

**IN THE MATTER OF AN ARBITRATION**

BETWEEN:

**UNIVERSITY OF BRITISH COLUMBIA**

(the “University”)

AND:

**FACULTY ASSOCIATION OF THE  
UNIVERSITY OF BRITISH COLUMBIA**

(the “Faculty Association”)

**(INTEREST ARBITRATION 2015)**

**SUBMISSION OF THE FACULTY ASSOCIATION**

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# TABLE OF CONTENTS

1.	INTRODUCTION .....	4
2.	SUMMARY OF ISSUES ON WHICH AGREEMENT HAS NOT BEEN REACHED .....	4
	2.03 SALARY .....	5
	2.04 BENEFITS .....	7
	2.05 FACULTY ASSOCIATION’S LANGUAGE PROPOSALS .....	8
	2.06 UNIVERSITY’S LANGUAGE PROPOSALS .....	11
3.	APPLICATION OF ARTICLE 11 OF THE FRAMEWORK AGREEMENT .....	12
4.	THE UNIVERSITY’S “ABILITY TO PAY” AN AWARD FOR 2014-2016 .....	17
5.	JURISPRUDENCE AND THE “ABILITY TO PAY” .....	23
6.	CRITERIA TO BE CONSIDERED ONCE ABILITY TO PAY IS ESTABLISHED .....	30
	A) <i>Academic Quality</i> .....	30
	B) <i>Changes In The Vancouver And Canadian Consumer Price Indices</i> .....	32
	C) <i>Changes In B.C. And Canadian Average Salaries And Wages</i> .....	35
	D) <i>Changes In Salaries and Benefits at Comparable Canadian Universities</i> .....	37
	I) <i>Academic Quality</i> .....	37
	II) <i>Size</i> .....	40
	III) <i>Salaries at Comparator Universities</i> .....	43
	IV) <i>Benefits at Comparator Universities</i> .....	50
7.	DETAILED ANALYSIS OF SALARY AND BENEFIT ISSUES ON WHICH AGREEMENT HAS NOT BEEN REACHED .....	52
	A) <i>GWJ (Proposal 1)</i> .....	52
	B) <i>Increases to Salary Scales (proposal 1)</i> .....	55
	C) <i>Minimum Lecturer Salary (Proposal 2)</i> .....	55
	D) <i>Retention Fund (Proposal 1)</i> .....	56
	E) <i>Economic Stability Dividend</i> .....	57
	F) <i>Improvements in Vision Care (Proposal 6)</i> .....	58
	G) <i>Tuition Fee Waiver (proposal 7)</i> .....	58
	H) <i>Professional Development Reimbursement Fund (Proposal 8)</i> .....	59
	I) <i>Extended Health for Post-71 Employees (Proposal 9)</i> .....	60
8.	DETAILED ANALYSIS OF UBCFA LANGUAGE PROPOSALS ON WHICH AGREEMENT HAS NOT BEEN REACHED .....	61
	A) <i>Elimination of Dates Pertaining to the Annual Payment of the Career Advancement Plan (CPI, Merit and PSA) (Proposal 3)</i> .....	62
	B) <i>Definition of Full-Time Sessional Lecturer (Proposal 2)</i> .....	64
	C) <i>Right of First Refusal for Sessional Lecturers (Proposal 12)</i> .....	66
	D) <i>Right of Reappointment for Lecturers (Proposal 13)</i> .....	68
	E) <i>Workload Issues (Proposal 11)</i> .....	70
	F) <i>Anonymous Student Comments (Proposal 18)</i> .....	73
	G) <i>Dean’s Advisory Committee (Proposal 18)</i> .....	75
	H) <i>Length of the Agreement (Proposal 26)</i> .....	77
9.	DETAILED ANALYSIS OF PROPOSALS ADVANCED BY THE UNIVERSITY ON WHICH AGREEMENT HAS NOT BEEN REACHED .....	78
	A) <i>Sessional Lecturers (UBC Proposal 5)</i> .....	78
	B) <i>Removal Of Tenured Assistant Professors (UBC Proposal 6a)</i> .....	79
	C) <i>Library (UBC Proposal 9)</i> .....	80

CONCLUSION .....	81
APPENDIX 1. METHODOLOGY AND SOURCES FOR RANKING SCALES .....	82

## LIST OF TABLES

Table 1: New Hires, Terminations, and Turnover Savings,.....	19
Table 2: Net Growth 2012-2014 .....	21
Table 3: Amended Ratios, FY10 to FY16.....	23
Table 4: CPI Inflation Change over Previous Year, Canada and Vancouver .....	34
Table 5: Annual Wage and Price Inflation, Canada and BC (July-July) .....	36
Table 6. Rankings of Comparator Universities.....	39
Table 7. Student Enrollment of U15 and Selected BC Universities for 2014 (preliminary).....	41
Table 8: Full-time University Teachers by Type of Appointment, 2010/2011,.....	42
Table 9: FTE Faculty Members, Selected Universities, 2013.....	43
Table 10. <i>Maclean's</i> Ranking of Median Faculty Salaries, 2010/2011 .....	44
Table 11. Comparison of Median Salaries by Rank of U15 Group 2010/2011 .....	45
Table 12. Selected Recent Salary Settlements across Canada (listed alphabetically).....	46
Table 13. Average Salaries, Librarians 2005-2011 (Fiscal Year, in 000's).....	49
Table 14. PDR, BC Comparators (2015).....	59
Table 15. PDR, Canada-Wide Comparators (2015 unless otherwise noted).....	60

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FACULTY ASSOCIATION OF THE UNIVERSITY  
OF BRITISH COLUMBIA

("Association")

## SUBMISSION OF THE FACULTY ASSOCIATION

### 1. INTRODUCTION

- 1.1 The procedure for collective bargaining between the Parties is governed by Article 9 of the Collective Agreement (Part 1: Framework for Collective Bargaining, p. 11).
- 1.2 Negotiations between UBC and UBCFA to renew the Collective Agreement that expired on June 30, 2014 began on April 7, 2014. The Faculty Association presented 26 proposals and the University presented 12 proposals. On January 30, 2015 the parties concluded a Memorandum of Agreement (**Tab 1**, in the Book of Evidence) which comprised 7 Faculty Association proposals and 4 University proposals on which agreement had been reached. Two subsequent addenda to that agreement were issued later (**Tab 1**, in the Book of Evidence).
- 1.3 In the Memorandum of Agreement the parties further agreed:
  - i) That UBCFA may submit its proposals on Workload (UBCFA #11: Part 1, Article 13); Sessional Lecturers (UBCFA #12 and #13) and Promotion and Tenure Processes (UBCFA #18: Part 4, Article 5) to the Arbitration Board under Article 11.02(b) of the Collective Agreement;
  - ii) That UBC may submit its proposal on Sessional Lecturers (UBC #5), and on tenured Assistant Professors (UBC #6(a): Part 4, Article 2.03(f)) to the Arbitration Board under Article 11.02(b) of the Collective Agreement.
  - iii) That either may submit their proposals on Part 5: Conditions of Appointment for Librarians to the Arbitration Board under Article 11.02(b) of the Collective Agreement.
  - iv) That all other proposals except those relating to the term of the agreement (UBCFA#26; UBC #1) and compensation (UBCFA #1, #2, #3, #4, #5, #6, #7, #8, #9, #10; UBC #2, #3) are withdrawn.
- 1.4 On July 28, 2015 the parties met to exchange final proposals on outstanding items on which agreement has not been reached and which have not been withdrawn.

### 2. SUMMARY OF ISSUES ON WHICH AGREEMENT HAS NOT BEEN REACHED

- 2.01 The Arbitration Board is constituted under and derives its jurisdiction from the *Framework for Collective Bargaining* (the "*Framework Agreement*"), Article 11 (p. 13).
- 2.02 The matters in dispute fall into four categories: salary, benefits, Faculty Association language proposals and University language proposals.

## 2.03 SALARY

### 2.03.1 General Wage Increase (“the GWI”)

- a) The Faculty Association’s GWI proposal is contained in UBCFA Proposal #1. It proposes that each bargaining unit member shall receive a general salary increase to his or her base academic salary as follows (two-year term):

3.0% effective July 1, 2014  
3.0% effective July 1, 2015

- b) The University’s proposal is contained in **Tab 2** of its Ability to Pay submission. It has proposed that each bargaining unit member shall receive a general salary increase to his or her base academic salary as follows (five-year term):

0.0% effective July 1, 2014  
0.9% effective July 1, 2015  
0.4% effective July 1, 2016  
1.0% effective May 1, 2017  
0.4% effective July 1, 2017  
1.0% effective May 1, 2018  
0.5% effective July 1, 2018  
1.0% effective May 1, 2019

- c) The Association submits that the University’s proposal for 2014 is well below Consumer Price Index (“CPI”) inflation, inflation in average wages and salaries, and average settlements at comparable Canadian Universities. The Association accepts that, taken together, CPI inflation and wage and salary inflation would tend to support an annual increase of approximately 2.5% but that the need to raise UBC’s salary ranking more into line with its academic quality ranking justifies a GWI of at least 3.0%.
- d) The Association submits that the University’s proposal for 2015 is well below a reasonable projection CPI inflation and inflation in average wages and salaries, and below average settlements at comparable Canadian universities. The Association accepts that, taken together, reasonable expectations of CPI inflation and wage and salary inflation would tend to support an annual increase of 2.5% but that the need to raise UBC’s salary ranking more into line with its academic quality ranking justifies a GWI of 3.0%.
- e) The Association submits that the Arbitration Board cannot evaluate the criteria of Article 11.02(e) with any accuracy past the end of a two-year term, and should not award more than a two-year term.

### 2.03.2 Increases to salary scales

- a) The Association proposes increasing the minimum salary scale for Sessional Lecturers by the amount of the GWI proposed in 2.03.1 a) above (3%). (UBCFA Proposal #1)

- b) The University has proposed increasing the minimum salary scale for Sessional Lecturers by the amount of the GWI it proposed (itemized in 2.03.1(b) above). (UBC Ability to Pay submission)
- c) The Association has proposed increasing the minimum salary scale for Librarians by the amount of the GWI proposed in 1 a) above, i.e. 3% in each of 2014 and 2015.
- d) The University has proposed no increase in the minimum salary scale for Librarians.
- e) The Association submits that, consistent with past practice, both scales should be increased by whatever GWI the Arbitration Board awards.

### 2.03.3 **Minimum Lecturer Salary**

- a) The Association proposes the introduction of a minimum salary for Lecturers of (1) \$59,350 effective on July 1, 2014; and (2) \$61,130 effective on July 1, 2015, such minimum salary to be pro-rated for Lecturers with less than full time or less than 12 month contracts. (UBCFA Proposal #2)
- b) The University has proposed the introduction of a minimum salary for Lecturers of \$59,350 (undated), such minimum salary to be prorated. (UBC Proposal #5, page 5, submitted in UBC's Final Proposals for Arbitration)
- c) The Association submits that \$59,350 is essentially the *de facto* **minimum** salary for full-time full-year Lecturers in 2014-2015. Thus there is effectively no cost that can be applied to the ability-to-pay question. The Association submits that this minimum salary should rise in line with GWI, as is the tradition for other salary minima in the Collective Agreement.

### 2.03.4 **Retention Fund**

- a) The Association proposes the elimination of Article 6, Retention Fund (p. 42, Collective Agreement). (UBCFA proposal #1).
- b) The University has proposed updating Article 6 to provide for \$500,000 in each of July 1, 2016, July 1, 2017, and July 1, 2018.
- c) The Association submits that the retention fund, in the years that it has existed, has primarily served the same purpose as the Merit and Performance Salary Adjustment ("PSA") funds, but without the collegial processes that those funds have as safeguards against administrative abuse. The Association strongly objects to the continuation of a provision that the parties have not agreed on since the expiration of the 2008-2010 Collective Agreement.
- d) The Association would view the granting of retention funds to the University as a concession, as it would not have agreed to this (and did not agree to this) during the normal course of collective bargaining.

### 2.03.5 **Economic Stability Dividend**

- a) The University has proposed an Economic Stability Dividend that will provide a GWI on May 1, 2016 equal to one half the positive difference between the increase in BC's

real GDP in 2014 and the forecast of the Economic Forecast Council in February 2014. The University also proposes a similar dividend in each of May 1, 2017, May 1, 2018 and May 1, 2019. (University's Ability to Pay submission, Tab 2)

- b) The Association has made no proposal regarding an Economic Stability Dividend.
- c) The Association does not believe that tying the GWI of members to forecast errors of a forecasting council is consistent with any provision of Article 11.02(e). The Association has no objection to participating in such a lottery as long as it is understood that it does not enter into the "ability to pay" analysis and does not satisfy any of the conditions of Article 11.02(e).

## **2.04 BENEFITS**

### **2.04.1 Vision Care**

- a) The Association proposes to increase the vision care benefit from \$250 in any 24-month period to \$400 in any 24-month period and to include prescription glasses, including prescription sunglasses, contacts, annual eye exams and laser correction surgery as included expenditures. (UBCFA Proposal #6)
- b) The University has proposed to increase the vision care benefit from \$250 in any 24-month period to \$300 in any 24-month period and to include prescription glasses, including prescription sunglasses, contacts, annual eye exams and laser correction surgery as included expenditures. (UBC Ability to Pay submission, Tab 2, p. 3)
- c) The Association membership receives the lowest eye care benefit of any employee group at UBC. The Executive Administrative group (i.e., the senior non-academic administrators, who are not unionized) and all other unionized groups receive \$400 in any 24-month period. Many comparator universities offer even higher vision care benefits. The Association has not asked to match the highest benefit provided at a comparator university, or even provided at other universities in BC. We simply ask for parity with other UBC employee groups.

### **2.04.2 Tuition Fee Waiver**

- a) The Association proposes a provision to allow members to transfer their existing tuition fee waivers (12 credits per year) to their spouses. (UBCFA Proposal #7) The University has not accepted this proposal.
- b) Currently "Tuition waivers are available only to members and dependent children; spouses are not eligible for tuition benefits at UBC" (CA, Part 2, Article 7.08, page 44). The Association proposes that existing tuition waivers be transferred from members to their spouse or partner. Specifically, the proposal would allow a spousal tuition waiver *instead* of the existing member tuition waiver, not in addition to it.
- c) As this is a matter that has no real cost to the University, and one that would make it easier to recruit and maintain faculty members, we believe the Arbitration Board should award this change to the Tuition Fee Waiver benefit.

- d) The Association further proposes that in the event that a member passes away while their dependent child is enrolled in UBC, the child will continue to be eligible for up to the maximum tuition waiver credits. (UBCFA Proposal #7) The University has made essentially the same proposal. (UBC Ability to Pay submission, Tab 2, p. 3)
- e) Given that UBC's proposal is essentially the same as the Association's proposal, we see no reason why the Arbitration Board should not award it.

#### 2.04.3 **Professional Development Reimbursement Fund**

- a) The Association Proposes, effective July 1, 2014, to raise the annual limit of professional development reimbursement (PDR) from \$1,100 to \$1,750 for members other than Sessional Lecturers without continuing status and to raise the annual limit from \$25 per credit to \$35 per credit for Sessional Lecturers without continuing status. (UBCFA Proposal #8)
- b) The University is proposing no raise in the annual limit of professional development reimbursement.
- c) The PDR at UBC is the lowest professional development reimbursement in the province and almost the lowest of the large research institutions in Canada.
- d) It is clear that UBC is at the very low end of the scale in respect of this benefit and at this level (\$1,100) is inconsistent with 11.02(e)(iii).

#### 2.04.4 **Extended Health for Post-71 Employees**

- a) The Association proposes that the Extended Health Plan not be limited by age. (UBCFA Proposal #9) The University has not accepted this proposal.
- b) The extended health plan in place for UBC faculty specifies that eligibility for extended health care ends at "the end of the calendar year in which you reach the maximum pensionable age as defined by the Income Tax Act (Canada). The maximum pensionable age at January 1, 2008 as defined by the Income Tax Act is 71." **Source:** (<http://www.hr.ubc.ca/benefits/extended-health/faculty/>)
- c) The current situation causes significant mischief which could be alleviated at very minor cost.

### **2.05 FACULTY ASSOCIATION'S LANGUAGE PROPOSALS**

#### 2.05.1 **Elimination of Dates Pertaining to the Annual Payment of the Career Advancement Plan (CPI, Merit and PSA)**

- a) The Association proposes eliminating reference to specific years in the language on Career Progress Increments ("CPI"), Merit, and PSA increments to ensure that those increments are paid on time. (UBCFA Proposal #3) The University has not accepted this proposal.
- b) Currently the University does not pay these increases until after a new Collective Agreement is concluded, even though PTR has been in existence since 1976 and the current structure of PTR has been unchanged since 1997.

- c) Withholding PTR payments until the new Collective Agreement has been concluded has a significant opportunity cost to members.

#### 2.05.2 **Definition of Full-time Sessional Lecturer**

- a) The Association proposes defining a full-time Sessional Lecturer as one who teaches nine credits per term or an equivalent combination of credits and different types of academic activities. (UBCFA Proposal #2) The University has not accepted this proposal.
- b) The definition of full-time determines the minimum per-course salaries for Sessional Lecturers, and their access to pension and health and welfare benefits.
- c) Currently full-time is defined Faculty by Faculty, leading to a gross inequity in minimum salary scales. Further, the lowest paying of the resulting scales is well below industry standards.

#### 2.05.3 **Right of First Refusal for Sessional Lecturers**

- a) The Association proposes giving part-time Sessional Lecturers the right to accrue additional available courses for which they are qualified, on a seniority basis. (UBCFA Proposal #12) The University has not accepted this proposal.
- b) Sessional Lecturers currently have very limited reappointment rights, and once courses are allocated in accordance with their individual rights of reappointment, they have only a “right of first consideration” for additional work that becomes available.
- c) This frequently puts Sessional Lecturers in the position of having to “apply for their own job” on an annual basis. The Association proposes that rather than “right of first consideration” Sessional Lecturers be given a “right of first refusal.”

#### 2.05.4 **Reappointment Rights for Lecturers**

- a) The Association proposes giving Lecturers the same reappointment rights as currently enjoyed by Continuing Sessional Lecturers. (UBCFA Proposal #13) The University has not accepted this proposal.
- b) Lecturers currently hold appointments of 12 months or less with absolutely no right to reappointment.
- c) The Association submits that the language of the Agreement makes clear that Lecturers are not truly intended to be treated as temporary employees. However, because they are continuing employees on a series of short contracts they are effectively “at-will” employees with no right to notice or severance.

#### 2.05.5 **Workload**

- a) The Association proposes limiting the ability of the University to assign faculty members’ teaching to no more than two of the three four-month terms each year (UBCFA Proposal #11) The University has not accepted this proposal.

- b) The resulting non-teaching term is not only traditional at UBC but also almost universal in university practices and collective agreements.
- c) The non-teaching term is the traditional period in which much of the faculty member's scholarly activity, educational leadership activities, course preparation, and professional development occur, all matters upon which members are evaluated for the purposes of salary increments, tenure, and promotion. Allowing UBC to change this traditional arrangement arbitrarily has created an environment in which individual members, or groups of members, can be denied the same opportunity to perform the activities on which they are primarily evaluated.
- d) The Association also proposes that Lecturers have a workload maximum that is defined as requiring no more than eight 3-credit courses or equivalent per academic year. (UBCFA Proposal #11) The University has not accepted this proposal.
- e) There is currently **no** limit on the number of courses that a Lecturer, once hired, can be assigned. The implications are that faculty hired into this classification can have the amount of work they are expected to perform increase without any increase in compensation, something that cannot occur with Sessional Lecturers.

#### 2.05.6 **Anonymous Comments**

- a) The Association proposes eliminating anonymous comments from material that can be considered in reappointment, tenure, and promotion processes. (UBCFA Proposal #18) The University has not accepted this proposal.
- b) Currently there are no explicit restrictions on the use of anonymous comments.
- c) The Association believes anonymous comments and material that has not been obtained following required or other recognized procedures have absolutely no probative value and should not be considered when addressing personnel decisions. The Association further believes that creating a mechanism by which students can comment on faculty members' performance, anonymously from the safety of their keyboards, creates an environment that is susceptible to bullying and harassment.

#### 2.05.7 **Dean's Advisory Committee**

- a) The Association proposes introducing a standard process for electing members to the Dean's Advisory Committee. (UBCFA Proposal #18) The University has not accepted this proposal.
- b) Currently the Collective Agreement has a provision to elect members to that Committee (Part 4, Article 5.10(c), p.77) but no mechanism for conducting the elections.
- c) This anomaly creates an environment in which the intention and wording of the Collective Agreement can be frustrated by the Dean.

### 2.05.8 **Length of the Agreement**

- a) The Association proposes a term of two years for the Collective Agreement, July 1, 2014 to June 30, 2016. (UBCFA Proposal #26) The University, as part of its Ability to Pay submission, has proposed a five-year term.
- b) The Association submits that the Arbitration Board cannot even begin to evaluate the criteria of Article 11.02(e) with any accuracy past the end of a two-year term. The University cannot accurately project expenditures and bargaining unit salaries even one year into the future, let alone four years into the future.
- c) The Association submits that the Arbitration Board should not award more than a two-year term.

## 2.06 UNIVERSITY'S LANGUAGE PROPOSALS

### 2.06.1 **Elimination of Sessional Lecturer Classification, Creation of New Classifications**

- a) The University has proposed massive changes to the Collective Agreement provisions concerning contract academic staff. (UBC Proposal #5) The Association has not accepted this proposal.
- b) The proposed changes would eliminate a classification in which as many as 1,000 employees a year are employed, and create two new classifications.
- c) The University has not only asked for a major breakthrough that represents an enormous concession demand, but a proposal that is far too complex to be dealt with in its entirety by an Arbitration Board.
- d) The Association submits that the Arbitration Board should award the language proposed by the Association (UBCFA Proposal #13), and leave the remaining issues UBC has attempted to deal with in their proposal for further negotiations between the parties.

### 2.06.2 **Removal of Tenured Assistant Professors**

- a) The University has proposed changes to CA, Part 1, Article 2.03 (p. 63) that would eliminate the ability of University to grant tenure at the rank of Assistant Professor (UBC Proposal #6a) The Association has not accepted this proposal.
- b) The University is asking for an enormous concession, one that would fundamentally change the meaning of the tenure criterion, a criterion that has been in place at UBC for decades.
- c) The University has not presented clear and compelling evidence as to the harm tenured Assistant Professors bring to the achievement of the educational mission of the University. On the other hand it is clear what mischief will result from the removal of this option. Being denied tenure is tantamount to being terminated.
- d) The Association's view is that the Arbitration Board should not award the removal of tenured Assistant Professors from the Collective Agreement.

### 2.06.3 **Probationary Period for Librarians**

- a) The University has proposed to lengthen the probationary period for Librarians from three years to five years. (UBC Proposal #9) The Association has not accepted this proposal.
- b) This is the first time the University has made this proposal in bargaining. The Association is unaware of any problems or issues arising from the current probationary period and the University has not presented any. The current probationary period is typical, or even long, by industry standards.
- c) Increasing the length of a probationary period for **any** employee by any length of time, let alone by two years, is an enormous concession and therefore the Association strongly submits that the Arbitration Board not award this proposal.

### 2.06.4 **Term Administrative Appointments for Heads in the Library**

- a) The University also proposes a Letter of Understanding (“LOU”) concerning term administrative appointments for New Heads in the Library.
- b) The Association submits that an LOU on such a complex matter, that expires at the end of a Collective Agreement (which the Association believes should be June 30, 2016) should not be awarded by an Arbitration Board.
- c) The very fact that it is proposed as an LOU indicates that it is a short-term or transitional matter that should be worked out between the parties. It makes no sense for the Arbitration Board to make an award on such a matter.

## 2.07 **Summary**

2.08 It is the position of the Association that the University has the ability to pay an award, within the meaning of Part 1: Framework Agreement (p. 14), based on the Report of Ms. Eleanor Joy, C.A., PricewaterhouseCoopers (“PwC Report”).

2.09 It is also the position of the Association that the Association’s salary, benefits and language proposals meet the tests required under Article 11.02(e)(i)-(iv) of Part 1: Framework Agreement (p.14).

## 3. **APPLICATION OF ARTICLE 11 OF THE FRAMEWORK AGREEMENT**

3.01 The Parties to the Framework Agreement have chosen an “adjudicative model” of interest arbitration for salary items based on criteria enumerated in Article 11.02(e) (p. 14) rather than a simple replication model. Arbitrator Taylor, in his July 24, 2013 decision of the arbitration between the Parties, acknowledges such:

However, on considering the parties’ submissions and the case law it is clear that Article 11.02(e) mandates an “adjudicative” model of interest arbitration.

Taylor Award (*UBC –and- UBCFA*) **Tab 1** (Book of Authorities), at paragraph 7

3.02 In the Award, Arbitrator Taylor cited Arbitrator Munroe’s December 23, 1986 decision quoted in *Governing Council of the University of Toronto –and- The University of Toronto*

*Faculty Association*, unreported, June 18, 1993 (Munroe, Brown, Sack), which explains what an adjudicative model is.

