

IN THE MATTER OF AN ARBITRATION
BETWEEN:
UNIVERSITY OF BRITISH COLUMBIA
AND
FACULTY ASSOCIATION OF THE UNIVERSITY
OF BRITISH COLUMBIA
(INTEREST ARBITRATION 2013)

REPLY SUBMISSION OF THE FACULTY ASSOCIATION

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REPLY SUBMISSION ON BEHALF OF THE FACULTY ASSOCIATION
(INTEREST ARBITRATION 2013)

We propose to respond to the submission of the Employer concerning the following:

- A. Legal Issues (adjudicative vs. replicative models)
- B. Ability to Pay (“the ratio”)
- C. Article 11.02e i-iv (“Considerations After Ability to Pay is Found”)
- D. The University’s Monetary Proposal
- E. The University’s Non-monetary Proposals
- F. The University’s Responses to Association Proposals
- G. Arbitration Principles for Non-Monetary Proposals

1. Introduction

- 1.01 This interest arbitration is governed by Article 11 of the Framework Agreement, which directs the arbitrator to give **first** consideration to the University’s ability to pay the cost of an award from its general purpose operating funds. To do that, the arbitrator is required to “take account of the University’s need to preserve a reasonable balance between the salary of members of the bargaining unit and other expenditures” and determine whether the University has the ability to pay the cost of an award. If an ability to pay is determined, then the arbitrator shall base the award on the criteria listed in Article 11.02(e)(i-iv).
- 1.02 The Association, in its submission of May 8, 2013, carefully and methodically examined the issue of the University’s ability to pay and clearly and transparently showed why the University has the ability to pay the cost of an award greater than what it offered the Association.
- 1.03 The Association then specifically addressed all of the criteria listed in Article 11.02(e)(i-iv) and presented compelling and detailed evidentiary support for each of the criteria.
- 1.04 In its earlier submission, the Association concluded that with respect to its monetary proposals
 - (a) the University has the ability to pay the cost of the Association’s monetary proposals; and
 - (b) the Association’s proposal for a significant general wage increase and its other monetary proposals, meet the tests required under Article 11.02(e)(i)-(iv) (pp. 14-15) to warrant such increases.
- 1.05 With respect to the Association’s non-monetary proposals, the Association concluded that none of its proposals fall outside the norm of agreements that comparator universities have already achieved, and in some cases, the Association is only seeking items that other employee groups have already achieved.
- 1.06 Below we address the major points of the University’s submission.

2. Legal Issues (adjudicative vs. replicative models)

- 2.01 Article 11 of the *Framework Agreement* addresses the criteria that the arbitrator is to use in adjudicating this agreement. However, the University asks the arbitrator to include the following considerations as part of his adjudication (paragraph references are to the University's submission):
- a. the Government's operating grant
 - b. the PSEC mandate
 - c. the findings of Arbitrator McPhillips in several arbitrations conducted pursuant to the Fire and Police Services Collective Bargaining Act;
 - d. a paper presented by Donald R. Munroe, Q.C. (footnote 8, page 15);
 - e. Labour Relations Code Principles (Paragraphs 77 and 78);
 - f. the feelings of other UBC employee groups (Paragraph 55);
 - g. settlements with other employee groups (Paragraphs 82 and 93).
- 2.02 None of these additional factors should be considered in this interest arbitration. As such, although we will speak to them briefly, we will not belabor the point on most of these considerations.
- 2.03 At Paragraph 6, the University draws a link between Articles 9 and 11.02 (*Framework Agreement*) to stress the significance of the Government's operating grant to the collective bargaining process. While the Association agrees that this is one of the components, it is certainly not **the** determining factor in a settlement, as the University tries to argue. It is simply the last necessary piece of data to become available, and thus it serves to establish a reasonable timeline for the end of negotiation and when the matters in dispute shall be submitted to arbitration.
- 2.04 The University refers to the PSEC mandate in a variety of places to suggest that the mandate must be considered as the limiting factor in bargaining, and further, the University has no ability to exceed the mandate. The PSEC mandate does not arise from either legislation or other formal mechanism. As we noted in our earlier submission, the Collective Agreement makes absolutely no reference to PSEC (or a PSEC mandate) as one of the criteria in determining the University's ability to pay, and therefore, it should not be given any weight in making a decision about the ability to pay the cost of an award.
- 2.05 Moreover, at Paragraph 2.22 of our earlier submission we cite the Teplitsky Award to support the argument that the PSEC mandate should have absolutely no bearing in the outcome of this interest arbitration.
- 2.06 The awards of Arbitrator McPhillips cited by the University were conducted pursuant to the *Fire and Police Services Collective Bargaining Act* [RSBC 1996] Chapter 142 (at **Tab 19** of the Association's Book of Evidence).
- 2.07 The terms of reference for the arbitrator under this Act can be found in Section 4, Settlement by Arbitration, at Paragraph 6.

(6) In rendering a decision under this Act, the arbitrator or arbitration board must have regard to the following:

- (a) terms and conditions of employment for employees doing similar work;

- (b) the need to maintain internal consistency and equity amongst employees;
- (c) terms and conditions of employment for other groups of employees who are employed by the employer;
- (d) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered;
- (e) the interest and welfare of the community served by the employer and the employees as well as any factors affecting the community;
- (f) any terms of reference specified by the minister under section 3;
- (g) any other factor that the arbitrator or arbitration board considers relevant.

- 2.08 The framework for the current interest arbitration is significantly different than that contained in the *Fire and Police Services Collective Bargaining Act*. Thus many of the findings and conclusions of Arbitrator McPhillips have no bearing on the matter at hand. In relying on these awards, the University has inappropriately advanced an argument that the criteria from the Fire and Police Services Collective Bargaining Act should apply to this arbitration
- 2.09 At Paragraph 79, the University refers to the award of Arbitrator Lanyon in a Police Arbitration, who said, “No bargaining unit can be permitted to employ interest arbitration by using the settlements of other bargaining units as a floor or a springboard to greater wages and benefits.”
- 2.10 The University produces **no** evidence that the Association has **in any way** tried to do this, nor would it make any sense for the Association to do so. The members of our bargaining unit – faculty members, librarians and program directors - are in a completely different labour market than the University’s other employee groups, with the exception of its senior administration. Faculty members, unlike administrative staff and outside workers, are recruited internationally, not locally. There is no overlap in the kinds of work done by the other bargaining units. The retention pressures for faculty members are considerably different than the other bargaining groups. Thus to the extent that there should be comparisons with other University employees, it is not with the other bargaining units at UBC, but rather with its administration. The benchmark for salaries for administrative positions was outlined in our earlier submission at Paragraph 6.01 (page 46):

As one of the highest ranked universities in Canada, and one of the top 30 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, June 8, 2012, sent to PSEC (emphasis added)

- 2.11 The University cites a paper presented by Donald R. Munroe, Q.C. arguing that government mandates must be given serious consideration by arbitrators. We respectfully suggest that Mr. Munroe is no longer a neutral party in resolving labour disputes when presenting this

argument. Though he once was extensively involved in labour arbitrations, more recently he is engaged in commercial arbitrations. More importantly, Mr. Munroe works for Heenan Blaikie, which is one of the major law firms representing the Provincial Government.

2.12 That said, Mr. Munroe makes three important observations that are relevant to this interest arbitration (**Tab 13**, University's Book of Evidence):

- a. The fact is that in some of our more sensitive work settings, both in the private and the public sectors, **there never has been free collective bargaining according to the true definition of that phrase:** which is "collective bargaining, including the right to strike or lock out, with a minimum of third-party intervention; and in particular, a minimum of senior governmental intervention". Hospitals, public schools, our ferry system in B.C., the national railways, the west coast grain terminals and the West Coast longshore industry are all examples of the point just made. In those settings, successive governments, both federal and provincial, have made it clear, by their serial and substantial interventions, that free collective bargaining, as defined above, will not be allowed. **So if that's the case, what's to replicate?**

(page 3, emphasis added)

- b. I do not thereby suggest that arbitrators become "minions of government".

(page 20)

- c. I do think that the future of interest arbitration in essential services or industries will depend on an acceptance of appropriate criteria for decision.

(page 20)

2.13 At Paragraph 51, the University states:

The mandate imposed on the University by government is an important consideration in assessing the University's ability to pay as defined above. PSEC is part of the legislative scheme designed to coordinate and regulate wages and benefits in the public sector through the *Public Sector Employers Act*, RSBC 1996, c. 384. The mandate is derived from PSEC's statutory authority and thus must be given considerable weight in assessing the University's ability to pay.

2.14 While PSEC itself may have been created through statutory authority, the mandate has absolutely no statutory effect. Further, the Association asserts, arbitrators are free from the constraint of the PSEC Mandate, for, as to quote Mr. Munroe, "they are not the minions of government." Instead, as Mr. Munroe suggests, the arbitrator in this interest arbitration is guided by an adjudicative model because the Collective Agreement provides the objective criteria on which to base his decision.

2.15 At Paragraph 132, the University writes, "It is the University's **primary submission** that the appropriate resolution to all non-salary proposals is to determine that none should form part of the award" and cites the factors referred to by Arbitrator McPhillips in *City of Surrey v. Surrey Fire Fighters' Assn* [2011] B.C.C.A.A. No 50., (i.e., that there is no compelling need for the changes; that the issues are too complex, that there is insufficient information and that they can be left to the next round of collective bargaining which is imminent)

(emphasis added)

- 2.16 The Association strongly disagrees with the University's assertion. The issues before the arbitrator are **not** that complicated. They have been spelled out clearly and succinctly in the Association's earlier submission. Further, if the arbitrator needs more time or requires more information, he can compel both parties to appear or to provide the necessary information and clarification to the issues as is required to render a decision. We submit that these matters have been appropriately placed before the arbitrator and that they should be adjudicated one way or the other, To do otherwise is to abdicate the responsibility of the arbitrator to decide the issues before him. Should the arbitrator decide not to award a proposal advanced by one of the parties before him, we would expect that the reasons would be provided.

3. Ability to Pay ("the ratio")

3.1 *The Determination of Reasonable Balance by Previous Arbitration Boards*

- 3.1.01 At Paragraphs 39-42, the University spends considerable effort trying to re-litigate the 1994 and 1997 arbitration awards by dwelling on a finding from the 1989 award:

We concluded that on the assumption that the alternate view was the correct one, the 1987-1988 ratio, having been the product of what we described as "free collective bargaining", was "the most reliable index of reasonable in the circumstances," and hence the applicable ratio.

- 3.1.02 At Paragraph 59, the University submits that:

Prior arbitration boards have held that a "reasonable balance" is the balance derived from **the previous negotiated collective agreement**. In other words, the product of the parties' own negotiated agreement is the best evidence of the reasonable balance.

(emphasis added)

- 3.1.03 The use of the singular "agreement" at Paragraph 59 above indicates that the University is attempting to limit the arbitrator's review of the reasonable balance to the past year, which is what the 1989 Arbitration Board did. That is the **only** arbitration board that did so. Subsequent to the 1989 award, the language in the Agreement changed from "reasonable ratio" to "reasonable balance." The Association discussed this change and its impact in our earlier submission at Paragraphs 2.12 to 2.18, pages 10-13).
- 3.1.04 It's important to understand that because of the change from "reasonable ratio" to "reasonable balance," both the 1994 and the 1997 awards recognized the need to consider more than just the previous year in making its determination. The 1997 Arbitration Board reviewed the 1994 Award to arrive at an understanding of how to properly interpret the language of reasonable balance:

Without attempting to be exhaustive, we take to mean that if one is put to determine whether a reasonable balance has been preserved **it must involve some examination of the historical past**, particularly agreements that were freely negotiated, and that **it is not sufficient to merely look at the previous year**. Secondly, the introduction of the word balance must be seen, in that context, to accord **a certain degree of expansiveness or range** to the decision of the

arbitration board that was **not possible under the reasonable ratio test** [used in the 1989 Award]. (1997 Award, p. 7)

(emphasis added)

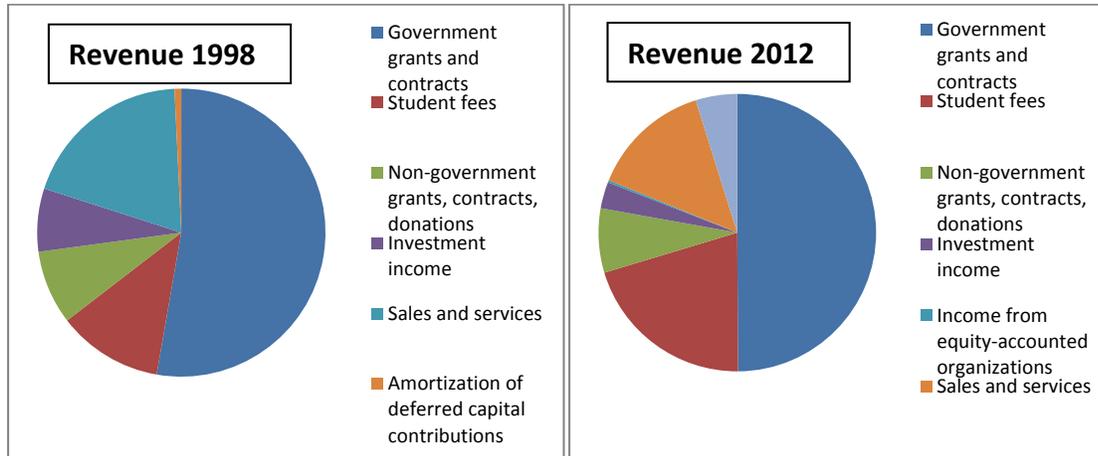
- 3.1.05 In the 1994 Award, the Arbitration Board calculated, on the basis of the information provided by the parties, the relationship between bargaining unit salaries and other operating fund costs for the fiscal years 1988-89 to 1992-93 inclusive. The Board then examined the comparative percentages over that five-year period to determine whether the Association's salary proposal preserved a reasonable balance for the 1993-94 academic year. It concluded that it did.
- 3.1.06 In the 1997 Award, the arbitrators considered the period between 1989 and 1996, and again concluded that the Association's salary proposal preserved a reasonable balance.
- 3.1.07 The idea of 'a reasonable balance' does not include freezing some past balance; if the parties had intended that, whether the prior year's balance or the last freely negotiated balance, then the parties could have stated that simply and directly in the Collective Agreement. Rather, the phrase "a reasonable balance" opens up the very space of negotiation, in an adjudicative sense, as it provides outer limits within which the award must fall.
- 3.1.08 The Association asks the arbitrator to consider the historical evidence for the period 2006 to 2012, as was included in our earlier submission.

