agrees that the Proposed Plan bear its own on-going administration costs as the Current Plan now bears its own on-going administration costs.

### **Separating Plan and Remaining Plan Members**

23. The Administration has expressed concern that establishing a separate plan for faculty and staff requires the consent or support of those remaining in the Current Plan.
24. There is no requirement under the PBA or other law that the consent of members remaining in the Current Plan be obtained in order to establish the Proposed Plan. Plan splits (and mergers) are relatively common transactions.

### **Conclusions**

25. The UTFA proposal explicitly acknowledges the role of the Administration as a sponsor and joint administrator of the Current and Proposed Plans.

26. The Administration Proposal does not address the inherent conflict of interest in the existing governance model. It also does not provide meaningful participation by members in the governance of the Current Plan.
27. In order to have meaningful participation in their pension plan, members must have an opportunity to participate in joint decision-making through appointees who are accountable to members. The UTFa proposal provides a reasonable governance solution.

## **SCHEDULE A**

### **PRIOR AMENDMENTS AND GOVERNANCE PROPOSALS**

The purpose of this section is to very briefly provide some contextual and historical background for the current proposal. From 1980 to 1983 substantial amendments and improvements were made to the Current Plan. These were altered in 1987. Since the 1980s, UTFA has sought greater voice and participation in the management of the pension plan.

#### **The 1982 and 1983 Amendments**

Following the 1980-81 salary and benefit negotiations, a joint Pension Plan Task Force was established to recommend amendments to the Plan. These recommendations were incorporated in an Agreement dated March 17, 1982 between UTFA and the University of Toronto (the “1982 Amendment”) and became effective on July 1, 1982.<sup>50</sup> Further amendments were made in an Agreement dated July 13, 1983 between UTFA and the University of Toronto (the “1983 Amendment”).<sup>51</sup>

The Administration agreed to give notice to UTFA prior to making any changes to actuarial methods or assumptions. Paragraph (C)(d)(i) of the 1982 Amendment provides that:

“the actuary will not change the methods and assumptions adopted for the valuation of June 30, 1980, without prior notification of intent to the Pension Plan Task Force.”

The parties agreed that any funding surplus above a certain level would benefit UTFA members as a credit towards future salary and benefits negotiations. Paragraph (C)(d)(iv) of the 1982 Amendment provides that:

“... any surplus beyond this level shall be amortized in the same way as deficits are amortized and the amortized amount will become a credit towards the forthcoming year’s salary and benefit negotiations.”

The Administration agreed to contribute a fixed amount to the fund, regardless of whether or not there was a notional surplus. A fixed contribution ratio of 1:2.44 between UTFA members and the Administration was established. Paragraph 2(a) of the 1983 Amendment provides that:

“...the University will raise the level of current service contribution to 244% of employee contribution effective July 1, 1983....”<sup>52</sup>

#### **The 1987 Amendments**

---

<sup>50</sup> See Tab 35.

<sup>51</sup> See Tab 36.

<sup>52</sup> See Tab 36. Note that by 1987, the Administration’s contribution rate was 255% that of UTFA members’ contributions.

The 1982 Amendment and the 1983 Amendment were cancelled and a new proposal (the “1987 Amendment”)<sup>53</sup> that resulted from the 1987-88 and 1988-89 salary and benefits negotiations was ratified by the UTFA Council in a 26-12 vote on May 5, 1987.

The fixed contribution ratio from the 1983 Amendment was eliminated. Instead, plan members were required to continue contributing the same fixed amount as before (2.5% of salary below the CPP maximum and 5% of salary above the CPP maximum) while the Administration was allowed contribution holidays when actuarial valuations showed a notional surplus. The 1987 Amendment states:

“[w]here the Pension Plan is in a surplus position, at the University’s discretion and subject to the provisions of the Pension Benefits Act, any surplus or a portion thereof may be used to reduce the University’s contributions.”<sup>54</sup>

Taking advantage of the favourable market returns of the late 1980s and early 1990s, the Administration changed the interest rate assumption used for actuarial valuations that had been in place since 1966.<sup>55</sup> This had the effect of creating and enhancing the fund’s notional surplus position and created an opportunity for the Administration to take contribution holidays over a period of 18 years.<sup>56</sup> Although some Plan members enjoyed contribution holidays as a result of salary and benefits negotiation agreements during some of these periods, these holidays undermined the funding status of the Plan to the detriment of Plan beneficiaries.<sup>57</sup>

The Administration was no longer required to consult or notify UTFA prior to making any changes to actuarial methods or assumptions nor prior to taking contribution holidays.