3.03 Arbitrator Munroe, in the University of Toronto Award (**Tab 2**, Book of Authorities) discusses the difference between the adjudicative model based on enumerated criteria and the replication model. The University of Toronto had, in 1981, negotiated a Memorandum of Agreement enumerating the criteria to be considered by the Interest Arbitrator.

3.04 In the Award, Arbitrator Munroe describes the adjudicative model as follows:

Thus, the Parties agreed that their arbitrator...would adopt and follow the “adjudicative model” of interest arbitration: where criteria are enumerated and expressed as objective yardsticks in the expectation that they will be interpreted and applied in a rights-like fashion to the proven facts and circumstances.

Munroe Award (*University of Toronto*) (*supra*), pp. 3-4

3.05 In the present dispute, the adjudicative task of the Arbitration Board **at the first stage** of its enquiry is to determine whether the University has the ability to pay the cost of an award from its general purpose operating funds (“GPOF”).

3.06 Article 11.02(e) of the *Framework Agreement* (p. 14) provides in part as follows:

In making its award, the Arbitration Board shall give **first consideration to the University’s ability to pay the cost of an award from its general purpose operating funds**. In doing so, **with due regard to the primacy of the University’s academic purpose and the central role of Faculty Members, Librarians and Program Directors in achieving it**, the Arbitration Board shall take account of the University’s need to **preserve a reasonable balance between the salary of members of the bargaining unit and other expenditures**. (emphasis added)

3.07 If the answer to the first stage is “yes, the University has the ability to pay an award,” the second stage of the Arbitration Board’s enquiry is to base the award on the criteria described in Article 11.02(e)(i)-(iv) of the *Framework Agreement* (p. 14):

i) the need for the University to maintain its academic quality by retaining and attracting Faculty Members, Librarians, and Program Directors of the highest caliber;

ii) changes in the Vancouver and Canadian Consumer Price Indices;

iii) changes in British Columbian and Canadian Average Salaries and Wages; and

iv) salaries and benefits at other Canadian universities of comparable academic quality and size.

3.08 Determining ability to pay as the first stage of the inquiry under the Framework Agreement is an adjudicative process based on the preservation of a reasonable balance described above. In accordance with this criterion, the University is deemed to have the “ability to pay” the cost of an award if, in doing so, it preserves a reasonable balance between the salary of bargaining unit members and other expenditures from the GPOF.

- 3.09 As Article 11.02(e) of the *Framework Agreement* (p. 14) notes, the “**primacy of the University’s academic purpose and the central role of faculty**” in achieving that purpose, **are criteria that must be considered by the Arbitrator** when determining the need to preserve a reasonable balance. The University’s academic purpose can be found in its vision statement:

As one of the world’s leading universities, The University of British Columbia creates an **exceptional learning environment** that fosters global citizenship, advances a civil and sustainable society, and supports **outstanding research** to serve the people of British Columbia, Canada and the world. (emphasis added)

Source: <http://strategicplan.ubc.ca/the-plan/vision-statement/>

- 3.10 Faculty members play the leading role in helping the University achieve its vision. Faculty members are responsible for creating the **exceptional learning environment** as well as performing the **outstanding research** that is at the heart of the University’s vision. The University has many talented non-faculty employees who perform a variety of important functions on both campuses, but it is faculty members, through their direct work with students, in and out of the classroom, who are the pivotal figures in creating the learning environment. It is also faculty members who are directly responsible for envisioning research problems, applying for research grants, and conducting the research that happens at the University. Other employees may play supporting roles in these activities, but faculty are at the heart. What is absolutely clear is that the University would be unable to achieve its “academic purpose” without faculty members. The two are inextricably linked together.
- 3.11 Arbitrator Taylor provides a succinct summary of how “reasonable balance” had been interpreted in the 1989 Award, the 1994 Award, and the 1997 Award (Paragraphs 25 – 42, **Tab 1**, Book of Authorities). He then summarizes where the Parties are today:

Accordingly, despite the Larson board’s statement that the “reasonable balance” analysis is not the “exclusive” criterion, both the Larson board and the Kelleher board applied it as the exclusive criterion in reaching their result (as did both Getz boards). In my view, considering the whole of these awards and the history of the provision, what this means is that the “reasonable balance” criterion is not the only one available, and can be departed from if there are compelling reasons to conclude that, in the particular circumstances, it would result in an unsound or unjust assessment of the University’s actual ability to pay.

Taylor Award (*UBC –and- UBCFA*, supra) **Tab 1** (Book of Authorities), at Paragraph 7

- 3.12 In the 2013 arbitration, the University asked the Arbitrator to consider macro conditions as part of making a determination of “reasonable balance.” Arbitrator Taylor questioned whether that would be appropriate:

It is readily understandable that the University would wish an arbitrator assessing “ability to pay” to appreciate that its operating grant was not increased for 2012-2013 and that it anticipates 1% and 1.5% decreases in its base funding from government for 2013-2014 and 2014-2015, and that annual tuition increases have been frozen at 2% since 2005. These factors are, as the University submits, relevant to “ability to pay” in

the broad sense. However, that is not the inquiry in which I am engaged, and if it were, I would then be obliged to balance those factors against the Association's submissions concerning the University's other sources of revenue, and its allegations concerning the University's spending priorities.

Taylor Award (*UBC –and- UBCFA*, supra), **Tab 1** (Book of Authorities), at Paragraph 51

- 3.13 Arbitrator Taylor also addressed what the University was to do, should there be a determination that there is an “ability to pay” but doing so conflicted with other University priorities.

[56] Moreover, those prior interpretations make it clear that if the “reasonable balance” criterion is met, but the result conflicts with the University's other obligations – including those with legislative force, such as the prohibition against incurring a deficit – **then the consequence is that the University must re-order its expenditures to meet those other obligations.** It is not that the “reasonable balance”, and the obligation to the Association, gives way. (emphasis added)

[57] I recognize the difficulty for the University that its bargaining mandate and government funding may not match its agreement. It would undoubtedly be more convenient for all concerned (with perhaps the notable exception of the Association and its members) if the bargaining mandate, the government funding and the “ability to pay” clause were all harmonious. The difficulty is they are not. **The “ability to pay” clause in this agreement, by longstanding interpretation, simply does not mean “co-extensive with the government funding allocation”, nor “co-extensive with the government province-wide bargaining mandate.”** (I note in passing that a PSEC mandate was also mentioned in the 1997 Larson award, but was not considered part of the “ability to pay”: p.19.) (emphasis added)

Taylor Award (*UBC –and- UBCFA*, supra) **Tab 1** (Book of Authorities), at Paragraphs 56-57

- 3.14 The Association submits that the rationale underlying the preservation of a **reasonable balance** is to ensure that, over time, salaries of faculty will not lose ground as a result of the University's spending priorities. As the Boards in the 1994 (Kelleher, **Tab 3**, Book of Authorities), 1997 (Larson, **Tab 4**, Book of Authorities), and 2013 (Taylor, supra, **Tab 1**, Book of Authorities) Awards recognized, it is the **historical examination** of faculty salaries as a percentage of the Operating Fund expenditures that permits an ongoing judgment as to whether the equilibrium between faculty salaries and other expenditures has been preserved.
- 3.15 The University in its July 13, 2015 submission on “Ability to Pay” seems to have forgotten the 1994, 1997 and 2013 Awards, relying instead on the 1989 Getz Award (**Tab 5**, Book of Authorities) to try to influence the Arbitration Board. The University directs the Arbitration Board that

If an increase in salaries and benefits awarded by this Arbitration Board would lead to a ratio of salaries to other expenditures that is the same as or lower than the **existing ratio** there is an ability to pay. On the other hand if the proposed increase in salaries and benefits leads to a ratio of salaries to other expenditures which is higher than the

**existing ratio**, there is no ability to pay. (Paragraph 17, University Ability to Pay Submission, emphasis added.)

- 3.16 In the three most recent Arbitration Awards between the Parties pursuant to Article 12 (since renumbered as Article 11) of the Framework Agreement (p. 13) (“the 1994 Kelleher Award,” “the 1997 Larson Award,” and “the 2013 Taylor Award”), the Arbitration Board agreed with the proposition that where the **historical balance** between bargaining unit salaries and other expenditures is preserved by an award, the University is deemed to have the ability to pay, and that the historical balance was never intended to reflect ratios to the 2<sup>nd</sup> and 3<sup>rd</sup> level decimal point. Using the University’s reasoning, if there is an “existing ratio” of (say) 25.6%, does that mean that a return to a previous ratio of (say) 26% would exceed the reasonable balance? The Association argues that it would not. Similarly, given the nature of the ratios, and the absurdity of carrying them out to multiple decimal place, if the highest ratio in the range is 26%, it might not be unreasonable to have a future ratio of 26.4%. The emphasis in the Collective Agreement is on “reasonable balance,” not the last decimal point.
- 3.17 The University in its July 13, 2015 submission on “Ability to Pay” paragraph 38 argues, contrary to its argument in paragraph 17 (noted above), that an “appropriate point of comparison” is the **average** of the ratios for the period 2010 – 2014. The Association notes that there is no support for this novel suggestion in either the Collective Agreement, nor in previous Arbitration Awards.
- 3.18 The Association submits that the “reasonable balance” is not mechanically delimited by the historic range of ratios, but rather that the Arbitration Board must insure that an Award does not unreasonably disrupt the balance as evidenced by the historic range of ratios. The Agreement was not meant to restrict the Board to any specific formula regarding previous ratios.
- 3.19 Arbitrator Kevin Burkett criticized the use of formulas in his 2014 Award for Mt. Allison University and Mount Allison Faculty Association:

Absent a clear understanding to the contrary, **collective bargaining is not intended to be a formula-driven exercise**. It has long been accepted that **there is no single correct result** but rather a range of results within which a reasonable resolve will be found. It follows that the parties, and by necessary extension an interest arbitrator, must proceed with an open mind and a preparedness to assess and weigh all the information available in attempting to come to a result that falls within the “range of reasonableness.”

Burkett Award (*Mount Allison*), **Tab 6**, Book of Authorities, at p.11 (emphasis added)

- 3.20 The University argues in its Ability to Pay submission that it “must comply” with the Public Sector Employer’s Council (PSEC) bargaining mandate (paragraph 8). The Collective Agreement makes absolutely no reference to PSEC in determining the University’s ability to pay an Award. Therefore, “the PSEC mandate” should not be given any weight in making a decision about the ability to pay the cost of an Award. Arbitrator Taylor said as much in his 2013 Award:

[54] The PSEC mandate does not have legislative force, and therefore does not override the parties' Agreement legislatively. The question that then remains is whether it fits within the concept of "ability to pay" in the parties' Agreement.

[55] I have concluded it does not. The meaning of that term in this agreement has been reviewed extensively above. It refers to a particular method of calculating whether there are the necessary funds available at this institution. ... The Association's agreement is with the University.

Taylor Award (*UBC –and- UBCFA*, supra) **Tab 1**, Book of Authorities, at Paragraphs 54-55

3.21 Similarly, Arbitrator Teplitsky, in his 2010 decision for the University of Toronto, noted his agreement with the U of T Faculty Association's position that recognizing the Ontario government's "Public Sector Compensation Restraint to Protect Public Services Act 2010" as a relevant criterion would compromise his independence in making an award, rendering him a "minion of government."

#### **4. THE UNIVERSITY'S "ABILITY TO PAY" AN AWARD FOR 2014-2016**

4.01 The Parties to this Agreement have identified the criteria that must be interpreted and applied in a "rights-like fashion" (Munroe, supra, **Tab 2**, Book of Authorities at p. 3-4) when determining the issue of the University's ability to pay an award. Under 11.02(e), the first step in that process is to determine, as noted in the previous arbitration awards referred to earlier, whether a reasonable balance has been preserved between bargaining unit salaries and other expenditures from the University's GPOF.

4.02 According to the University's Ability to Pay submission Tab 5.1 (revised), if the University's offer of 0% for 2014/2015 and 0.9% GWI with a \$500,000 retention fund for 2015/2016 is awarded by the Arbitration Board the ratio of bargaining unit salaries to operating expenses will be 25.7% in 2014/2015 and 25.8 in 2015/2016, both below the recent historic high of 26.1%. Even by its own submission the University has the ability to pay an award greater than the one they propose.

4.03 However, the Association notes several problems with the data the University uses in its calculations and projections which calls the accuracy of its analysis into question. Under 11.02(e), the first step in that process is to determine, as noted in the previous arbitration awards referred to earlier, whether a reasonable balance has been preserved between bargaining unit salaries and other expenditures from the University's GPOF.

#### **4.04 Inclusion of non-bargaining unit members**

4.04.1 "Associate Dean" was never a classification in the Collective Agreement. In the 2006-10 Collective Agreement the term "Associate Dean" never appears. Many members of the Association take on administrative responsibilities as part of their service duties and are given titles such as Program Coordinator, Assistant Head, Graduate Supervisor, and so on. These are not classifications in the Collective Agreement; they are service duties.

4.04.2 Prior to the 2010-2012 round of bargaining a member who took on administrative duties assisting the Dean was generally called an "Associate Dean." That was not a

classification. In the 2010-2012 bargaining round the Association was concerned that the duties of Associate Deans had evolved beyond normal service duties and become a position that should be recognized in the Collective Agreement. The Association proposed a new Article in Part 4 that would provide the terms and conditions of members with "Associate Dean" administrative responsibilities (UBCFA Proposal #7 in 2010). The University counter-proposed that the work that these members perform should be taken out of the bargaining unit and given to a new excluded position called "Associate Dean." The Association accepted this proposal and agreed to add "Associate Dean" to the list of excluded positions in Appendix A (pg. 27).

- 4.04.3 The University is now claiming, in its Ability to Pay submission, that salaries of UBC non-bargaining unit members, Associate Deans, who are in excluded positions clearly listed in Appendix A, should be included in the "salary of members of the bargaining unit." This is incorrect by the plain meaning of the language of the Collective Agreement and an obvious attempt to misrepresent the ratio of salaries of bargaining unit members to expenditures.
- 4.04.4 The salaries of Associate Deans are not determined by the Collective Agreement. They are covered by UBC Policy 31 on Executive compensation. They are not entitled under the Collective Agreement to the GWI that the Board awards and do not receive the same increase as members of the Association.

#### **4.05 Inconsistent Measurements of New Hires and Terminations**

- 4.05.1 Tab 5.6 of the University's Ability to Pay submission provides data on the number of new hires and the number of terminations in each fiscal year from 2006 to 2015 for "BU members". The number does not purport to include Sessional Lecturers. In order to check the accuracy of these data the Association requested a list of "all new hires for all classifications in the bargaining unit" and a list of "all terminations for all classifications in the bargaining unit." On August 25, 2015 the University provided that list, with the exception of terminations of sessional lecturers. This allowed the Association to compare the University's Tab 5.6 numbers with the actual number of new hires and terminations, based on the original data.
- 4.05.2 The "new hires" actual data provided by the University include 7 Associate Deans, 9 Deans, 1 Provost, and 1 Vice-President. The "terminations" actual data include 1 Provost. None of these were new hires into or terminations from the bargaining unit. We know that the University wrongly treated Associate Deans as members of the bargaining unit for the purpose of reporting salaries to the Arbitration Board. To be consistent with this approach we did not remove Associate Deans from the "new hires" and "terminations" data the University provided on August 25, 2015 for the purpose of comparing these data to the data in Tab 5.6 of the University's Ability to Pay submission. The other 11 management positions are simply errors as the University has not asserted that Deans, Provosts and Vice-Presidents are, or should be, included in the data used to produce its Tab 5.6. Consequently, for the purposes of comparing the new hires and terminations data with Tab 5.6 these 11 those individuals were removed from the data provided by the University on August 25, 2015. Based on the list of actual terminations and new hires provided by the University (minus the 11 senior administrators incorrectly

included in its data) the correct figures for FY2012 to FY2016 are given below in **Table 1**.

**Table 1: New Hires, Terminations, and Turnover Savings  
Corrected (FA)\* and Uncorrected (UBC)\*\***

	2012		2013		2014		2015	
<b>New Hires and Terminations</b>								
	<b>FA</b>	<b>UBC</b>	<b>FA</b>	<b>UBC</b>	<b>FA</b>	<b>UBC</b>	<b>FA</b>	<b>UBC</b>
New Hires	169	166	193	203	136	152	157	170
Terminations	89	101	123	126	131	127	154	154
Faculty Growth	80	65	70	77	5	25	3	16
<b>Average Salaries (\$)</b>								
	<b>FA</b>	<b>UBC</b>	<b>FA</b>	<b>UBC</b>	<b>FA</b>	<b>UBC</b>	<b>FA</b>	<b>UBC</b>
New Hires	87,005	82,154	92,071	90,999	95,778	89,176	92,718	83,746
Terminations	111,687	100,910	104,769	95,903	111,967	103,338	127,383	112,190
Difference	-24,682	-18,756	-12,698	-4,904	-16,189	-14,162	-34,665	-28,444
* FA: Corrected Based on Data Provided to the FA by UBC on August 25, 2015								
** UBC: As Per Tab 5.6, UBC Ability to Pay Submission (July 13, 2015)								

4.05.3 A comparison of the data in **Table 1** of the University's Tab 5.6 and the FA's corrected data, based on actual data provided to the Association on August 25, 2015 indicates that the Terminations data for years 2013, 2014 and 2015 are within 4 of each other. The new hires data for 2012 are also within 4 of each other. Some of the discrepancies in both Terminations and New Hires may be explained by the inclusion of non-bargaining unit members (other than Associate Deans) in the University's data. However, the other data in the University's Tab 5.6 are significantly different in a way that cannot be explained by the inclusion of a handful of Deans and other non-bargaining unit members.

#### **4.06 Misrepresentation of Growth Rates**

4.06.1 UBC uses the data from 2007 to 2015 in its Tab 5.6 to project average growth rates. In a note the University states that the period over which the average was calculated began in 2007 because UBCO started in FY2006. This implies that all new hiring as a result of UBCO started and ended prior to FY2007. In fact the Provincial Government increased UBCO's enrolment targets and funding over a number of years until it reached its full size. This created several years of extra growth that is now complete and should not have been used to project future growth rates for the entire University. This is illustrated by measuring the number of net new positions at UBCO between FY12 and FY15.

FY12	29
FY13	20
FY14	15
FY15	-3

- 4.06.2 Now that the build out of UBCO is complete the higher growth rates that started in 2007 will not be sustained by the University.

#### **4.07 Inflated Projected Faculty Growth in FY2016**

- 4.07.1 The University has projected an increase in net new positions of 63 for FY 2016 based on its inflated projected “normal” faculty growth rates (53) and a number of “extra” strategic positions (10). This latter number is effectively completely arbitrary and presumes that none of the growth in previous years was strategic.
- 4.07.2 With the exception of the build out of UBCO, which was funded by the government, government grants to UBC have been static, at best. Any growth in the number of faculty members, outside of UBCO, has only been possible because of profits UBC makes on its international education businesses and other non-grant sources, and use of the operating surpluses. Whatever the source, the decision to grow is definitionally strategic.
- 4.07.3 Every year UBC hires new faculty at the rank of full Professor. These can only be described as “strategic.” Between April 1, 2015 and July 15, 2015 UBC hired 10 full professors, which can only be described as “strategic hires.” That may be the total number of full professors hired in the fiscal year, or it may not be. But the University cannot project “normal” faculty growth based on previous hires which clearly included strategic hires, and add another, completely arbitrary, level of strategic hires as it has done in its submission.
- 4.07.4 According to information provided by the University, between April 1, 2015 and July 15, 2015 (which constitutes 7/24 of FY15) the University had a net new growth of 7 faculty members (90 hires and 83 terminations).
- 4.07.5 As **Table 2** shows, even in 2012 which, partly due to UBCO, was an unusually large net growth year, faculty net growth in the fiscal year after July 15 was only slightly more than twice net growth up to and including July 15. In the past two years net growth after July 15 has been 0 and -14, respectively. The University’s projection of 63 net new hires for FY15 implies 8 times as many net new hires will occur in the last 17/24 of the fiscal year as occurred in the first 7/24 of the fiscal year (7). This is all out of proportion with recent history. It is more likely that, based on the data provided by the University, by the end of the fiscal year net new hires will be closer to 10 than 63.

**Table 2: Net Growth 2012-2014**

Fiscal Year	Hires			Terminations			Net		
	April 1 - July 15	July 16- March 31	Total	April 1 - July 15	July 16- March 31	Total	April 1 - July 15	July 16- March 31	Total
2012	70	99	169	44	45	89	26	54	80
2013	111	82	193	63	60	123	48	22	70
2014	61	75	136	56	75	131	5	0	5
2015	85	72	157	68	86	154	17	-14	3
2016	90			83			7		

**4.08 Underestimation of Turnover Savings**

4.08.1 UBC projects its turnover savings by calculating the difference between the average salaries of terminations and the average salaries of new hires. However, much of that turnover is in the Lecturer classification, where the differences in salaries between new hires and terminations is not great. Most of the actual turnover savings comes with the retirement of members in the tenurable classifications, and their replacement by (generally) much younger colleagues. For example, in FY15 the average salary of retiring members in tenurable positions was \$151,150 while the average salary of new hires in tenurable classifications was \$106,228 for a turnover saving of nearly \$45,000 per retirement.

4.08.2 Following the elimination of mandatory retirement at UBC on May 15, 2007, the University experienced a number of years of unusually low retirements as the new normal age profile of faculty was established. Retirements in the early years after the end of mandatory retirement dropped dramatically. According to Fran Watters, then Director of Faculty Relations, about one-third of professors were delaying retirement (University Affairs, January 12, 2009).  
[\(http://www.universityaffairs.ca/news/news-article/faculty-postpone-retirement-across-canada/\)](http://www.universityaffairs.ca/news/news-article/faculty-postpone-retirement-across-canada/)

4.08.3 The elimination of mandatory retirement created a “Mandatory Retirement Effect.” Now that the transition is largely complete, annual retirements will return to their normal levels. The last few years of the “Mandatory Retirement Effect” can be seen by looking at the number of retirements by faculty members in tenurable positions between FY12 and FY15:

FY12	36
FY13	43
FY14	64
FY15	66

Although the period of unusually low retirements may not be completely over, the Association believes that by 2015 annual retirements had approximately returned to their steady state level.

- 4.08.4 By not recognizing that turnover savings are primarily driven by the percentage of all terminations that are high-savings replacements of retiring tenured faculty, and that this percentage was temporarily reduced during the immediate post-mandatory retirement period, the University has significantly underestimated future turnover savings.

#### **4.09 Ms. Joy's Report**

- 4.09.1 Black Gropper, on behalf of the Association, engaged Ms. Eleanor M. Joy of PricewaterhouseCoopers LLP (PwC) in March 2015 to prepare a report which a) comments on the ratio analysis contained in the University's ability to pay submission; b) produces alternate calculations to the extent issues were found with UBC's ratio analysis; c) provides an opinion as to whether payment of the Association's proposed GWI ("GWI") of 3%, effective on both July 1, 2014 and July 1, 2015, (the Association's "Proposal"), preserves a reasonable balance between BU salaries paid to UBCFA members ("Members") and other expenditures in the General Purpose Operating Fund ("GPOF" or the "G Fund"); and, d) provides an opinion as to whether payment of the Association's Proposal preserves a reasonable balance between BU salaries and other expenditures in the Operating Fund ("Operating Fund").
- 4.09.2 Ms. Joy is a Chartered Accountant and a Chartered Business Valuator. She has specialized in dispute analysis and valuations for over 25 years. She has been qualified as an expert witness and has given evidence in the Supreme Court of British Columbia and in arbitrations. She analyzed both the Faculty Association's and the University's financial situation for the 1997 and 2013 arbitrations, so she has a very clear understanding of what is required regarding the "ability to pay" as referenced in the Collective Agreement. The Association will tender Ms. Joy as an expert witness in these arbitration proceedings.
- 4.09.3 Ms. Joy was not involved in any way in any aspect of the Association formulating its bargaining proposals for the 2014 round of bargaining. She is completely at arm's length to the University's budgeting process.
- 4.09.4 Ms. Joy relied on the information she was given by the University, some of which we now believe is wrong. She removed the Associate Deans' salaries from BU salaries for FY13 onwards (as shown on Schedules 5.2 and 5.3 of the PwC report). She also replaced the 63 net new hires included by the University in FY16 with 21 new net hires, based on the two-year average of actual hires for FY14 and FY15 (as shown on Schedule 5.4 of the PwC report), based on data from UBC (UBC Tab 5.6 in its Ability to Pay submission) which we believe was incorrect. We now believe that an estimate of 10 rather than 21 net new hires would be the appropriate number to use.
- 4.09.5 The Association's submission that the University's turnover costs and growth rates are incorrect is based on information obtained from the University on August 25, 2015, too late to be incorporated into Ms. Joy's report. The Association merely notes that, as a result of data and estimation errors of which Ms. Joy was unaware, the ratios calculated by Ms. Joy for FY16 are higher than they would be if Ms. Joy had been provided with accurate data and estimations by the University.