3.2 The Macro Considerations of Reasonable Balance Presented by the University

- 3.2.01 Under the Collective Agreement, the ability to pay is determined by the preservation of "a reasonable balance between the salary of members of the bargaining unit and other expenditures." In the three previous arbitrations on this matter the ratio was calculated as the relationship between bargaining unit salaries and total expenditures. This definition is not in dispute by the parties, as is evidenced in the University's Paragraph 64, where the University says "The methodology confirmed by Mr. Cosh has been consistently accepted and applied by arbitration boards under the Framework Agreement."
- 3.2.02 Despite this, the University presents a variety of other considerations to make an argument about its ability to pay (i.e., the challenges facing the University to manage its expenditures to avoid an operating deficit), before actually turning to its discussion of the real measure of ability to pay, which is "the ratio."
- 3.2.03 At Paragraph 11, the University discusses cuts to its operating grant. It notes that the anticipated 1% Provincial cut for 2013-14 was reduced to 0.27% but then argues that "the total reduction is expected," without providing any evidence in support of this claim (either in their submission or at **Tab 4** in the University's Book of Evidence). Thus we question whether the "total reduction expected" claim can be relied upon.
- 3.2.04 While we acknowledge that the Provincial Operating Grant makes a substantial contribution to the University's revenue, this has been declining over time. In 1998, the operating grant made up 53% of the GPOF. In 2012, it made up 50% of the operating

fund. Thus the government’s contribution to revenue is falling, while other sources of revenue have grown, particularly student fees.

Table 1. Comparison of Revenue, 2012 and 1998



3.2.05 At Paragraph 57 the University notes that it has to manage its expenditures to avoid an operating deficit and at Paragraph 14, the University notes that “every percentage increase in bargaining unit compensation therefore has a cost of approximately \$3.5 million” (not including pension and benefits increases).

3.2.06 However, there is little evidence of any real threat of an operating deficit. Table 1 of the Association’s earlier submission (page 15) shows that the University has had considerable surpluses in the GPOF between 2006 and 2012, with the surpluses of the past three years varying between \$94 and \$128 million.

3.2.07 As the PwC report at **Tab E** shows, considerable amounts of money have been deliberately removed out of the GPOF and into Capital Assets between 2006 and 2012. The University has also moved sums of money into the Endowment Fund, the “Internally Restricted Fund,” and several of its lesser funds. However, money from these other funds was then moved into the Capital Assets Fund, leading to the conclusion that \$596 million has been transferred out of the GPOF and into the Capital Assets Fund between 2006 and 2012. These are intentional choices made by the University to invest in buildings rather than people.

3.2.08 At Paragraph 45, the University notes that “While money or ‘surpluses’ might be identified in any given year, the issue when considering salary increases is whether there is an ability to pay **additional recurring expenses.**” The Association understands this argument, but respectfully submits that using money for capital assets is mistakenly viewed as “one-time costs.” Each new building generates recurring costs in the form of employees to clean and manage it, heating, lighting, maintenance, etc. This list is far from exhaustive. Erecting buildings creates far greater recurring costs than the comparable tiny salary increases to faculty members. At **Tab 20** of the Association’s Book of Evidence we show as just one example, the recurring costs that will result from the Earth Systems Science Building (ESSB), which carries with it a capital cost of \$75

million. ESSB will have recurring annual costs of \$1.3 million. And, this is just one of the many new buildings that are on the University's roster at the moment. So the University's argument that salary increases, which are a trivial charge to the GPOF as a recurring cost, will damage the University's budget is nothing short of a red herring. Rather, given the pattern of recurring surpluses between 2006 and 2012, it stands to reason that the University is capable of absorbing increased recurring costs of a reasonable salary increase for its faculty..

(emphasis added)

3.2.09 At Paragraph 48, the University claims that it "would have to forgo necessary expenditures such as deferred maintenance and refurbishing teaching labs, which will impact faculty members and their work, in order to fund the salary increases that the Faculty Association proposes in this arbitration." Slide 11 of the document at **Tab 10** of the University's Book of Evidence shows that \$274 million needed to be loaned to capital projects in 2011 and \$322 million needed to be loaned in 2012. This money was recovered from central and unit allocations through internal loans. In other words, a total of \$569 million was removed from the GPOF to lend to capital projects in 2011 and 2012. **That** is the real reason that deferred maintenance and refurbishing teaching labs might have to be forgone if there is a salary award of greater than 2% and 2% to faculty.

3.2.10 That there was such a large overrun in capital projects means that either the University didn't raise enough money for the buildings that are currently under construction, or it didn't budget enough for the buildings and there have been cost overruns. In any event, it doesn't seem that poor planning for capital projects should come at the expense of reasonable faculty salaries.

3.2.11 At Paragraph 39, the University quotes extensively from the 1989 Award. The following paragraph relates to the University's ability to raise money:

No doubt the University has some other sources of revenue, such as tuition fees, gifts, earned income and the like, and no doubt to some extent these other revenues might be enlarged through the University's own efforts. But the extent to which they can be so enlarged is relatively limited. It is no doubt also true that, like Oliver Twist, the University may return to those principally responsible for its health and well-being, and ask whether it can have "some more". It has no obligation to do any of these things, however, and there is no guarantee in any event that this would be attended by any degree of success.

(1989 Award, page 13)

3.2.12 The issue here is that although it is routine to fundraise for buildings (after all, donors like to put their names on buildings), the University has a responsibility to make sure that it can finance major capital projects **before** it commits to them. Taking money out of the GPOF may create the illusion that the University has no ability to make a reasonable salary offer to faculty members, but it does not relieve it of the responsibility to maintain a 'reasonable balance.' Furthermore, the University has presented absolutely no evidence as to why these capital projects are of **greater importance** or of a **greater necessity** than providing an appropriate wage increase for faculty.

3.2.13 Though Pierre Ouillet, the University's Chief Financial Officer, may present some of the financial challenges of the University, including cuts in the Operating Grant, the

Association argues that the University has made deliberate choices about where to spend money, without “**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.**” (Article 11.02 of the *Framework Agreement*, emphasis added.)

3.2.14 Thus, although the University says, at Paragraph 68, that because of the University’s budget, the University’s salary proposal “is at the limit of its ability to pay (even beyond the limit),” this assertion is not a fact, but a simple artifact of how the University chooses to spend money.

3.2.15 At Paragraph 14, the University states:

Every percentage increase in bargaining unit compensation therefore has a cost of approximately \$3.5 million at a minimum in salary

3.2.16 If we apply that amount to the 2010 surplus, which is the **lowest** of the most recent three year period, \$3.5 million represents 3.7 percent of the surplus. Given that a two percent increase has already been budgeted, an additional three percent increase, to bring the total award to 5 percent, would represent 11.2 percent of the surplus from 2010. This is not a large amount, would leave most of the surplus for other things, and would most definitely not impose an operating deficit on the University.

3.2.17 Although the Association believes the appropriate measure of ability to pay is the reasonable balance, we note that by **any** reasonable measure UBC is in good financial shape, certainly better financial shape than other universities whose salary settlements have been greater than that proposed by UBC.

3.3 Ability to Pay "Reasonable Balance" Consideration

A) Data Issues

3.3.01 At Paragraph 65 the University claims that in the 2006 round of bargaining, the parties agreed on the make-up of the general purpose operating fund (GPOF) via “the Mackie letter.” This is false. The “letter,” which the University presents at **Tab 14** of its Book of Evidence, is not addressed to anyone; thus it does not meet the basic definition of a letter. Such alleged agreement forms no part of the Settlement Agreement signed by the Parties for that round of bargaining (see **Tab 21** of the Association’s Book of Evidence). And had there been, the language in the Framework Agreement would have been revised to reflect that agreement. The Mackie Letter is entitled “General Budget Definitions” and does not make reference to either negotiations with the UBCFA, the Framework Agreement or its use in any “Ratio” analysis. Paragraph 2 of the Mackie Letter refers specifically to the GPOF revenues, not the Unrestricted Operating Fund revenues. It identifies the “principal revenues sources” within the GPOF, but it does not indicate that this list is all inclusive and/or meant to exclude specific revenues normally included as part of the GPOF. The Mackie Letter provides no actual calculations of any ratios. In any event, as an example, the Association does not accept the exclusion of international student tuition from the GPOF as being appropriate. GPOF revenue from international student tuition was \$106.8 million in 2012/2013 (Source: University’s Evidence Binder, **Tab 18**,) or 29% of all GPOF student tuition received of \$365.0 million (Source: University’s Evidence Binder, last page of **Tab 17**).

- 3.3.02 In paragraph 67, the University states, "The revenues in the Operating fund are listed in Schedule 1 and are accounted for as General Purpose, Fee for Service and Continuing Studies." This statement is **only correct** for fiscal 2010 onwards. Prior to that, Fee for Service and Continuing studies were part of Specific Purpose Fund and shown on Schedule 2.
- 3.3.03 In paragraph 69, the University states. "The 2006-2010 collective agreement produced a 'reasonable balance' in the 30% to 31% range." Based on the analysis on page 4 of **Tab 15** of the University's Evidence Binder, the ratios between 2006 and 2010 ranged from 26.4% to 32.2%.
- 3.3.04 In paragraph 70, the University states. "Using the GPOF as defined in the Mackie Letter the University's proposal will produce a reasonable balance of 33.6% for 2012-13 and 35.3% for 2013-14 (**Tab 15** pages 5 and 6)." On the contrary, based on the analysis on page 4 of **Tab 15** of the University's Evidence Binder, the ratio for fiscal 2014 is only 34.9% (not 35.3%).
- 3.3.05 In paragraph 72, the University state,: "The analysis at Tab 15 (page 1) shows the last negotiated collective agreement produced a balance between faculty salary expenditures and total expenditures of 24.9% for 2011-12 (or 25.1% adjusted for the lump sum payment). The previous collective agreement (2006-2010) produced a "reasonable balance" in the 23%-24% range." On the contrary, based on the analysis on page 1 of **Tab 15** of the University's Evidence Binder, the ratios between 2006 and 2010 ranged from 22.2% to 25.3%.
- 3.3.06 Paragraph 67 makes reference to **Tab 17** including Schedule 1 for each of the fiscal years 2005 to 2012, however, it does not.
- 3.3.01 In paragraph 76 of the University's Submission, the University states that "The University has provided the expert report of Ernst & Young (Mr. Paul McEwen) attesting to the validity of the analysis presented above (University Book of Documents Tab 18)." Ms. Joy comments that the E&Y Report does not explain why E&Y's scope of work was limited to only commenting on the ratios for fiscal 2011 to 2014, when UBC's Ratio Analysis provides ratios for each of the fiscal years ended (or ending) March 31, 2006 to 2014. She also notes that E&Y was apparently not asked to comment on whether the University's Mackie Approach and/or its Current Approach were consistent with the "Cosh approach." Ms. Joy further comments that the E&Y Report does not explain why the University did not provide E&Y with the supporting source documents to assess the reasonableness of the fiscal 2014 forecast provided by the University. Ms. Joy's comments can be found in paragraphs 22 to 25 of the Reply.

B) The PwC Reply

- 3.3.02 Black Gropper, on behalf of the Association, engaged Ms. Eleanor M. Joy of PricewaterhouseCoopers LLP in December 2012 to provide her opinion as to whether payment of the Association's proposed salary settlement would preserve a reasonable balance between salaries of Faculty Association Members and other expenses in the GPOF. Ms. Joy was not involved in any aspect of the Association formulating its bargaining proposals for the 2012 round of bargaining. She is at arm's length to the

University's budgeting process. More information about Ms. Joy can be found in our earlier submission at Paragraphs 3.02-3.04 on page 14.

- 3.3.03 Ms. Joy was subsequently asked to provide comments on certain information contained in the University's submission on the University's ability to pay increased remuneration to Faculty Association members.
- 3.3.04 Ms. Joy provided a report based on her analysis, which will be referred to as the "Reply." At Paragraph 8 of the Reply, Ms. Joy outlines the information she used to prepare the Reply.
- 3.3.05 The University proposed two ways to calculate the ratio (in terms of what was put into the numerator and the denominator), as outlined in paragraphs 18 and 19 of the Reply. In paragraph 64, the University states "The methodology confirmed by Mr. Cosh has been consistently accepted and applied by arbitration boards under the Framework Agreement. That same methodology has been applied by the University in the following analysis." We disagree with the second sentence, in that the University has not applied the methodology confirmed by Mr. Cosh, as the University did not use GPOF expenses in the denominator, when calculating the historic ratios.
- 3.3.06 Paragraph 66 of the University's Submission states "The analysis presented at Tab 15 (in the University's Book of Documents) is the "Cosh approach" that has been adopted by all prior arbitration boards who have dealt with "reasonable ratio" and "reasonable balance" in determining ability to pay. The analysis is based on two alternate definitions of "general purpose operating funds" in Article 11.02(e) of the Framework Agreement. The first is based on the description of the GPOF in the Mackie Letter. The second approach uses the Operating fund as reported in the financial statements. Again, both approaches use revenue in the GPOF as described in the Mackie Letter or revenue in the current Operating fund as a proxy for total expenditures (the denominator in the "reasonable balance" ratio)." According to Ms. Joy, the approach used by Mr. Cosh in the prior arbitrations compared the ratios of salaries of Faculty Association Members paid out of the GPOF to other GPOF expenditures. Only when looking at forecast expenditures was reference made to not incurring expenses greater than forecast revenues.
- 3.3.07 Although the Association does not agree to the use of the Mackie approach, and we spelled out the reasons in Paragraph 3.3.01, Ms. Joy evaluated the University's analysis of that approach, and concluded that because of the way it is constructed, the Mackie approach cannot be used to assess whether payment of the UBCFA Proposal preserves a reasonable balance between salaries to Faculty Association Members (paid out of the GPOF) and other expenses in the GPOF. She provides her rationale in Paragraphs 27-29 of her Reply, and her conclusion in Paragraph 30.
- 3.3.08 Ms. Joy then reviewed the University's Current approach, and also concluded that the Current approach cannot be used to assess whether payment of the UBCFA Proposal preserves a reasonable balance between salaries to Faculty Association Members (paid out of the GPOF) and other expenses in the GPOF. She provides her rationale in Paragraphs 31-36 of her Reply, and her conclusion in Paragraph 37.

