

REPORT

Review of Presidential Compensation Practices at the University of Western Ontario

Hon. Stephen Goudge, Q.C.
155 Wellington Street West, 35th Floor
Toronto, ON, M5V 3H1

Tel: 416.646.7401
Fax: 416.646.4301
Email: Stephen.goudge@paliareroland.com

Review of Presidential Compensation Practices at the University of Western Ontario

Introduction

On April 22, 2015, I was appointed by the Board of Governors of the University of Western Ontario to conduct an independent review of certain aspects of presidential compensation at Western.

The review was initiated by the Board following the many expressions of serious concern raised by the decision of the President to draw a payment of 100% of his base salary at the end of his first term, in lieu of a year of administrative leave, by mutual consent and in accordance with the terms of his contract with Western.

My terms of reference read as follows:

Terms of Reference

The scope of the independent review is to consider and respond to the following questions:

1. Are Western University's presidential compensation practices (including but not limited to salary, benefits and post-service provisions) in line with those of peer institutions?
2. Does the Board of Governors have the appropriate accountability and reporting mechanisms in place with respect to executive compensation? If

not, what other mechanisms should be in place and/or what amendments to our current processes might be appropriate?

3. (a) Is a contractual provision that grants a year-long administrative leave at 100 percent of salary for each term in line with university presidents' contracts offered by peer institutions?
- (b) Is a provision that permits salary to be paid in lieu of taking a leave in line with presidential contracts offered by peer institutions?
- (c) In satisfying the contractual provisions for an administrative leave for a sitting president in each term, what options are appropriate with respect to such leaves between terms?

In conducting my review, I have been given full cooperation by all at Western. I have had full unimpeded access to all the information I considered relevant.

Through the very helpful efforts of the University Secretary, I have obtained a significant number of contracts of senior administrators at other universities in Canada. With the able assistance of Deborah McKenna, a lawyer at Paliare Roland, I have conducted a detailed review of those contracts. I am very grateful to her. My review provides a basis of comparison with the experience at Western.

To acquire as full an appreciation as possible of the factual context for my review I held a large number of interviews with senior officials at the University and leaders of the major stakeholders in the Western community. A list of those I consulted is attached as

Appendix A to my report. I express my thanks to all of them for their candour and their fundamental desire to serve Western's best interests.

In addition, I received and reviewed a large number of individual expressions of opinion from members of the Western community who responded by e-mail to my open invitation to comment. I am grateful to them as well.

I have found this information all very useful in the discharge of my mandate. Needless to say however, the recommendations that follow are entirely my own. In advancing them, I have sought to speak to the future in the hope that as a result of this painful episode, Western can move forward even stronger than it was.

The Factual Context

Dr. Amit Chakma was appointed President and Vice Chancellor effective July 1, 2009. Prior to that, he served as Vice President Academic and Provost of the University of Waterloo.

The first step leading to Dr. Chakma's appointment was a search process conducted by a Selection Committee of the Board of Governors that was struck in November 2007. It was made up of members elected by the Board and members elected by the University Senate. The Selection Committee unanimously recommended to the Board of Governors that Dr. Chakma be appointed to a five year term as President of Western.

The Senior Operations Committee of the Board then negotiated the terms of his appointment with Dr. Chakma. Once that was concluded, that Committee

recommended his appointment on those terms to the Board of Governors and the Board agreed.

At Western, the Board of Governors has formally delegated to the Senior Operations Committee the responsibility for negotiating and approving the contract with the President. The Senior Operations Committee is a standing committee of the Board. It is chaired by the Chair of the Board and is made up of the Vice Chair of the Board and the Chairs of the other standing committees of the Board. There are no members of the academy on the Committee.

Dr. Chakma's appointment contract, dated July 10, 2009, contained the following term concerning administrative leave:

11. Administrative Leave

- 11.1 Administrative leave will be accrued at 2.4 months for each year of completed employment as President in the Term provided that no accruals will be earned for any period during which Dr. Chakma is Totally Disabled. Dr. Chakma will be entitled upon completion of the five (5) year Term to take this administrative leave or to receive a payment in cash, less applicable deductions, equal to the base salary in the last year of the Term, to be paid in a manner to be determined by the University. If Dr. Chakma's contract is renewed for a second Term, these provisions for administrative leave may be carried forward, with the consent of the University, to the end of the second Term.