- 4.09.6 **Table 3** reproduces Ms. Joy’s findings with respect to the Operating Fund ratios. According to her calculations, we say that the University has the ability to pay the Association’s proposed 3% and 3% in a two-year agreement.
- 4.09.7 **Table 3** shows the amended ratios for FY10 to FY16, which are detailed on PwC’s Schedule 5.1:

**Table 3: Amended Ratios, FY10 to FY16**

	FY10	FY11	FY12	FY13	FY14	FY15	FY16
Ratios	25.7%	26.1%	25.9%	25.0%	25.6%	25.4%	25.8%

- 4.09.8 As can be seen from **Table 3**, the forecast ratios for FY15 and FY16 are 25.4% and 25.8%, respectively, and fall within the range of the historic ratios, which reached a high of 26.1% in FY11.
- 4.09.9 There is no question that the University has the ability to pay an award. The University does not deny this in their Ability to Pay submission. The only question is whether the cost of the Association’s GWI proposals maintains a reasonable balance.
- 4.09.10 The Association’s GWI proposal for 2014-2016 (3% and 3%) addresses the erosion in faculty salaries resulting from price inflation and takes into account changes in average wages and salaries in Canada, and salaries at comparator universities. The University’s GWI proposal (0% and .9%), which is considerably lower than inflation, runs counter to these criteria, and thus counter to the items enumerated in 11.02(e)(i-iv).
- 4.09.11 It is the position of the Association, based on the findings of Ms. Joy, as reported in the PwC report, that the University has the ability to pay an award within the meaning of the Collective Agreement, and further, that it has the Ability to pay a GWI up to, and even greater than the 3% and 3% GWI the Association proposes.

## 5. JURISPRUDENCE AND THE “ABILITY TO PAY”

- 5.01 In compensation-related interest arbitrations, the general focus of arbitrators is to determine what level of salary or compensation would be fair and reasonable. **Where an employer argues that it does not have the ability to pay a certain level of salary, the onus is on that employer to establish that this is, in fact, the case.** A good statement of the type of evidence that an employer will be expected to lead in making an (in)ability to pay argument is found in the following comments of Arbitrator Larson:

There was no coherence to the financial data put to the board. To the extent that it existed the evidence was limited to funding and there obviously was no attempt to make that comprehensive. No evidence was put on expenditures. Under those circumstances, for the Employer to state that it is unable to pay more than 6% in the first year and 5% in the next amounts to a request that the board take it on faith.

In order for an employer to establish the level of its ability to pay, it will be required to present a board of arbitration with full and complete financial data. It will be necessary to show not only the amount of funding available, but also evidence on the application of those funds and the net amounts available for wages and salaries. It will be necessary to permit an Arbitration Board to examine budgets, financial statements, accounts and any other relevant data through witnesses qualified and authorized to speak to the allocation of those funds. It will be necessary to show the total financial resources available to the employer.

This cannot be done by the presentation of incoherent financial data. Nor will it be sufficient to present a budget. Without more, a budget represents estimates of spending but not ability to spend. **One would expect that the ability of an employer to spend would be shown rather by demonstrating that the funding available is limited, that there is no possibility of allocating funds between accounts, that there are no surplus or secret funds available to the employer; that there are no supplementary funds available to the employer and that there is no ability to raise and/or carry a deficit.**

**That list is not necessarily exhaustive.** But we trust that the point has been made. In order to determine the employer's financial ability to pay any given level of compensation increase, it will be necessary to present the financial data necessary to establish it. ...

**Crossroads Treatment Centre Society and Hospital Employees' Union, Local 180** (Employee Status Grievance), [1983] BCCAAA No. 652 (Larson) (Tab 7, Book of Authorities, at paras. 137-140) (emphasis added)

5.02 In *Niagara (Regional Municipality) Police Services Board and Niagara Region Police Assn. (Re)*, [1997] OLAA No. 1116 (Jackson) (Tab 8, Book of Authorities), Arbitrator Jackson discussed the issue of public sector revenue generation in the policing context. He stated:

Logically, what is fair and reasonable in the circumstances should not be influenced by the fact that one level of government has made a policy decision with respect to public finances. **That government has said nothing, and has offered no evidence, of police salaries being too high or of police compensation being too generous; it has simply said that aggregate public spending is too high, and that it is reordering provincial finances.** And, while the government has also said that local taxes should not be raised, it cannot have everything: it cannot cut its grants to the Police Service Board by over 8%, foreclose an increase in local taxes, and leave compensation intact. However, **without some convincing evidence that police salaries and benefits are too high, relative to those of other occupations and professions, it would be completely unjust and inappropriate for this arbitration board to conclude that, of the three variables -- provincial grants, local taxes and police compensation -- it is police compensation that has to give.** We anchor this logic, again, in the proposition that, if the public wants a service, then it should be prepared to pay a fair price for it. The question becomes, then, how does one determine a "fair price"?

(at paras. 54-56, emphasis added)

- 5.03 In *The Ottawa Police Services Board -and- The Ottawa Police Association*, October 5, 2004 (Kaplan) (**Tab 9**, Book of Authorities), Arbitrator Kaplan described the impact of an employer's budgetary decisions on its ability to pay in the following terms:

... In that regard, while the employer sought to rely on its inability to pay, the evidence compelling[ly] demonstrates an unwillingness not inability to pay with the justification and the criteria of "ability to pay" advanced in order to avoid the normative application of the results of replication and comparability, the most important of all the commonly accepted and applied criteria. As Arbitrator Swan indicated in *Hamilton Police Services Board and Hamilton Police Association* (unreported decision dated July 9, 2002): "To whatever extent the Board bases its argument on the budgetary allocation made by the City ... It will be obvious that a municipal council cannot, simply by a budgetary process, control the interest arbitration process ... While budgetary allocations are certainly entitled to consideration, they cannot be given a status which would permit municipalities to trump all of the other considerations which go into establishing fair and reasonable salaries for employees subject to mandatory interest arbitration. To do so would render the interest arbitration provisions of the *Police Services Act* essentially meaningless".

(at pp. 2-3)

- 5.04 In the *2013 Taylor Award, supra* (**Tab 1**, Book of Authorities), Arbitrator Taylor stated:

...If an award would preserve a "reasonable balance" between faculty salary and other expenditures in the University's general purpose operating funds, then absent compelling reasons why that would result in an unsound or unjust assessment of the University's actual ability to pay, that is determinative. Like the prior arbitration boards, I have found no sufficient cause for departure in this case.

(at para. 52)

- 5.05 Essentially, Arbitrator Taylor found that the University has the "ability to pay" any Award that preserves a "reasonable balance" between salary expenditures and other expenditures. Fiscal restraints may be balanced against the need to preserve a reasonable balance, but such considerations should not trump the importance of preserving a "reasonable balance" between salaries and expenditures.

- 5.06 The University's financial circumstances must also be viewed in light of spending decisions which it has made, and will continue to make in the future. Decisions to allocate resources to other spending areas should not be permitted to support a claim of inability to pay. In *Public Service Alliance of Canada and Burnt Church (Esgenoôpetitj) First Nation*, [2006] CLAD No. 522 (Kuttner) (**Tab 10**, Book of Authorities), Arbitrator Kuttner made the following observations:

Each of the situations described here is illustrative of the weakness of an ability to pay argument based solely on the operating budgets drawn up by BCFN. The budgets themselves are the product of conscious decisions taken by BCFN as to revenue allocation and operational expenditure. Even within the context of the severe economic constraints under which BCFN must operate, such decisions in effect impose upon members of the bargaining unit the burden of subsidizing the

community by accepting substandard wages in place of those found in the collective agreement.

(at para. 45)

5.07 In *Toronto Transit Commission v Amalgamated Transit Union, Local 113*, [2012] CanLII 51346 (ON LA) (Burkett) (**Tab 11**, Book of Authorities), Arbitrator Burkett was appointed to adjudicate the remaining issues in dispute between the Parties following enactment of the *Toronto Transit Commission Labour Disputes Resolution Act* of 2011. In exercising his function under the *Act*, the Arbitrator was required to take into consideration all factors he/she considers relevant, including the following criteria:

1. The employer's ability to pay in light of its fiscal situation;
2. The extent to which services may have to be reduced, in light of the decision or award, if current funding and taxation levels are not increased;
3. The economic situation in Ontario and the City of Toronto;
4. A comparison, as between the employees and other comparable employees in the public and private sectors, of the terms and conditions of employment and the nature of the work performed;
5. The employer's ability to attract and retain qualified employees;
6. The purposes of the Public Sector Dispute Resolution Act, 1997.

5.08 Burkett then clarified that the purposes of the Public Sector Dispute Resolution Act, 1997, as referenced above, are:

- a) To ensure the expeditious resolution of disputes through collective bargaining;
- b) To encourage the settlement of disputes through negotiation;
- c) To encourage best practices that ensure the delivery of quality and effective public services that are affordable to taxpayers.

(at p. 3)

5.09 At p. 7 of the Award, the Arbitrator noted:

The answer to the question -- ability to pay what? -- is that, were it not for the TTC-related fiscal considerations raised by the Employer, the award, having regard to the general fiscal environment and to the comparator freely negotiated settlements, would be for 2% annual across the board wage increases. **On a close analysis, I have not been convinced that the fiscal reality that forms the basis for the application of the first three statutory criteria overrides the fourth criterion that requires a comparison between these employees and those doing comparable work, especially in circumstances where a clear pattern in this regard already exist.** While there can be no dispute that the economy is struggling and that the Employer is under budgetary constraint, a comparative pattern has been set and it has been set at a level that can and should be met by the Employer. It should be met by the Employer because it is consistent with the past bargaining between these Parties and because the fiscal constraints are not so severe as to prevent the

Employer from meeting the pattern. The application of the fifth and sixth criteria does not dissuade me in this regard.

(emphasis added)

5.10 Of considerable significance to the adjudication of monetary issues before the Arbitration Board is the often cited Award of Justice Warren Winkler, the Chair of an Interest Award between the University of Toronto and the University of Toronto Faculty Association. At issue was an Award that addressed salaries and benefits for a two-year period, commencing July 1, 2005 and concluding June 30, 2007 (see **Tab 12**, Book of Authorities). The Award identified two general principles which serve as “key pillars in the contextual framework of this award”:

1. The first is the “replication principle” which need not be explained further here.
2. The second underlying principle is found in the mutual commitment of the University and the Association to ensuring that the University is a leader among the world’s best teaching and research institutions of higher learning.

Winkler Award (*University of Toronto*, supra), **Tab 12**, Book of Authorities, at p. 3

5.11 The following passages from that Award are also apposite:

[8] It is obvious that in the context of this dispute, the two principles are inextricably interrelated. Any attempt to replicate an agreement that might have been reached between the parties has to take into account the fact that the parties would be bargaining on common ground with respect to their mutual, commendable devotion to the excellence and reputation of the University.

[18] This reasoning brings us full circle to revisit the common ground between the parties regarding the commitment to the pursuit of excellence. As both parties are surely aware, more than mere lip service to the ideal is required for the due administration and execution of a commitment to excellence. In that respect, the University acknowledges that “the excellence of the University owes much to the quality of its faculty and librarians.” However, as the Association similarly implicitly acknowledges, “comparability and general economic conditions” are relevant factors providing a context within which the panel might determine what degree of influence adherence to the principle would exert in bargaining.

[19] In our view, while the commitment to excellence is clearly a significant factor in the relationship between the University and the Association, assessing its impact on the bargaining requires that it be considered in the context of the “marketplace” in which it is pursued.

[20] In essence, the University has staked out a position at the top of the relevant market or “industry segment.” It implicitly admits that maintaining that position depends to a large degree on maintaining the quality of its faculty and librarians. That in turn requires, leaving aside the intangibles, ensuring that the total compensation package available to those faculty members and librarians is sufficient to place them at

the top of the market as well. That will be the starting point for our analysis of the specific proposals. (at p. 8)

Winkler Award (*University of Toronto*) (*supra*), **Tab 12**, Book of Authorities at pp. 3, 8

- 5.12 What is significant about the portions of the Award cited above is that both the University and the Association view the University's excellence as a teaching and research institution of higher learning being driven in large measure by the high quality of its faculty and librarians. Thus, compensation for its faculty and librarians must reflect a figure that maintains that high standard. That same reasoning applies for faculty salaries at UBC.
- 5.13 In **McMaster University and McMaster University Faculty Assn.**, [1990] O.L.A.A. No. 84, 13 L.A.C. (4th) 199, Arbitrator Shime discussed the importance of catch-up in an interest arbitration between McMaster University and McMaster University Faculty Association. In that Award, he noted that:

Salary negotiations between the faculty and the university take place against a backdrop of ongoing government underfunding and an agreement by both sides that some level of catch-up is needed. There was such substantial agreement between the sides that the real difference was little more than one percentage point. **The union argued that salaries and [sic] eroded when compared to any and all major indices such as the Consumer Price Index, salaries of secondary school teachers and professors at other universities, etc.** The employer did not deny any of this but maintained that the offer being made was generous in the circumstance **and that the benefits package had been improved** as well.

Shime Award (*McMaster University*), **Tab 13**, Book of Authorities at page 1

- 5.14 Arbitrator Shime discussed the fact that collective bargaining is inherently an economic power struggle, with neither side satisfied at the end. He suggested that this could lead to reluctance on the part of arbitrators reviewing the past in terms of catch-up, but concluded:

Notwithstanding my scepticism about reviewing the past, I am prepared to give great weight to salaries negotiated in other universities. **In very simple terms, I see no reason to pay people performing the same functions at McMaster University less than those at other universities. It seems to me that an assistant professor teaching biology at McMaster should not receive less than an assistant professor teaching the same course at another Ontario university. There may be some room for slight differences depending on local conditions, but those local situations do not derogate from the basic premise that persons of the same rank doing the same work at different universities should, by and large, receive the same or an equivalent salary and by salary I mean all benefits.** In my view it is preferable to determine salaries and benefits by comparing salary schedules. Again, the most significant indicator of salaries is what free collective bargaining has produced for the same or similar positions at other universities. (emphasis added)

....

I am also in agreement with the faculty that there is little economic rationale for using ability to pay as a criterion in arbitration. In that regard I need only briefly repeat what I have said in another context, that is, **public sector employees should not be required to subsidize the community** by accepting substandard wages and working conditions: see, e.g., General Truck Drivers, etc. and B.C. Railway Co. (1973) (Shime); Re University of Manitoba, May 16, 1979 (Williams). Thus, for example, if I were faced with data showing that the salary scale for assistant professors at McMaster was less than that of other universities in Ontario, I would have no hesitation in increasing the amount to achieve the same standard for McMaster regardless of the university's fiscal position. (emphasis in original)

Shime Award (*McMaster University*, supra), **Tab 13**, Book of Authorities at paragraphs 14-17

5.15 Effectively Arbitrator Shime argues that one of the considerations of the Arbitrator is to achieve the same standard of salary as comparator institutions. For UBC, the primary comparator is the University of Toronto, as UBC is ranked second to it in most ranking schemes.

5.16 Shime clarifies his position as follows:

**In my view settlements in other universities and the salary schedules that flow from those settlements bear the greatest weight for arbitrator/ selectors who are involved in wage determination.** Again, for comparison's sake, total compensation should be weighed against total compensation.

Shime Award (*McMaster University*, supra), **Tab 13**, Book of Authorities at paragraph 20 (emphasis added)

5.17 Shime's account, that "total compensation should be weighed against total compensation" (rather than just salary comparisons) makes sense, particularly when he reports the previous settlement at McMaster:

**What appears to be significant and in my view tips the balance is that the across the board increase for McMaster University in 1988-1990 was 4.5% and with benefits it was 4.51%. This fell short of other universities by a significant amount.** Based on these recent or more contemporary settlements, **it is my view, that the faculty have made a case for catch-up.** Thus while I might not have awarded the full amount claimed by the faculty, its position falls closer to the mark than the university's position. **To have selected the university's position would have left faculty salaries in a deficit position for a second straight year when compared to other settlements in the recent past.** On balance, therefore, while I consider both the university's position the faculty's position to be within the range of reasonableness, I have chosen the faculty's position as being the more reasonable of the positions, but only by a small margin, and I therefore select it.

Shime Award (*McMaster University*, supra), **Tab 13**, Book of Authorities at paragraph 23 (emphasis added)

5.18 This is extremely relevant in the UBC situation, because there have been few increases in any benefits except the Professional Development Reimbursement, which was introduced in 1999 at \$500, increased to \$1,100 in 2011, and which remains the lowest in the Province. Vision care, which is lower for the Association than for other UBC employee groups was raised to \$250/2 years in 2002, and not increased since. There were also some changes to limits on things like orthotics, hearing aids, etc in 2002/2003. There have been no other improvements in benefits since 1999. Thus, while comparators have received increases in wages and benefits over recent years, UBC has not kept up on either factor. As a consequence, UBC has fallen behind faculty at comparator universities in both wages and benefits. We discuss how far salary and benefits have fallen behind in Sections 6 and 7 of this submission.

## **6. CRITERIA TO BE CONSIDERED ONCE ABILITY TO PAY IS ESTABLISHED**

**6.01** Once the Arbitration Board is satisfied that the University has the ability to pay the cost of an Award, it must base its Award on the criteria described in sections (i) to (iv) of Article 11.02(e) (p. 14).

### *A) ACADEMIC QUALITY*

#### **6.02 THE NEED FOR THE UNIVERSITY TO MAINTAIN ITS ACADEMIC QUALITY BY RETAINING AND ATTRACTING FACULTY OF THE HIGHEST CALIBRE (ARTICLE 11.02(E)(I)).**

- 6.02.1 The University's offer of GWI for 2014-2016 does not advance the objective of maintaining the academic quality of the University as set out in its vision statement.
- 6.02.2 In the 2012 Arbitration the University took the position that "there is no general retention issue, but rather a need to address specific cases" (University Reply Brief, 2012 Arbitration, paragraph 39). The Association disagrees with both assertions.
- 6.02.3 The University's high national and international standing rests on the entirety of its faculty. The University competes with other top universities to attract and retain highly skilled and sought after faculty. In order to attract and maintain its complement of skilled faculty the University must keep salaries competitive.
- 6.02.4 Evidence from the University's Workplace Experiences Survey, conducted in November 2013 and administered by Ipsos Reid, one of the world's leading survey research firms, asked faculty to indicate the degree of agreement with the statement "UBC is successful in retaining the best faculty." This is a new question so there are no previous responses with which to compare it. Only 28% of all faculty members agreed or strongly agreed with that statement.
- 6.02.5 The University has proposed a retention fund of \$500,000 in each of the second, third and fourth years of a proposed five-year agreement. The Association is proposing no retention fund for either year of a two-year agreement. The parties agreed to a retention fund in 1998-99, and again between 2001/02 and 2009/10. The 2010- 2012 Agreement contained no retention fund and the Association strongly opposed the University's proposal for a retention fund in the last round of bargaining. However, the Arbitration Award included a retention fund of \$200,000 in 2012/13 and \$400,000 in 2013/2014.

6.02.6 The University, in paragraph 39 of its 2012 reply brief says: “The use of allocated funds for retention purposes demonstrates two points: that funds are needed for specific cases in particular disciplines and markets where adjustments must be made, and that the strategy works.” In terms of the latter argument, there is no evidence that the strategy works, since there is no way of knowing which members who received retention awards would have left but for those awards. There is not even a requirement for members to be in receipt of an offer from another university in order to receive a retention award. The Association is well aware that some members are approached by other universities and that many members could easily find positions at other universities if they sought them. That is the nature of being at a top research university. However, there is simply no way of knowing how many, if any, members would have left but for the retention award, and the University provides no such evidence.

6.02.7 In terms of the argument “that funds are needed for specific cases in particular disciplines and markets where adjustments must be made,” the Association recognizes that occasionally average salaries in particular disciplines at UBC diverge from the national trend, and that highly productive members are most likely to be headhunted. However, the Association submits that the existing Merit fund and PSA fund are specifically designed to deal with exactly those problems, and that if the problem to be solved was one of a particular discipline, the University would propose a specific market adjustment, as it has in the past.

6.02.8 Under CA Part 4, 6.01 the University is obliged to provide the Association with the “reasons” for the specific retention awards it makes. The justifications the University provides for the retention awards it makes does include a number of cases where actual offers from other universities are mentioned, although there is no evidence that the member would have left but for the award. Certainly the Association does not dispute that our members are extremely valuable, and generally underpaid, and thus at risk of recruitment by other universities. However, in most cases the justification for a retention award is speculative in terms of faculty being a recruitment risk because of a low salary, something the current PTR is designed to prevent. A sample of justifications include:

“She is a very desirable faculty colleague to other major research universities, and her modest salary makes her a recruitment risk.”

“Given his expertise in the area of vascular health, he is likely to be targeted by research-intensive institutions.”

“His salary is low compared to his peers, and a tempting offer might lead him to another institution, putting the continued success of the program at risk.”

“Her salary is very low compared to her colleagues at a similar career stage and given her outstanding scholarship record she is at risk of being lured by another institution.”

“... as he has a considerably lower salary than anyone else in either of the departments to which he is jointly appointed, is a retention risk.”

“Professor X’s current salary is low both within the faculty and compared to scholars of similar standing at other Canadian law schools.”

**Source:** UBC Faculty Relations reports to Faculty Association on retention

- 6.02.9 The Association submits that, since our members are generally underpaid, such justifications could be applied to almost anyone and that the retention fund has primarily acted as a slush fund from which the University can reward individuals for any number of reasons, including but not limited to salary anomalies, without benefit of the academic recommendation process that exists for Merit and PSA awards.
- 6.02.10 We also note that many retention awards are given to Heads and other faculty who take on administrative service roles for which administrative stipends are paid. The University no longer identifies the administrative roles of members given retention awards, but in the last two years in which it did so (2006/07 and 2007/08), 45 awards were given to individuals identified as “Associate Dean”, “Vice Provost”, “Head”, “Director”, “Chair”, “Associate Head” or “Graduate Advisor.” Thus, of the 165 awards given, 45 were to individuals with identified administrative duties, which is a far higher proportion than would be expected if the awards were unrelated to administrative service. If the University feels those members are not adequately rewarded for their administrative service they can increase their administrative stipends, which have no maxima specified in the Collective Agreement.
- 6.02.11 In short, the Association submits that the best way of dealing with the general problem that any top flight university has in retaining its faculty is to ensure, through adequate GWI, that salaries keep pace with those at comparable institutions, and that a mechanism exists to ensure highly productive members are paid the appropriate market differentials due their skills. With our current Merit and PSA processes we have the latter mechanism. It is the former mechanism that will be lacking if the University’s GWI proposal is accepted.

## *B) CHANGES IN THE VANCOUVER AND CANADIAN CONSUMER PRICE INDICES*

### **6.03 CHANGES IN THE VANCOUVER AND CANADIAN CONSUMER PRICE INDICES (ARTICLE 11.02(E)(II)).**

- 6.03.1 Article 11.02(e)(ii) directs the Arbitration Board to base its Award on, among other criteria, changes in the Vancouver and Canadian Consumer Price Indices.
- 6.03.2 The University is proposing a five-year agreement that would be in place until June 30, 2019. Should the Arbitration Board award this (which the Association strongly opposes), it will have to forecast Consumer Price Inflation (CPI) almost four years into the future.
- 6.03.3 The inflation rate in Canada, and in every province and city in Canada, is influenced by the Bank of Canada’s monetary policy, which in turn is determined by the Bank of Canada’s inflation target rate. Since 1991 the target range has been 1 to 3 per cent, with the Bank’s monetary policy aimed at keeping inflation at the 2 per cent target midpoint:

The inflation-control target was adopted by the Bank and the Government of Canada in 1991 and has been renewed five times since then, most recently in November 2011 for the five years to the end of 2016. The target aims to keep total CPI inflation at the 2 per cent midpoint of a target range of 1 to 3 per cent over the medium term. The Bank raises or lowers its policy interest rate, as appropriate, in order to achieve the target typically within a horizon of six to eight quarters—the time that it usually takes for policy actions to work their way through the economy and have their full effect on inflation.