- 3.3.09 Ms. Joy illustrates in Paragraph 35 the extent to which using Operating Fund revenue rather than Operating Fund expenses in the denominator distorts the historic trend of “the ratio.”
- 3.3.10 Ms. Joy updated the analysis provided in the earlier PwC Report based on new information that became available after the initial report. This information is described in Paragraph 38 of the Reply. Her analysis is set out in paragraphs 39 to 48 of the Reply.
- 3.3.11 In paragraphs 42 and 43, Ms. Joy notes potential errors in UBC’s costing analysis (Source: University’s Evidence Binder, **Tab 11**).
- 3.3.12 In Paragraph 46, Ms. Joy reports the updated ratios. The historical period covered by Paragraph 46 includes the 2006-2010 Collective Agreement, and the 2010-2012 Collective Agreement. As well, she reports the updated ratios in fiscal 2013 and 2014 that incorporate the Association’s proposals. Her use of a historical period of this length is consistent with the previous awards that examined ‘reasonable balance.’ We describe these approaches in Paragraphs 2.17 and 2.18 on page 12 of our previous submission.
- 3.3.13 The ratios Ms. Joy calculates that pertain to the Faculty Association Proposals (2012-2014) fall well within the range of ratios for the previous years. Ms. Joy also notes in Paragraph 48 of the Reply that because of a change in accounting policy in fiscal 2013, there was an adverse effect on the ratios for the Association. Without this change in accounting policy, the ratios would have been 31.1% and 32.5% for 2013 and 2014. We think these are the ratios that should be considered, as they are the ones most consistent with the ratios from previous years, and previous arbitrations.
- 3.3.14 Ms. Joy concludes in Paragraph 47: “Based on our analysis in the PwC Expert Report, our updated analysis, and the ratios noted above, we believe that the UBCFA Proposal preserves a Reasonable Balance between salaries to Members and other expenses in the GPOF.”
- 3.3.15 The Association submits, therefore, that under the terms of the Collective Agreement, the University does have the ability to pay the costs of the Associations monetary proposals.

4. Article 11.02e i-iv (“Considerations After Ability to Pay is Found”)

Should the arbitrator find that the University has the ability to pay more than the University has offered, he then needs to consider the criteria in Article 11.02(e)(i-iv). The Association thoroughly addressed these criteria in Section 5 of its earlier submission, beginning on page 22. Below we respond to the University’s arguments about these criteria.

4.1 The Need For The University To Maintain Academic Quality (Article 11.02(e)(i))

Article 11.02(e)(i) directs the arbitrator to consider the need for the University to maintain its academic quality by retaining and attracting Faculty Members, Librarians, and Program Directors of the highest caliber.

4.1.01 At Paragraph 99 the University argues that it does not have a retention problem. However, at Paragraph 162 the University notes that the Faculty of Science appointed an Associate Dean, Faculty Affairs and Strategic Initiatives who is responsible for ensuring equity and diversity within faculty recruitment, **retention**, mentoring, career evolution, policies and procedures.

(emphasis added)

4.1.02 The Association questions the need for the Faculty of Science to have an Associate Dean, Faculty Affairs and Strategic Initiatives with retention included in his/her portfolio, if there is no retention issue.

4.1.03 Notably, the University buried a proposal for a \$600,000 retention fund in footnote 5 on page 4. UBC's claimed 2% and 2% general wage proposal is actually 1.95% and 1.90%, because the remaining .15% is for retention money. The University does not provide any explanation for the need for this money. Clearly this request is inconsistent with the University's argument at Paragraph 99 that UBC has no problem retaining faculty.

4.1.04 At Paragraph 99 the University argues that the number of resignations last year was 42 "which is minimal (0.01%) when considering a complement of approximately 3500 faculty." First, the Association would point out that 42 resignations, if that number is correct, would constitute 1.2% of 3500 members, or over 100 times more than UBC claims. Second, and more importantly, the number 42 is simply incorrect. As we noted in our earlier submission at Paragraph 5.02.10 (page 24), we know from our membership lists that there were 3,260 members of the bargaining unit in November 2006 and of those, 555 (17%) had permanently left the bargaining unit by November, 2009. That represents a turnover rate of about 6% per year. During this period retirements have been depressed by the elimination of mandatory retirement and relatively few members were involuntarily terminated. The true number of annual voluntary resignations is thus far greater than the numbers presented by UBC.

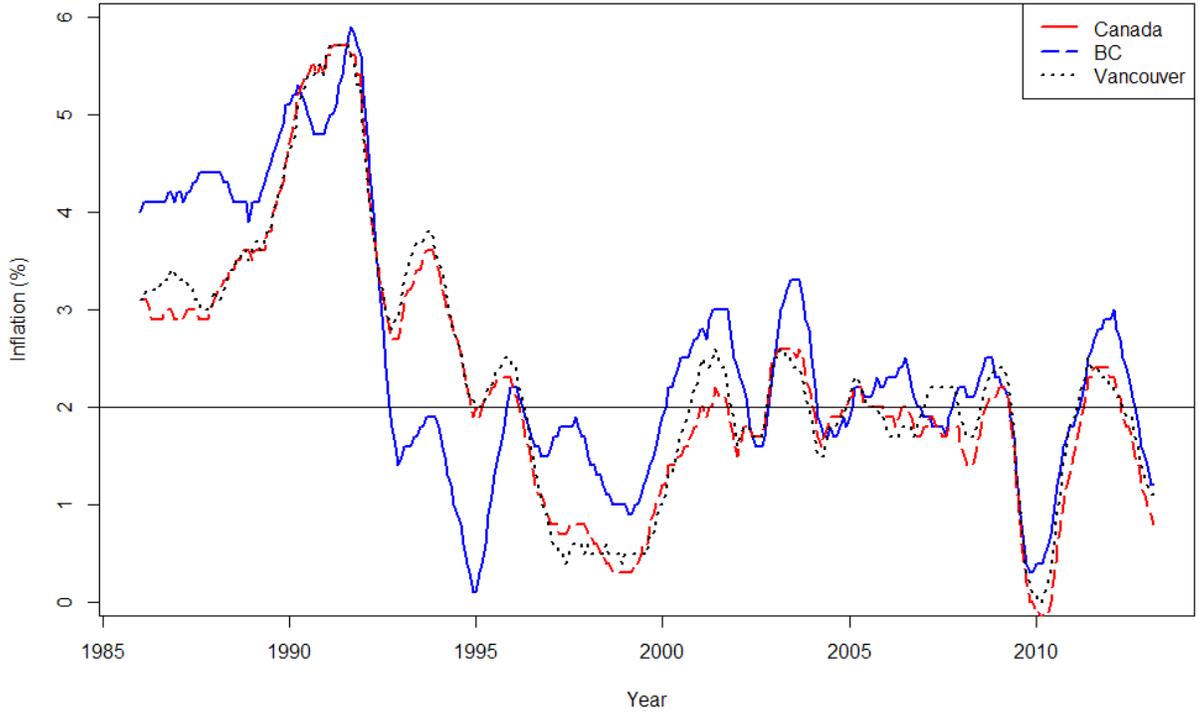
4.2 Changes In Consumer Price Indices (Article 11.02(e)(ii))

Article 11.02(e)(ii) directs the arbitrator to consider changes in the Vancouver and Canadian Consumer Price Indices.

4.2.01 At Paragraphs 100 to 102 the University argues that inflation is currently below 2% and thus the "University's salary proposal significantly exceeds changes in the Vancouver and Canadian CPI." The University is guilty of selective comparisons. As noted at Paragraphs 5.03.3 and 5.03.4 of the Association's earlier submission, inflation in Canada, and the provinces, has averaged 2% per year since the introduction of the Bank of Canada's inflation targeting policy in 1991. (Refer to **Table 2** below). The Bank of Canada's inflation target remains at 2%. The 12 month inflation rate, measured at any point in time, varies significantly, with periods above 2% and periods below 2%, and the University has chosen a period below 2% for comparison purposes.

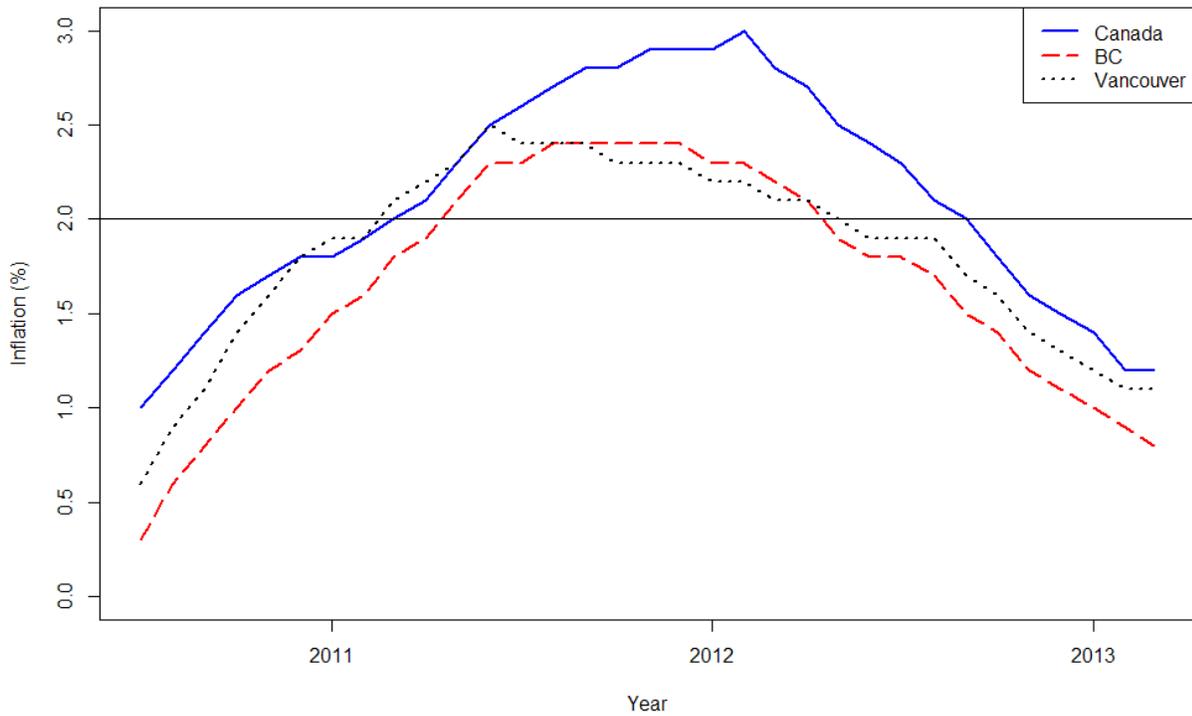
4.2.02 Since July 2010, which was the start of two years of no salary increases for Faculty Association members, the Canadian Inflation Rate spent eight months below 2%, followed by 19 months at or above 2% (12 months of which it was at or above 2.5%), followed by 6 months below 2%. (Source: Statistics Canada CANSIM Table 326-0020.)

Table 2. Inflation, January 1986 to March 2013



Source: Statistics Canada CANSIM Table 326-0020

Table 3. Inflation, July 2010 to March 2013



Source: Statistics Canada CANSIM Table 326-0020

4.2.03 **Table 3** shows that inflation over the same period has decreased the real spending power of wages by 5.6% in the intervening two years and 9 months. Although it is impossible to accurately forecast inflation on a monthly basis, it is clear that the only reasonable estimate over a longer period, such as the next 1.25 years, is 2% per annum. The University's offer of 1.95% and 1.9% will not even allow the real purchasing power of wages to regain the level they had in July 2010, let alone protect against future inflation.

4.3 *Changes In Average Salaries And Wages (Article 11.02(e)(iii))*

Article 11.02(e)(iii) directs the arbitrator to consider changes in British Columbian and Canadian Average Salaries and Wages.

4.3.01 At Paragraph 103, the University states: "The graphs at **Tab 21** [of their evidence binder] show that (*sic*) change in Average Weekly Wage Rates for each month when compare (*sic*) with the same month in the previous year. For BC, the rate of change has been below 1.5% since the middle of last year with the exception of October 2012 and February 2013 which were less than 2.5%." The graphs at **Tab 21** are labelled, respectively, "Canadian Average weekly wage rate - 2013/2012/2011 monthly change", and "BC Average weekly wage rate - 2013/2012/2011 monthly change." The graphs are consistent with neither the statement at Paragraph 103 nor with the actual data. Neither the numbers presented at Paragraph 103 nor the graphs at **Tab 21** are correct. A source is not given for the data used to create the two graphs, nor is the information presented in tabular form anywhere at **Tab 21**, but it is clear that the data used are not accurate.

4.3.02 The arbitrator should refer to Table 6 (Page 30) of the Association's earlier submission, where we present annual data on the percent change in average weekly wages in BC and Canada. The data used in Table 6 are produced by BC Stats from the Statistics Canada Labour Force Survey. This is the authoritative source. In **Table 4** below we graph the monthly data from the same source: <http://www.bcstats.gov.bc.ca/Files/68316f41-5683-42e1-9f29-a188a979fb15/EarningsandEmploymentTrendsData1304.xls>. We include the first four months of 2013, which we had not done in Table 6 of the Association's Earlier submissionearlier submission, to counteract the University's misleading presentation at Paragraph 103.