Small gains from the 1987 Amendment included a slightly improved formula for pension indexation. A Pension Advisory Committee with two representatives from UTFA was part of the 1987 Amendment. However, no such Pension Advisory Committee was ever established.

### **Prior UTFA Governance Proposals**

Between 1985 and 1987, UTFA was advocating separate governance of its pension plan as shown in the documents below.

**Governance Proposal.** A proposal letter to President Connell dated November 25, 1985 in connection with the 1985-86 salary and benefits negotiations states:

“The Pension Plan funds to be managed separately from funds otherwise owned by the University of Toronto; management to be overseen by a committee with proportional representation of employee groups with money in the plan.”<sup>58</sup>

---

<sup>53</sup> See Tab 37.

<sup>54</sup> See Tab 37, par. 6.

<sup>55</sup> See Tab 38.

<sup>56</sup> See Tab 30.

<sup>57</sup> See Tab 39.

<sup>58</sup> See Tab 40, at clause V. See also Tab 42.

**Proposal of Separate Plan.** The Negotiation Report prepared by UTFa for the benefit of its members dated February 19, 1987 describes the following proposal:

“(a) Faculty members and librarians to withdraw from the current pension plan; a new plan, identical to the current plan, to be established, excepting that membership in the plan be limited to faculty members and librarians.

(b) Pension Plan Funds, whether in the current Plan or in a new Plan established under (a), above, be managed by a committee composed, in the majority, of Plan members.”<sup>59</sup>

None of the proposals described above were reflected in the settlement announced by President Connell in June 1987.<sup>60</sup>

---

<sup>59</sup> See Tab 41, at clause V. See also Tab 42.

<sup>60</sup> See Tab 43.

## SCHEDULE B

### EXAMPLES OF SHARED CONTROL OF GOVERNANCE

#### I. MCGILL UNIVERSITY

- (a) Type of plan: Hybrid plan that consists of a defined contribution plan with a defined benefit minimum.
- (b) Size of fund: \$1.4 billion as at December 31, 2007.
- (c) Governance: Governance is shared between Plan members and the University. Its 9 member Pension Administration Committee (PAC) is composed as follows:
  - (i) 2 elected by academic staff;
  - (ii) 2 elected by administrative and support staff;
  - (iii) 2 designated by Principal and Chair of Board of Governors;
  - (iv) 2 designated by Board of Governors; and
  - (v) 1 independent appointed by University acting on the PAC's recommendation.
- (d) Under Quebec legislation, pension plans must be governed by a Pension Committee (that is not the sponsor) having at least one member designated by active plan members and one member designated by retired plan members<sup>61</sup>.

#### II. UNIVERSITY OF BRITISH COLUMBIA FACULTY PENSION PLAN

- (a) Type of plan: Defined contribution plan.
- (b) Size of plan: \$1.28 billion as at December 31, 2007.
- (c) Governance: Plan members and University share control equally. Board of Trustees composed of:
  - (i) 4 elected by members; and
  - (ii) 4 appointed by University.
- (d) Governance guidelines include that:
  - a. Board's primary fiduciary duty is to Plan beneficiaries;
  - b. Board is independent of management;
  - c. Trustees must adhere to Conflict of Interest policy which requires disclosure and withdrawal from discussion and voting on the relevant matter.

---

<sup>61</sup> *Supplemental Pension Plan Act*, R.S.Q. c. R-15.1., s. 147.

**III. UNIVERSITY OF NEW BRUNSWICK (UNB) PENSION PLAN FOR ACADEMIC EMPLOYEES**

- (a) Type of plan: Defined benefit plan.
- (b) Size of fund: \$124.0 million as at December 31, 2005.
- (c) Governance: UNB and the Association of University of New Brunswick Teachers (AUNBT) share control equally.

**IV. BISHOP'S UNIVERSITY**

- (a) Type of plan: Defined benefit plan.
- (b) Governance: Employers and employees share control equally. Pension Committee is composed of:
  - (i) 2 designated by active members;
  - (ii) 1 designated by retired member;
  - (iii) 3 designated by University; and
  - (iv) 1 designated by other Pension Committee members.
- (c) Note: Quebec legislation requires that plans be governed by a Pension Committee that includes representatives of both active and retired plan members.

# SCHEDULE C

## Breakdown of Actual and Notional Contributions to the Current Plan

November, 2008

### U of T RPP - Service Costs - Contributions - Holidays - Time Value of \$ - Summary Data

All numbers are totals for both faculty and staff at U of T.

All numbers are directly from or computed from Hewitt Annual Actuarial Reports.

Columns [4], [6], [8], [10], [12], and [14] take onto account column [15], the pension plan time-value-of-money.