**Source:** <http://www.bankofcanada.ca/rates/indicators/key-variables/inflation-control-target/>

- 6.03.4 Since the introduction of monetary targeting the Bank has been very successful in maintaining an annual inflation rate of approximately 2%. Between 1990 and 2000, inflation in Canada, as measured by the Consumer Price Index, averaged 1.98% per year, and between 2000 and 2014 Canadian CPI inflation averaged 2.0%.
- 6.03.5 The Government of BC's 2015 *Budget and Fiscal Plan* contains both assumptions about future CPI inflation and forecasts about future CPI inflation made by the Economic Forecast Council. The assumptions on which the Government has based its budget are that CPI inflation will be 1.6% in 2015 and 2% for each year between 2016 and 2019 (p. 81). The Economic Forecast Council's forecasts are for British Columbia's CPI inflation to be 1.4% in 2015, 1.9% in 2016 and 2.0% between 2017 and 2019 (p. 85). Referenced pages can be found in **Tab 3** of the Binder of Evidence. The whole report can be found at [http://bcbudget.gov.bc.ca/2015/bfp/2015\\_Budget\\_and\\_Fiscal\\_Plan.pdf](http://bcbudget.gov.bc.ca/2015/bfp/2015_Budget_and_Fiscal_Plan.pdf)
- 6.03.6 The CPI inflation assumptions and forecasts contained in the 2015 *Budget and Fiscal Plan* are not surprising. Indeed, it would have been shocking if any forecasts or assumptions for CPI inflation more than one year in advance had deviated significantly from 2%, given Bank of Canada policy.
- 6.03.7 In the short-term, deviations, even fairly large ones, do occur. During the four-year period from January 2011 to December 2014 the Canadian CPI 12 month average all-item inflation rates ranged from a low of 0.2% to a high of 3.7%. The all-item CPI contains both "core" items and 8 "volatile items." The latter includes indirect taxes, gasoline, and other volatile items. Inflation measures the change in the prices of items. Items that are volatile are prone to rapid price changes in both directions. However, the effects of these changes are always short term and cannot be used to predict inflation rates in the future. Consequently, the Association maintains that, when projecting CPI inflation into the future, the only reasonable assumption is for an annual rate of inflation of 2%.
- 6.03.8 The Association proposes a two-year Agreement that would be in place until June 30, 2016. If the Board awards a two-year term, it will only have to forecast Consumer Price inflation less than one year into the future.
- 6.03.9 **Table 4** presents the Consumer Price index for Canada and Vancouver. The CPI all-item inflation rate between July, 2014 and July 2015 was 1.3% for Canada and 1.1% for Vancouver, or an average of 1.2% between the two indices. The core

inflation rate was 2.4%. The University’s proposed GWI of 0% is thus well below actual CPI inflation for 2014/15, and bears no relationship to the criteria in Article 11.02(e). We see no justification for a GWI below actual CPI inflation rates for the first year of the Agreement. (The entire monthly series for July 2011 to July 2015 can be found in **Tab 2** of the Binder of Evidence.)

**Table 4: CPI Inflation Change over Previous Year, Canada and Vancouver July 2011 to July 2015**

Date	Canada				Vancouver	
	All-items		Core		All-items	
	CPI	% Change	CPI	% Change	CPI	% Change
<b>Jul-11</b>	120	2.7%	117.3	1.6%	117.5	1.6%
<b>Jul-12</b>	121.5	1.3%	119.3	1.7%	119.2	1.4%
<b>Jul-13</b>	123.1	1.3%	121	1.4%	119.3	0.1%
<b>Jul-14</b>	125.7	2.1%	123.1	1.7%	121.2	1.6%
<b>Jul-15</b>	127.3	1.3%	126	2.4%	122.5	1.1%

**Source:** Statistics Canada. Table 326-0020 - Consumer Price Index, monthly (2002=100).

- 6.03.10 As demonstrated above, the only reasonable basis for projecting inflation in the future is the Bank of Canada target, which is 2%. We note that the core CPI inflation rate between July 2014 and July 2015 was 2.4%, indicating that the low all-item inflation rate during that period was caused by the “volatile” items, particularly gasoline prices, which by their very nature, are unpredictable in even the short term. The University’s proposed GWI of 0.9% as of July 1, 2015 is thus well below any reasonable projection of CPI inflation for the second year of the Agreement. The Association believes that the criteria of 11.03(2)(e), taken together, justify an increase above CPI inflation rates. We see no justification for a GWI in 2015/2016 below any reasonable expectation of CPI inflation rates.
- 6.03.11 The University points out, in paragraph 10 of their Ability to Pay submission, that as they are proposing both a 0.9% GWI and a retention fund for the second year of the Agreement, the appropriate increase to use in assessing their proposal in terms of the reasonable balance analysis is 1.0% “as the allocation of salaries does not affect ability to pay.” The Association agrees with this, *but only for the purpose of assessing their proposal in terms of the reasonable balance analysis.*
- 6.03.12 However, for the purposes of protecting faculty salaries against inflation, the proposed retention fund does not function as a GWI. The retention fund **only** provides increases to a very small percentage of members, and is not evenly allocated among different classifications. For example, no Sessional Lecturers, of whom the University employs as many as 1,000 in any given year, have ever been given a retention award. Since 2006/07 there have been 499 retention awards. (Prior to 2006 the University did not always include rank information when they reported the awards, and in two of the years since 2006 the Association and the University came to an agreement that did not include a retention fund). Only one

award (0.2%) was given to a Lecturer. Only 8 awards (1.6%) were given to members in any rank in the Educational Leadership stream. None has been given to a Librarian or a Program Director. In contrast, in April 2015, of 2,933 members in the bargaining unit, excluding Sessional Lecturers, 234 (8%) were Lecturers, 247 (8.4%) were in the Educational Leadership stream and 94 (3.2%) were Librarians or Program Directors.

### *C) CHANGES IN B.C. AND CANADIAN AVERAGE SALARIES AND WAGES*

#### **6.04 CHANGES IN B.C. AND CANADIAN AVERAGE SALARIES AND WAGES (ARTICLE 11.02(E)(III))**

- 6.04.1 Article 11.02(e)(iii) directs the Arbitration Board to base its Award on, among other criteria, British Columbia and Canadian Average Salaries and Wages.
- 6.04.2 Unlike the use of the Consumer Price Index to measure price inflation, which is clearly mandated by the Collective Agreement, there is no specifically defined measure of wage and salary inflation mandated by the Agreement. The standard measure is Statistics Canada's Average Weekly Wage Rate for all employees, all occupations, both sexes, age group 15 years and over, which is produced by the Labour Force Survey (LFS). The LFS data are based on the reported "usual wages or salary of employees" and most closely match the Collective Agreement language "Salaries and Wages." As the Association's bargaining unit includes both full-time employees and a very significant number of part-time employees, we submit that the "all employee" rate is the appropriate one, but we have included the "full-time only" rates for comparison purposes.
- 6.04.3 **Table 5** presents average annual wage and price inflation, in Canada and BC, for recent years, measured each July. (The entire monthly series for July 2011 to July 2015 can be found in **Tab 2** of the Binder of Evidence.)
- 6.04.4 As **Table 5** indicates the LFS all-employee inflation rate between July 2014 and July 2015 was 3.6% for Canada and 3.1% for BC, or an average of 3.35% between the two jurisdictions. This closely aligns with the first year of the renewal Collective Agreement.
- 6.04.5 The Association has already demonstrated that the University's proposed GWI for 2014-2015 of 0% is well below actual CPI inflation during that period (which averaged 1.2% between Canada and Vancouver). Based on **Table 5**, the Association submits that the University's proposed GWI for 2014-2015 of 0% is even farther below actual wage and salary inflation for that period (which averaged 3.35% between Canada and BC).

**Table 5: Annual Wage and Price Inflation, Canada and BC (July-July)**

Date	Canada			BC		
	All Employees	Full-time Employees	CPI	All Employees	Full-time Employees	CPI
Jul-03	2.0%	2.3%	2.1%	3.3%	2.4%	1.6%
Jul-04	2.4%	2.3%	2.3%	-0.5%	0.0%	2.4%
Jul-05	3.7%	3.3%	2.0%	2.2%	-0.2%	1.8%
Jul-06	3.9%	3.8%	2.3%	3.3%	3.7%	2.1%
Jul-07	3.4%	3.2%	2.2%	3.4%	3.4%	1.6%
Jul-08	3.2%	3.7%	3.4%	5.4%	5.0%	3.3%
Jul-09	2.7%	3.3%	-0.9%	1.1%	3.7%	-1.6%
Jul-10	1.7%	2.2%	1.8%	3.4%	3.3%	2.0%
Jul-11	2.5%	1.9%	2.7%	2.9%	2.6%	1.7%
Jul-12	4.0%	3.7%	1.3%	0.0%	-1.1%	1.1%
Jul-13	1.3%	1.6%	1.3%	4.8%	4.1%	0.0%
Jul-14	2.2%	2.4%	2.1%	-0.6%	0.6%	1.4%
Jul-15	3.6%	3.2%	1.3%	3.1%	2.7%	1.0%
Average	<b>2.8%</b>	<b>2.9%</b>	<b>1.8%</b>	<b>2.4%</b>	<b>2.3%</b>	<b>1.4%</b>

**Source:** Statistics Canada. Table 282-0069 - Labour force survey estimates (LFS), wages of employees by type of work, National Occupational Classification for Statistics (NOC-S), sex and age group, unadjusted for seasonality, monthly (current dollars) and Statistics Canada Table 326-0020 - Consumer Price Index, monthly (2002=100).

- 6.04.6 The University is proposing a five-year Agreement that would be in place until June 30, 2019. Should the Arbitration Board award this, which the Association strongly opposes, it will have to forecast changes in average wages and salaries almost four years into the future.
- 6.04.7 Wage and salary inflation is much more difficult to predict than price inflation, and more variable on a month-to-month basis. However, a general rule of thumb is that wage and salary inflation runs about 1% higher than price inflation, on average.
- 6.04.8 **Table 5** demonstrates that between July 2003 and July 2015 the average rate of change in Canadian average weekly wages was 2.8%. During the same period the change in the Canadian CPI was 1.8%, exactly one percent lower. Between July 2003 and July 2015 the average rate of change in average weekly wages in BC was 2.4%. During the same period the change in the BC CPI was 1.4%, also exactly 1% lower. Of course this rule of thumb is a long-term average and there is significant variability over time.
- 6.04.9 The Association's view is that, when projecting wage inflation rates it is appropriate to use the rule of thumb that wage inflation averages 1% more than price inflation in the long run. As previously discussed in paragraphs 6.03.3 –

6.03.6 the only reasonable basis for projecting inflation in the future is the Bank of Canada target, which is 2%. Consequently a reasonable projection for wage inflation is 3%. The University's GWI proposal for the second year of the agreement is 0.9%, well below any reasonable projection of wage inflation for 2015/16 or any subsequent year. We see no justification for a General Wage Increase below CPI inflation rates and well below wage inflation rates.

#### *D) CHANGES IN SALARIES AND BENEFITS AT COMPARABLE CANADIAN UNIVERSITIES*

##### **6.05 SALARIES AND BENEFITS AT OTHER CANADIAN UNIVERSITIES OF COMPARABLE ACADEMIC QUALITY AND SIZE (ARTICLE 11.02(E)(IV)).**

Article 11.02(e)(iv) (p. 15) requires the Arbitration Board to turn its mind to the salaries and benefits at other Canadian universities of comparable academic quality and size. Below we examine quality first, and then size, in order to adduce a set of comparators for examining the relationship of UBC faculty salaries and benefits to other Canadian universities.

#### *I) ACADEMIC QUALITY*

- 6.05.1 The University of British Columbia is the largest university in the Province. While it is the Province's premier university, it is also one of the top research universities in Canada. The University refers to and relies heavily on national and international rankings, and watches them carefully, providing comment when rankings are positive and when a ranking does not meet the University's expectation.
- 6.05.2 On its website UBC boasts: "The University of British Columbia is consistently ranking among the 40 best globally, and now places among the top 20 public universities in the world." It even posts its international rankings on its website at <http://www.ubc.ca/about/global.html>, starting with its 2003 ranking in the first international ranking of universities survey conducted, that by Shanghai Jiao Tong University Institute of Higher Education. (<https://www.ubc.ca/about/our-place.html>)
- 6.05.3 The website specifically calls out its rank of 37 on The Times Higher Education World Reputation Rankings. This ranking is based on "the considered expert judgment of senior, published academics - the people best placed to know the most about excellence in our universities." As *The Times* reports, the survey provides "the definitive list of the top 100 most powerful global university brands."

**Source:** <http://www.timeshighereducation.co.uk/world-university-rankings/>

- 6.05.4 In short, UBC follows its rankings with other universities quite closely.
- 6.05.5 UBC is a member of the U15 Group of Canadian Research Universities, an organization that represents its members' interests, primarily in the area of research funding, with governments at various levels. In **Table 6**, we report the national and international rankings of UBC and the other members of the U15 group in eight different international rankings. (An explanation of the methodology

of each of the rankings, and its source, can be found in Appendix A.) An examination of those 15 universities illustrates a significant gap between the top three (Toronto, UBC, McGill) and the second tier of seven universities, which, in turn, is significantly above the third tier of five U15 universities.

- 6.05.6 UBC ranks either second or third among Canadian Universities in every one of the four main rankings: The Center for World University Rankings (#3), the Academic Ranking of World Universities (#2), the Times Higher Education World University Rankings (#2), and the Maclean's rankings (#2).
- 6.05.7 David Naylor, former President of the University of Toronto, gave a talk to the Empire Club of Canada members in early March, 2013. The abridged text was published in the *Financial Post* on March 14, 2013 (<http://business.financialpost.com/2013/03/14/fending-off-the-university-attacking-zombies/>). His presentation and the accompanying data showing the University of Toronto's comparators make clear that UBC is second only to the University of Toronto in terms of research excellence, and both universities rank considerably higher than the rest of the comparators. This is also the position of the Faculty Association, and we would be surprised to hear that the University would consider any of the other members of the U15, with the possible exception of McGill, as being at the same level of academic quality as UBC.
- 6.05.8 The international rankings shown in **Table 6** demonstrate that UBC is one of the very few elite institutions in Canada. UBC specifically references two international rankings on its website, Times Higher Education Reputation Ranking (UK) and Academic Ranking of World Universities ("ARWU") which is produced by Shanghai Jiao Tong University.
- 6.05.9 It is clear from the descriptions of how the Times Higher Education World University Rankings and the ARWU rankings are constructed, that the research and publications of faculty members bear the highest responsibility for the rankings achieved. In other words, these rankings are a measure of the strength and productivity of a university's faculty members.

**Table 6. Rankings of Comparator Universities**

	<i>Maclean's</i> 2015 Medical Doctoral University Ranking	<i>Times</i> Higher Education 2015 World Reputation Ranking	<i>Times</i> Higher Education 2014- 2015 World Ranking	Academic Ranking of World Universities 2014	Newsweek Top 25 Outside the US 2011	QS World University Rankings 2014	SCImago 2012	National Taiwan University 2014
Toronto	2	16	20	24	3	20	3	4
<b>UBC</b>	<b>3</b>	<b>37</b>	<b>32</b>	<b>37</b>	<b>8</b>	<b>43</b>	<b>25</b>	<b>27</b>
McGill	1	35	39	67	13	21	51	33
McMaster	6	*	94	90	*	113	116	116
Alberta	5	*	124	101-150	15	84	54	79
Montréal	10 (tie)	*	113	101-150	*	83	171	86
Queen's	4	*	251-275	201-300	*	187	255	299
Ottawa	8 (tie)	*	188	201-300	*	218	184	161
Western	8 (tie)	*	226-250	201-300	*	191	158	206
Waterloo	Not appl.	*	251-275	201-300	*	169	161	261
<b>Remaining U15</b>								
Calgary	12 (tie)	*	*	151-200	*	171	1	144
Saskatchewan	14	*	*	301-400	*	481-490	1	393
Manitoba	12 (tie)	*	*	301-400	*	501-550	1	271
Laval	10 (tie)	*	*	201-300	*	298	1	226
Dalhousie	7	*	*	201-300	*	235	1	282
<b>Selected British Columbia Universities</b>								
SFU	Not appl.	*	*	201-300	*	222	1	324
UVic	Not appl.	*	*	201-300	*	290	1	306
UNBC	Not appl.	*	*	*	*	*	1	*
<sup>1</sup> Data no longer available								
<b>Source:</b> See Appendix 1								

6.05.10 For 2015, The Times Higher Education World Reputation Rankings ranks UBC as 37th best in world reputation, after only the University of Toronto (ranked 16th best in world reputation) and McGill (ranked 35th in world reputation). There are no other Canadian universities in the top 100 of world reputation. For 2014-2015, The Times Higher Education World University Rankings ranks UBC as 32nd best in the world after the University of Toronto (ranked 20th best in the world). The only other Canadian universities in the top 100 are McGill (39th) and McMaster (94th). Thus, between the two different Times ratings, only four Canadian universities are ranked in the top 100 of the world: UBC, the University of Toronto, and McGill are on both the top *ranked* and the top *reputation* lists, while McMaster makes the top *ranked* list.

- 6.05.11 The ARWU rankings nearly replicate the ordering if not the rank itself of these same four schools, and no other Canadian universities make the top 100.
- 6.05.12 These international rankings are far from precise, but the overall consistency across a variety of different ranking platforms indicates that UBC and the University of Toronto are the top two universities in Canada. They also show that only a handful of Canadian universities are able to compete successfully on the international scene.
- 6.05.13 A relatively new ranking organization, the Higher Education Strategy Associates (HESA) (<http://higheredstrategy.com>) recently ranked Canadian universities on research excellence, including the number of articles published, the quality of the journals in which they were published, and the impact factor of the journals. These are all measures that demonstrate faculty productivity. UBC ranked 1 for Natural Science and Engineering disciplines, for both publications and grant funding, the two key measures of research excellence with this ranking agency. The agency then weighted the research and funding scores, with UBC coming out top overall in Science and Engineering disciplines. University of Montreal, University of Toronto, Ottawa and McGill rounded out the top 5. In the Social Sciences and Humanities, UBC ranked first in research publications, and second in SSHRC funding. These measures combined resulted in UBC scoring first overall in the Social Science and Humanities disciplines. McGill, University of Toronto, University of Alberta and Guelph rounded out the top 5. These results are somewhat consistent with the rankings that appear in **Table 6** on page 39. More importantly, however, in these rankings, which are direct measures of faculty research productivity, UBC ranked #1 in Canada for research excellence in both the Natural Science and Engineering disciplines, and in the Social Sciences and Humanities disciplines.

**Source:** <http://higheredstrategy.com/wp-content/uploads/2012/08/rankings2012.pdf>

- 6.05.14 The University of British Columbia is ranked highly internationally, not for the quality of its senior administrators (although senior administrators make valuable contributions to the University), but for the quality of its faculty and their research endeavours. Thus, it can only make sense that UBC's "compensation philosophy" (see paragraph 7.02) should apply equally to its faculty and its senior administrators.
- 6.05.15 As Arbitrator Taylor put in in his July 2013 Award: "The picture that emerges from the rankings overall is that UBC is second in Canada only to the University of Toronto, with McGill in third. Those are the only three Canadian universities that consistently rank highly in the international rankings. There is a sharp drop-off after those three, with none of the other universities approaching UBC in any of the rankings." (paragraph 99).

## *II) SIZE*

- 6.05.16 **Table 7** presents the enrolment of the U15 group and select provincial universities. The universities are ranked by total enrolment for convenience.

**Table 7. Student Enrollment of U15 and Selected BC Universities for 2014 (preliminary)  
(Rank ordered by total enrollment)**

		Full-time Undergraduate	Full-time Graduate	Part-time Undergraduate	Part-time Graduate	Total
1	Toronto	62,400	15,200	6,800	1,500	85,900
2	<b>UBC</b>	33,770	8,960	14,840	1,490	59,060
3	Montréal	23,610	9,410	10,270	2,930	46,220
4	Laval	25,230	8,270	8,150	3,750	45,400
5	Ottawa	30,200	5,600	6,100	1,400	43,300
6	Alberta	29,790	5,840	1,660	1,640	38,930
7	McGill	22,890	6,960	5,720	2,210	37,780
8	Waterloo	29,600	3,900	1,400	1,250	36,150
9	McMaster	23,100	3,700	3,100	780	30,680
10	Western	22,800	5,300	2,050	450	30,600
11	Calgary	22,130	6,380	1,530	500	30,540
12	Manitoba	21,560	3,010	3,830	660	29,060
13	Queen's	8,700	4,000	2,800	400	25,900
14	Saskatchewan	15,510	2,760	1,350	360	19,980
15	Dalhousie	13,420	3,190	1,490	710	18,810
<b>Select British Columbia Universities</b>						
	SFU	13,320	3,580	11,900	780	29,580
	UVic	13,480	3,060	4,490	310	21,340
	UNBC	1,830	500	810	120	3,260
<b>Source:</b> <a href="http://www.aucc.ca/canadian-universities/facts-and-stats/enrolment-by-university/">http://www.aucc.ca/canadian-universities/facts-and-stats/enrolment-by-university/</a>						

6.05.17 The University of Toronto is by far the largest university in Canada, with the largest full-time undergraduate program, and UBC is second in size in its full-time undergraduate program. The University of Ottawa, the University of Alberta, and Waterloo are fairly similar in undergraduate size, but smaller than UBC or Toronto. The University of Toronto has the largest full-time graduate program, with UBC third behind Montreal. None of the remaining universities are nearly as large, when looking at these dimensions combined.

6.05.18 None of the other research universities in British Columbia approach anywhere near the size of UBC.

6.05.19 **Table 8** shows the size of faculty for U15 schools as well as the research universities in British Columbia for 2010/2011. Unfortunately Statistics Canada no longer collects such data. We have no reason to believe that the relative size of the faculty complement would be much different currently. The data show that UBC is very close to the University of Toronto in size of faculty, and both of those universities have much larger faculties than the third largest university, the University of Calgary.

**Table 8: Full-time University Teachers by Type of Appointment, 2010/2011  
(Ranked by total size)**

	University	Tenured	Leading to Tenure	Other	Total
1	Toronto	1,539	414	714	2,667
2	<b>UBC</b>	<b>1,746</b>	<b>699</b>	<b>129</b>	<b>2,574</b>
3	Calgary	987	288	369	1,644
4	Alberta	1,179	369	0	1,548
5	Western	840	348	303	1,491
6	McMaster	888	303	108	1,299
7	Ottawa	792	393	108	1,293
8	Manitoba	729	276	168	1,173
9	Saskatchewan	672	279	150	1,101
10	Waterloo	678	255	156	1,089
11	Dalhousie	597	150	231	978
12	Queen's	636	129	27	792
	Montréal <sup>1</sup>				
	Laval <sup>1</sup>				
	McGill <sup>1</sup>				
<b>British Columbia</b>					
	SFU	573	213	156	942
	UVic	519	174	54	747
	UNBC	138	30	21	189
<sup>1</sup> Data on type of appointment are not available for Quebec universities					
<b>Source:</b> Statistics Canada, Centre for Education Statistics, University and College Academic Staff System (UCASS)					

6.05.20 We can conclude from both enrollment and faculty size that the University of Toronto and UBC are much more similar to each other than they are to any other of the U15 group, or the British Columbia group.

6.05.21 Without the consistent definitions that the Statistics Canada data provided, it is impossible to get a truly comparable measure of faculty size at various universities since 2010/11. However, by comparing the growth rates in roughly comparable employee groups since then we can see (**Table 9**) that the largest universities have experienced fairly similar growth to the growth reported by UBC in its “Ability to Pay” submission. Thus there is no reason to believe the relative faculty sizes reported by Statistics Canada in 2010/2011 have changed since then.

**Table 9: FTE Faculty Members, Selected Universities, 2013**

University	Group	% change 2010-2103
Toronto	Full-time Tenured/Tenure Stream faculty	0.9%
Calgary	Full time academic headcount	2.3%
Alberta	Headcount Professoriate	1.2%
<p><b>Source:</b> University of Toronto Facts and Figures, <a href="http://www.utoronto.ca/about-uoft/measuring-our-performance/facts-figures">http://www.utoronto.ca/about-uoft/measuring-our-performance/facts-figures</a>            University of Calgary, <a href="http://oia.ucalgary.ca/fact-books/fact-book-20132014">http://oia.ucalgary.ca/fact-books/fact-book-20132014</a>            University of Alberta, Databook, <a href="https://uofa.ualberta.ca/reporting/statistical-reports">https://uofa.ualberta.ca/reporting/statistical-reports</a></p>		

### III) SALARIES AT COMPARATOR UNIVERSITIES

- 6.05.22 Salaries, and particular UBC faculty salaries relative to other universities, is a serious concern to faculty at UBC. In the most recent UBC Workplace Experiences Survey (2014) conducted by Ipsos Reid, faculty were asked how much they agreed or disagreed with the statement “I believe that my pay at UBC is as good as or better than the pay offered by other similar institutions.” Only 36% of UBC faculty agreed or strongly agreed with that statement. A greater percentage (40%) disagreed or strongly disagreed. Not surprisingly, among Sessional Lecturers the percentages were 27% agreed or strongly agreed and 49% disagreed or strongly disagreed. (Tab 2, Binder of Evidence).
- 6.05.23 In May 2012 *Maclean’s* published an article comparing median faculty salaries at Canadian universities for 2010/2011 (see **Table 10**). According to the report, the University of Toronto paid the highest salaries in Canada. Second and third place, respectively, went to Queen’s University and McMaster University. UBC ranked 19th. In order to prevent distortion caused by high salaries in Faculties of Dentistry and Medicine (which not all universities have) the analysis excluded the Faculties of Medicine and Dentistry. The analysis also excluded faculty with senior administrative duties, who usually are not part of faculty bargaining units.
- 6.05.24 **Table 10** shows that UBC faculty salaries at that time are not only lower than universities of similar quality and size, but also of universities that are much smaller, and less comprehensive.