4.3.03

4.3.04 Table 5. Average Weekly Wage Rate, Canada and BC

		Canada		B.C.	
		\$	% Chg*	\$	% Chg*
2011	Jan	835.31	2.6	828.54	2.2
	Feb	832.58	2.3	828.91	2.0
	Mar	836.77	2.9	827.55	0.9
	Apr	837.75	2.9	828.11	1.1
	May	837.44	2.7	831.56	0.5
	Jun	834.53	2.4	839.42	0.9
	Jul	833.73	1.9	834.14	1.4
	Aug	839.99	1.7	839.93	0.8
	Sep	845.51	2.0	843.67	1.2
	Oct	842.19	1.5	842.87	2.0
	Nov	851.35	2.8	847.57	3.6
	Dec	853.57	2.9	854.88	4.6
2012	Jan	855.15	2.4	851.91	2.8
	Feb	855.69	2.8	860.57	3.8
	Mar	859.73	2.7	858.29	3.7
	Apr	859.11	2.5	844.42	2.0
	May	863.53	3.1	836.13	0.5
	Jun	863.37	3.5	850.70	1.3
	Jul	867.33	4.0	848.01	1.7
	Aug	874.01	4.1	850.66	1.3
	Sep	876.66	3.7	858.69	1.8
	Oct	876.54	4.1	865.53	2.7
	Nov	874.04	2.7	859.57	1.4
	Dec	873.15	2.3	868.09	1.5
2013	Jan	874.98	2.3	881.18	3.4
	Feb	872.00	1.9	876.87	1.9
	Mar	879.01	2.2	868.14	1.1
	Apr	885.20	3.0	877.05	3.9
Average:	Canada	BC			
Jan-Apr12	857.42	853.80			
Jan-Apr13	877.80	875.81			
%Change	2.4	2.6			
*Monthly percent changes are calculated as month over same month previous year					
Source: Prepared by BC Stats, using Statistics Canada Labour Force Survey					
http://www.bcstats.gov.bc.ca/Files/68316f41-5683-42e1-9f29-a188a979fb15/EarningsandEmploymentTrendsData1304.xls (Page 21)					

4.3.03 **Table 5** presents the actual data used to construct **Table 4**. The conclusions in section 5.04 of the Association's earlier submission remain unchanged. The most recently measured wage inflation (April 2013) in BC is 3.9% and 3.0% in Canada overall. The wage inflation for January-April 2013 compared to January-April 2012 is 2.6% for B.C. and 2.4% for Canada. In general, wage inflation in Canada and in BC has been running ahead of price inflation, and can be expected to do so for the foreseeable future.

PAGES 21-23 HAVE BEEN REMOVED FROM THE DOCUMENT DUE TO A FORMATTING ERROR THAT OCCURRED IN THE ORIGINAL, CAUSING MATERIAL TO REPEAT. THUS THE FOLLOWING PAGE IS NUMBERED "24" AND SUBSEQUENT PAGE NUMBERING FLOWS FROM THAT.

THE PARAGRAPH NUMBERING IN THE NEXT SECTION (4.6, BUT SHOULD BE 4.4) WAS ALSO AFFECTED BY THE FORMATTING ERROR. NEVERTHELESS, THE PARAGRAPHS ARE PRESENTED IN THE INTENDED ORDER.

4.6 *Salaries And Benefits At Other Canadian Universities (Article 11.02(e)(iv))*

Article 11.02(e)(iv) directs the arbitrator to consider the salaries and benefits at other Canadian universities of similar academic quality and size.

- 4.4.05 At Paragraphs 15 and 82, the University argues that settlements concluded by the University with its **other** employee groups, as well as settlements in the post-secondary education sector and the public sector more broadly in BC, should govern the settlement with the Faculty Association.
- 4.4.06 The University suggests, at Paragraph 55, that other employee groups would not find giving faculty members more money “reasonable.” This statement is simply speculative, but also irrelevant. For the University to argue this effectively it would have to point to the Collective Agreement and show that this is a criterion to be considered. Our Collective Agreement has no such reference; it does not direct the arbitrator to consider either the salaries awarded, or the feelings of other employee groups, in making his determination.
- 4.4.05 Thus, the only comparator groups that can be considered by the arbitrator are those identified in the Collective Agreement. The University’s arguments Paragraphs 15, 55 and 82 are irrelevant to the application of Article 11.02(e)i-iv of the Collective Agreement.
- 4.4.06 Likewise, the University cannot rely on settlements offered or achieved by other universities in the province, as these are not part of the comparator group of institutions specified by the Collective Agreement. They are simply not of **comparable academic quality and size**. We have listed the universities that are of comparable academic quality and size in Table 7 (page 32) of our earlier submission. We argued there that the University of Toronto is UBC’s most natural comparator, both by the evaluation of Toronto’s President, David Naylor, and also by the significantly high standings that Toronto and UBC have achieved in the various international ratings, compared to other U15 institutions (ie., large, comprehensive research intensive universities).
- 4.4.07 At Paragraph 104 and at **Tab 22**, the University argues that faculty salaries are “at the upper end of the scale of Canadian Universities of comparable quality and size.” In the process it has made statistical arguments that are not only incorrect, but that it should reasonably know are incorrect.
- 4.4.08 First, UBC has added 1% to the salary data provided to Statistics Canada by UBC, and UBC alone. The effect of so doing is to raise UBC’s total rank of median salaries from 19th to 16th (Table 9, page 35 of the Association’s earlier submission). This alteration of Statistics Canada’s data is completely inappropriate. UBC is required to report, as per Statistics Canada’s Data Element Manual for Survey Respondents, the “annual gross salary (including vacation pay) the staff member is expected to receive during the salary year,” excluding only “stipends or other honoraria for administrative duties” and “extra payments such as those received for summer employment, extension work, or others.” The 1% annual bonus is neither a stipend for administrative duties nor extra payment

for extra work. It is a regular part of member's annual gross salary that, rather than being paid out over 24 pay periods, is paid in a lump sum on the last day of the academic year. UBC pays pension contributions on it, reports it as income on T4 forms, and includes it as part of the annual report to the BC government on employees earning more than \$75,000 per year. What the University is attempting to do at **Tab 22** is to double count this income to try to make its annual salaries numbers look higher than they are.

Source (StatsCan Manual):

http://www23.statcan.gc.ca/imdb/pIX.pl?Function=showDirectPDF&flng=eng&fl=http://www23.statcan.gc.ca/imdb-bmdi/instrument/3101_Q1_V2-eng.pdf&Item_Id=108398&a=1&LI=108398&lang=en&db=imdb&adm=8&dis=2, at page 21.

- 4.4.09 The University also cannot claim it alone reports false (or inadequate) data to Statistics Canada, and then assume that no other University makes this same mistake. Thus, for the University's calculations to be meaningful, it would have to provide corrected data for every university reported in the Statistics Canada data set. The Association submits that is entitled to rely on data provided by the employer to the government or to government agencies.
- 4.4.10 **Tab 22** of the University's Book of Evidence also contains a further example of questionable statistical information. In addition to wrongly adding 1% to actual UBC salaries, the University purports to break down average UBC salaries into average salaries at each of the two campuses. It did not similarly break down the University of Toronto's average salaries into those at each of its three campuses (Downtown Toronto (St. George)), Mississauga, and Scarborough.
- 4.4.11 The University thus demonstrates that if you isolate the salaries for **each** of UBC's campuses and compare these to the **entirety** of the University of Toronto, the gap between UBC's higher paid campus and the entirety of the University of Toronto is going to be smaller, and the gap between UBC's lower paid campus and the entirety of the University of Toronto is going to be greater than if one compared all of UBC combined with all of University of Toronto combined. This is true by definition. The only way such an analysis could possibly make sense would be to compare UBCO's salaries to the University of Toronto's satellite campuses, and UBCV's salaries to the University of Toronto's downtown campus.
- 4.4.12 At Paragraphs 5.06.8 through 5.06.10 of the Association's earlier submission (page 45), we explained why the Statistics Canada data likely deflates the size of the salary gap between the UBC and the University of Toronto. The clearest way to show this is to note that there are 1023 Full Professors in the Bargaining Unit, as determined from the February 2013 Facsnaps. Only 28 of those individuals are employed at the UBCO campus, or under 3 percent of the total. This is not a significant number of people to have any meaningful impact on the median salaries of Full Professors at UBC. Thus, the gap reported for Full Professors between UBC and the University of Toronto in Table 12 on page 37 of our earlier submission is the actual size of the gap.
- 4.4.13 As a statistical observation, in the final column of **Tab 22**, UBC produces the "Average of Averages" by simply summing the salaries across the three ranks and dividing that

- number by three. That would be the correct procedure if there were equal numbers of faculty in each rank at each university, but that is not the case. The correct calculation is a weighted average across ranks. As an example, if a university has 10 Assistant Professors earning an average of \$80,000, 10 Associate Professors earning an average of \$90,000 and 1 Professor earning \$100,000 the average salary of those 21 members is \$85,714. UBC's calculation would mistakenly calculate the average as \$90,000. What UBC has done is such an obvious mistake that it is surprising.
- 4.4.14 In summary, the calculations provided by the University at Paragraph 104 and at **Tab 22** are completely incorrect. The correct salary rankings are those produced by Statistics Canada and presented at Paragraphs 5.05.19 to 5.05.32 and Tables 8 through 14 of the Association's earlier submission (pages 34-40).
- 4.4.15 We also wish to call attention to UBC's reliance on mean (or average) salaries when presenting their argument related to Paragraph 104 and **Tab 22**. When comparing faculty salaries between universities, there are two main measures of the distributions that are commonly used: the median salary and the average salary.
- 4.4.16 The mean salary is the average. You simply add up the salaries of all the people, and divide by the number of people. The median salary is the salary that falls exactly in the middle of all of the people, once you rank order all of the salaries, from lowest to highest. Thus, half of the individuals will have salaries above the median, and half below.
- 4.4.17 The median is more useful when salaries are unequal, with some people paid considerably more or considerably less than others, which often happens at universities. Like other major research universities, UBC has some anomalously high salaries in each rank. The mean is not robust since it is sensitive to these extreme salary values, whereas the median is considered a robust statistic because it is not influenced by anomalously high (or low) salaries. Therefore, for universities, median to median comparisons are better than mean to mean comparisons.
- 4.4.18 **Table 6** presents a brief illustration of this. We present three scenarios. In Column 1, all Professors of the same rank earn the same salary. In Column 2, eight of the individuals within each rank earn the same, and two are outliers, earning considerably **more** than their colleagues. In Column 3, eight of the individuals within each rank earn the same, and two are outliers, earning considerably **less** than their colleagues. The means for the three columns vary from \$100,000 to \$114,000. By contrast, the median is \$90,000 for all three columns. This shows that when there are wide variations in salary distributions the median gives the clearest summary of the data, as it represents the midpoint of salaries.
- 4.4.19 As can be seen in Column 1, two-thirds of the faculty members have salaries much lower than the mean. In Column 2, 60 percent of the faculty members have salaries much lower than the mean. In Column 3, 60 percent of the faculty members have salaries lower than the mean, and two are right at the mean. In all three scenarios, the mean would suggest that over 60% of the faculty members are being paid individually considerably more than they are. The median, in each scenario, presents a clearer picture of actual salaries of individuals because it is not confounded by outliers who are paid considerably more or less than the average faculty member. For these reasons we

argue that the median is the appropriate statistic to use when comparing salaries across universities.

4.4.20 As **Table 6** illustrates, the median is the more stable statistic to consider when comparing salaries across universities. The distributions of salaries between comparable universities are rarely identical, and the median is less sensitive to any variations between these salary distributions.

Table 6. Scenarios Comparing Median and Mean Salary

Rank	Salary Column 1	Salary Column 2	Salary Column 3
Assistant Professor	80000	80000	50000
Assistant Professor	80000	80000	50000
Assistant Professor	80000	80000	50000
Assistant Professor	80000	80000	80000
Assistant Professor	80000	80000	80000
Assistant Professor	80000	80000	80000
Assistant Professor	80000	80000	80000
Assistant Professor	80000	80000	80000
Assistant Professor	80000	110000	80000
Assistant Professor	80000	110000	80000
Associate Professor	90000	90000	60000
Associate Professor	90000	90000	70000
Associate Professor	90000	90000	70000
Associate Professor	90000	90000	90000
Associate Professor	90000	90000	90000
Associate Professor	90000	90000	90000
Associate Professor	90000	90000	90000
Associate Professor	90000	90000	90000
Associate Professor	90000	120000	120000
Associate Professor	90000	120000	120000
Full Professor	150000	150000	100000
Full Professor	150000	150000	100000
Full Professor	150000	150000	150000
Full Professor	150000	150000	150000
Full Professor	150000	150000	150000
Full Professor	150000	150000	150000
Full Professor	150000	150000	150000
Full Professor	150000	150000	150000
Full Professor	150000	190000	150000
Full Professor	150000	210000	150000
Mean	106667	114000	100000
Median	90000	90000	90000

5. University's Monetary Proposal

5.1 *The Nature of Progress Through the Ranks*

- 5.1.01 At Paragraph 20, the University cites the 1997 Award as evidence that the value of PTR is bargained and that CPI is the main mechanism for salary increases. The University quotes Arbitrator Larson:

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. (The 1997 Award, Association's Book of Authorities, page 27, **Tab 4**)

- 5.1.02 Whatever Arbitrator Larson thought about the relationship between the parties in 1997, this is simply irrelevant to the relationship between the parties in 2013. For instance, in that same award, Arbitrator Larson said:

The Association is not a certified bargaining agent and, for that reason has no statutory entitlement to compel the University to negotiate about rates of pay, hours of work and other conditions of employment under the terms of the Labour Relations Code. (The 1997 Award, Association's Book of Authorities, page 2, **Tab 4**)

- 5.1.03 That statement is demonstrably false today, though it was true at the time. There is no evidence to show that the Association continues to hold the belief that the Career Advancement Plans is intended to be "the primary means of advancing the compensation levels of faculty under the collective agreement."

- 5.1.04 We think a more accurate way of explaining PTR is found in the oft-cited Burkett award **University of Toronto v University of Toronto Faculty Association**, [1982] (**Tab 10**, Association Book of Authorities). Arbitrator Burkett was asked to consider whether PTR should be considered as part of a general wage increase. His response was that it should not be:

The purpose of the PTR increase...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.**

(Burkett, 1982, at p. 21)
(emphasis added)

- 5.1.05 Arbitrator Burkett goes on to explain why the University of Toronto was wrong in making an argument that PTR was part of a general wage increase:

The defect in the University's position is illustrated by the example of the faculty member whose salary, including PTR, has kept pace with, but not exceeded, inflation during the period when he[sic] has been promoted from Assistant to Associate to Full Professor. The University does not dispute that the faculty member is entitled to monetary recognition for promotion. However, because his [sic] salary has remained constant in real terms throughout the period, it cannot be said that he [sic] has both maintained his salary level in real terms and received recognition for his promotions. It is open to the faculty member in this situation to claim one of two things; that he [sic] has not received real monetary recognition for his promotion or that the value of his [sic] base salary has fallen.