It appears that this term was not the subject of any significant discussion in the negotiation of Dr. Chakma's original appointment contract. It is also worth noting that his contract with the University of Waterloo contained a very similar provision.

In 2012, the Senior Operations Committee struck a President's Review Committee to consider Dr. Chakma's re-appointment to a second five year term. It was made up of members of the Senior Operations Committee and representatives of the faculty, staff and students. In November 2012, it recommended Dr. Chakma's re-appointment to the Board of Governors for a second five year term. The Board agreed.

The resulting renewal of appointment letter is dated April 26, 2013 and is signed by the then Chair of the Board. Dr. Chakma agreed to it on May 1, 2013 and it then constituted his renewal of appointment contract. It provided that his second term was to commence July 1, 2014. The renewal of appointment contract stated that the terms of his initial contract would continue, subject to several changes. One related to administrative leave, and provides as follows:

- Pursuant to Section 11.1 of the Appointment Contract, the administrative leave you have earned in respect of your first term shall be carried forward to the end of the Term including your additional year of service pursuant to Section 5.6(a) Special Executive Pension.

Again it appears that this term was not the subject of much discussion between the then Chair and Dr. Chakma. It was requested by Dr. Chakma as perhaps having a positive impact on his ultimate pension benefits and was agreed to as one change that could be

made in the face of the freeze on broader public sector remuneration that had been imposed by provincial legislation.

A year later, discussion took place between President Chakma and the new Chair of the Board, Charaq Shah, about the possibility of Dr. Chakma taking his administrative leave entitlement in the form of cash payment rather than deferring his entitlement to the end of his second term as President. It appears that the objective was to provide Dr. Chakma with means to enhance his pension contributions. Advice was sought from outside legal counsel who indicated that the legislation freezing broader public sector remuneration did not prohibit this.

As a result, on June 30, 2014 the Chair sent Dr. Chakma a letter amending his renewal of appointment contract. It provides as follows:

- Pursuant to Section 11.1 of the Appointment Contract dated July 10, 2009, the administrative leave you have earned in respect to your first Term will be paid in cash, less applicable deductions.

Because this way of dealing with administrative leave was an option contemplated in President Chakma's original appointment contract, it was not thought that Senior Operations Committee approval was required. However the result was an amended renewal of appointment contract. This contract was then acted upon. The consequence was that in the year commencing July 1, 2014 the President received the base salary for the year of administrative leave earned over his first term and his salary for the first year of his second term.

When this came to light in the spring of 2015, one consequence was my appointment to conduct this review. In doing this, my consultations have left me with two broad conclusions. First those who participated in the amending of the President's renewal of appointment contract acted entirely in good faith. Second, underpinning the deep concerns that resulted was the sense that a contractual provision for administrative leave ought to be for leave and salary, not simply salary and that this was particularly so in a very constrained fiscal environment.

Western's Presidential Compensation Practices

Comparing Western's presidential compensation practices with those of peer institutions can be done both from the perspective of the process used and from the perspective of the substantive provisions that have resulted.

In my view, to be useful, these comparisons must focus on the big picture, both for process and substance. Detailed comparison of the practices of large complex institutions, each with its own history and procedures, will undoubtedly turn up many differences. Not only is that inevitable. It is also desirable because a university must have the freedom to adapt its practices to its own specific circumstances.

The same is true for any line-by-line comparison of individual contracts. Each is negotiated in an individual context and its terms will inevitably reflect that.

Rather the comparisons that are useful relate, I think, to the fundamentals: is Western's basic process for determining presidential compensation comparable to that of its peers; and is the substance of the results generally in line with its peers.

Turning to the process comparison, as I have described, at Western the responsibility for presidential contracts has been delegated to the Senior Operations Committee. Many of Western's peer institutions, including most of the larger ones, operate the same way, although an almost equal number leave this responsibility with the Board. A few delegate it to the Chair of the Board of Governors alone. This is the fundamental process comparison that matters. My view is that in this, Western is in line with its peer institutions and need not be changed. Subject to what I later propose, I think the present process is appropriate for an institution of Western's size and complexity. Requiring the full Board of Governors to undertake the task is likely to be unwieldy, inefficient and may put the necessary confidentiality of the process at risk.