**Table 10. Maclean’s Ranking of Median Faculty Salaries, 2010/2011**

1. University of Toronto	\$136,483
2. Queen’s University	\$133,395
3. McMaster University	\$131,696
4. University of Guelph	\$127,307
5. University of Waterloo	\$127,238
6. York University	\$126,664
7. University of Alberta	\$126,549
8. École Polytechnique	\$123,524
9. Ryerson University	\$121,469
10. Brock University	\$119,472
11. Trent University	\$119,387
12. University of Calgary	\$117,682
13. University of Windsor	\$116,998
14. Laurentian University	\$116,214
15. University of Ottawa	\$115,839
16. Western University	\$114,835
17. University of Saskatchewan	\$114,807
18. Carleton University	\$114,413
<b>19. University of British Columbia</b>	<b>\$114,356</b>
<b>Source:</b> <a href="http://oncampus.macleans.ca/education/2012/05/04/professor-pay-ranked-from-highest-to-lowest/">(http://oncampus.macleans.ca/education/2012/05/04/professor-pay-ranked-from-highest-to-lowest/)</a>	

- 6.05.25 While **Table 10** is instructive in showing where UBC salaries place for all Canadian universities, the table contains universities that are significantly smaller and/or less comprehensive in scope.
- 6.05.26 Only a handful of these universities are true comparators in academic quality and rank. The Association finds that the **University of Toronto is the single most appropriate comparator to be considered under the terms of Article 11.02(e)(iv)** (p. 15). We present the fuller set of comparators to illustrate that UBC salaries fall behind a number of comparable institutions.
- 6.05.27 Using the same Statistics Canada data that was used in the Maclean’s ranking of median salaries in **Table 10**, **Table 11** provides a comparison of UBC’s median salaries by rank with the other U15 institutions, as well as selected BC universities. Like **Table 10**, **Table 11** excludes the Faculties of Medicine and Dentistry as well as faculty with senior administrative duties.
- 6.05.28 Based on the national and international rankings, UBC should fall in second place for salaries. Instead, for full professors, it ranks 7th. For Associate Professors it ranks 10th.
- 6.05.29 Unfortunately 2010/2011 was the last year in which Statistics Canada collected these data. However, by comparing GWI at various universities since 2010/2011 it is possible to infer whether the salary rankings have changed much since then.

**Table 11. Comparison of Median Salaries by Rank of U15 Group 2010/2011  
(Rank ordered by Full Professors)**

		<b>Full Professors</b>	<b>#</b>	<b>Associate Professors</b>	<b>#</b>	<b>Assistant Professors</b>	<b>#</b>
1	Toronto	\$162,475	732	\$127,825	627	\$98,750	411
2	McMaster	\$151,100	273	\$124,275	285	\$90,850	198
3	Waterloo	\$150,225	348	\$122,325	312	\$96,375	231
4	Alberta	\$149,975	612	\$113,800	408	\$92,025	318
5	Calgary	\$149,000	372	\$111,725	348	\$92,625	183
6	Ottawa	\$147,075	324	\$115,050	411	\$92,850	309
<b>7</b>	<b>UBC</b>	<b>\$145,850</b>	<b>639</b>	<b>\$110,325</b>	<b>615</b>	<b>\$95,250</b>	<b>396</b>
8	Queen's	\$144,550	273	\$125,050	267	\$108,575	132
9	Western	\$140,150	282	\$112,050	369	\$89,725	249
10	Saskatchewan	\$138,100	258	\$112,425	213	\$93,475	198
11	Manitoba	\$137,275	300	\$97,175	285	\$77,625	219
12	McGill	\$137,075	414	\$105,148	533	\$83,950	312
13	Dalhousie	\$134,800	222	\$105,650	198	\$89,300	204
14	Montréal	\$125,400	603	\$102,696	400	\$82,325	222
15	Laval	\$120,275	681	\$96,300	297	\$77,875	204
<b>Selected BC Universities</b>							
	Victoria	\$128,950	252	\$101,000	246	\$81,250	162
	Simon Fraser	\$133,050	297	\$103,850	276	\$89,300	198
	UNBC	\$100,125	48	\$82,600	78	\$71,475	51
<b>Source:</b> Statistics Canada's Centre for Education Statistics through the University and College Academic Staff Survey							

6.05.30 **Table 12** provides salary settlements at comparable U15 universities. Additional salary settlements at other Canadian universities can be found at Tab 2 in the Binder of Evidence.

**Table 12. Selected Recent Salary Settlements across Canada (listed alphabetically)**

	University	2008/ 09	2009/ 10	2010/ 11	2011/ 12	2012/ 13	2013/ 14	2014/ 15	2015/ 2016	2016/ 2017	2017/ 2018
1	UBC	3.3%	3.3%	0%	0%	2.5%	2.5%				
2	Alberta	4%	4.8%	4.8%	1.8%	2%	1%	1.65%			
3	Calgary	4.5%	4.5%	0%	2%	2%	0%	0%	2%		
4	Dalhousie	3%	3%	3.4%	1.3%	1.3%	1.8%	2%	1.75%	1.5%	
5	Laval	n/a	n/a	n/a	n/a	n/a	n/a	3%	.75% (Min)	.75% (Min)	
6	Manitoba	3%	3.4%	\$500	1%	2.9%	2.9%	2%	2%		
7	Mc Gill	n/a	n/a	n/a	n/a	n/a	0%	0%	0%	0%	
8	McMaster	3%+ \$750	3%+ \$750	3% + \$750	1%+ \$2000	1%+ \$2000	1% pension offset	\$1,250 + 1% pension offset	1.5% + \$1,850	1.5% + \$1,925	
9	Montreal	n/a	n/a	n/a	n/a	n/a	n/a	2%	Equal to government public sector rate	Equal to government public sector rate	
10	Ottawa	4.1%	3.5%	3%	1.7%	2%	2%	3.5%	3.5%		
11	Queen's	3.2%	3.2%	3.2%	1.3%	1.5%	1.5%	2.5%	1%	1.25%	1.5%
12	Saskatchewan	\$3000	5.3%	4.5% + \$300	4% + \$300	4% + \$300	1%	2.25%	2.25%	2.75%	
13	Toronto	\$3,150	2.30%	2.3%	1% + \$1000	1% + \$1520	1% + \$1815	n/a	n/a	n/a	
14	Waterloo	3% + \$400	3% + \$400	0%	0%	3%	3%	3%	1.95%	1.95%	1.5%
15`	Western	3%	3.3%	1.5%	1.5%	1.5%+ \$800	1.5%+ \$800	1.25% (scale) + .81% (lump sum)	1% (scale) + .78% (lump sum)	1% (scale) + .76% (lump sum)	1% (scale) + .56% (lump sum)

n/a Data not available.

**Source:** CAUT *Facts and Figures* and individual Collective Agreements on Association websites

6.05.31 Between 2011/12 and 2013/14 faculty at UBC received a total of 4.85% in GWI, plus retention funds for a total of 5% over three years. Not counting the Quebec universities for which data are not available, the maximum increases over those three years at other U15 universities were attained by faculty at the University of Saskatchewan (9% plus \$600) and by faculty at the University of Manitoba (6.8%). The minimum increase was attained by faculty at the University of Calgary (4%) and by faculty at Queen's University (4.3%).

6.05.32 It is difficult to make exact comparisons when some settlements have GWI that are a combination of percentage and fixed dollar amount increases unless the settlement explicitly values the fixed dollar amounts in percentage terms as the

UBC settlement of 2006 - 2010 did. However, by valuing the fixed amounts as a percentage of the average salary, as listed in **Table 11**, we are able to obtain a reasonably good estimate. The average salary increase, over the three years in question was 5.73%, slightly higher than the settlement at UBC.

- 6.05.33 Of particular note, of course, were the salary increases at the University of Toronto. Over the three-year period, 2011/12 to 2013/14 faculty at the University of Toronto achieved GWI of 3% plus \$4,335, which is approximately equal to a 6% GWI over 3 years.
- 6.05.34 It is obvious that faculty at UBC have not gained ground on faculty at the University of Toronto, and in fact that little has changed in the salary rankings in the past three years with the possible exception of upward movement by the University of Saskatchewan and the University of Manitoba.
- 6.05.35 Although many other Universities are still negotiating their 2014/15 and 2015/2016 salary increases, as UBC is, **Table 12** does give us a sense of the likely effect of the University's offer, should the Board award it. UBC is offering 0% in 2014/2015. With the exception of McGill, where a pattern of salary increases is hard to discern as its non-unionized faculty association does not negotiate wages and benefits, every other university in **Table 12** that has settled, has settled for more than 1%. Similarly, with the exception of Laval, which has settled for the greater of 0.75% or the increase granted to public sector workers generally, no university has settled for as little as 0.9%, which is what UBC is offering.
- 6.05.36 The clear picture that emerges is this: Salaries at UBC have lagged behind its relative standing in terms of academic quality and size, settlements of the past three years have not changed UBC's salary rankings appreciably, and the University's proposal would cause faculty at UBC to fall further behind. The Association's proposal of 3% and 3% would allow us to make some minor movement up the salary rankings to move us closer to our appropriate position, given our academic quality and size.
- 6.05.37 The discussion to this point has focused on professoriate salaries, as this is the largest group in the bargaining unit. However, Librarians at UBC are underpaid compared to the comparator institutions, as are Sessional Lecturers. We are not able to report salary comparisons for Lecturers and the Instructor stream, as these data are not available.
- 6.05.38 There are no definitive national surveys of Sessional Lecturers. However, it is possible to compare Sessional salaries by examining salary grids at comparator universities. Currently there are four different Sessional minimum salary scales at UBC. Most Sessional Lecturers (those in Arts, College for Interdisciplinary Studies (CFIS), Science, Medicine, Health Sciences, Barber School of Arts and Sciences, and some other Faculties) are on a scale that ranges from \$5,970 per three-credit course (Step 1) to \$6,477 per three-credit course (Step 8). By comparison, at the University of Alberta Sessional salaries range from \$5,766 to \$7,091 for Sessional Lecturers without a PhD and \$6,823 to \$8,391 for Sessional Lecturers with a PhD. At the University of Toronto salaries range from \$7,125 per 3-credit course for a Sessional I with fewer than 6 years' experience to \$7,925 for a Sessional III.

- 6.05.39 To take a simple example, a large majority of Sessional Lecturers in the Faculty of Arts hold Ph.Ds. While some departments pay above minimum scale, many do not. Thus, a Sessional Lecturer at the top of scale in the Arts Faculty who teaches in English or Classics or Art History at UBC earns \$6,477 per three-credit course. By comparison, a similarly placed Sessional Lecturer at the University of Alberta would earn \$8,391 per three-credit course. Thus a UBC Sessional Lecturer in the Faculty of Arts who is paid at minimum scale earns 77% of what a Sessional Lecturer at the University of Alberta earns per 3-credit course. A Sessional 1 at top of scale at University of Toronto earns \$7,125 per 3-credit course while a similarly placed Sessional Lecturer at UBC (Step 5) earns \$6,264 per 3-credit course. Thus a UBC Sessional Lecturer in the Faculty of Arts paid on the minimum scale grid earns 88% of what a Sessional Lecturer at the University of Toronto earns per 3-credit course, when both Sessional Lecturers are in Year 5 of their career. However, at the University of Toronto, Sessional Lecturers have the ability to move from the rank of Sessional I after completing 5 years of service through to Sessional III, giving Sessional Lecturers at the University of Toronto further opportunities to increase their earnings per three-credit course. Meanwhile, a UBC Sessional Lecturer reaches top of scale at Year 8 in their career.<sup>1</sup>
- 6.05.40 **Table 13** indicates that the average salaries of UBC Librarians are lower than the University of Toronto, and fall in about the middle of salaries for the comparator set of institutions.
- 6.05.41 Our data provide evidence that faculty salaries at the University of British Columbia are behind both its explicit comparator, University of Toronto, and a number of other highly respected universities. The harm to UBC if faculty salaries continue to erode compared to the University of Toronto is serious. This brief earlier discussed the emphasis UBC places on its international rankings. The international rankings speak to the quality of a university's faculty members, almost more than any other factor. In posting its rankings, UBC also reveals the factors that make up these rankings: "numbers of Nobel laureates; number of highly cited researchers; number of articles published in Nature and Science; number of articles cited in the Science Citation Index; and academic performance per faculty." (Source: <https://www.ubc.ca/about/our-place.html>)
- 6.05.42 Faculty members leaving to get better salaries elsewhere would necessarily result in a drop in the University's international standing.

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<sup>1</sup> Source for UBC sessional rate: <http://www.hr.ubc.ca/faculty-relations/compensation/minimum-salaries-sessional-lecturers/>

Source for University of Toronto sessional rate: CUPE 3902 Unit 3, Collective Agreement, pp. 32-33.

Source for University of Alberta rate: Agreement between University of Alberta and Sessionals and Other Temporary Staff, p. 13

**Table 13. Average Salaries, Librarians 2005-2011 (Fiscal Year, in 000's)  
(Rank ordered by 2011)**

	University	2005	2006	2007	2008	2009	2010	2011
1	Alberta	79.4	89.9	93.7	85.6	96.9	95.5	105.2
2	Queen's	71.7	75.5	77.8	83.4	88.6	96.9	100.3
3	Toronto	81.7	85.1	88.7	91.1	92	95.8	95
4	Calgary	75.5	72.5	77.7	86.5	92.2	91.3	94.8
<b>5</b>	<b>UBC</b>	<b>71.9</b>	<b>78.8</b>	<b>84.6</b>	<b>85.3</b>	<b>90.5</b>	<b>89.5</b>	<b>92.2</b>
6	Waterloo	75.1	78	77.4	79.9	83.1	82.2	82.9
7	Ottawa	72.9	75.8	74.8	81.6*	88.5	85.3*	82
8	McMaster	.	.	.	.	80.7	80.4	80.6
9	McGill	69.5	73*	76.4	76*	75.6	76.3*	77
10	Western	59.8	62.9	66	67.3	67.7	71.1	.
	<b>Average</b>	73.06	76.83	79.68	81.86	85.58	86.43	90.00
	<b>UBC Rank</b>	6/9	3/9	3/9	4/9	4/10	5/10	5/9
<p>Notes:            * indicates an interpolated value            All ranks combined, administrative librarians only included if in bargaining unit.  <b>Source:</b> CAUT Librarian Salary Survey</p>								

6.05.43 The University has publicly acknowledged that UBC has fallen behind other research universities. In a letter dated March 12, 2013 sent to the President of the Faculty Association and some other faculty members, Lisa Castle, Vice President Human Resources, said:

**“In terms of overall compensation at UBC and its relative position among other top Canadian research universities, UBC has fallen somewhat behind** although the statistics published in such venues as Maclean’s do not give an accurate picture of the comparative placement of salaries by academic rank. The differences where they exist can be partly explained by the market realities of the various disciplines at the University, including UBC Okanagan, and significantly explained by the Provincial Government mandates I have mentioned above.” (Redacted Letter from Lisa Castle, dated March 12, 2013, **Tab 3**, in the Book of Evidence, emphasis added)

6.05.44 The Association agrees with Ms. Castle that salaries at UBC have fallen behind, and agrees that the University's bargaining mandates, leading to lower salary settlements, are the primary cause. The Association takes exception, however, with the University offering the “Provincial Government mandates” as a defense of salaries that have fallen behind comparator institutions. There is no legislative authority behind the bargaining mandate, and the University has never produced this mandate at the bargaining table. The University has not explained by what authority or body the mandate should be determinative of compensation awarded

by the Arbitration Board. The Collective Agreement states that the “Arbitration Board shall give first consideration to the University’s ability to pay the cost of an award from its general purpose operating funds...[and] shall take account of the University’s need to preserve a reasonable balance between the salary of members of the bargaining unit and other expenditures.” PSEC is not one of the listed criteria to be considered.

- 6.05.45 The arbitrated salary settlement for the 2012-2014 Collective Agreement did little to close the gap between faculty salaries at UBC and our comparator institutions, which means that Ms. Castle’s statement that we were behind in 2013 continues to be true.
- 6.05.46 In summary, the University clearly acknowledges the wage gap between its faculty and the University’s comparators. The data presented here support the position that a 6% GWI over two years (given the University’s ability to pay) is an extremely modest proposal from the Association, given settlements at comparable universities in recent years. It will bring faculty wages at UBC more in line with its major comparators. Even with this level of GWI, however, UBC faculty salaries will still be behind those at the University of Toronto.

#### *IV) BENEFITS AT COMPARATOR UNIVERSITIES*

- 6.05.47 It is somewhat difficult to compare benefits at comparator universities, as each one has its own complex formula. We chose five comparators to examine a range of benefits: University of Toronto, University of Alberta, McGill, Queen’s and McMaster as these were judged from all of the available comparators as to be the most similar either because of international rankings or size.
- 6.05.48 UBC has one of the lowest professional development reimbursement funds in the entire country.
- 6.05.49 The University of Toronto, Queen’s, McMaster and McGill all provide tuition waivers for children and spouses. UBC does not provide waivers for spouses, and that is something we are seeking in this round of bargaining.
- 6.05.50 With respect to vision care, UBC’s reimbursement level of \$250 every two years is at the lower end of the range observed at other universities.
- 6.05.51 With respect to extended health benefits for post-71 faculty members, all of our major comparators provide this for their post-71 year old employees, including Toronto, McGill, Queen’s, and Alberta. Thus it is only UBC of all of our major comparators that withdraws extended health coverage from those working past 71.
- 6.05.52 Medical benefits, dental benefits, and life insurance vary by institution, but the coverage provided is relatively similar amongst the comparators and UBC. Thus the University cannot argue that differences in medical benefits, dental benefits, and life insurance somehow offset lower benefits in the areas of concern to us.
- 6.05.53 In short, in addition to lower salaries, a number of UBC’s benefits are also less than many of its comparators. We seek to have improvements in some of these in this

round of bargaining: a larger professional development fund; tuition waivers for spouses and for dependents enrolled at UBC whose faculty-member parent dies; extended health coverage for all employees, regardless of age; and improvements in vision care. These proposals are described in Section 6 below.

**6.06 CONCLUSION OF THE APPLICATION OF ARTICLE 11.02 (E)(I-IV) TO AN EXAMINATION OF UBC'S FACULTY SALARIES**

6.06.1 Article 11.02 (e) (p. 14) of the Framework Agreement states:

In making its award, the Arbitration Board shall give **first consideration to the University's ability to pay the cost of an award from its general purpose operating funds**. In doing so, **with due regard to the primacy of the University's academic purpose and the central role of Faculty Members, Librarians and Program Directors in achieving it**, the Arbitration Board shall **take account of the University's need to preserve a reasonable balance between the salary of members of the bargaining unit and other expenditures**. If the Arbitration Board is satisfied that the University has the ability to pay the cost of an award, **it shall base its award on the following criteria:**

- i) the need for the University to maintain its academic quality by retaining and attracting Faculty Members, Librarians, and Program Directors of the highest caliber;
- ii) changes in the Vancouver and Canadian Consumer Price Indices;
- iii) changes in British Columbian and Canadian Average Salaries and Wages; and
- iv) salaries **and benefits** at other Canadian universities of comparable academic quality and size.

(emphasis added)

6.06.2 Based on the specific criteria laid out in Article 11.02 (e)(i) (p. 14), and examining the evidence (as shown in section 6), the Association argues that the GWI proposed by the Association is necessary in order for the University to maintain its academic quality by retaining and attracting Faculty Members, Librarians and Program Directors of the highest calibre.

6.06.3 Based on the specific criteria laid out in Article 11.02 (e)(ii) (p. 15), i.e., changes in the Vancouver and Canadian Consumer Price Indices, and examining the evidence (as shown in section 5.03), the Association argues that the GWI proposed by the Association is necessary in order to keep up with inflationary pressures that have arisen since the last GWI in July 2013.

6.06.4 Based on the specific criteria laid out in Article 11.02 (e)(iii) (p. 15), i.e., changes in BC and Canadian average salaries and wages, and examining the evidence (as shown in section 5.04), the Association argues that the GWI proposed by the Association is necessary because of increases in average salaries and wages provincially and nationally that have occurred since 2013.

- 6.06.5 Based on the specific criteria laid out in Article 11.02 (e)(iv) (p. 15), i.e., salaries and benefits at other Canadian universities of comparable academic quality and size, the data shown in section 5.05 are quite clear: UBC salaries and benefits lag significantly behind the University's main comparators.
- 6.06.6 The Association proposal of a GWI of 3% in both 2014/2015 and 2015/2016 is well justified on the basis of the totality of criteria of 11.02(e). For 2014/15 price inflation was 1.2%, wage inflation was 3.35%, and together these argue for approximately a 2.5% GWI. But UBC faculty salaries need to move up the salary rankings because of 11.02(e), so a GWI of 3% would be a modest improvement in that regard.
- 6.06.7 For 2015/2016, and every year thereafter, the Association needs to project price and wage inflation. The best projection of price inflation is 2% and the best projection of wage inflation is 3%. Together these argue for approximately a 2.5% GWI. But UBC faculty salaries need to move up the salary rankings because of 11.02(e), so a GWI of 3% would be a modest improvement in that regard.

## 7. DETAILED ANALYSIS OF SALARY AND BENEFIT ISSUES ON WHICH AGREEMENT HAS NOT BEEN REACHED

### A) GWI (PROPOSAL 1)

- 7.01 The University has proposed a GWI of 0% in 2104/2015 and 0.9% in 2015/2016. As previously demonstrated, actual CPI inflation for 2014/2015 averaged 1.2% between Canada and Vancouver. Average Weekly Wage inflation for 2014/2015 averaged 3.5% between Canada and BC. Taken together these argue for a salary increase of approximately 2.5%. However, the Association believes that 11.02(e)(iv) justifies at least a 3% GWI because of the need to move our salaries more into line with those of other comparable universities.
- 7.02 The University of British Columbia is the largest university in the Province. While it is the Province's premier university, it is also one of the top research universities in Canada. The University acknowledges this ranking when explaining how it benchmarks salaries of senior administrators, including that of the University's president:

As one of the highest ranked universities in Canada, and one of the top 40 universities in the world, **UBC seeks to retain and attract the best senior administrators it can by remaining competitive in its compensation practices** with other large research-intensive universities represented by the U15 (i.e., leading research-intensive universities in Canada), and **in particular the University of Toronto and the University of Alberta**, and with the global market for senior administrator talent generally.

**Source:** UBC Executive Compensation Report, May 8, 2015, sent to PSEC (emphasis added)

- 7.03 The University's benchmarking for former President Toope's salary resulted in him being one of the highest paid in 2008, 2010, and 2012, second in 2011 and 2009, and third in

2007. Former President Gupta's salary was benchmarked in the same way by the Board of Governors. Unfortunately there is no additional comparative data available at this time.

- 7.04 One of the primary objectives of this round of bargaining is to continue bringing faculty salaries closer into line with those of other Canadian universities of comparable academic quality and size, in particular, the University of Toronto. The strategy for benchmarking faculty salaries at UBC should be no different than the benchmarking used for the President (and senior administrators of the University), and that strategy places UBC's President's salary in the top three in the country for university presidents at comparator institutions.
- 7.05 Table 11 on page 45 shows how far UBC salaries had fallen behind the University of Toronto and other comparators by 2011, the last time Statistics Canada published national salary data. **Table 12** on page 46 shows recent salary settlements at the University of Toronto and other comparators. The general increase proposed by the Association for the 2014-2016 contract years (3 percent and 3 percent, see proposed language in **Tab 3**, in the Book of Evidence) is a quite reasonable way to help faculty salaries at UBC meet the objective of maintaining pace with the University of Toronto, and reduce the current disparity between UBC and some of its comparator institutions. The proposed increase will not make UBC faculty salaries comparable to the University of Toronto, but it will address the inflationary increase since 2014, as well as settlements at comparator institutions and move UBC a little closer in line with the University of Toronto, while at the same time preserving a reasonable balance between the overall cost of the salary proposal and other expenditures from the GPOF.
- 7.06 Arbitrator Burkett also emphasized the importance of maintaining relative salary position in making an award:

Accordingly, the objective, as I see it, is to award salary increases that reflect salary movement within the comparator groups, as appropriately weighted, through the relevant three-year period and thereby to maintain the relative salary position of the Mount Allison faculty.

Burkett Award (*Mount Allison*, supra), **Tab 6**, Book of Authorities, at p.14

- 7.07 The University has repeatedly tried to claim, in both the last Arbitration and in its Ability to Pay submission of July 13, 2015, that faculty increases include more than the GWI offered, and that these additional monies should be considered as part of the "overall wage increase."
- 7.08 Although the University represents the 1% lump sum payment as part of its "overall wage increase," it is not. It is simply an element of the Collective Agreement. The Parties previously negotiated and agreed that, annually, 1% of total wage compensation is withheld from the semi-monthly paycheques and paid out as a lump-sum on the last day of the academic year. It does not lead to a GWI.
- 7.09 PTR increments also cannot be viewed as a mechanism for automatic salary increases, or factored into calculations of a GWI either. The structure of UBC faculty wages is such that the professoriate and other members of the bargaining unit do not start at the "job rate." Rather, it is assumed that members' knowledge, skills, and abilities (KSAs) will increase

over time, and thus PTR Increments are used to recognize this increase in KSAs, until finally the individual achieves their full base salary. Arbitrator Andrew C.L. Sims, the Chair of an Interest Award between the University of New Brunswick and the Association of University of New Brunswick teachers, addressed this issue clearly in a 2011 Award:

PTR increases are also different from annual economic adjustments. The academic salary model, at least for tenured or tenure track academics in Canada, almost universally contemplates a fairly low salary at the outset of the person's career building over 30 years or so to a significantly higher level. Academics, usually requiring PhD's before they start, have usually spent many years without pay or with low pay, preparing for their academic careers. There is a deferred income aspect to the Canadian model. It provides opportunities at times to withhold or accelerate advancement, based on performance. However, an academic's "wage prospects" are inevitably assessed on a career long basis.