(Burkett, 1982, at p. 21)

- 5.1.06 At Paragraph 20, the University claims that the "Faculty Association's salary proposal seeks to lock into the Collective Agreement the value of this component [PTR] of salary increases for the future." Both the existence and value of PTR is effectively locked into the Collective Agreement already. These values have not changed since 1998 and the only discussion that has occurred in recent rounds of bargaining was whether to combine the Merit and PSA amounts to form a larger Merit pool.
- 5.1.07 The University makes a ludicrous argument on this point, in any event. Whether the dates are in the Agreement or not, any item in the Collective Agreement can be changed during a round of bargaining if the parties come to such an agreement. If that were not true, then neither party could propose changes to the Collective Agreement at any point.
- 5.1.08 In essence, the University misrepresents what **is** under dispute, which is whether the PTR should be paid out automatically, effective July 1 of each year, or withheld until the bargaining round has completed.
- 5.1.09 Ms. Castle's letter of March 12, 2013 is included at **Tab 1** of the Association's Book of Evidence. Her comments are telling as to how the University considers PTR:

In terms of your **proposal for interest on PTR**, that is a compensation issue most appropriately dealt with through the bargaining process. The University and the Faculty Association negotiate the compensation package within the applicable mandates and the criteria for its distribution. **While we understand your argument about delay and interest, it is fair to say that the timing of this round of bargaining is not typical of how negotiations have been conducted in the past.** For many rounds of negotiations since the mid-1990s, the parties have reached agreements much earlier.

(emphasis added)

- 5.1.10 If the existence of PTR itself was the subject of each round of bargaining, Ms. Castle would have indicated that in her letter, explaining that it cannot be paid out before bargaining ended, because the University could not know in advance how this would turn out in bargaining. Rather, she notes, the issue is about the **timing** of the payout and **whether interest should be paid** when PTR is withheld beyond July 1, and that it was this matter that should be "dealt with through the bargaining process."

5.2 Costing

5.2.01 Before addressing UBC's specific monetary proposal, we need to address claims made by the University regarding their including the costing of PTR and the 1% annual payout as part of the total salary increase.

5.2.02 At Paragraph 21, the University notes that the end of year payout represents a 1% increase. It does not. By the University's logic, if there were no general increases in the Collective Agreement for the next 10 years, and an individual did not receive any PTR increments, during that time, his or her salary would nevertheless have increased 10% over the ensuing period, at the rate of 1% a year. This is demonstrably false.

5.2.03 The 1% is simply deferred compensation. In the 2010-2012 round of Collective Bargaining, the parties agreed to Article 5, Lump-Sum Payments (*Salaries and Economic Benefits*, p. 45):

1. The Parties recognize each member of the bargaining unit has been paid an amount equal to 1% of salary as a development (fundraising) productivity lump sum payment. This lump sum payment will continue to be paid to each member of the bargaining unit effective July 1 of each year, beginning July 1, 2011.

5.2.04 This 1% lump sum payment was **not** costed against the 2010-2011 Agreement, as it was already being paid out in earlier years. The parties discussed whether to simply roll the money into base, but could not come to agreement on that. So it remained a lump sum payment that is part of overall compensation, not an annual 1% increase to compensation.

5.2.05 By including PTR as part of the increases faculty would achieve in the settlement at Paragraph 17, the University essentially argues that PTR is costed against the Agreement as if it were similar to a GWI with a different name. But, it clearly is not. In the 2010-2012 round of bargaining, the University indicated that its mandate from the Province was 0 and 0, which it achieved, as is obvious from the joint statement issued by the parties on November 22, 2010.

The Agreement is for a two year term (July 1, 2010 to June 30, 2012) and is **consistent with the Provincial Government's bargaining mandate** for public sector employees.

(emphasis added)

5.2.06 PTR continued to be part of the Collective Agreement and clearly was not costed, or by the University's accounting, it could not have fulfilled a 0-0 mandate. This argument is equally true for why the 1% lump sum payment is not to be costed. It was not done so in 2010.

5.2.07 In the current round of bargaining the University indicates that the Provincial Cooperative Gains Mandate is 2% and 2%. We note that it does not actually provide any written evidence that would establish the percent increase attached to the Cooperative Gains Mandate, but the University obliquely establishes it at 2% and 2% at Paragraph 15.

- 5.2.08 As can be seen in their Proposal 4 (**Tab 8**, University Book of Evidence), the structure of PTR remains intact. If this were meant to be viewed as a salary increase, then again we would argue that it would need to be costed against the agreement, and would put the University seriously over the Cooperative Gains Mandate. But it is not costed against the Collective Agreement. The University misleadingly presents PTR as just a simple economic increase in wages at Paragraph 21. As Arbitrator Burkett noted (see Paragraph 5.1.04 above), this is clearly incorrect.
- 5.2.09 Moreover, the evidence shows that not everyone receives a salary increase through PTR. First, not every member is eligible for PTR. Approximately 11% of the total salary bill is earned by members who are not eligible for PTR. Second, not every eligible member receives PTR, by design. In 2011 only 61% of the bargaining unit (2,145 of the approximately 3,500 members) received normal CPI, Merit, or PSA. By comparison all members of the bargaining unit receive general wage increases when they occur.
- 5.2.10 That 39% of our members receive no increases through PTR should be irrefutable evidence that the Association could not possibly take the view, portrayed by the University, using Arbitrator Larson's words from 1997, 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." It would mean that the Association willingly writes off 39% of its members with respect to salary increases.
- 5.2.11 The Association does agree that if there are changes made to PTR, for instance, the value of PTR changed from 2.5% of annual salaries to 3% of annual salaries, the additional .5% would be costed, as that represents an increase in the cost of the Collective Agreement.
- 5.2.12 Faculty members would be shocked to discover, if true, that the annual PTR increases they had been told at the time of hiring, were subject to elimination through bargaining each year.

5.3 *General Wage Increase*

- 5.3.01 The University claims that it was forced to present at arbitration an offer higher than it would have wished, blaming the Association for forcing them into this position.
- 5.3.02 At Paragraph 87, the University refers to a "without prejudice" offer it made at the bargaining table in December. The University whines about the Association not acting in good faith. We will remind the University that in the 2010-2012 round of bargaining, it misleadingly posted information about the Association's positions in bargaining. This led the University's chief negotiator, Mark Leffler, to remind the Association about the definition of "without prejudice" at the November 10, 2010 session when he specifically stated, "Some collective bargaining terms are terms of art. Without prejudice doesn't mean confidentiality."
- 5.3.03 We would also remind the University that shortly after the talks broke down in October 2012, with both parties in agreement that they would proceed to arbitration, the University quickly posted its own "without prejudice offer," as well as the Association's proposals at the time. The University thus set the precedent in October that it was okay to post without prejudice offers once bargaining broke down and the parties were off to

arbitration (see the University's Bargaining Bulletin Update #48 of October 25, at **Tab 22** of the Association's Book of Evidence).

- 5.3.04 In December, before bargaining resumed, representatives from both Parties met to discuss how the week would proceed. The Parties agreed that there would be no Association Bargaining Blogs or University Bargaining Bulletins during the week scheduled for bargaining. We honored that commitment **to the letter**. We had **no** agreement about what we would do in the event negotiations broke down and the Parties once again were proceeding to arbitration. Once bargaining was determined to be at an impasse, the Association posted a blog so that our members would know why we turned down the University's last offer. The Association has a statutory obligation to report to members on why bargaining broke off, and what the final settlement offer was. We will not make any further comments on this matter as the University is simply being disingenuous about the "December incident."
- 5.3.05 The University's proposal of a 1.95% and 1.9% general wage increase is derisory, following two years of zero increases. It shows no respect for the central role of Faculty Members, Librarians and Program Directors in achieving the University's academic purpose, as directed in Article 11 of the *Collective Agreement*.
- 5.3.06 The University readily acknowledges that UBC salaries have fallen behind other top research universities. At Paragraph 5.06.6 of our earlier submission (page 44) we point to a letter dated March 12, 2013 written by Lisa Castle, Vice President Human Resources, that said: "In terms of overall compensation at UBC and its relative position among other top Canadian research universities, **UBC has fallen somewhat behind.**" (Redacted Letter from Lisa Castle, dated March 12, 2013, **Tab 1**, Association's Book of Evidence, emphasis added)
- 5.3.07 UBC acknowledges that it's in better financial shape than other comparable universities. In slides prepared for this arbitration (University's Book of Evidence, **Tab 10**), the University summarizes its position as follows:
- "UBC currently healthy and in a stronger operating and financial position than 3 years ago but public funding and tuition cap threaten to erode its advantage" (page 9)
- 5.3.08 At the November 14, 2012 meeting of the Vancouver Senate "the President concluded the discussion by stating that whenever one discusses budgets at the public sector it is chastening; however, UBC is still operating from a position of strength that is enviable to most."
- 5.3.09 At the May 11, 2011 Vancouver Senate meeting, the Vancouver Sub-Committee of the Council of Senates Budget Committee reported that "While the University was not particularly wealthy, it was financially healthy and in a sustainable position, while continuing to enhance its academic performance. Few other universities had fared as well through the recent recession."
- 5.3.10 The minutes of the February 23, 2011 Vancouver Senate meeting record the President as saying that "The University remained in strong financial shape, with no cuts to faculties or other units anticipated in this budget."

- 5.3.11 UBC is in a far better financial situation than the University of Toronto, which faces \$1.2 **billion** shortfall in its staff pension plans (Long Range Budget Guidelines 2013-14 to 2017-18 at **Tab 32**). Despite this, it was still able to afford its most recent settlement (settled in 2012).
- 5.3.12 The 3-year settlement, backdated to July 1, 2011, uses a mix of percentage increase and flat-rate increase. Those with lower salaries will receive higher increases than those with higher salaries. To give a sense of this increase though, a faculty member earning \$100,000 on June 30, 2011 will find their salary rise to \$107,400 on July 1, 2013, an increase, with compounding of 7.4%. The actual annual increase is 2% (2011-12), 2.49% (2012-13) and 2.74% (2013-14) for someone earning \$100,000 at the University of Toronto. For someone earning \$125,000 the annual increase would be 1.8%, 2.19%, and 2.4%. This clearly illustrates how much further UBC's salaries will fall behind. The University of Toronto pays much higher salaries, and these increases simply put UBC further behind. The salary settlement is at page 7 of the UTFA Bargaining Report at **Tab 33**.
- 5.3.13 The University of Toronto settlement also included increases in vision care and a variety of other health care services, increases in Professional Development Funds (value=\$1850), and increases in sabbatical leave payments, among other things. Thus, the University of Toronto faculty were not forced to trade salary increases for improved benefits. The salary settlement is at page 7 of the UTFA Bargaining Report at **Tab 33**.
- 5.3.14 Given that UBC is much better off than the University of Toronto, it can certainly afford the Association's monetary proposals, including some of the same benefits that the University of Toronto faculty Association negotiated at the same time as getting salary increases.
- 5.3.15 Given the financial health of the University, UBC can also afford higher salary increases than those offered by UVic, SFU and other BC universities, all of which face a much more difficult financial situation than UBC.
- 5.3.16 In short, UBC salaries have not kept up with our primary comparators, and the offer the University makes would have us falling further behind. The University has the ability to pay for the Association's proposals.

5.4 **Retention**

- 5.4.01 The University proposes that \$600,000 over two years be placed in a retention fund that would be dispersed at the discretion of the employer, supposedly based on "market considerations."
- 5.4.02 While UBC certainly does face a retention problem, past experience has proven this type of solution to be a complete failure. In the view of the Association most retention money was allocated to individuals who were not at risk of leaving, while the existence of the fund did not prevent others from leaving. At best the fund is functioning as an anomaly or market consideration adjustment fund, at worst as a pool of funds that the University has available to reward individual employees who are friendly to management. There is no accountability for the use of this money and no peer review process to determine

who is awarded retention money. Members are told who receives merit and PSA each year. In the past the Association has been given a list of faculty who received retention, but this was not made available to members of the units in which retention money was distributed so that they would know which of their colleagues received preferential treatment via retention money.

- 5.4.03 The University already has a mechanism (Performance Salary Adjustments) specifically designed to deal with salary anomalies and market considerations. It does not need another fund for that purpose.
- 5.4.04 Even if the fund could be made to operate in a way that actually addressed retention, the Association would have a strong objection, in principle. Members who are not a “flight risk” would be disadvantaged vis-a-vis those who, because of their discipline or personal situation, were more mobile. This is simply inappropriate.
- 5.4.05 The Association believes the only fair and effective way to deal with retention issues is a general wage increase sufficient to bring wage levels at UBC more into line with those at comparable institutions. This would stop the retention issue in its tracks.

6. University’s Non-Monetary Proposals

In the following sections, all references to the "University's List of Proposals" or the "Attachments" refer to the University's list of outstanding issues and final position on the same, delivered April 4, 2013. These are found at **Tab 8** of the University’s Book of Evidence.

6.1 Proposal 7: Tenure and Promotion (Attachment 6)

- 6.1.01 UBC is proposing a number of changes to the criteria for appointment, tenure and promotion that, jointly and severally, constitute very significant and fundamental changes to the terms and conditions of employment. Current criteria and practices, which can be found in Articles 3 and 4 of *Conditions of Appointment for Faculty*, pages 70-76, have been in place for decades. The work of the many people who have been tenured and promoted over the past 20 years has helped propel UBC far up the rankings to become one of the top universities in the world. This demonstrates that the standards currently in place are sufficiently high and are working.
- 6.1.02 Moreover, the University has not produced any compelling reasons why it wants or needs changes in these criteria. If over time the various rankings of the University showed that the University fell from number 2 to number 10 among Canadian universities, that might suggest that the criteria need to be changed. But the University is solidly near the very top of the rankings for Canadian universities. The evidence at Paragraphs 5.05.1 through 5.05.16 of the Association’s earlier submission (pages 30-33) suggest the current criteria are sufficient.

Removal of Tenured Assistants

- 6.1.03 The University has identified the elimination of the rank of tenured Assistant Professor as their most pressing priority in this round of bargaining. (This can be inferred from Paragraph 198 and 203 of their submission.) This is not the first time that it has put this proposal on the table, and the Association has vigorously refused to allow this concession.