That is not to say however that the present process cannot be improved in light of the unfortunate events that led to my review. In the next section of my report, I will describe the changes that I think should be made.

A substantive comparison of Western's presidential compensation practices yields much the same conclusion. Western is generally in line with its peer institutions. Presidential contracts all deal with the basics of appointment, term, compensation, faculty position, pension duties, and fringe benefits. Unsurprisingly, there is some considerable variation among the institutions on many of these items. But in general, all universities, including Western, can be said to be comparable. Moreover, where dollars are concerned, the governing provincial legislation is, at least at present, the circumstance of overwhelming importance. It would appear to make very challenging any attempt to address individual difference among institutions.

For these reasons, I think that, in general, Western's presidential compensation practices are in line with those of its peer institutions.

The Board of Governors' Accountability and Reporting Mechanisms

In my view, the events of the last two years point to three changes that need to be made at Western in the way executive compensation, particularly the President's contract, is negotiated, approved and reported on.

The first recommendation concerns the way senior executive compensation contracts, including the President's contract, are negotiated. That is the responsibility of the Senior Operations Committee, a process which is in line with many of Western's peer institutions. As I have said, that serves the efficiency and confidentiality of the negotiating process and I would not change it.

As well, membership on the Senior Operations Committee does not include anyone from the academic community at Western. This serves to avoid any conflict of interest in negotiating these contracts. Again I do not think this needs to be changed.

However, the interviews I conducted made clear that the breadth and depth of the reaction in the Western community to what the President's contract permitted took those involved in negotiating it by complete surprise. That should not have happened.

It is important to try to fix that for the future. The Chair and the members of the Senior Operations Committee are in a sense outsiders to the University community. It is therefore important that in negotiating senior executive contracts they be armed with informed views about how those in that community may react to what the Committee

proposes to commit to. That was missing here. Correcting it simply requires better information flow and better communications, both of which promote sound governance.

For contracts other than his or her own, the President, who advises the Senior Operations Committee on these matters, can help supply that information. That cannot be expected when it comes to the President's own contract.

To fill this information gap, I recommend that when a senior executive contract is being negotiated, particularly that of the President, the Chair of the Committee is required to consult on a confidential basis with a sufficient number of members of the university community to inform himself and the Committee of how the community may react to what it proposes to do. It should be the role of the University Secretary to assist the Chair to identify the appropriate people to consult and to facilitate the Chair's consultations with them. It will also be useful, I think, to have those consultations take place earlier rather than later in the negotiations, to minimize the risk that positions advanced will have to be withdrawn.

This proposal would not change the decision-making authority of the Senior Operations Committee. It does, however, minimize the risk of a repetition of what happened here, namely that the reaction of the University community to a senior executive contract, in this case the President's Amended Renewal of Appointment Contract, comes as a complete surprise to those who negotiated it.

The second recommendation I make addresses the fact that the Amended Renewal of Appointment Contract made June 30, 2014 did not receive the approval of the Senior Operations Committee, although it is that Committee that has the responsibility for it.

My interviews suggest that this mistake arose from a simple misunderstanding with outside counsel about what Western's governance rules required for the new contract made on June 30, 2014. To avoid a repeat of this mistake in the future, University Legal Counsel should be consulted as negotiations for a senior executive contract near conclusion. That did not happen here. University Legal Counsel is best placed to determine both the legal status of the result of negotiations and what Western's governance rules require in the circumstances. Outside counsel's familiarity with the latter is likely to be minimal. However both are important. The fix is to involve University Legal Counsel in this way.

My third recommendation addresses the fact that once the Amended Renewal of Appointment Contract was concluded on June 30, 2014, members of the Board of Governors were unaware of its terms until the controversy erupted in the open a year later. That should not be repeated.

Avoiding a repeat of this is easily done. Once the Senior Operations Committee has concluded a senior executive contract, it should then be tabled with the full Board of Governors for information. Doing so is simply in the best interest of sound reporting and transparent governance.

The Administrative Leave Provision

The unfortunate events that unfolded over the last two years had their genesis in the administrative leave provision contained in President Chakma's original appointment contract.