In this they are not unlike other occupations where rank or step systems reward length of service. It is not customary for Arbitration Boards to view these annual PTR increments as part of the economic adjustment.

Sims Award (*University of New Brunswick, supra*), **Tab 14**, Book of Authorities, at p. 30

- 7.10 In 2013, Arbitrator Taylor agreed with the Association's position when he set out how the 1% lump sum bonus and PTR are to be viewed, so we will not repeat the arguments we made in the previous Arbitration about this. This is what Arbitrator Taylor wrote:

[107] The University submits that I should consider, under Article 11.02(e), not just its proposal of 2% and 2% GWI, but also its proposal to maintain 1% lump sum and 2.5% for Progress Through the Ranks (PTR). (I note that I have accepted UBC's submission that it mistakenly failed to add the 1% to its numbers used for comparative purposes, though that does not make a difference to the ultimate Award.)

[108] **I accept, however, the Association's point that both 2.5% PTR and the 1% lump sum represent the status quo**, and the mere fact that they would be open to bargaining (as would any collective agreement provision) does not mean that the Association must start from ground zero in that regard. **The University's proposal to maintain does not take the place of an increase.** (emphasis added.)

[109] The University also relies on the following passage from the Larson award, which occurs in the context of a discussion of a proposal concerning PTR:

Notwithstanding the gaps in that system, it is obvious to us that the Career Advancement Plan has been adopted by the parties as the primary means of advancing the compensation levels of faculty under the collective agreement. Certainly in the immediate past general salary increases have not been an essential feature of the compensation structure. (p.27)

[110] This point would be more relevant if there were a debate as to how a justified increase under Article 11.02(e) should be fulfilled – i.e., whether by an increase in PTR

or GWI or both. That is not the debate at hand; the University is not proposing to increase PTR.

[111] **I also accept the Association's submission that PTR rewards individuals' career advancement; it is not a substitute for a GWI to keep pace with inflation and the general state of salaries elsewhere.** As noted by Arbitrator Burkett in *The University of Toronto and the University of Toronto Faculty Association*, unreported, June 3, 1982: (emphasis added)

The P.T.R. increases received by a faculty member over time are given in recognition of his increasing contribution to the University. ... The purpose of the P.T.R. increase, therefore is not to advance the salary ranges but to recognize merit by moving individual faculty members through the salary ranges. Upward movement of the salary ranges is achieved by means of, and in the amount of, the annual economic increase. It follows that only the amount of economic increase should be included for purposes of determining how faculty salary ranges have fared over time. (para.27)

[112] In summary, the University's proposal to maintain 2.5% PTR is significant, and an important part of the context. However, **a proposal to maintain the status quo is not an increase, and if an increase under Article 11.02 is justified, then a proposal to maintain the status quo does not fulfil it.** (emphasis added)

Taylor Award (*UBC -and- UBCFA*, supra) **Tab 1** (Book of Authorities)

## **B) INCREASES TO SALARY SCALES (PROPOSAL 1)**

- 7.11 The Association has proposed increasing the minimum salary scale for Sessional Lecturers and the minimum salary scale for Librarians by the amount of the GWI, i.e., 3% each year in a two-year contract.
- 7.12 The University has proposed increasing the minimum salary scale for Sessional Lecturers by 0% and 0.9% in the first two years of the Collective Agreement. This matches the amount of its proposal for a GWI.
- 7.13 The University has proposed no increase in the minimum salary scale for Librarians. However, there is a long history of raising the salary scales for Librarians by the amount of GWI. Thus it would be unequitable and unreasonable for the University not to continue this practice.
- 7.14 Given that both parties have proposed an increase in the salary scale for Sessional Lecturers by the amount of GWI they propose, and given the long history of raising the Librarian scale by the amount of GWI, we submit that the Arbitration Board should award an increase in the salary scale for Sessional Lecturers and Librarians equal to whatever GWI the Board awards, and not reduce that GWI award should the Arbitration Board also award the concessionary proposal from the employer for a retention fund.

## **C) MINIMUM LECTURER SALARY (PROPOSAL 2)**

- 7.15 The Association proposes the introduction of a minimum salary for Lecturers of (1) \$59,350 effective on July 1, 2014; and (2) \$61,130 effective on July 1, 2015, such minimum salary to be pro-rated for Lecturers with less than full-time or less than 12-month contracts.

- 7.16 The University has proposed the introduction of a minimum salary for Lecturers of \$59,350 (undated), such minimum salary to be prorated. (UBC Proposal #5). The language for this proposal can be found in **Tab 4**, in the Book of Evidence.
- 7.17 The Association submits that that \$59,350 is essentially the *de facto* minimum salary for full-time full-year Lecturers in 2014-2015 thus there is effectively no cost that can be applied to the ability-to-pay question. The Association notes that, although UBC has proposed the same minimum salary for Lecturers, it has not included the cost of this proposal in the Ability to Pay submission, thus indicating there is no additional cost to this proposal.
- 7.18 Given that there is little dispute about the appropriate minimum salary for Lecturers, the Association submits that the Association's contract language should be awarded and that minimum salary should rise in line with whatever GWI the Arbitration Board awards, as is the tradition for other salary minima in the Collective Agreement.

#### **D) RETENTION FUND (PROPOSAL 1)**

- 7.19 The Association notes that in the University's Ability to Pay submission it describes its GWI offer as:

salary increases as follows:

July 1, 2014	0%
July 1, 2015	1.0%
July 1, 2016	0.5%
May 1, 2017	1.0%
July 1, 2017	0.5%
May 1, 2018	0.5%
May 1, 2019	1.0%

(paragraph 7)

- 7.20 However, in paragraph 9 of its Ability to Pay submission, the University says:

[9] The University is proposing that effective July 1, 2015 and each July 1 to and including July 1, 2018, a retention fund of \$500,000 be put in place in accordance with Article 6 of Part 2 of the Collective Agreement (Tab 1), such that the July 1<sup>st</sup> salary increases for 2015, 2016 and 2017 would be reduced by 0.1%.

- 7.21 Thus the University is proposing to reduce GWIs by amounts to fund retention. The Association objects to this and instead proposes the elimination of Article 6, Retention Fund (p, 42, Collective Agreement).
- 7.22 The Association notes that retention funds have never been applied to Sessional Lecturers, Librarians, and Program Directors, and almost never to Lecturers so that the University is, in effect, proposing to reduce their GWI to pay for a proposal that the Faculty Association considers a concession that will not benefit them. The Association submits that retention should not be awarded to the University. Retention money takes GWI increases from faculty members who the University has never considered for retention. Should the Arbitration Board award some retention fund amount, the Association recommends that it not reduce

the GWI for those groups who never receive retention by the percentage equivalent of the retention fund.

- 7.23 The Association does not deny that its members are highly valuable and, as salaries at UBC have fallen behind those at its competitors, many members are potential recruitment targets by other universities. However, the solution to this problem is to keep up to salary levels elsewhere with an appropriate GWI, and to use the Merit and PSA provisions to protect against individual salary anomalies.
- 7.24 The Association submits that the retention fund, in the years that it has existed, has primarily served the same purpose as the Merit and PSA funds, but without the collegial processes that those funds have as safeguards against administrative abuse. The Association strongly objects to the continuation of a provision that the parties have not agreed on since the expiration of the 2008-2010 Collective Agreement.
- 7.25 The Association would view the granting of retention to the University as a concession, as it would not have agreed to this (and did not agree to this) during the normal course of collective bargaining. Thus the Association would expect a comparable concession demanded from the University by the Arbitration Board should it grant retention to the University.

#### **E) ECONOMIC STABILITY DIVIDEND**

- 7.26 The University has proposed that, on May 1, 2016, in addition to whatever GWI the Arbitration Board awards, faculty salaries will also be increased by 50% of the amount by which the Economic Forecast Council forecast underestimates real (inflation adjusted) GDP growth in 2014. They also proposed similar forecast error increases on May 1, 2017, May 1, 2018, and May 1, 2019. (UBC Ability to Pay submission, Tab 2)
- 7.27 In approximately February of each year the BC government brings down its annual budget, which includes forecasts of real GDP growth for that year by members of the Council. In the *2014 BC Budget and Fiscal Plan* members of the Council forecast real GDP growth for 2014. Their forecasts ranged from 2.0% to 2.7% growth in real GDP, with a mean forecast of 2.33%. In November 2015 (twenty months after the 2014 budget was passed) Statistics Canada will produce its estimates of actual real GDP in 2014 and it will be possible to evaluate the accuracy of the Council's forecasts. UBC has proposed that if the Council's forecast error (Actual minus Mean Forecast) is positive, then in May 2016 (six months after the forecast error is known) bargaining unit salaries would increase by one half of the forecast error. In other words, they propose to tie our salaries to inaccuracies in the Economic Forecast Council's forecasts twenty-six months earlier. If the Council's average forecast is exactly correct or an overestimate the members would get no additional salary increase, but if the Council underestimates growth the members will get some wage increase.
- 7.28 There is no accurate way to assess what effect this specific proposal would have on wages. First, we have no way of knowing whether the future members of the Council, which is appointed by the Government, will be as accurate in forecasting GDP growth as the past members of the Council. Second, we have no way of knowing how the Council's forecasting ability will be affected by finding its forecasts part of the mechanism by which faculty members are paid and universities are funded.

7.29 The University has, in effect, proposed a lottery with unknown expected payout. The Association does not believe tying the GWI of members to forecast errors of a forecasting council is consistent with Article 11.02(e). The Association has no objection to participating in such a lottery as long as it is understood that it does not enter into the ability to pay analysis and does not satisfy the conditions of 11.02(e).

#### **F) IMPROVEMENTS IN VISION CARE (PROPOSAL 6)**

7.30 The Association proposes to increase the vision care benefit from \$250 in any 24-month period to \$400 in any 24-month period and to include prescription glasses, including prescription sunglasses, contacts, annual eye exams and laser correction surgery as included expenditures. (UBCFA Proposal #6. The proposed language is in **Tab 5**, in the Book of Evidence.)

7.31 The University has proposed to increase the vision care benefit from \$250 in any 24-month period to \$300 in any 24-month period and to include prescription glasses, including prescription sunglasses, contacts, annual eye exams and laser correction surgery as included expenditures. (UBC Ability to Pay submission, Tab 2, p. 3)

7.32 Because the Parties agree on the additional coverage, the Arbitration Board should simply include the additional coverage as part of its Award.

7.33 Regarding the amount of the Award, the Association membership receives the lowest eye care benefit of any employee group at UBC. The Executive Administrative group (i.e., the senior non-academic administrators, who are not unionized) and all other unionized groups receive \$400 in any 24-month period. Many comparator universities offer even higher vision care benefits (See “Comparator Summary Table: Vision Care” in **Tab 5**, in the Book of Evidence). The Association has not asked to match the highest benefit in the system, or even in BC. We simply ask for parity with other UBC groups, and ask that the Arbitration Board make that an emphasis in the Award.

7.34 The Association submits that ability to pay is not at issue here, as ability to pay is narrowly defined in the collective agreement in terms of a reasonable balance between the salary of members of the bargaining unit and other expenditures. Nonetheless we note that the cost of our proposal is trivial. Our estimate of the maximum cost over the two years of the agreement is no more than \$400,000. According to the Consolidated Financial Statements for Fiscal Year 2015, UBC had revenues of \$2,161,044,000. The maximum cost of this proposal is less than 2/10 of one percent (0.0185%).

#### **G) TUITION FEE WAIVER (PROPOSAL 7)**

7.35 Currently “Tuition waivers are available only to members and dependent children; spouses are not eligible for tuition benefits at UBC” (CA, Part 2, Article 7.08, pp. 44-45). The Association proposes that existing tuition waivers may be transferred from members to their spouse or partner. Specifically, the proposal is to allow a spousal tuition waiver *instead* of the existing member tuition waiver, not in addition to it. The proposed language is in **Tab 6**, in the Book of Evidence.

- 7.36 This proposal would have very little cost to the University. The current policies obligate a member to get permission from the course professor or instructor to enroll in the course. This means that spouses would not be displacing regular UBC students, as they likely would only get permission if there were any additional seats in a course that is already being offered. The burden of this proposal, to the extent that there is one, is on faculty members, not the University. It is faculty members who would face extra marking and interaction time from having extra students in their courses.
- 7.37 The University emphasizes retention problems when they request retention money—our members have repeatedly told us that a spousal tuition waiver are both a recruiting and a retention issue. The “Comparator Summary Table Tuition Benefits” in **Tab 6** in the Book of Evidence, indicates the use of this at other institutions.
- 7.38 The Association has also proposed that in the event that a member passes away while their dependent child is enrolled in UBC, the child will continue to be eligible for up to the maximum tuition waiver credits. The University agrees with this proposal, and has included it in its Ability to Pay submission in Tab 2, page 3. While this more logically should have been included in the list of items the Parties agreed to, the University apparently wanted the Arbitration Board to make this Award.

**H) PROFESSIONAL DEVELOPMENT REIMBURSEMENT FUND (PROPOSAL 8)**

- 7.39 The Association has proposed that the annual limit of professional development reimbursement be raised from \$1,100 to \$1,750 for members other than Sessional Lecturers without continuing status. The proposed language is in **Tab 7**, in the Book of Evidence.
- 7.40 The Association has proposed that the annual limit of professional development reimbursement be raised from \$25 per credit to \$35 per credit for Sessional Lecturers without continuing status.
- 7.41 The PDR is the lowest professional development reimbursement in the Province (**Table 14**) and almost the lowest of the large research institutions in Canada (**Table 15**). Further data are available in the “Comparator Summary Table: Professional Development” in **Tab 7**, in the Book of Evidence.

**Table 14. PDR, BC Comparators (2015)**

UNBC	\$2000
Simon Fraser University	\$1910
University of Victoria	\$1770
Royal Roads University	\$1200*
<b>UBC</b>	<b>\$1100</b>
* Royal Roads gets \$1200 guaranteed plus access to an additional pool equal to \$2,500 per member, for an average of \$3,700.	

**Table 15. PDR, Canada-Wide Comparators (2015 unless otherwise noted)**

McMaster <sup>1</sup>	\$2050 (2015) rising to \$2100 (2016)
University of Waterloo	\$1750 (May 1, 2014 – April 30, 2015)
Queen's <sup>2</sup>	\$1764
University of Toronto	\$1600 post-tenure; \$1850 pre-tenure
York	\$1450
University of Alberta	\$1400
Western University	\$500 (+ \$900 that can be allocated to PD or to healthcare spending account)
<b>UBC</b>	<b>\$1100</b>
McGill	\$500
<sup>1</sup> Sessionals (CUPE 3902) receive \$200 per 3-unit course to a max of \$1200 per academic year). <sup>2</sup> Term Adjunct Faculty Members receive \$251 per 0.5-credit course or equivalent	

- 7.42 Professional development reimbursement is important because faculty members incur professional expenses to maintain and enhance their academic and professional competence, as well as their respective disciplinary or specialist expertise.
- 7.43 For the same reason, professional development for non-continuing Sessional Lecturers is also important, which is why we have proposed an increase in the current amount of \$25 to \$35 per credit. By way of comparison, Queen's grants its term adjunct faculty \$251 per 0.5-credit course or equivalent. McMaster provides its Sessionals (CUPE 3902) with \$200 per 3-unit course to a max of \$1200 per academic year. The Association request on behalf of our Sessional members is extremely modest (if not too low) by comparison.
- 7.44 The Association notes that regular improvements in Professional Development allowances are standard in almost any industry. At UBC the maximum Professional Development level has increased only once since it was introduced in 1999.
- 7.45 The Association submits that this proposal be awarded on the basis of replication and comparability as per 11.02(e)(iv). Ability to pay is not an issue here, as this will not affect the balance between wages and other expenditures but the Association notes that the total cost of this proposal, if granted in full, will be no more than \$2.2 million. While not trivial, it is certainly a reasonable expense for an institution with annual operating revenues of over \$2 billion. The Association notes that Professional Development is an investment in the productivity of employees and thus brings benefit both to employees and employer. The guidelines for expenditure of PD funds reads: "These expenses must relate to activities that enhance the performance, ability, or effectiveness of a Member's work at the University." (<http://www.hr.ubc.ca/faculty-relations/compensation/professional-development-reimbursement-fund/#2>)

**I) EXTENDED HEALTH FOR POST-71 EMPLOYEES (PROPOSAL 9)**

- 7.46 The Association proposes to remove the Extended Health Plan from the list of benefits that are available only to members over the age of 65 *in accordance with the terms of the plan*

and specify that the extended health plan is not limited by age. The language can be found in **Tab 8**, in the Book of Evidence. The University has not accepted our proposal.

- 7.47 The extended health plan in place for UBC faculty specifies that eligibility for extended health care ends “the end of the calendar year in which you reach the maximum pensionable age as defined by the Income Tax Act (Canada). The maximum pensionable age at January 1, 2008 as defined by the Income Tax Act is 71.”
- 7.48 The current situation causes significant mischief, which could be alleviated at very minor cost. It is unreasonable, unfair and inconsistent to deny a category of employee extended health benefits because of their age. It is also prejudicial to any faculty member who continues to be employed by the University past age 71.
- 7.49 The Association submits that ability to pay is not at issue here, as ability to pay is narrowly defined in the Collective Agreement in terms of a reasonable balance between the salary of members of the bargaining unit and other expenditures. Nonetheless we note that the cost of our proposal is trivial. The amount UBC charges faculty to maintain their extended health benefits when they are on personal leave (the “normal employer cost”) is \$128.28 per month\*. In April 2015 a total of only 50 otherwise eligible members were over 71, and thus the cost to cover those members while they are employed by the University would be \$77,280 per year. This is a trivial expense for an organization with operating revenues in excess of two billion dollars.

\*Source: <http://payrollintranet.ubc.ca/calculators/LOAcalculator.htm>.

- 7.50 Other universities grant health care benefits to post-71 employees past normal retirement age, and a list of these can be found in “Comparator Summary Table: Benefits for Post-71 Employees” in **Tab 8**, in the Book of Evidence.
- 7.51 The Association submits that the University denies this proposal not because of the cost, which is trivial, but as an attempt to discourage older workers from maintaining employment, as is their right under the Collective Agreement and the Human Rights Code of BC. It also leads to the ridiculous situation where faculty members over age 71 who travel to conferences, to present their work and represent the University, are not covered by travel insurance. This is an unreasonable burden to place on faculty members.

## **8. DETAILED ANALYSIS OF UBCFA LANGUAGE PROPOSALS ON WHICH AGREEMENT HAS NOT BEEN REACHED**

- 8.01 The Collective Agreement is silent on how non-monetary proposals are to be resolved in arbitration, as the extant language focuses on monetary issues. That said, replication is the obvious principle to guide arbitrators for these issues. Arbitrators have recognized that the best way to achieve replication is through comparability with other similar universities/colleges. Cases on interest arbitration criteria reflect two key themes; comparability and replication.
- 8.02 The best yardstick by which to replicate what the Parties might have agreed to in free collective bargaining is settlements that similarly situated parties arrived at voluntarily. As stated, the key criterion for an Interest Arbitration Board in setting terms and conditions of

employment is comparability. It is by assessing what truly comparable parties have done in bargaining that Interest Arbitrators are best able to replicate a freely bargained result.

- 8.03 Another consideration that Arbitrators use to resolve disputes between Parties over language issues is by considering “demonstrated need.” As Arbitrator Davie explains:

The principle of "demonstrated need" indicates that **arbitral changes to existing negotiated (or even imposed) language typically requires some specific demonstrated need. That does not mean we must slavishly adhere to maintaining the status quo. Instead the concept of demonstrated need requires us to closely examine the proposals put forth by a party in context of the existing provisions of the collective agreement and determine whether a demonstrated need for the proposal has been established.** Some examples of demonstrated need include collective agreement language that is not functioning as the parties intended it to, existing language which has given rise to multiple disputes, or may cause inordinate or undue disagreement in the future etc. This is not meant as an exhaustive list but is indicative of the types of factors which might be considered and addressed under the "demonstrated need" rubric. Long-standing or freely negotiated language should not be changed for the sake of change. Absent some demonstrated need it is important to recognize the bargains which the parties themselves have achieved.

**Participating Homes and Ontario Nurses Association [2014] (Davie)**  
(**Tab 15**, Book of Authorities, p. 5) (emphasis added)

- 8.04 In presenting the rationale for a number of proposals, the Association explicitly asserts the demonstrated need for the language proposed.
- 8.05 The Association’s proposals to the University were constructed in the spirit of making the University a better place to work for Association members. They are in no way prejudicial nor an impairment to the University’s functioning as a premier research and teaching institution. They are intended to make sure that members are treated fairly during the conduct of their employment.

**A) ELIMINATION OF DATES PERTAINING TO THE ANNUAL PAYMENT OF THE CAREER  
ADVANCEMENT PLAN (CPI, MERIT AND PSA) (PROPOSAL 3)**

- 8.06 PTR at UBC is maintained through the Career Advancement Plan. All continuing members (defined as all members, excluding Sessional Lecturers, employed on June 30 of one academic year and July 1 of the subsequent academic year) are eligible to receive annual increments paid out of a “career advancement” fund. (Collective Agreement, pages 33-38)
- 8.07 The introduction of the Career Advancement Plan (also known as PTR), and its purpose, are reflected in a 1979 letter from the President of the University to the Association (at **Tab 9**, in the Book of Evidence). The Plan was created to ensure that members of the bargaining unit would receive salary adjustments for years of experience and career progress apart from any general increases awarded for inflationary purposes.
- 8.08 An allocation of money for PTR has been in existence since 1976 and the current structure of the PTR Plan has been unchanged since 1997.

- 8.09 The existing language pertaining to the PTR Plan (CA, Part2, Articles 2.02, pp. 34-35), Merit (CA, Part2, Article 2.04, p. 35-36) and PSA (CA, Part2, Article 2.05. pp. 37-48) contains specific dates for the distribution of this money. For example, Article 2.02 currently reads :

A sum equal to 1.25% of the

(1) 2011/2012 salaries of continuing members of the bargaining unit shall, effective on July 1, 2012; and

(2) 2012/2013 salaries of continuing members of the bargaining unit shall, effective on July 1, 2013,

be allocated by way of CPI in accordance with the following provision

- 8.10 The Association is proposing eliminating reference to specific years in the language of when CPI, Merit, and PSA increments are paid to ensure that those increments become effective July 1 of each year (proposed language is in **Tab 9**, in the Book of Evidence). Typically the University withholds these increases until after the new Collective Agreement is ratified, even though the payment of the increases has been an ongoing feature of the Collective Agreement.
- 8.11 The Association contends that the University has an incentive to withhold making payouts in order to earn interest on the money until it is paid out.
- 8.12 According to correspondence with Allison Matacheskie, Director of Faculty Relations at UBC, the total amount wages of continuing salaries on which PRT was calculated for the 2014/2015 contract year was \$364,637,954 (**Tab 9**, in the Book of Evidence). The total Career Advancement Fund used for CPI, Merit and PSA is 2.5% of the total wages of continuing members. Therefore on July 1, 2014 the total amount of the Career Advancement Fund for 2014-2015 was \$9,115,949. This money was not received by members at any point in the 2014-2015 contract year.
- 8.13 By holding on to the money that would be used to pay PTR for one entire year, the University is able to generate significant interest earnings. It is impossible to assess exactly the return on the withheld salaries without knowing how UBC invested that money. However, it is known that the University's assets are invested in a variety of asset classes, which had a 13.7% net rate of return in fiscal 2014 (<http://www.ubcimant.ca/investments/endowment-fund.php>). Even at a 10% rate of return the earnings on the withheld salaries would have amounted to in excess of \$450,000. Were the Career Advancement Fund paid out on time, faculty members could have been earning interest on this money themselves.
- 8.14 At every other university in British Columbia, in every other bargaining unit at UBC, and at all of the comparator institutions for which data are available, except for Western, Waterloo and Dalhousie, increments are paid annually on a specific date, notwithstanding the fact that the Collective Agreement has expired. This is illustrated in the "Comparator Summary Table: CPI & Merit/PSA Increases" in **Tab 9**, in the Book of Evidence.