- 6.1.04 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.
- 6.1.05 While tenure without promotion is not necessarily common, it does occur. Some highly distinguished members of the professoriate were, at some point in their careers, tenured without being granted promotion at UBC, including the current Dean of the Sauder School of Business, one of Canada's premier Business Schools.
- 6.1.06 The University claims at Paragraph 218 that 19 people have not converted from tenured Assistant Professor to Associate Professor in the period since 2004/2005. Of those, 8 individuals would not have had an opportunity to convert yet, given that they were denied promotion in 2010 or later, and wouldn't be able to go up for promotion before 2012. All of the results for 2012 are not yet available.
- 6.1.07 Nevertheless, the University presents this as evidence that there are failures on campus, for whom taxpayers are now on the hook for, for millions of dollars. What the University does not acknowledge is that for some people, the promotion and tenure process is so brutal and humiliating, they simply elect not to go through the process again. That does not mean they are not working every bit as hard, and working just as effectively, as those who have been promoted. They simply do not want to be brutalized by the process a second time. In effect, the University does not demonstrate that these individuals are less productive, just that they have not subjected themselves to the politics of the promotion process for a second time.
- 6.1.08 Without clear and compelling evidence as to the harm tenured Assistants bring to the achievement of the educational mission of the University, the Association's view is that the arbitrator should not award the removal of tenured Assistants from the Collective Agreement.

Termination of Appointment Where Tenure Denied

- 6.1.09 At Paragraph 232, the University advises the arbitrator of the estoppel notice served to the Association to end the practice of allowing faculty members to maintain their appointment with the University pending the outcome of the appeal of their tenure denial. In response, the Faculty Association tabled a proposal on this matter (which can be found at **Tab 14** of the Association's Book of Evidence along with other supporting documentation) and presented our arguments on page 66 of our earlier submission.

Criteria for Appointment, Reappointment, Tenure and Promotion

- 6.1.10 At Paragraph 222, the University argues that the language changes "are not intended to 'raise the bar'" but rather to bring the Collective Agreement in line with "what is happening on the ground." The Faculty Association, outside of our concerns regarding the University's admissions of ignoring the current language of the Agreement, submits that the University's proposals in this section represent major substantive changes. If the University is not trying to raise the bar, then there is no need to change any of the existing language.

- 6.1.11 The University proposes to change the criteria for appointment as an Assistant Professor from “involved in scholarly activity” to “presents compelling evidence of scholarly activity” and to change the language from “it is sufficient to show potential to meet these criteria” to “In exceptional circumstances, it is sufficient to show potential to meet these criteria.” Such changes clearly reflect a “raising of the bar” for one that is already high.
- 6.1.12 These are fundamental changes. Currently the Assistant Professor rank is the entry-level rank in the professorial “silo” and, in many disciplines, members enter directly from graduate school and could not possibly show “compelling evidence” of scholarly activity. It is quite normal at UBC and other universities for Assistant Professors to be hired on the basis of potential to meet the criteria.
- 6.1.13 As the tenure and promotion rates indicate, there is no evidence that departments are hiring inadequate people at the Assistant Professor level, nor would it be in their interest to do so. There simply is no justification for the proposed change.
- 6.1.14 The University proposes to change the criteria for appointment at or promotion to Associate Professor by a) adding “demonstrated” as a modifier to the criterion of “ability to direct graduate students”; b) adding “meaningful and collegial participation” as a modifier to the criterion of “participation in the affairs of the Department and the University”; and c) eliminating entirely the following “it is expected that some persons who may be granted tenured appointments will not attain this rank. In exceptional circumstances, initial appointment at this rank may be based upon evidence of the candidate’s potential to meet these criteria, including the opinion of scholars or other qualified persons familiar with the candidate’s work and capability.” Again, the intent of the University is clearly to raise the bar.
- 6.1.15 Not only is the University proposing to get rid of the rank of tenured Assistant Professors, but the modifiers in a) and b) also make it more difficult for members to become Associate Professors, and it is not known how “meaningful and collegial” participation might be understood or even measured. This would have an enormous negative impact on our members. In addition, adding “demonstrated” as a modifier to “ability to direct graduate students” would make it impossible for faculty members in departments without graduate programs to be promoted to Associate Professor.
- 6.1.16 The University further proposes to add a new criterion for promotion to Full Professor, which is “to show high quality in graduate student supervision.” The Faculty Association supports the idea that there should be high quality graduate student supervision. The problem is that not **all** departments have graduate programs, and this addition would make it impossible for some members to attain the rank of Full Professor through no fault of their own. Further, adding this requirement puts pressure on departments to admit more and more Ph.D. students, even though the evidence shows that there are fewer full-time jobs available for them. For instance, in Canada, “universities conferred 4,800 doctorate degrees in 2007 but hired just 2,616 new full-time professors.” (*The Economist*, December 16, 2010)
- 6.1.17 The number of graduate students at UBCV has increased 37% between 2003 and 2012. At UBCO, the number has increased more than 600% between 2006 and 2012. Thus the University, by trying to require as a condition of promotion that everyone engage in

graduate student supervision, is engaging in a dangerous game of creating alumni who, at least in some disciplines, may be destined to be unemployed or underemployed.

6.1.18 The University has improperly marked the changes to **Article 3.08 – Professors (Conditions of Appointment for Faculty)**, and their submitted article should read:

b) These persons will have met appropriate standards of excellence and have wide recognition in the field of their interest. They must have shown high quality in teaching and graduate student supervision, have ~~and~~ sustained and productive scholarly activity, have attained distinction in their discipline, and have participated significantly in academic and professional affairs. Promotion to this rank is not automatic nor based on years of service ~~and it is expected that some persons will not attain this rank.~~ (Emphasis added to indicate the omission)

6.1.19 At no major research university does every single person in the professoriate advance to the level of Full Professor.

6.1.20 The language on appointment, reappointment, tenure and promotion proposed by the University constitutes massive and far-reaching changes to one of the most important components of our Collective Agreement and yet the University does not present any compelling evidence as to why these changes are necessary. On the contrary, in its own submission, the University admits that UBC is among the top ranked universities globally and asserts that Associate Professors are “of the highest caliber” and that they “are celebrated by the University.” Clearly, changes to this language are neither necessary nor justified.

6.2 *Proposal 6: Eligible Voting Members (Attachment 5)*

6.2.01 Currently, eligibility for membership on departmental appointment, reappointment, tenure and promotion committees are defined in terms of “equal rank” or “higher rank”. Specifically for appointments, it is equal or higher rank; for reappointments and promotions, higher rank; and for tenure cases, equal or higher rank. The language can be found on pages 78 and 82 of the Collective Agreement.

6.2.02 Prior to the current Collective Agreement, ordering of ranks was clearly defined, from highest to lowest, as Full Professor, Associate Professor, Assistant Professor, Senior Instructor, Instructor I, based on promotion language. That is, one could be promoted from Instructor I to Senior Instructor, from Senior Instructor to Assistant Professor, from Assistant to Associate and from Associate to Full.

6.2.03 In the last round of bargaining the ability to be promoted from Senior Instructor to Assistant Professor was altered when a new terminal rank was added to the teaching stream, so that Senior Instructors could be promoted to Professor of Teaching. This effectively created two “silos” which were neither above each other, nor equivalent with each other, and thus the language of “higher rank” or “equal rank” became meaningless as a way of making comparisons between the two silos.

6.2.04 In recognition of this the parties have agreed on a temporary solution, based on the current system, which can be found at **Tab 23** (Association’s Book of Evidence).

6.2.05 The University is proposing a permanent, complex and rather incoherent set of voting eligibility rules that amounts to the creation of equivalencies between ranks in the two separate silos in some cases, but not in others.

6.2.06 In the Collective Agreement, it is still possible for someone who fails to achieve tenure as an Assistant Professor to be tenured as a Senior Instructor, which suggests that a Senior Instructor is a lower rank than a tenured Assistant Professor, contrary to what the University has proposed. This has in fact happened on a number of occasions in the past few years. Tenured Assistant Professors should therefore not be barred from participating in appointments of Senior Instructors or reappointments of Instructors or Senior Instructors as is the case in the University's proposal. For the same reason, tenured Assistant Professors should not be removed from voting on tenure and promotion to Senior Instructors.

6.2.07 The UBC Senate has also made clear very recently that there is limited equivalence across the two silos. At the February 13, 2013 Vancouver Senate meeting, the following motion was passed:

That the Senate amend its policy on the Membership in the Faculty of Graduate Studies to allow faculty members with the rank of Professor of Teaching to supervise graduate students provided they meet the relevant criteria. (Found at **Tab 24** of the Association's Book of Evidence)

6.2.08 Assistant Professors are routinely allowed to supervise graduate students. Instructors and Senior Instructors are not. The specific language pertaining to this is as follows:

Members of the Faculty of Graduate Studies must be tenured or tenure track (including grant tenured or grant tenure track) faculty members holding the rank of Assistant Professor, Associate Professor, or Professor.

Source:

<http://senate.ubc.ca/vancouver/policies/membership-graduate-studies?ID=3>

6.2.09 This Senate motion clearly shows that Professors of Teaching have similar status as Assistant Professors, in that they would be the first rank in the Instructor stream to be allowed to supervise graduate students.

6.2.10 The Senate's amendment to the policy also helps to clarify why Professors of Teaching should not be voting on whether Associate Professors should be promoted to Full Professors. The use of an important qualifier is included in the motion: "**provided they meet the relevant criteria.**" There is no such language in the University's policy regarding members of the professoriate stream, which indicates that all in the professoriate stream would meet the relevant criteria. If not all Professors of Teaching meet the relevant criteria to supervise graduate students, then Professors of Teaching as a rank should not be voting on promotion to Full Professor.

6.2.11 Given the clear non-equivalence in the two streams, the Association strongly opposes making the University's ad hoc and inconsistent proposal a permanent feature of the Collective Agreement. We would propose renewing the current letter until such time as a solution acceptable to both parties can be found. As noted at Paragraph 6.2.04 above, the Association is proposing that we roll over our existing without prejudice agreement

(found at **Tab 23** of the Association's Book of Evidence) while we continue discussions on this matter.

Broader Representation on Departmental Standing Committees

- 6.2.12 At Paragraph 243, the University submits that "When building a department, 'fit' is an important consideration and it is often desirable for a department or faculty to be able to have more - or even all - faculty members, such as Instructors and Assistant Professors, participate in the departmental consultation process for initial appointments, regardless of rank." The Faculty Association agrees with this aspect of the University's proposal and is willing to look at some limited language to achieve this.
- 6.2.13 The Faculty Association, however, has very serious concerns about the expansion of rights the University is seeking in this proposal, because it would confer on non-University employees, and non-academics, decision-making powers to make recommendations on the future direction of departments, and, more importantly, granting rights to participation and **voting** in tenure and promotion processes. The Faculty Association vehemently opposes voting rights in departmental decision for **non-bargaining unit individuals**, and submits that it is such a significant change to the Collective Agreement that it should not be considered by the arbitrator.
- 6.2.14 In terms of new appointments, as the University noted at Paragraph 244, "many departments are expanding the nature of the individuals who participate in Departmental Standing Committees. For instance, certain departments have invited First Nations elders to participate where appropriate. At times even students at the graduate and undergraduate level are invited to provide their input during committee meetings." This confirms that departments currently can and do access appropriate individuals to provide necessary input about whom to hire. This is the equivalent of the departmental "search" committee. The Association believes that **voting rights, which are currently codified in the agreement, must remain with the faculty members of that department**. This is a fundamental feature of collegial governance. Allowing people who are not members of the bargaining unit to vote on who can join the bargaining unit, or be promoted within the bargaining unit, is simply inappropriate.

6.3 Proposal 4: CPI, Merit, and PSA (Attachment 3)

- 6.3.01 The University proposes to update the dates on which CPI, Merit, and PSA are paid to reflect the term of the new Collective Agreement (i.e., July 1, 2012 and July 1, 2013). The current language can be found at page 38 in the Collective Agreement
- 6.3.02 The Association's position is that the practice of changing the dates with each Collective Agreement has created a hardship to members, and an incentive for the University to delay settlement by withholding PTR payments until after the Collective Agreement has been settled. The Association has proposed to replace specific dates (i.e., July 1, 2013) with a general date - July 1 of each year. Achieving this proposal is very important to the Association as the University is financially enhanced under the current situation when bargaining does not conclude in a timely fashion, while our members are financially harmed. We explain this in Paragraphs 7.07-7.12 on pages 54-55 of our earlier submission.

- 6.3.03 A second change the University proposes is to add a clause that would change the dates that define the period on which Merit is assessed to “the past year (‘year’ to be determined by the Faculty)” as opposed to the current language that defines the period as April 1 to March 31. The Association strongly opposes this as it would create a patchwork of different dates for different members and may even have the effect of adversely impacting members who are cross-appointed to two different faculties.
- 6.3.04 There needs to be one clear cycle upon which all members of the bargaining unit are evaluated for merit and PSA. The fiscal year dates allow for the University to process the payments in time to meet the July 1 pay period. There is simply no compelling reason to change the dates.

6.4 Proposal 11: Salaries for Faculty Members Seconded to the Association (Attachment 10)

6.4.01 At the outset of collective bargaining, the University issued an estoppel notice regarding the June 13, 2011 and September 15, 2010 Memoranda of Agreement (“MOA”), which can be found at **Tab 25** of the Association's Book of Evidence. Following intense discussions at the bargaining table on the ability of the University to essentially rip up an agreement between the Parties, the estoppel notice was formally withdrawn on March 16. During those discussions, the University indicated that it would like to discuss the matter in collective bargaining but conceded that should the Parties not come to an agreement at the bargaining table, the existing MOAs would remain in effect, as the MOA states: “The obligations and rights in the agreement **may only be amended by written mutual agreement of the parties.**”

(emphasis added)

- 6.4.02 Should the arbitrator determine that this matter can be considered, we fundamentally object to the proposal put forward. The University’s proposed language would **significantly** increase the cost to the Association of course release for union officers, which is a pure concession demand and something it has not costed as a gain in its own revenue at the expense of the Association’s finances.
- 6.4.03 More troubling, however, is that their proposal would give the University a new right to deny course release to faculty members who have been duly elected by their colleagues to serve on the Executive Committee of the Faculty Association. While the view of the Association is that this latter provision constitutes interference in the administration of a trade union, we also submit that the University has failed to provide a compelling reason why it should be awarded this language. The example it provided for doing so was pure fiction.

6.5 Proposal 5: Maternity/Parental/Adoptive Leave (Attachment 4)

6.5.01 The University has improperly marked the changes to Article 1 – Leave During Pre-Tenure Period (Leaves Of Absence, page 58 of the Collective Agreement). The submitted article should read:

When a member of faculty on a pre-tenure appointment is granted and takes a maternity or parental leave of at least 10 weeks, the length of the pre-tenure appointment period shall will be extended by one year, unless there are extenuating

circumstances or the faculty member informs the Head in writing that she or he does not wish the pre-tenure period extended.