I will address whether in respect of this term, Western is in line with peer institutions and what alternatives to that term might be more appropriate.

Dr. Chakma's original appointment contract contained the provision for administrative leave that I have quoted above, which was carried over to his renewal of appointment contract and its amendment. The basic component of this contractual term was that over the five year term of service, the President would earn an entitlement to a year of administrative leave for which he would receive his base salary. My examination of other presidential contracts reveals that this component, or something very like it, is very common. By way of example, in Ontario, such a component is contained in fifteen of the sixteen presidential contracts to which I have had access. However, it must be said that beyond this basic component, the details of the term vary considerably amongst peer institutions.

Dr. Chakma's appointment contract also gave him the option to receive payment of his base salary rather than taking his administrative leave. In this event, the University's only right was to determine the manner of payment.

As I have described, in his renewal of appointment contract it was agreed that rather than take either option (administrative leave with pay or simply the pay), the President would carry over the administrative leave entitlement he had earned to the end of his second term.

However, in his Amended Renewal of Appointment Contract, it was agreed that this be changed and that the President would immediately receive his base salary in lieu of the administrative leave he had earned.

My examination of other presidential contracts leads me to conclude that the President's right in his original contract to monetize the administrative leave earned for his first term, and to do so at the start of his second term is not in line with the practice at most peer institutions. Only a very few of those institutions contemplate such a possibility. One, however, was the University of Waterloo where both the then President of Waterloo and Dr. Chakma had contracts according them this right.

In other words, the right to monetize earned administrative leave on renewal of an administrative term is rare among Western' peer institutions. Indeed, many of those institutions presume or even require that administrative leave earned during a first term of service not only not be monetized, but be deferred to be taken at the end of any renewal term. In addition, several institutions explicitly emphasize that administrative leave has a purpose beyond salary and spell out that purpose, for example to permit return to the academic and scholarly responsibilities of the individual.

This comparison clearly shows that it is standard in a presidential contract in Canada today that at the conclusion of a term of administrative service, the President will have earned the entitlement to take a year of administrative leave with full salary. Beyond that basic provision however, my review has led me to conclude that there are a number of additions and clarifications that should be added, in the best interests of both the University and the President.

First, I recommend that in future the purpose of this administrative leave be made explicit. The articulation should be negotiated and indeed may vary president to president. It may include for example, re-engaging the President's scholarly activity or

reflecting on the concept of leadership or service to the broader post-secondary system (although, as with sabbatical leave, income other than the President's salary would be for the University). Such purposes carry benefit both for the individual but also for the University. It would also clarify that during the period of administrative leave an acting President would be appointed.

Making the purpose explicit would prevent debate over the way administrative leave is taken, and whether it is being taken in a way that is contrary to its true purpose. A good deal of the controversy about which I heard in my interviews reflected just such a debate.

Second, with one exception to which I will come, I do not think that taking administrative leave as salary alone should be permitted. In other words, I do not think presidential contracts should permit the monetizing of administrative leave. However elastic the notion of administrative leave may be, I have difficulty stretching it to encompass deferred compensation. If a President were to be provided with a year's salary on completing an administrative term, I think transparency would require that it be described as what it is, namely deferred compensation, rather than administrative leave.

Third, I think it is sound policy that, with the consent of the University, the President has the option of deferring earned administrative leave to the end of his or her full administrative service. When a President is renewed for a second term that would allow the President to preserve what he or she has earned, if it is agreed that continued uninterrupted service is important for the University.

My fourth recommendation about administrative leave focuses on the end of a President's full administrative service. A number of alternatives may arise and can be provided for in the presidential contract:

- (a) If the President is returning to an academic position in the University, the administrative leave he or she has earned but has not yet enjoyed would simply then be taken.
- (b) If the President is leaving the University immediately to take employment elsewhere, any outstanding administrative leave entitlement would be waived. The President would be giving full care and attention to his or her new employer and would not be able to fulfil the purposes of administrative leave.
- (c) If the President is leaving to retire, the situation presented by administrative leave that has earned but not taken is more challenging. The notion of leave no longer applies. What is left is the payment of salary, what I have called the monetizing of administrative leave.