- 8.15 In addition, in all other unionized bargaining units at UBC the entitlement to annual increments is not term-certain, but paid annually, and thus are paid out even when the Collective Agreement is being negotiated. As an example, the Collective Agreement between UBC and the BCGEU contains the following provision: “29.1 Employees on full-time regular appointments shall receive an annual incremental increase in the pay period in which their anniversary date falls.” Part-time and Auxiliary appointments also receive increments on anniversary dates, which are not tied to renewal of the Collective Agreement. It should be noted that this Collective Agreement lists 19 salary steps (in Appendix C), each step being worth an annual 3.5% increase. The BCGEU language and steps can be found in **Tab 9**, in the Book of Evidence.
- 8.16 The Association notes that paying PTR before collective bargaining is complete does not create any administrative difficulties for UBC and is administratively simpler than making retroactive payments. In this current round of bargaining, as well in the 2012 round, the University has agreed to pay PTR before the Collective Agreement was settled, but in both cases it waited a year before doing so. The Joint message regarding 2012 PTR payments, dated March 5, 2013, and the Joint message regarding 2014 PTR payments, dated March 13, 2015 can be found in **Tab 9**. The Association submits that the University has no principled, or administrative objection to paying PTR before collective bargaining is complete and that its interest in withholding the payments is simply to earn interest on monies that properly belong to faculty members.
- 8.17 Based on the preponderance of the evidence, the Association submits that the above proposal should be awarded on the basis of replication and demonstrated need. Other bargaining units on campus do not have their step increases delayed, most of our competitors do not have their PTR increases delayed, and members suffer a financial loss because they do not get the benefit of interest and other investment advantages that would come from receiving their increases in a timely manner. Rather, the University benefits financially when the payout of these increments are delayed.

## **B) DEFINITION OF FULL-TIME SESSIONAL LECTURER (PROPOSAL 2)**

- 8.18 The Association has proposed defining full-time for Sessional Lecturers as nine credits per term or an equivalent combination of credits and different types of academic activities. The language of this proposal is found in **Tab 10**, in the Book of Evidence. The University has not accepted this proposal.
- 8.19 The Association’s proposal is based on considerations of equity and comparability with other institutions. The current structure of the scales allows each Faculty to determine a full-time load for its Sessional Lecturers (see “Minimum Salaries for Sessional Lecturers” in **Tab 10**, in the Book of Evidence). Depending upon the particular Faculty, full-time for a Sessional Lecturer can mean teaching 6, 9, 12 or 15 credits per term. Thus, in some Faculties, Sessional Lecturers teach 6 credits and earn the same minimum salary that Sessional Lecturers in another Faculty earn by teaching 15 credits.
- 8.20 The only function of the “full-time” definition is to determine the minimum salary per course that Sessional Lecturers can be paid, and their access to pension and health and welfare benefits. The effect of the Association’s proposal, if awarded, would be that thenceforth all Sessional faculty would have the same minimum scale.

- 8.21 The effect of the current structure is that in some cases a Sessional Lecturers may teach essentially the same course for two different Faculties (e.g., a writing course in Arts, and a writing course in Education) and receive significantly different pay for the same work. The Association argues that it makes no sense to structure minimum scales in this fashion. The result of the current system is that some faculty members have to teach 2.5 times as many courses as others to earn the same pay. This is highly inequitable, as well as unreasonable.
- 8.22 Sessional Lecturers in Faculties with a 6-credit definition have a minimum salary scale that ranges from \$9,399 to \$10,197 per three-credit course. Sessional Lecturers in Faculties with a 15 credit definition have a minimum salary that ranges from \$3,756 to \$4,083 per standard 3-credit course. (<http://www.hr.ubc.ca/faculty-relations/compensation/minimum-salaries-sessional-lecturers/>).
- 8.23 Because Sessional Lecturers need to have a minimum of a half-time appointment to be entitled to pension and health and welfare benefits, Sessional Lecturers in Faculties where full-time is defined as 6 credits receive pension and health and welfare benefits if they teach a single course. Sessional Lecturers in Faculties with a 15-credit definition for full-time need to teach 2.5 courses (normally 3, as half courses are rare) in order to qualify for pension and health and welfare benefits. This is highly inequitable, as well as unreasonable.
- 8.24 The minimum scale for Sessional Lecturers in Faculties with a 15-credit definition is well below industry standard. At the University of Toronto the minimum stipend rate for Sessional Lecturers with no teaching experience is \$7,232 for a 3-credit course. At Queen's it is \$7,406 for a 3-credit course. At the University of Alberta it is \$5,989 for a 3-credit course for those without a PhD and \$7,050 for those with a PhD. At Calgary it is \$6,170 for a 3-credit course. In contrast, at the UBC the minimum stipend rate for Sessional Lecturers with no teaching experience in a Faculty with a 15-credit definition is \$3,756 for a 3- credit course.
- 8.25 For further reference, see the document entitled "Comparator Summary Language: Unified Minimum Salary Scale for Sessional Lecturers" in **Tab 10**, in the Book of Evidence, which contains the detailed language regarding scales for Sessional Lecturers at the following comparator institutions: University of Toronto, Queen's, University of Alberta, University of Calgary, Western, University of Saskatchewan, Waterloo, University of Victoria, University of Northern BC, and Thompson Rivers University.
- 8.26 The Association has not proposed to make this, or any other language, retroactive. Consequently the proposal will not affect salaries in Fiscal 15 and Fiscal 16 but it will raise some Sessional salaries thereafter. Total Sessional Lecturer salaries are a small, and declining, portion of total bargaining unit salaries. According to Tab 5.7 of the University's submission on Ability to Pay, salaries paid to Sessional Lecturers equaled \$14,136,504 in Fiscal 15. According to Tab 5.1 of the University's submission on Ability to Pay, total bargaining unit salaries out of operating funds equaled \$361,004,000. Thus total Sessional Lecturer salaries constitute less than 4% of total bargaining unit salaries. It is impossible to calculate an actual cost to this proposal without fairly detailed information about individual sessional employees' contracts, which the university has thus far refused to provide, but from the data we do have we estimate that approximately 10-15 percent of the total sessional wage bill is spent on sessionals who would be effected and that the average increase in salary for affected sessionals would be approximately 30%. Consequently we

estimate that the total increase in salaries, starting in 2016/17 would be no more than 2/10 of one percent of the total bargaining unit wage bill.

- 8.27 The current way of calculating the minimum pay for a 3-credit course cannot be justified by the University. Minimum scales don't mean that everyone gets paid the same; they just establish a reasonable base-line upon which to build. Though we accept that there are market differences across disciplines, determining minimum scales based on a fluctuating notion of full-time teaching loads is arbitrary at best. Our proposal on minimum scales emphasizes that a 3-credit course is a 3-credit course, no matter in what Faculty it's taught. We've proposed that the standard scale should be the one currently governing the majority of Sessional Lecturers: Faculties of Arts, Science, Medicine, and Health Sciences. All comparator universities for which information is available have a unified minimum salary scale for Sessional Lecturers or the equivalent rank.
- 8.28 Under the Association's proposal, the top of UBC's Sessional Lecturer Scale would still be below Toronto's job rate for Sessional Lecturers and the top rates at many comparator institutions. This can be seen in the "Comparator Summary Table: Minimum Unified Salary Scale" in **Tab 10**, in the Book of Evidence.
- 8.29 Based on the preponderance of the evidence, the Association submits that the above proposal should be awarded on the basis of replication and demonstrated need. The proposal should also be awarded on the basis of equity. There is no justification for some of the Association's members to have to teach five three-credit courses per term to earn the same **minimum** salary as members who need teach just two three-credit courses per term. The minimum salary should be standard across the campus, and it would remain the case that Faculties can pay more than the minimum.

### **C) RIGHT OF FIRST REFUSAL FOR SESSIONAL LECTURERS (PROPOSAL 12)**

- 8.30 UBC has recognized the significant role of Sessional Lecturers at the University, as evidenced by the following two sentences included within the Preamble to the CA, Part 7 (p. 114):

The University and the Faculty Association recognize the important contribution of Sessional Faculty Members to the University in the achievement of its purposes, and, specifically, its teaching mission.

Sessional Faculty Members have a right to fair terms and conditions of employment within the many distinct administrative structures of the University community.

- 8.31 The Association has proposed to give part-time Sessional Lecturers the right to accrue additional courses for which they are qualified, on a seniority basis. The language for changes to Part 7, Article 6, pp. 118-119 is in **Tab 11**, in the Book of Evidence.
- 8.32 Sessional Lecturers, while a small percentage of the bargaining unit's total wage bill, contribute enormously to the undergraduate teaching function of the University. In departments such as Economics and English and in the Faculties of Education and Commerce, Sessional Lecturers teach the majority of undergraduate students. According to the Canadian Association of University Teachers between 40 and 60 per cent of

undergraduate teaching in Canada is done by Sessional Lecturers (also called Adjuncts or Contract Academic Staff at other universities).

- 8.33 Because Sessional Lecturers are paid per course credit, or equivalent, it is crucial that they be able to access available courses in order to have access to the equivalent of a full-time job.
- 8.34 Prior to 2011 there was a dispute between the Parties as to the meaning of a Sessional Lecturer's right to reappointment. On January 11, 2011 the Parties entered into an agreement to arbitrate differences regarding the assignment of courses. The Association contended that Sessional Lecturers were entitled to available work based on what they had previously taught and that this was common practice in some departments. (See excerpt from FA's "Sessional Work at UBC" and an email from a departmental administrator to a sessional outlining this practice in **Tab 11**, in the Book of Evidence.) Evidence presented at that arbitration, however, led the Association to accept the University's position of a much more limited right of reappointment. The Parties came to a consent agreement about what the current language in the Collective Agreement meant.
- 8.35 The consent agreement specified that a non-continuing Sessional Lecturer's right to reappointment is the right to an assignment to teach one course each academic year and that a Continuing Sessional Lecturer's right to reappointment is the right to an assignment to a minimum course load as specified in their individual entitlements.
- 8.36 Currently, the university distributes available course assignments to Sessional Lecturers in accordance with their individual rights of reappointment, with Continuing Sessional Lecturers having priority over other Sessional Faculty Members (CA, Part 7, 6.02, p. 118). Distribution of any work available after that process is governed by CA, Part 7, 6.04, p.119:
- Sessional Faculty Members with less than full time appointments may apply for additional course assignments as they become available and they will receive first consideration for such teaching course assignments subject to the criteria in Article 6.1.
- 8.37 Article 6.01, p. 118, states:
- In making Sessional course assignments, the University shall consider qualifications to perform the required work, quality and effectiveness of work performed and length of service. All evaluations of work performed shall be consistent with the criteria and procedures outlined in Articles 7 and 8 of this Agreement. Length of service shall be the determining factor only where the other factors are relatively equal.
- 8.38 The Association proposes that rather than "right of first consideration" Sessional Lecturers be given a "right of first refusal" and that the sole determining factor be length of service, with Continuing Sessional Lecturers being given priority over other Sessional Lecturers.
- 8.39 Queen's, McMaster, Saskatchewan and Calgary all provide the right of first refusal to sessional members. In BC, both Simon Fraser University and Royal Roads provide these rights. A summary of comparators with respect to the right of first refusal is found in **Tab**

**11**, in the Book of Evidence, as are the specific language provisions of a number of the comparator institutions.

8.40 Based on the preponderance of the evidence, the Association submits that the above proposal should be awarded on the basis of replication and demonstrated need. The University's position of "right of first consideration" has led to a demoralized Sessional Lecturer workforce, who have to wonder each academic year if they will get enough teaching assignments to support themselves. There is no demonstrated need by the University that they need to treat their employees this poorly.

#### **D) RIGHT OF REAPPOINTMENT FOR LECTURERS (PROPOSAL 13)**

8.41 The Association has proposed modifying Part 4, Articles 2 and 3 (pp. 62-65) to introduce a right of reappointment for Lecturers.

8.42 Lecturers are employees "holding an appointment without review for a term of twelve (12) months with responsibilities limited to teaching and related duties which may include administrative responsibilities normally undertaken by faculty members" (Article 1.01 of the Conditions of Appointment for Faculty, p. 61). As of April 2015 there were 234 Lecturers in the bargaining unit, a 33% increase since 2012/2013. Of these 234 Lecturers 219 had 12-month appointments, and 189 were full-time.

8.43 Lecturers are defined as continuing members of the bargaining unit. They are entitled to annual increments as per Appendix A of Part 2: Salary and Economic Benefits (p. 51). Lecturers earn increments during years 2 through 12 of their employment. Lecturers are also entitled to Merit and PSA awards from the same Career Advancement Fund as all other continuing members.

8.44 Lecturers are hired on a series of one-year term contracts. However, Lecturers do not negotiate the terms of their contracts every year. Once hired, Lecturers can only receive salary increases through GWI, annual increments, Merit and PSA, as do all other continuing members.

8.45 The most senior Lecturer received her first appointment in 1983. Despite this, Lecturers have to wait each year to find out whether or not they will be reappointed, leading to unnecessary stress for employees who have served the University for a long period of time.

8.46 In every respect, other than reappointment rights, Lecturers are treated as continuing faculty members. When the University provided the Association with a list of new hires and terminations Lecturers were (appropriately) not considered to be terminated when their appointment expired, unless they were not reappointed. Lecturers who were reappointed were not considered to be new hires.

8.47 In the list of terminations, the termination of some Lecturers was listed as retirements. The University has accepted that retirement options (CA LOU #2, pp.29-32) apply to Lecturers and recently agreed to a three-year retirement option for a senior Lecturers despite the fact that the very definition of a Lecturer is someone with an appointment for "12 months or less".

- 8.48 The Association submits that Lecturers are not truly employed on one-year contracts, but employed on continuing “almost-at-will” contracts. By virtue of issuing Lecturers annual “appointments” that specify termination dates the employer is circumventing the need to provide members with even minimal notice of termination.
- 8.49 Lecturers have no right of reappointment nor are they eligible for an appointment without term (tenured appointments). Even Non-Continuing Sessional Lecturers have the right to reappointment to one course per year. Continuing Sessional Lecturers have considerably more reappointment rights than non-Continuing Sessional Lecturers (CA Part 7, 5.05, p. 117).
- 8.50 The Association proposes to remedy this inequity by giving Lecturers a right of reappointment. The proposed Language (**Tab 12**, in the Book of Evidence) is “Candidates for initial appointment at the rank of Lecturer are judged principally on qualifications, performance in teaching, and experience. As a general principle Lecturers have the right to reappointment in accordance with this agreement. The only reasons for non-renewal of appointment of a Lecturer shall be (a) teaching performance; or (b) lack of funding; or (c) discontinuance or non-scheduling of a course or section of a course; or (d) for just cause as is generally recognized at law.”
- 8.51 The proposed language is identical to language that currently applies to Sessional Lecturers. (CA, Part 7, Article 2.06 (p.115); CA, Part 7, Article 3.01 (p.115); CA, Part 7, Article 10.01 (p.115)). Thus, the Association merely asks to give a similar right that has already been granted to all other members of the bargaining unit.
- 8.52 The right of reappointment for Lecturers that the Association seeks is similar to what can be found at the University of Alberta, where “Following an assessment of satisfactory performance, a staff member who has an appointment for a rolling term shall have the terms of the appointment extended by one year (in the case of persons appointed on a 12-month basis), or one complete term (in the case of persons appointed on recurring terms of less than 12 months).”
- Source:**  
<http://www.hrs.ualberta.ca/MyEmployment/~media/hrs/MyEmployment/Agreements/Academic/CAST.pdf> (at 7.01.1)
- 8.53 Based on the preponderance of the evidence, the Association submits that the above proposal should be awarded on the basis of replication and demonstrated need. The University has created a class of employment that has absolutely no rights. By allowing the University to grant non-renewable one-year contracts, Lecturers can be employed by the University for many years, and then simply dismissed, with no notice or severance. This likely contravenes the spirit of the Employment Standards Act. The University’s Administrative and Professional employees, who are covered by the AAPS agreement, can be dismissed at will, but at least there is a formula for severance. Lecturers are seriously harmed by the University being allowed to hire them repeatedly, one year at a time, without granting them any right of reappointment.
- 8.54 The AAPS agreement states the following:

A regular employee who has successfully completed her/his probationary period will be given a minimum of three (3) months' notice and will increase beyond three (3) years of continuous service at one month per year of service and one week per quarter year of service (rounded to the nearest quarter) to a maximum of twenty-four (24) months or eighteen (18) months as limited by the Public Sector Employers Act.

A term employee who has accumulated three (3) years of service within a five (5) year period with the University pursuant to Article 3.1.3, will receive the notice entitlements under this Article as if she/he were a regular employee to a maximum of eighteen (18) months' notice.

- 8.55 By contrast, the University has created a condition of employment for Lecturers, where they can be rehired annually on one-year contracts, thus avoiding paying severance. This does significant harm to Lecturers, allowing them to be fired at will by the University, with no consequences to the University. The Association deems this situation unfair, unreasonable, irrational, inconsistent with the way the Sessional Lecturers are treated, and prejudicial to Lecturers.

#### **E) WORKLOAD ISSUES (PROPOSAL 11)**

- 8.56 Workload has long been identified by members as a major problem, both in surveys of our members and in the Workplace Experience Surveys conducted by Ipsos Reid for the University (**Tab 13c**, in the Book of Evidence). In fact, workload was identified by Faculty Association members as the top priority in the question "In your opinion, what should be the top three priority areas for improvement within your unit?" Workload was also identified as the largest source of stress in the survey, by 43 percent of members. The Association has proposed to add two clauses to Article 13 in CA, Part 1 (p. 17) that will solve two of the most important problems (**Tab 13**, in the Book of Evidence).
- 8.57 The first clause of Proposal 11 (**Tab 13b**, in the Book of Evidence) pertains to the non-teaching term. The Association proposes that, in the interest of scholarly activity and educational leadership, tenured and tenure-track faculty shall not be required to teach in more than two four-month terms, or the equivalent, in any academic year, nor shall they be pressured to volunteer to do so. The second clause pertains to workload for Lecturers. The Association proposes that faculty members in the Lecturer classification shall not be assigned more than eight three-credit courses, or their equivalent, in any academic year.
- 8.58 With respect to the Association's proposal on one non-teaching term, unlike most employees, individual faculty members have no assigned daily or weekly hours. Their workloads consist of assigned courses, largely self-assigned service, and entirely self-assigned scholarly activity or, in the case of instructors, educational leadership. Because tenure, promotion, and merit awards are largely based on members' productivity in the areas of scholarly activity or educational leadership, members need sufficient time to pursue these activities. In addition, all faculty members are judged on their teaching, which requires, among other things, command over subject matter, familiarity with recent developments in the field, and preparedness. Faculty need adequate time to maintain currency in their area and adequate time to prepare for the work of the "teaching terms." Lack of sufficient time leads to overwork and lack of appropriate work-life balance. Because Faculty have had the right to a non-teaching term for many years, it is time to codify the historic nature of this and put the right into the Collective Agreement.

- 8.59 Allowing a full term without teaching (which for research faculty has traditionally been called the “research term”) each year is a crucial and traditional mechanism by which faculty have time to focus on their non-teaching responsibilities. Historically the “research term” was standard at the University of British Columbia, as it is at virtually every research university, and courses taught in the summer were taught by Sessional Lecturers or members of the professoriate, who were paid on a stipend basis. This tradition is starting to be eroded and some faculty members have started to be assigned courses in the summer, in addition to courses in the two winter terms. In some cases these assignments were forced on departments by Deans, contrary to departmental policy, leading to grievances.
- 8.60 Assigning full-time members teaching in all three terms is completely unnecessary for the functioning of any program in the University. Because UBC is a large university with large departments, and because so many courses are taught by Sessional Lecturers, who do teach in all three terms, it is entirely possible for every program to function with full-time faculty members teaching their entire year’s teaching obligations in two out of the three traditional four-month terms, or equivalent.
- 8.61 A provision restricting assigned teaching to two terms is common in the Collective Agreements of our comparators, as can be seen in “Comparator Summary Table: Term Free of Teaching Duties” in **Tab 13a**, in the Book of Evidence. We have also provided specific illustrations of the language used at a variety of Canadian universities. See, for example, in **Tab 13a** in the Book of Evidence, the language used at the University of Toronto (Article 4.1, University of Toronto Workload Policy and Procedures for Faculty and Librarians, “WLPP”), the University of Alberta (Article 7.03.2 & Appendix H – Intersession Teaching), Queen’s University (Article 37.2.6) and Western (Workload, Article 6). Similar collective agreement language also exists at less research-intensive universities (“Comparator Summary Language: Term Free of Teaching Duties” in **Tab 13a** in the Book of Evidence), demonstrating that this is fairly standard practice throughout the country.
- 8.62 A term free of teaching for the purposes of scholarly activity and educational leadership duties is so much the norm both in research-intensive universities and in teaching-intensive universities that the University would face a major recruitment and retention issue should this practice cease at UBC.
- 8.63 The specific language proposed by the Association for Article 13.04 is virtually identical to extant language at our major comparator, the University of Toronto. Toronto’s language is included in **Tab 13a**, in the Book of Evidence.
- 8.64 Based on the preponderance of the evidence, the Association submits that the above proposal should be awarded on the basis of replication and demonstrated need. This provision is important because the University is under increasing pressure to make more use of the summer term. This is due to the way the Province computes space use when it comes to its assessment of the University’s requests for capital for new buildings, etc. “Summer use” is listed as one of the key drivers in the University’s ten-year financial plan (<http://president.ubc.ca/files/2011/10/10yrplan2011oct.pdf>), and increasing the summer use of each campus by 50% is listed as a “portfolio action” in UBC’s current Strategic Plan (<http://strategicplan.ubc.ca/the-plan/sustainability/>). There is no operational reason that increased summer term usage would require the elimination of the traditional term free of teaching. The Association’s proposal is completely consistent with these plans as it is

consistent with a move from the traditional “winter teaching, summer non-teaching” model into a “two out of three” teaching model.

- 8.65 With respect to the proposal regarding workloads for Lecturers, the Association has proposed that the workload for Lecturers be no more than eight 3-credit courses or equivalent per academic year. The language is included in Article 13.05 in **Tab 13b**, in the Book of Evidence.
- 8.66 Both Lecturers and Sessional Lecturers are contract academic staff appointed to perform teaching and related duties. The primary difference between the two classifications is two-fold. First, “Lecturers” hold appointments for twelve (12) months or less. (CA, Part 4, Article 1.01, p. 61) “Sessional Lecturers” are appointed for a period of “less than twelve months” (CA, Part 7, Article 1.01, p. 114). Typically Sessional Lecturers are hired on four or eight month contracts. Second, Lecturers are defined as faculty members in the Collective Agreement, Part 4, which means they are salaried employees. Sessional Lecturers are defined as faculty members in the Collective Agreement, Part 7, and are paid by the course credit.
- 8.67 We point out the distinction between these two categories of faculty member because there is currently no limit on the number of courses that a Lecturer, once hired, can be assigned. This is an unusual enough circumstance for faculty in tenurable classifications, but it is almost unheard of for contract academic staff. The implication is that faculty hired into this classification can have the amount of work they are expected to perform arbitrarily increased, without any increase in pay (because they are salaried, and thus increases come only from GWI and PTR and have no link to their workload).
- 8.68 Historically the University has employed relatively few Lecturers, with the majority of contract academic staff being in the Sessional Lecturer classification. For example, in April 2006 there were only 105 Lecturers employed, less than one-sixth the number of Sessional Lecturers and only 3.4% of the total bargaining unit membership. Since then the University has converted a large number of faculty members formerly with Sessional Lecturer appointments to Lecturer appointments. By April 2015 the number of Lecturers had risen to 234, increasing their proportion of total membership from 3.4% to 6.8%. During the same period the full-time equivalent number of Sessional Lecturer employees fell by 17.6%.
- 8.69 Many of the newly appointed Lecturer positions are filled by former Sessional Lecturers. Sessional Lecturers are protected from workload abuse, because they are paid per credit. The Association deems that salaried Lecturers having no defined workload is unfair, unreasonable, irrational, inconsistent with the way the Sessional Lecturers are treated, and prejudicial to Lecturers. This change in the composition of contract teaching staff from employees paid by the course to those with similar job duties but with annual salaries and no maximum teaching load brings with it the danger of significant exploitation by the University.
- 8.70 Based on the preponderance of the evidence, the Association submits that the above proposal should be awarded on the basis of replication and demonstrated need. A maximum of eight (8) three-credit courses, or equivalent, per year is currently the *de facto* standard for Lecturers at UBC, although in some departments full-time Lecturers teach fewer courses. This *de facto* load must be maintained, because otherwise, the University would be in the position of increasing workloads for Lecturers, with no increase in pay. And the Association

has evidence that the University is moving in this direction. The Association seeks to protect the per-course equivalent salaries and workloads of this classification from exploitation as the composition of contract academic staff changes by embedding this maximum in the Collective Agreement.

**F) ANONYMOUS STUDENT COMMENTS (PROPOSAL 18)**

8.71 Part 4, Article 5.06(e) of the Collective Agreement describes the “material to be considered” in processes leading to recommendations concerning appointment, reappointment, tenure and promotion.

8.72 Currently Article 5.06(e), page 74, states:

Normally, the only material which will be considered is material that has been obtained following required or other recognized procedures. Material which will not normally be considered includes material solicited by the candidate and unsolicited material such as letters from third parties, faculty members who are not official appraisers, or students. If any material that would normally not be taken into account is considered and it is not supportive of the candidate, the contents of the material shall be revealed to the candidate. The candidate shall be given a reasonable opportunity to rebut or explain the contents, and this rebuttal or explanation shall be added to the file.