6.5.02 Currently when a member on a pre-tenure appointment is granted maternity or parental leave, the length of the pre-tenure appointment is extended by one year. The University proposes to eliminate this provision for faculty whose maternity/parental leave is less than 10 weeks.

6.5.03 This means that any pre-tenure members who become parents and who, for one reason or another, choose to take a leave of two months, would have two months less work time to meet the criteria for tenure than would pre-tenure members who do not become parents and do not take maternity/paternity leave. The Faculty Association believes this constitutes discrimination on the basis of family status.

6.5.04 The University is also being disingenuous by inserting the words “unless there are extenuating circumstances.” Either there is a problem with taking leaves less than 10 weeks in length or there is not. It is simply unfair of the University to propose Collective Agreement language such that it will allow some people to take leaves of fewer than 10 weeks while others cannot. The University’s proposal would effectively allow it to negotiate tenure clock extensions directly with our members.

6.6 Proposal 8: Review by the President (Attachment 7)

6.6.01 The current language of this Article appears at page 84 of the Collective Agreement. Currently, recommendations to the President concerning appointment, tenure, and promotion are reviewed first by a departmental standing committee, next by a decanal advisory committee, and finally by the Senior Appointments Committee. UBC has a particularly extensive review process. All universities have the first (departmental) review but many have only one of the two subsequent reviews. The University now proposes to add an **additional** review, by the Deputy Vice Chancellor at UBC Okanagan or the Provost at UBC Vancouver. The Faculty Association believes that this additional level of review is not only unnecessary, but it is uncollegial. Appointment, tenure and promotion are fundamentally peer review processes; every other level involves recommendations by colleagues.

6.6.02 The University, likewise, gives no indication as to exactly how the Deputy Vice Chancellor or Provost would enter into the process. Would they write a separate report and would this report be provided to the faculty member for comment in keeping with the other levels of review and recommendation? The University has failed to provide a reasonable rationale as to why this proposal is necessary, or to put it differently, how it would enhance the current review process, and as such the arbitrator should not award it.

6.7 Proposal 2: Preservation of Past Rights and Practices (Attachment 1)

6.7.01 The University proposes to suspend the operation of Article 17 (p. 19, *Framework Agreement*) which reads:

Subject to this Agreement or any amendments thereto or to any Collective Agreement the University agrees not to change rights of or practices relating to Faculty Members or members of the bargaining unit that traditionally have been the

subject of consultation and discussion without appropriate consultation and discussion at the Departmental, Faculty or University level.

- 6.7.02 At Paragraph 271, the University writes, “Its only potential effect is to inhibit communication between the parties.” The Faculty Association strongly disagrees with this statement. To the contrary, this article is an important guarantor of the strong tradition of collegial joint governance at UBC. Suspending this article would allow UBC to make unilateral decisions on matters outside the purview of the Collective Agreement without any consultation with faculty. The University is already engaging in this behaviour to an alarming degree. A recent example of this is not consulting widely about its Flexible Learning Initiative. In fact, of the matters brought to the attention of the Association by members, it is increasingly the lack of broad consultation with faculty that is of greatest concern to our membership.
- 6.7.03 The University argues that this Article inhibits discussion between the parties on new issues that may arise and that have not traditionally been the subject of consultation. It has provided no evidence for this and, in fact, there is a tradition between the parties that allow off-the-record discussions on matters to determine whether or not, on a case-by-case basis, Article 17 would apply.
- 6.7.04 Finally, it is purely and simply insulting that the University thinks that it should not have to consult regularly, routinely, and broadly on all matters that have any bearing on faculty. As Article 11.02 notes (p. 14), Faculty Members play a central role in helping to achieve the primacy of the University’s academic purpose.

6.8 *Proposal 10: Roster of Mediators/Facilitators (Attachment 9)*

- 6.8.01 The University proposes a “jointly sponsored initiative” for peer mediation and facilitation for interfaculty member disputes, funded jointly by the parties. There is nothing that prevents the University from training senior faculty members in mediation and conflict resolution and turning to these individuals to assist with informal problem solving when issues arise that might lend themselves to this type of intervention. The Association is opposed to having its members fund activities that are the **sole** responsibility of the University.

6.9 *Proposal 13: Housekeeping (Attachment 12)*

At Paragraph 275 the University notes that there remains one outstanding housekeeping matter that the parties did not reach agreement on. The University has proposed eliminating the language of “promotion to” in Article 3.06, Assistant Professor (p. 71). This issue is fundamentally related to the ongoing discussions regarding the relatively newly created Professor of Teaching rank and the “equivalencies” that might emerge as a result of these talks (as discussed in section 6.2 above). As such the Faculty Association does not agree that this is simply a housekeeping matter and does not agree to the removal of this language.

7. The University's Responses to Association Proposals

MONETARY PROPOSALS

7.1 Salary

The University essentially argues that it cannot pay anything beyond 2% and 2%. We have vigorously disputed that argument thoroughly throughout Section 3 of this document. The University does not want to pay more than 2% and 2%. That is a separate issue.

7.2 Sessional Pension Benefits and Sessional Scale

- 7.2.01 At Paragraph 114, the University states that the Association has proposed full pension and benefits coverage for all Sessionals. This is not true. The Association is proposing to extend only pension benefits for Sessionals who are not currently eligible. This proposal has nothing to do with any disagreement between the parties relating to the role of Sessionals at the University, but rather it is based on principles of equity between members of the bargaining unit. It is the view of the Association that employers should pay pension benefits as part of total compensation. The amount of work should not disqualify an individual from pension eligibility. Individuals should not be without pensions after working their entire life, especially when they are working at UBC.
- 7.2.02 At Paragraph 117, in response to the Association's proposal for a minimum Sessional salary scale, the University says: "This flat rate mirrors the manner in which tenure-track faculty teaching loads are calculated." This does not make any sense. Starting salaries for tenure-track faculty have nothing to do with their teaching loads. As well, the variation in teaching loads for the Professoriate is nowhere near as extreme as what the University claims it is for Sessionals at Paragraph 116.
- 7.2.03 At Paragraph 120 the University makes the argument that the Association's proposal is "fundamentally at odds" with Article 1.4 of *Conditions of Appointment for Sessional Faculty Members* (p. 124). This is a tautological argument. It's akin to saying the University can't ask to have Article 17 of the *Framework Agreement* suspended, because that would be at odds with the language of Article 17. Clearly the Association's single Sessional scale proposal would have the effect of modifying this Article. That's why we proposed it.
- 7.2.04 The Association's position on this matter is clearly stated in our earlier submission. The University greatly inflates the cost of this proposal (perhaps because it relied on a proposal presented much earlier in negotiations, rather than our final position before mediation.) The University costed the proposal that is currently at arbitration during the 2010 round of bargaining. We discuss this at Paragraph 6.11 (page 48) of our earlier submission. This proposal is a very important one to the Association.

7.3 Librarians

- 7.3.01 At Paragraph 123, the University has argued that there are significant costs associated with the Faculty Association's proposal to grant administrative leave to Heads in the Library. The Association has addressed this issue at Paragraphs 6.35-6.38 of our earlier submission (p.53).

- 7.3.02 The University argues that there is no need for administrative leaves for Head Librarians for, unlike Heads of Academic Departments, these appointments “can be renewed indefinitely” (Paragraph 125). However, there is no guarantee that this will in fact be the case. If a Head’s appointment is not renewed, the individual will need time to re-familiarize themselves with key areas of their work, such as liaising, teaching, collections and other core duties Librarians perform.
- 7.3.03 Given the transition to this new model of term appointments, it was the Faculty Association’s understanding that many librarians will perform the role of Head for one or two terms and then move on to pursue other opportunities within the Library. As the Library is a dynamic system with emergent roles for librarians, it is entirely feasible to predict that following a term as a Head, a librarian will transfer to a new position and import into that new role the skill sets they acquired or built upon as Head and take the time on administrative leave to prepare themselves for the transition.
- 7.3.04 The University also writes that, “during their appointments [as heads] they continue to perform work of the same nature as they performed before their appointments” (Paragraph 125). This does not truthfully characterize the work of most Heads. Heads of larger “branches” of the library take on greater supervisory responsibilities and perform more management oriented roles (financial, facilities, planning) and, thereby, do not participate in many aspects of their former routine duties. They are therefore disconnected from their area of expertise. Subject matter changes rapidly, particularly within three to five years. If Heads are to transition back to a general librarian role, even one they previously held, they will also need “time to re-integrate with their disciplines before they resume their regular duties” as the University notes is the reason that Heads of academic units are granted such leaves. This is why we are seeking parity across the bargaining unit in this proposal.

NON-MONETARY PROPOSALS

Below, we present the University’s responses to the Faculty Associations non-monetary proposals in the order of the University’s submission, starting at Paragraph 137.

7.4 Investigations

- 7.4.01 The University has argued that the Faculty Association’s proposal on Investigations is “unnecessary, unworkable, and there is no clear and compelling reason for an arbitral determination of this issues” (Paragraph 141). The Faculty Association contends that our proposal to establish representational rights is not only workable, but that these rights have been contemplated and incorporated into established University policies.
- 7.4.02 At Paragraph 143, the University acknowledges that Policy 95 “sets out comprehensive guidelines for investigative procedures at the University.” Section 2, Paragraph 6 of those guidelines reads as follows:

Notwithstanding Paragraph 5 above, at some point in the investigation the Person at Risk should be told clearly the nature of the concern and disclose the material reported to the Decision Maker. The purpose here is to enable the Person at Risk to understand that concern and be given an opportunity to explain to the Decision

Maker, including an opportunity to meet with the Decision Maker. **It is important to note that under various collective agreements the presence of a Faculty Association or Union representative may be required during any meeting with the Person at Risk.**

(emphasis added)

- 7.4.03 The University likewise cites Policies 3 and 85 and highlights the comprehensive nature of the investigatory procedures contained therein. The guidelines in both policies make explicit references to representational rights for unionized employee groups:

The respondent or any party involved in an investigation may have a representative or support person present at any time during the process outlined under these Procedures. **Members of unions and employee associations have all rights to representation that their collective agreements confer.** (Paragraph 1.2 of *Guidelines*, Policy 85).

(emphasis added)

Our Collective Agreement does not confer such rights, which means that the University's objection to the proposal amounts to it making sure that members have **no rights to representation** in investigatory matters. This is an untenable position.

- 7.4.04 At Paragraph 150, the University acknowledges that its goal is "generally to resolve disputes and concerns as efficiently and informally as the particular circumstances allow." The Faculty Association shares this goal with the University, which is why we have included a provision on "informal resolution" in our proposed language. There are several examples of where the inclusion of a Faculty Association representative in discussions has assisted the parties in arriving at an informal and efficient resolution, whereas we have also experienced the contrary, where the lack of representation has caused undue stress and hardship on our members and turned a simple matter into a much more complex one.

- 7.4.05 Finally, at Paragraph 154, the University states: "This new article would constitute the sort of significant breakthrough gain for the Faculty Association that is inappropriate to award via the conservative process of interest arbitration." Although the Faculty Association recognizes that the University is speaking to a previous proposal on investigations and not the one we submitted for arbitration, the Faculty Association submits that representation rights do not constitute a "breakthrough gain" but rather are a common feature of collective agreements of unionized employee groups. Moreover, many of the other unions at UBC have representational rights. The specific language provisions of these other employee groups can be found at **Tab 9** in the Association's Book of Evidence. This proposal is very important to the Association and should, as a matter of course, simply be part of the Collective Agreement. Having to bargain for it seems ludicrous.

7.5 Equity and Diversity

- 7.5.01 We respectfully disagree with the University's position on this proposal.

7.6 Workload

- 7.6.01 The University has argued that the Association's proposed workload language is "simply unworkable" (Paragraph 75). The Association's proposals are either substantially similar to, or identical to, those currently in place at the University of Toronto, the leading university in Canada, as well as at comparable universities, and the language has proved quite workable. This is true of the which has comprehensive workload language. Some of the Association's proposals, such as the proposal for a non-teaching term, are essentially industry standard as demonstrated in **Tab 11(D)**. The Association does not accept the University's position that language that exists, in one form or another, at many comparable universities are "simply unworkable". If this were truly the case, how does the University explain that the University of Toronto can maintain its number one ranking, under approximately the same workload language that we are trying to achieve?
- 7.6.02 The University argues that the determination of workload is a fundamental aspect of management rights and that an interest arbitrator should not interfere with those rights (Paragraph 179). The Association's position is that workload determination is a fundamental term and condition of employment and thus entirely within the purview of an interest arbitrator. The University of Toronto's workload language was in fact developed out of interest arbitration because the parties could not agree at the bargaining table on workload language. Thus, submitting workload language to interest arbitration already has precedence through the University of Toronto's actions. (Teplitsky Award (University of Toronto, October 2010), **Tab 11** of the Association's Book of Authorities, at p. 5) It is also, as stated in our earlier submission, a very important provision to faculty members and contained in numerous collective agreements.
- 7.6.03 The University argues that the language proposed by the Faculty Association is "more in keeping with an industrial model of workload management than a research intensive university" (Paragraph 183). The Association's proposals are in fact modelled precisely on those of other research universities, **particularly** the University of Toronto. The language proposed is also not dissimilar to language at Queen's University, the University of Western Ontario, and other universities that are highly intensive research institutions comparable to UBC.
- 7.6.04 At Paragraph 188 the University appears to confuse the responsibility for assigning workload with the development of workload policies (the unit's general approach to workload). The former is certainly the purview of the Head (Article 13.03 of the *Framework Agreement*). There is, however, no specified role for the Head to develop unit workload policies. The Head is a faculty member charged with intellectual and administrative leadership for the unit, accountable for the operation of the unit, **who represents the views of their Departments** (Article 1.1 (b) in *Conditions of Appointment for Faculty*, page 66) to the Deans and the University at large. The Head's role in workload is specifically delineated in the Agreement as "assigning workload in accordance with the principles governing the assignment of workload (Article 13.02), **the unit's general approach to workload**, and other factors relevant to the individual member." (13.03(d)). Nowhere does the Agreement give the Head, management, or departmental committees any specific role in developing departmental policies. The Association's proposal remedies this problem and also introduces, for the first time, a

role for the Dean in the development of workload policy. (See proposed Article 13.03e, **Tab 11** of the Associations Book of Evidence.)