I think the fair outcome in that circumstance is that the President should receive the salary for the administrative leave earned but not taken, but at a discounted rate, perhaps 50%. That would recognize that the President has earned something of value and is not leaving to serve another institution. It would also recognize that members of the academy often never really "retire" but frequently continue to make valuable contributions

to knowledge during retirement. To that extent the purpose of administrative leave would be served.

However, in this circumstance I think it would be appropriate to pay out the salary for the earned administrative leave over the years of leave that have been earned. If, for example, two years of administrative leave have been earned, the payout would be over two years. Then, if during that period of time the individual leaves retirement for employment elsewhere the unpaid balance would be waived, just as it would have been if the employment elsewhere had been taken up immediately.

- (d) Finally, while I have addressed three alternative scenarios at the end of full administrative service, life being what it is I know that this is unlikely to be an exhaustive list. Thus I recommend that the President's contract permit the President and the University, at the end of his or her administrative service, to negotiate an agreed outcome for any administrative leave earned but not taken. This will allow for unanticipated circumstances to be provided for. Hopefully, the principles underpinning the recommendations I have made may provide some helpful guidance in such a circumstance.

In summary, therefore, Western's contractual provision granting the President a year of administrative leave at full salary for a term of administrative service, is in line with peer institutions. Its provision for monetizing that leave is not. However, there are additions

and clarifications that can be made that I suggest are in the interests of both the University and its President.

Conclusion

I began my review in an unfortunate atmosphere of significant crisis. While challenges remain, my work over the last few months has left me with a sense that all at Western are now focused on how to assist the University to put this episode behind it and move forward, to make Western even stronger than it has been. If the process of my review and my recommendations in this report can help with this, I will be very gratified.

Hon. S.T. Goudge, Q.C.

APPENDIX A
INTERVIEWS CONDUCTED

1. Adams, Jeremy Board of Governors
2. Armstrong, Souzan Board of Governors
3. Beynon, Carol Board of Governors
4. Birrell, Irene University Secretary
5. Capone, John Vice President, Research
6. Carmichael, Tom Dean of Information and Media Studies
7. Chakma, Amit President
8. Chakraborty, Endranil Vice President, Society of Graduate Students
9. Cole, Kelly Vice President, External
10. Coxford, Stephen Past Chair, Board of Governors
11. Darnell, Regna Board of Governors
12. Deakin, Janice Provost and Vice President, Academic
13. Dean, Charmaine Dean of Sciences
14. Doesksen, John Vice Provost, Academic
15. Eberhard, John President, Alumni Association
16. English, Jonathan Board of Governors
17. Gainey, Laura Board of Governors
18. Grindrod, Susan Board of Governors
19. Hassan, Hammy Vice Chair, Board of Governors
20. Hearn, Alison President, Faculty Association
21. Helland, Matt President, Students Council
22. Hinein, Tamara President, Society of Graduate Students

23.	Jarrett, Steve	University Legal Counsel
24.	Jenkins, Paul	Board of Governors
25.	Kennedy, Bob	Dean, Ivey Business School
26.	Knowles, Jim	Board of Governors
27.	Kulczyeki, Gitta	Vice President, Resources and Operations
28.	Lassonde, Christian	Board of Governors
29.	Lerner, Michael	Board of Governors
30.	McMullin, Julie	Vice Provost, International
31.	Milde, Michael	Dean of Arts and Humanities
32.	Miller, Linda	Vice Provost, Graduate Studies
33.	Noble, Michelle	Past Chair, Board of Governors
34.	O'Brian, Jane	Assistant Vice President, Human Resources
35.	Patterson, Bonnie	President, Council of Ontario Universities
36.	Perinpanayagam, Meg	President, Staff Association
37.	Schwean, Vicki	Dean of Education
38.	Scott, Iain	Dean of Law
39.	Shah, Chirag	Chair, Board of Governors
40.	Steeves, Catherine	Chief Librarian
41.	Strong, Michael	Dean of Medicine
42.	Sutherland, Thomas	Board of Governors
43.	Timney, Brian	Dean of Social Sciences
44.	Toswell, Jane	Board of Governors
45.	Weece, Jim	Dean of Health Sciences
46.	Weedon, Alan	Vice Provost, Academic Planning, Policy and Faculty
47.	Wilson, Matthew	Board of Governors