8.73 The Association Proposes that 5.06(e) be changed to:

The only material which will be considered is material that has been obtained following required or other recognized procedures. Material which will not be considered includes material solicited by the candidate, anonymous comments whether solicited or unsolicited, including those from SEOT and TEQ evaluations, and unsolicited material such as letters from third parties, faculty members who are not official appraisers, or students.

8.74 This language can be found in **Tab 14**, in the Book of Evidence.

8.75 Should the Arbitration Board award this language the last sentence of the current 5.06(e) becomes redundant.

8.76 The Association submits that “material which will be considered” should not include anonymous comments, particularly those elicited by the University in its online teaching evaluation procedures.

8.77 The Association believes anonymous comments and material that have not been obtained following required or other recognized procedures have no probative value and should not be admitted in personnel decisions. The Association further believes that creating a mechanism by which students can comment on faculty members’ performance, anonymously from the safety of their keyboards, creates an environment susceptible to bullying and harassment.

8.78 The Association has received numerous complaints, and initiated grievances resulting from student comments. Some comments are of the nature that the commentator clearly knew, or

reasonably ought to have known, would cause that member to be humiliated or intimidated. One of our members described their experience with comments as follows:

This term I received several disrespectful and ad hominem attacks in my written student undergraduate course evaluations. I have never experienced anything like this before and this is my fourth university. I am not sure what to do about this or what can be done. I was wondering if this university had any policies on such comments or offered any written instructions to students about the inappropriateness of such comments. I also wondered what recourse we have as faculty when we receive such comments.

- 8.79 Another member described his experiences thusly: “On several occasions, I have been subject to racist, hateful and personally derogatory statements . . . . I was told by the Provost that nothing could be or would be done to change this process and that I should basically live with it.” Yet another reports

I have experienced anonymous inappropriate offensive personal student comments on the CoursEval system in the past, and I requested those specific comments be removed to both the system admin and to my Director (as they have nothing to do with critique or my teaching or the course). They never were, and I agree this is highly problematic, as it represents a very one-way process in the system, especially given the current bullying policies!

- 8.80 The Association submits that the humiliation and helplessness these members feel helps foster an environment that leads to employee burnout and emotional damage.
- 8.81 Processes leading to recommendations concerning appointment, reappointment, tenure and promotion are peer processes. As a result these anonymous comments are seen by a member’s colleagues. Comments that are merely hurtful when read by the member, become humiliating when read by colleagues.
- 8.82 Until fairly recently, the University typically did not use these comments, which were hand written on paper, for personnel decisions. The change occurred when Faculties started introducing online evaluations in which students typed their comments in online forms which allowed the University to collate and distribute them easily. But there was no discussion with the Faculty Association about this change. It was arbitrarily introduced.
- 8.83 It is not surprising that the change from paper evaluations to online evaluations has resulted in more negative feedback on teaching evaluations. Studies show that online anonymity increases the vitriol people use when making comments. One recent study found that 53.3 percent of anonymous comments included language that was “vulgar, racist, profane or hateful,” while only 28.7 percent of non-anonymous comments were uncivil. The study also showed that “when anonymity was removed, civility prevailed.”<sup>2</sup> Another study showed that when people make comments “the distinctive properties of online

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<sup>2</sup> Arthur D. Santana, “Virtuous or Vitriolic,” *Journalism Practice*, 2014; 8 (1): 18-33.

environment... introduce new dynamics that distinguish it from its offline variety.”<sup>3</sup> Researchers refer to how anonymity affects online activity with the term disinhibition effect: “When people have the opportunity to separate their actions online from their in-person lifestyle and identity, they feel less vulnerable about self-disclosing and acting out.”<sup>4</sup>

8.84 The University not only refuses to do anything to remedy the distress and damage that online comments cause members, it compounds the problem by permitting these comments to be shared with colleagues and the Senior Appointments Committee. The Association argues that anonymous comments have no legitimate place in personnel decisions. Members are not able to defend themselves in the face of such comments.

8.85 The Association also takes note of the WorkSafeBC Guidelines to the Workers Compensation Act which states:

Bullying and harassment is not limited to behaviour engaged in by a worker towards another. The definition encompasses behaviour engaged in by a person that a worker may encounter at the workplace, such as clients, customers, members of the public, etc. While employers and supervisors may not have direct control over the behaviour of such non-workers, it is important to acknowledge that **employers and supervisors must implement procedures to ensure bullying and harassing behaviour from non-workers is prevented or minimized, and appropriately addressed if such behaviour should occur.** (emphasis added)

**Source:**

[http://www2.worksafebc.com/Publications/OHSRegulation/GuidelinesWorkersCompensationAct.asp#SectionNumber:G-D3-115\\_1-3](http://www2.worksafebc.com/Publications/OHSRegulation/GuidelinesWorkersCompensationAct.asp#SectionNumber:G-D3-115_1-3)

8.86 **Tab 14** in the Book of Evidence provides information on comparator institutions on the use of anonymous student comments for promotion and tenure decisions and the language governing such use in “Comparator Summary Table: Anonymous Comments,” and “Comparator Summary Language: Use of Anonymous Comments in Reviews, Promotion and Tenure.”

8.87 Based on the preponderance of the evidence, the Association submits that the above proposal should be awarded on the basis of replication and demonstrated need. Anonymous comments have no place in a performance review. The University has proffered no evidence why anonymous comments should be considered. There are very few review processes among comparator institutions that allow the inclusion of anonymous comments, and when these are entered, it is only at the discretion of the Professor. The harm that allowing anonymous comments to be entered against the will of members violates the spirit of the University’s Respectful Workplace Statement.

## **G) DEAN’S ADVISORY COMMITTEE (PROPOSAL 18)**

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<sup>3</sup> Katie Davis, David P. Randall, Anthony Ambrose, Mania Orand, “I Was Bullied Too’: Stories of Bullying and Coping In an Online Community,” *Information, Communication & Society*, 2014; 1: 357-375.

<sup>4</sup> John Suler, “The Online Disinhibition Effect,” *Cyberpsychology & Behavior*, 2004, 7(3): 321-326.

- 8.88 Part 4, Article 5.10, p. 77 of the Collective Agreement (Review by the Dean) establishes a Dean's Advisory Committee (commonly referred to as "DAC") with whom the Dean shall consult on reappointment, tenure and promotion recommendations. The Faculty Association proposes three modifications to the existing language designed to ensure that the intent of the section is not frustrated by ambiguous language. The proposed language is in **Tab 15**, in the Book of Evidence.
- 8.89 First, the Association proposes to add "Professors of Teaching" explicitly to 8.02(c). The current language uses the term "tenured full professors." When that clause was written it was unambiguous. In 2010 the parties agreed to add a professor rank to the Educational Leadership Stream. The Association believes that, consistent with provisions already agreed in the Letter of Understanding reached between the Parties regarding Professors of Teaching serving on DAC, the intent of the parties is to make it clear in the Collective Agreement that the intent of the language includes professors in both tenurable streams.
- 8.90 The Association submits that the Arbitration Board should award the change in language proposed by the Association in 5.10(c) that introduces the phrase "or Professors of Teaching" into the clause twice.
- 8.91 Based on the preponderance of the evidence, the Association submits that the above proposal should be awarded on the basis of replication and demonstrated need. The University has agreed with the Association over recent years that Professors of Teaching should be included on DAC, and we have signed several MOAs on this point.
- 8.92 Second, the Association proposes to amend 8.02(c) to a) introduce a minimum size to the DAC; b) ensure the elected members are elected by secret ballot; and c) ensure the members of DAC serve for specified and staggered terms.
- 8.93 Based on the preponderance of the evidence, the Association submits that the above proposal should be awarded on the basis of replication and demonstrated need. The Association submits that in the absence of such standard provisions for the Dean's Advisory Committee, individual Deans, through intent or lack of attention, can effectively frustrate the intent of the clause. The Association is not asking for a new process, just assurances that the intended practice actually gets carried out in every Faculty at UBC.
- 8.94 Third, the Association proposes a new clause in 8.02:
- When serious concerns about the candidacy arise in the advisory committee, the Dean shall inform the candidate of that fact and the reasons therefore with sufficient particularity to enable the candidate to have a meaningful opportunity to respond and to introduce further relevant evidence. If the candidate has not already been provided with a summary of the referees' opinions they shall be provided by the Dean. The summary shall be prepared in such a way that the identities of the referees are not disclosed.
- 8.95 Based on the preponderance of the evidence, the Association submits that the above proposal should be awarded on the basis of replication and demonstrated need. The Association submits that this is a simple matter of natural justice and administrative fairness. Members being considered for reappointment, tenure, and promotion should have

the right to address concerns that arise at any level of the process. The Association notes that an analogous clause already exists in Article 5.06:

5.06(f) When serious concerns about the candidacy arise in the departmental standing committee, the Head shall inform the candidate of that fact and the reasons therefore with sufficient particularity to enable the candidate to have a meaningful opportunity to respond either orally or in writing at the option of the committee and to introduce further relevant evidence

## **H) LENGTH OF THE AGREEMENT (PROPOSAL 26)**

- 8.96 The Association has proposed a two-year length for the Collective Agreement, July 1, 2014 to June 30, 2016 (**Tab 16**, in the Book of Evidence). The University has proposed a five-year agreement.
- 8.97 In the history of the relationship between UBC and UBCFA there has **never** been a five-year agreement, and the Association would never agree to such a long agreement. Twenty one of the previous twenty four Agreements have been for a term of one or two years. The evidence for this can be found in **Tab 16**, in the Book of Evidence, in “UBC/UBCFA History of Collective Agreement Terms.”
- 8.98 No Arbitration Board has ever awarded a term greater than one year for the Parties. Every prior Arbitration Award has been for a one-year term except the 2012-2014 Agreement, where the Parties had agreed on a two-year term and the Arbitrator did not have to make term part of his Award.
- 8.99 In order to make an Award the Arbitration Board must assess the criteria in CA, Part 1, Article 11. In particular it must determine that an Award preserves a reasonable balance between the salary of members of the bargaining unit and other expenditures, and it must consider changes in the Vancouver and Canadian Consumer Price Indices, changes in British Columbian and Canadian Average Salaries and Wages, and salaries and benefits at other Canadian universities of comparable academic quality and size.
- 8.100 The University has no ability to accurately project expenditures and salaries even one year into the future, let alone 4 years into the future. In the 2013 Arbitration, the University projected “adjusted expenditures” for fiscal 2014 to be (in thousands) \$1,145,944. That was a projection one year into the future. We now know (Tab 8.1 (revised) of the University’s Ability to Pay submission) that the actual adjusted expenditure for that year was (in thousands) \$1,174,835. If the University’s prediction of expenditures one year into the future is out by nearly 29 million dollars, it is clear that projections four years into the future will be subject to such significant errors as to be meaningless. We note that in the five years between fiscal 2009 and 2014 actual adjusted expenses rose by 29.3%. However, in the projected five years between fiscal 2014 and fiscal 2019 the University is projecting increases in expenditures of only 18.3% (Tab 5.1 (revised) of the University’s Ability to Pay Submission). Given the University’s inability accurately to project a single year’s increase in expenditures, no credence can be given to such a projected large divergence from the historic pattern.

- 8.101 The University's projection of increases in bargaining unit salaries is entirely speculative, depending on assumptions about the rate of growth in starting salaries, the number of retirements, and the amount of growth in the faculty complement.
- 8.102 Since the introduction of the Bank of Canada's inflation control target in 1991, price inflation has averaged 2% and wage inflation has averaged approximately 1% more than price inflation. However, there are significant variations on a month-to-month basis as a result of variations in "volatile items." Short-term declines in gasoline prices tend to lower all-item inflation and short-term reductions in the value of the Canadian dollar tend to raise all-item inflation. As a result, while long-term average price and wage inflation rates can be accurately predicted, actual inflation rates in any given year cannot.
- 8.103 In 2014, Mt. Allison University asked Arbitrator Kevin Burkett for a 4-year term for the Agreement, while the Association asked for a 3-year term. Arbitrator Burkett ruled:

The first issue to be addressed is that of term. It is clear from the data that has been filed that there is not as yet a settlement pattern for 2016-2017 (the fourth year of a renewal agreement). Given that these parties have never before negotiated or had imposed upon them a four-year collective agreement, I am not prepared to award a four-year term in circumstances where I would be required to speculate as to what the settlement pattern might be for that year. While the University would prefer a four-year term for reasons of certainty and stability, I am not convinced, given the absence of a settlement pattern and given the Association's strong objection, that if left to their own devices, the parties would have concluded a four-year collective agreement. Accordingly, a three-year term will be awarded.

Burkett Award (*Mount Allison*, supra), **Tab 6**, Book of Authorities, at p. 9

- 8.104 Based on the preponderance of the evidence, the Association submits that the above proposal should be awarded on the basis of replication and demonstrated need. There are many outstanding issues between the parties that have not been resolved, but which the parties have agreed not to take to arbitration in this bargaining round. Some of these issues are pressing and are currently causing significant mischief. The Association cannot wait an additional four years without the ability to again address them in bargaining. Very few universities in Canada have concluded agreements that extend beyond 2016. Thus there is no basis for projecting changes in salaries and benefits at other Canadian universities.

## **9. DETAILED ANALYSIS OF PROPOSALS ADVANCED BY THE UNIVERSITY ON WHICH AGREEMENT HAS NOT BEEN REACHED**

### **A) SESSIONAL LECTURERS (UBC PROPOSAL 5)**

- 9.01 The University has proposed massive changes to the Collective Agreement provisions concerning contract academic staff (UBC Proposal #5). The effect of the proposal would be to:
- eliminate completely the classification of Sessional Lecturer (a classification in which approximately 1,000 different members are employed each year),
  - remove Part 7 of the Collective Agreement in its entirety,
  - create two new classifications: Contingent Faculty and Graduate Student Lecturers,

- d) redefine Lecturers from the current “12 months or less” to holders of 3-year appointments,
- e) provide a right of reappointment for three-year Lecturers,
- f) introduce a new mechanism for paying contract academic staff based on departmental workload allocations, and
- g) specify that the vast majority of Sessional Lecturers (those not covered by Part 7, Article 5), who currently have a right to reappointment, will lose all rights to work and may only apply for Lecturer appointments (with probation).

9.02 While the Association does not disagree that language issues are within the purview of the Arbitration Board, we must agree with the general view that interest arbitration is inherently conservative, and not intended to result in major breakthroughs from an Arbitration Board. The University has not only asked for a major breakthrough that represents an enormous concession demand, but a proposal that is far too complex to be dealt with in its entirety by an Arbitration Board.

9.03 We note that the University’s proposal to introduce a right of reappointment for Lecturers is consistent with the Association’s proposal. However, we note that the Association’s proposed language

Candidates for initial appointment at the rank of Lecturer are judged principally on qualifications, performance in teaching, and experience. As a general principle Lecturers have the right to reappointment in accordance with this agreement. The only reasons for non-renewal of appointment of a Lecturer shall be (a) teaching performance; or (b) lack of funding; or (c) discontinuance or non-scheduling of a course or section of a course; or (d) for just cause as is generally recognized at law.

is simpler, clearer, and based on the existing right of reappointment for Sessional Lecturers.

9.04 The Association submits that the Arbitration Board should award the language proposed by the Association (UBCFA Proposal #13), and leave the remaining issues the University has attempted to deal with in their proposal for further negotiations between the parties.

**B) REMOVAL OF TENURED ASSISTANT PROFESSORS (UBC PROPOSAL 6A)**

9.05 The University has proposed changes to CA, Part 1, Article 2.03 that would eliminate the ability of University to grant tenure at the rank of Assistant Professor.

9.06 This is not the first time that the University has put this proposal on the table, and the Association has vigorously refused to agree to this concession.

9.07 Currently, at the end of a pre-tenured member’s appointment as an Assistant Professor he or she may either a) be tenured but not promoted, b) be tenured and promoted to Associate Professor, or c) be denied tenure. The University proposes to eliminate the option of being tenured but not promoted.

9.08 The criterion for being granted tenure is that the candidate must "have maintained a high standard of performance in meeting the criteria [of teaching, scholarly activity or educational leadership and service] ... and show promise of continuing to do so" (CA, Part 1, Article 4.01(a))

- 9.09 The University is asking for an enormous concession, one that would fundamentally change the meaning of the tenure criterion, a criterion that has been in place at UBC for decades.
- 9.10 While tenure without promotion is not necessarily common, it does in fact occur. Some highly distinguished members of the professoriate were, at some point in their careers, tenured without being granted promotion at UBC.
- 9.11 The University has not presented clear and compelling evidence as to the harm tenured Assistants bring to the achievement of the educational mission of the University. On the other hand, it is clear what mischief will result from the removal of this option. Being denied tenure is tantamount to being terminated.
- 9.12 The Association's view is that the Arbitration Board should not award the removal of tenured Assistant Professors from the Collective Agreement. Under the Labour Code, the Association has a duty of fair representation to its members. Every newly hired Assistant Professor is hired under the provisions of the Collective Agreement that separate the tenure decision from the promotion decision. We would be abdicating our responsibility to these members were we to make such a concession to the University.

### **C) LIBRARY (UBC PROPOSAL 9)**

- 9.13 The University has proposed a number of changes to CA, Part 5, Article 2 (p. 91-93), the effect of which would be to increase the length of the probationary period for Librarians from three years to five years.
- 9.14 This is the first time the University has made this proposal in bargaining. The Association is unaware of any problems or issues arising from the current probationary period.
- 9.15 There is no standard probationary period for University Librarians. Many universities have probationary periods of one or two years, including Simon Fraser University (1 year), the University of Victoria (2 years), the University of Northern British Columbia (2 years), and the University of Toronto (“[probation will] not be less than one (1) year or more than two (2) years”).
- 9.16 Increasing the length of a probationary period for any employee by any length of time, let alone by two years, is an enormous concession.
- 9.17 The Association strongly submits that the Arbitration Board not award this proposal.
- 9.18 The University also proposes a Letter of Understanding concerning term administrative appointments for New Heads in the Library. This proposal is identical to one proposed by the University in the 2012 arbitration, a proposal that was not awarded. While there are elements of this LOU that were agreed to by the Parties, language has been included in the current version of the Collective Agreement that was not agreed to nor awarded. The inclusion of this language in the Collective Agreement was done in error.
- 9.19 The LOU, with the language printed in error, expired on June 30, 2014. The Association submits that an LOU on such a complex matter, that expires at the end of a Collective Agreement (which the Association believes should be June 30, 2016) requires further discussion between the parties and should not be awarded by an Arbitration Board. The very

fact that it is proposed as an LOU indicates that it is a short-term or transitional matter that should be worked out between the parties. We submit that the Arbitration Board should not make an award on such a matter, but rather, direct the parties to continue to discuss this matter so that a resolution can be achieved. In making this recommendation, the Association notes that there is nothing to prevent the parties from negotiating a Memorandum on this transitional matter either before or after the Arbitration hearings. The Association had always expressed its willingness to carry on discussions on this matter with the University.

### **CONCLUSION**

In summary, the Association submits that with respect to its wage and benefit proposals

- (a) the University has the ability to pay the cost of the Association's wage and benefit proposals; and
- (b) the Association's proposal for a significant GWI and the other wage and benefit proposals meet the tests required under Article 11.02(e)(i)-(iv) (pp. 14-15) to merit such increases.

With respect to the Association's language proposals, the Association submits that the proposals that were put forward are high priority items for the Association (other proposals were not brought forward to Arbitration), none of its proposals falls outside the norm of Agreements that comparator universities have achieved, and the arguments for the advanced proposals show a demonstrated need to be addressed.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED ON BEHALF OF THE UNIVERSITY OF BRITISH COLUMBIA FACULTY ASSOCIATION.**

Dated at Vancouver, BC, August 31, 2015

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Allan E. Black, Q.C.

Counsel for the University of British Columbia Faculty Association

## APPENDIX 1. METHODOLOGY AND SOURCES FOR RANKING SCALES

### **Maclean's 2015 Medical Doctoral University Ranking**

*Maclean's* University Rankings are likely the most widely known rankings of Canadian universities. The magazine issues an annual rankings guide, aimed at students and their parents. *Maclean's* rankings are based on weightings that consider the following criteria: student awards and student-faculty ratios, faculty research and awards, expenses per full-time student, amount of research grants, student support, library and reputation. The rankings are based on publicly available data, much of it collected by government organizations. *Maclean's* 2015 Medical Doctoral University Ranking are at <http://www.macleans.ca/education/unirankings/2015-university-rankings-medical-doctoral/>

### **Times Higher Education 2015 World Reputation Ranking**

The *Times Higher Education* World Reputation Rankings “employ the world's largest invitation-only academic opinion survey to provide the definitive list of the top 100 most powerful global university brands. A spin-off of the annual *Times Higher Education* World University Rankings, the reputation league table is based on nothing more than subjective judgement - but it is the considered expert judgement of senior, published academics - the people best placed to know the most about excellence in our universities.” **Source:**

<https://www.timeshighereducation.co.uk/world-university-rankings/2015/reputation-ranking#/search/brit>. The *Times* Higher Education 2014-2015 World Reputation Rankings are at <https://www.timeshighereducation.co.uk/world-university-rankings/2015/reputation-ranking>.

### **Times Higher Education 2014-2015 World Ranking**

The *Times Higher Education* World University Rankings “are the only international university performance tables to judge world class universities across all of their core missions - teaching, research, knowledge transfer and international outlook. The top universities rankings employ 13 carefully calibrated performance indicators to provide the most comprehensive and balanced comparisons available, which are trusted by students, academics, university leaders, industry and governments.” **Source:**

<https://www.timeshighereducation.co.uk/world-university-rankings/2015/world-ranking>. The *Times* Higher Education 2014-2015 World Rankings are at <https://www.timeshighereducation.co.uk/world-university-rankings/2015/world-ranking>

### **Academic Ranking of World Universities 2014**

The Academic Ranking of World Universities (ARWU) “uses six objective indicators to rank world universities, including the number of alumni and staff winning Nobel Prizes and Fields Medals, number of highly cited researchers selected by Thomson Reuters, number of articles published in journals of Nature and Science, number of articles indexed in Science Citation Index - Expanded and Social Sciences Citation Index, and per capita performance of a university.” **Source:**

<http://www.shanghairanking.com/aboutarwu.html>. The Academic Ranking of World Universities 2014 are at <http://www.shanghairanking.com/ARWU2014.html>

### **Newsweek Top 25 Outside the US 2011**

*Newsweek* uses data from three major international college rankings: the *Times Higher Education World Rankings*, *Webometrics* world college rankings from public-research outlet Consejo Superior de Investigaciones Científicas in Spain, and the *Shanghai Ranking Consultancy*. The ranking combines a mix of teacher quality, research output, academic citations, research income, and the geographic diversity of staff and students; *Webometrics'* size rank, a measure of each school's Web

presence; Webometrics' visibility rank, a measure of unique links to each school's website; Webometrics' scholar rank, which is the number of papers and citations attributed to each school; SRC's alumni rank, which tallies the number of alumni who have won Nobel Prizes and Fields Medals; SRC's award rank, which measures the institution staff who have won Nobel Prizes and Fields Medals; SRC's HiCI rank, which measures highly cited researchers affiliated with each school; and finally, SRC's tally of papers published in *Nature* and *Science* for each institution. Newsweek Top 25 Outside the US 2011 data are no longer online, but referenced here: [www.provost.utoronto.ca/Assets/Provost+Digital+Assets/Provost/Provost+Digital+Assets/Provost/planning/view from 2012/2-viewfrom2012 ResearchExcellence.pdf](http://www.provost.utoronto.ca/Assets/Provost+Digital+Assets/Provost/Provost+Digital+Assets/Provost/planning/view%20from%202012-2-viewfrom2012%20ResearchExcellence.pdf)

### **QS World University Rankings 2014**

The QS rankings use peer review data academics and employers. Their methodology is described at <http://www.iu.qs.com/university-rankings/world-university-rankings/> The QS World University Rankings 2014 are at: <http://www.topuniversities.com/university-rankings/world-university-rankings/2014#>

### **SCImago 2012**

The SIR (SCImago Institutions Rankings) is a characterization of institutions, grounded on three sets of ranges based on research, innovation and web visibility indicators. Their methodology is described at: <http://www.scimagoir.com/methodology.php>. SCImago 2012 data are now behind a paywall, but limited access can be found here: [http://www.chemistryviews.org/details/news/2495661/Ranking\\_of\\_Worldwide\\_Research\\_Institutions.html](http://www.chemistryviews.org/details/news/2495661/Ranking_of_Worldwide_Research_Institutions.html)

### **National Taiwan University 2014**

The National Taiwan University Ranking employs bibliometric methods to analyse scientific paper performance. Their methodology is described at: <http://nturanking.lis.ntu.edu.tw/BackgroundMethodology/Methodology-enus.aspx>. The 2014 rankings are at <http://nturanking.lis.ntu.edu.tw/>.