[1] Academic Year to July 1	[2] Total Salary Base \$ in Mil	Faculty & Staff - Pension Plan Members						Employer - U of T, Pension Plan Sponsor & Administrator						[15] Actual Market Return Rate	[16] Assumed Real Return Rate
		[3] Pension Service Cost \$ in Mil	[4] Cumulative Service Cost \$ in Mil	[5] Actual Pension Input \$ in Mil	[6] Cumulative Pension Input \$ in Mil	[7] Yearly Pension Holiday \$ in Mil	[8] Cumulative Pension Holiday \$ in Mil	[9] Pension Service Cost \$ in Mil	[10] Cumulative Service Cost \$ in Mil	[11] Actual Pension Input \$ in Mil	[12] Cumulative Pension Input \$ in Mil	[13] Yearly Pension Holiday \$ in Mil	[14] Cumulative Pension Holiday \$ in Mil		
1986	251.9	8.9	10.1	6.9	7.8	2.0	2.3	24.8	28.1	11.1	12.6	13.7	15.5	13.2%	2.25%
1987	270.3	9.6	19.7	8.5	16.4	0.0	2.3	26.6	54.8	0.0	12.6	26.6	42.2	0.3%	2.50%
1988	290.1	10.4	34.0	8.8	28.4	1.6	4.4	28.5	94.0	0.0	14.2	28.5	79.8	12.8%	2.50%
1989	314.8	11.2	46.0	5.2	34.2	6.0	10.6	31.4	127.8	0.0	14.5	31.4	113.3	1.9%	2.50%
1990	339.3	12.2	63.0	12.2	50.2	0.0	11.4	28.6	169.2	0.0	15.7	28.6	153.5	8.2%	3.00%
1991	360.4	13.1	84.7	13.1	70.4	0.0	12.7	35.7	227.9	25.6	45.9	10.1	182.0	11.2%	3.00%
1992	358.6	17.2	116.1	17.6	100.3	0.0	14.5	36.4	301.3	14.7	69.1	21.7	232.2	14.0%	3.00%
1993	353.4	16.8	137.6	17.1	121.5	0.0	15.0	37.0	350.1	0.0	71.5	37.0	278.6	3.5%	3.00%
1994	345.7	16.0	175.1	16.4	157.3	0.0	17.1	35.8	439.9	0.0	81.5	35.8	358.4	14.0%	3.00%
1995	335.0	15.5	214.6	16.4	195.5	0.0	19.2	30.8	530.0	0.0	91.8	30.8	438.3	12.6%	3.00%
1996	339.7	16.1	279.8	15.7	256.2	0.0	23.3	30.6	680.0	0.0	111.3	30.6	568.7	21.3%	3.50%
1997	353.5	16.9	340.0	1.8	295.7	15.1	44.1	31.1	815.0	0.0	127.6	31.1	687.4	14.6%	3.50%
1998	362.2	18.0	365.2	0.0	301.6	18.0	63.3	30.9	862.8	0.0	130.1	30.9	732.7	2.0%	4.00%
1999	385.0	19.8	450.0	0.0	352.6	19.8	97.1	33.3	1,047.5	0.0	152.1	33.3	895.4	16.9%	4.00%
2000	403.2	20.7	446.7	0.0	334.6	20.7	111.8	34.7	1,027.0	0.0	144.4	34.7	882.7	-5.1%	4.00%
2001	434.6	22.3	457.8	11.5	337.8	10.8	119.7	37.3	1,038.8	0.0	140.9	37.3	897.9	-2.4%	4.00%
2002	462.5	24.4	480.7	24.4	361.1	0.0	119.3	42.9	1,078.5	0.0	140.5	42.9	938.0	-0.3%	4.00%
2003	494.6	25.6	584.3	25.6	446.3	0.0	137.7	47.1	1,298.9	41.0	209.4	6.1	1,089.5	15.4%	4.00%
2004	511.3	26.7	677.6	26.7	524.5	0.0	152.7	51.6	1,497.7	64.1	303.3	-12.4	1,194.5	10.9%	4.00%
2005	563.4	29.5	762.3	29.5	597.3	0.0	164.6	56.0	1,674.9	83.9	417.4	-27.9	1,257.6	7.8%	4.00%
2006	606.9	32.0	946.8	32.0	750.1	0.0	196.2	64.7	2,073.6	69.4	580.3	-4.7	1,493.4	19.2%	4.00%
Sum	8,136.4	382.9	946.8	289.4	750.1	94.0	196.2	775.8	2,073.6	309.8	580.3	470.8	1,493.4		
Percentile-A		4.7%		3.6%		1.2%		9.5%		3.8%		5.8%			
Percentile-B				75.6%	79.2%	24.5%	20.7%			39.9%	28.0%	60.7%	72.0%		