- 7.6.05 At Paragraph 192 the University argues that it cannot agree that faculty will not be required to teach in the summer term because of the possibility of moving to a trimester system. The Association recognizes this and has not proposed that faculty cannot be required to teach in the summer term. It has proposed that faculty “not be required to teach in more than two four-month terms in any academic year, or the equivalent”. This proposal, which is standard in the industry, is, in fact, ideally suited to a trimester system.
- 7.6.06 At Paragraph 193 the University argues that prohibiting “significant discrepancies” between workloads at UBCV and UBCO is unworkable because UBCO is an “institution in transition (towards the research intensiveness of the Vancouver Campus)”. This statement is simply at odds with the fact that UBC has one Collective Agreement; one set of tenure and promotion criteria across both campuses; and one Senior Appointments Committee that hears all promotion and tenure cases. Certainly there are differences between the average characteristics of the two campuses, just as there are differences between the average characteristics of the three campuses at the University of Toronto. However, that does not alter the fact that, just as at the University of Toronto, faculty members at different campuses in the same disciplines and classifications should not have significantly different workloads. A review of the University of Toronto’s language on this matter in **Tab 11** (including Tabs 11a through 11d) of the Association’s Book of Evidence makes this clear.

7.7 Sessionals, Ph.D. Students and 12-Month Lecturers

- 7.7.01 Contrary to the University’s assertion at Paragraph 276 that the proposals made by the parties concerning Lecturers, Sessionals, and PhD students “are inextricably intertwined with each other and cannot be awarded or considered in isolation,” these are not overly complex or intertwined issues. The Faculty Association believes they can be adjudicated at interest arbitration.
- 7.7.02 There are two ranks of employees under dispute: Sessionals, appointed for terms of less than a year, most commonly four or eight months, in a highly flexible manner with limited reappointment rights, and Lecturers, also known as 12-month Lecturers, who, in practice, are used as continuing members of the bargaining unit and are eligible for PTR Increments (see Paragraph 7.70, page 65, of the Association’s earlier submission).

A) Lecturers

- 7.7.03 The Association asserts that at this arbitration, the Lecturer issue is a stand-alone issue, and not intertwined with the Sessionals and Ph.D. students. Lecturers are guaranteed teaching assignments at a higher priority than are Sessionals. As described at Paragraphs 7.62 and 7.63 of the Association’s earlier submission (page 64), the parties recently entered a consent agreement concerning the rights of reappointment of Sessionals. This award sets out a detailed process by which Sessionals receive work:

22. [...] Pursuant to the Sessional Agreement and this Agreement, the process by which courses are distributed to Sessional Faculty Members is:

First, the Department Head assigns courses to the teaching and professoriate streams **including 12-month lecturers.**

(emphasis added)

- 7.7.04 Sessional appointments come afterwards. In other words, Lecturers are an ongoing and vital element of their units, and should not under any circumstance be described merely as “fill-ins.” The respectful thing to do, then, would be to establish their right of reappointment. This is no different than what the University of Alberta does for its lecturers, as we noted at Paragraph 7.74, on page 66, of our earlier submission.
- 7.7.05 At Paragraphs 297 through 299, the University suggests that it is “untenable for both 12-month Lecturers and Sessionals to have reappointment rights” as both these ranks are “intended to ‘fill the gap’ in the teaching roster.” Inherent in this assertion is the supposition that providing work for Lecturers will limit the University’s ability to respond to sudden needs. As acknowledged by both the University and the Faculty Association, Lecturers are not currently used “to fill in gaps,” but rather reappointed “year after year.” Indeed, Lecturers are fundamentally tied to their Departments in important ways. Paragraphs 7.70 and 7.71 (page 65) of the Association’s earlier submission detail the ongoing nature of this rank and the long-term employment of most of its members. The graph at **Tab 27** of the Association’s Book of Evidence illustrates their length of service.
- 7.7.06 Thus, for Lecturers, the Association is simply asking for the codification of the existing practice of reappointing Lecturers on an ongoing basis subject to performance and where work is available. The University acknowledges this practice at Paragraph 294 where it asserts, “the majority of Lecturers are appointed to 12 month terms, year after year, on a long-term basis.” Thus the Association’s proposal to give Lecturers the same right of reappointment as Sessionals does not impinge on the University’s flexibility in teaching assignments.
- 7.7.01 At Paragraph 95, the University states that “The Association also proposes that the University be required to provide written reasons if a Lecturer is not reappointed.” It’s not clear if this Paragraph is meant as an objection or a statement of fact. The University cannot actually provide a coherent objection to providing written reasons, as even non-continuing Sessionals are notified “in writing, with a copy to the Faculty Association” if they are not going to be reappointed. (Article 10.02 in the Conditions Of Appointment For Sessional Faculty Members, page 133.)
- 7.7.02 Is the University suggesting that of the entire bargaining unit, only Lecturers, who are entitled to merit, PSA, and CPI, are not entitled to a written reason for not being reappointed? That does not make sense, and the University’s inability to explain why it would be a bad idea underscores that.

B) Sessional Course Entitlement/ Right of First Refusal

- 7.7.03 The Association has proposed language to provide part-time Sessionals the right of first refusal to additional teaching where it is available on a seniority basis. As with the current right of reappointment, this would be subject to the candidate meeting the necessary qualifications and performance standards.

7.7.04 The University contends that accepting this proposal “runs contrary to [its] expectations of excellence” and would deprive “the community of the richness available to it” by limiting its ability to appoint individuals who are not part of the bargaining unit, specifically adjuncts, visiting professors, and PhD students. The University also contends that Sessionals “fill-in” the gaps in teaching and the Association’s proposal would alter the use of this rank. None of these contentions is supported by the evidence and all ignore existing language agreed between the parties that addresses these concerns.

7.7.05 First, like the University, the Faculty Association is committed to maintaining teaching excellence at UBC. However, we believe that excellence is not achieved by hiring the widest range of individuals possible on a one-off basis, but rather by hiring appropriately qualified individuals and then ensuring that performance is maintained and improved through a structured review process. The University’s position disregards existing language within the Collective Agreement that provides the University significant mechanisms for ensuring the quality of teaching in appointment, reappointment, and review of the performance of Sessionals.

7.7.06 Second, setting aside the University’s unsupported contention that hiring outside the bargaining unit inherently adds diversity and richness to pedagogy, there is nothing within the Association’s proposal that limits the University’s ability to hire adjuncts, visiting professors, or other non-bargaining unit members to teach. As described at Paragraphs 7.62 and 7.63 of the Association’s earlier submission (page 64), the parties recently entered a consent agreement concerning the rights of reappointment of Sessionals. This award sets out a detailed process by which Sessionals receive work:

22. [...] Pursuant to the Sessional Agreement and this Agreement, the process by which courses are distributed to Sessional Faculty Members is:

- i. First, the Department Head assigns courses to the teaching and professoriate streams including 12-month lecturers.
- ii. Second, the Department Head assigns courses to CSs [Continuing Sessionals] to meet their individual course load entitlements.
- iii. Third, the Department allocates the remaining courses to either:
 - a) A pool of course designated by the Department for assignment to Sessional Faculty Members (the “Sessional Course Pool”, or
 - b) A pool of courses designated by the Department for assignment to Externals.

7.7.07 Article 17 of this consent agreement also emphasizes that “the University decides, at its sole discretion, what work will be allocated to the ‘Sessional Course Pool’ and the ‘External Pool.’” Therefore, providing a right of first refusal to non-continuing Sessionals will have absolutely no impact on the University’s ability to hire externals where it is appropriate to do so.

7.7.08 In response to the specific concerns raised at Paragraph 283 of the University’s submission, please see the letter from the Faculty Association to the University at **Tab 26** of the Association’s Book of Evidence, which allows the University to appoint

seconded public school teachers on a full time basis. There is no threat to this program or any other use of adjuncts via our proposal.

- 7.7.09 In its submission, the University asserts that Sessional appointments are used for “filling in the gaps” and indicates that these are temporary, fluctuating appointments. This is demonstrably false. As noted at Paragraph 7.60 of the Association’s earlier submission (page 64), Sessionals make enormous contributions to the University’s undergraduate teaching and in some units teach the majority of courses. For example, in the Department of English, Sessionals teach 139 sections (for a total of 4546 registrants) compared with 136 sections (5220 registrants) taught by tenure-track faculty and Lecturers, or a total of 47% of the registrants. In Arts Studies in Research and Writing, Sessionals teach 48 sections (1399 registrants) compared with 11 sections (316 registrants) taught by Lecturers and Instructors, or a total of 82% of the registrants. In Economics, Sessionals teach 53 sections (6394 registrants) compared with 68 sections (5112 registrants) taught by tenure-track faculty and Lecturers, or a total of 56% of the registrants. If Sessionals are teaching half or more of the undergraduate students in these large programs, there is no way in which this meets the University’s definition of “fill-in” appointments or “covering the gap.”
- 7.7.10 The great majority of these Sessionals are also reappointed. UBC currently employs 509 Sessionals who have non-continuing status; of these, 213 have worked at UBC for 5 years or more and 89 of these have worked at UBC for 10 years or more. For more detailed information on years of service for Sessionals and Lecturers please see the graphs at **Tab 27** of the Association’s Book of Evidence. This is further evidence that Sessionals are not used simply as “fill-in” appointments or for “filling in the gaps.”
- 7.7.11 Notwithstanding that existing practice contradicts the University’s suggestion that Sessionals are used to “fill in” gaps on a one-off basis, providing a right of first refusal would not alter the characteristic of this rank as non-permanent employees. The Association’s proposal simply provides existing employees the right to further work where it is available in the “Sessional Course Pool.” We are seeking basic seniority rights for members that the University hires year after year and exploits.

C) Doctoral Students as Teachers

- 7.7.12 The University proposes in a Memorandum of Agreement (“MOA”) (Attachment 8 of their Proposals, which can be found at **Tab 8** of the University’s Book of Evidence), that would allow the University to contract out bargaining unit work to doctoral students who would no longer be members of the bargaining unit.
- 7.7.13 The Association strongly opposes taking graduate students out of our bargaining unit, for obvious reasons. They will lose their rights to protections and assistance from the Association should an issue arise during the course of their employment. They would also not have any guarantee of a consistent minimum salary.
- 7.7.14 In their MOA, the University does not propose **any** limit to the number of credits post-candidacy doctoral students can teach. This is contradictory to the argument it makes at Paragraph 301 that the “University proposes to allow Doctoral Candidate students (or the equivalent) to hold an appointment to teach **a course or courses** for which a Board of Governors appointment is required.

7.7.15 The University notes at Paragraph 302, that Policy 75 allows post-candidacy Ph.D. students to teach 9 credits a year. Thus, their proposal, **as written**, would allow Ph.D. students to teach 9 credits a year, while not being members of the bargaining unit. This is more than a half-time load in most Faculties. By not explicitly limiting the amount of teaching that a Ph.D. student can do without being part of the bargaining unit in their proposal, the University is proposing, in reality, to create a vast pool of additional people who teach at the University, but are not subject to any Collective Agreement.

8. Arbitration Principles for Non-Monetary Proposals

8.1.01 At Paragraph 133 the University argues that “none of the non-monetary proposals are so pressing that they cannot be left for bargaining in January of 2014 when the appropriate trade-offs can be freely negotiated by the parties.”

8.1.02 The problem with the University’s argument is that because of the PSEC Mandate, the University is forced to bargain with both hands tied behind its back. At **Tab 28** we provide a copy of the 2012 PSEC Mandate.

Source: http://thetyee.ca/Documents/2012/11/06/SKMBT_60012110116500.pdf

8.1.03 As the arbitrator will note, not only does the mandate discuss monetary issues, but at Section 5 of the mandate (page 15), it addresses management rights:

Employers must not surrender existing “material” management rights in collective bargaining. Material management rights are those rights that if negotiated away would have a negative impact on the employer’s ability to deliver services effectively and efficiently.

...

Any questions regarding management rights and bargaining should be discussed with the Secretariat prior to bargaining.

8.1.04 At the bargaining table on March 9, 2012, with respect to our proposal on workload, Mark Leffler, the University’s chief negotiator stated: “Determination of workload is one of the most fundamental of management rights, [and we are] not prepared to have these rights fettered more than they currently are.”

8.1.05 Our proposals related to investigations, Sessionals and Lecturers would also be claimed by the University to be dealing with “management rights.”

8.1.06 The University claims its hands are tied by the PSEC mandate. If that is in fact true, it makes it impossible for it to fully engage in good faith and free collective bargaining. To the extent that the PSEC Mandate governed the University’s behaviour at the bargaining table, the replication model cannot be used to determine language issues, as the replication model tries to replicate what the parties might have negotiated themselves:

It is perhaps important to observe that the shift from the adjudicative model to the replication model does not mean that the process of decisionmaking has become undisciplined. What it does mean is that the role of the decisionmaker is no longer simply to identify the criteria — either contractual or jurisprudential — around which to pivot a detached and dispassionate award. Rather, **the**

essential function of the decisionmaker becomes the identification of the factors which likely would have influenced the negotiating behaviour of the particular Parties in the actual circumstances at hand. It is the dynamic mix of those factors which produces the end result.

Munroe Award, **Tab 1** (Association's Book of Authorities) at p. 4-5 (emphasis added)

- 8.1.07 It is difficult to know how to replicate what the parties might have negotiated under free collective bargaining, for as Mr. Munroe asked, in circumstances very similar to these, "what's to replicate?" (University's Book of Evidence, Tab 13, page 3).
- 8.1.08 Perhaps examining the adjudicative approach that the Collective Agreement requires for the monetary proposals might help the arbitrator consider some possibilities for fashioning an award. In that approach, looking at what our major comparators have done in free collective bargaining gives a very good idea of what could happen at UBC, if the University did not have its hands tied by the PSEC Mandate. We have seen, for instance, that the University of Toronto and the University of Toronto Faculty Association have negotiated workload language in recent years. We also reported on the benefit and other non-salary items that the University of Toronto Faculty Association recently was able to negotiate with the University of Toronto at Paragraph 5.3.13.
- 8.1.09 We invite the arbitrator to break the impasse that seems to arise from the University feeling that it is bound by the PSEC Mandate and consider some trading of language between the Parties.
- 8.1.10 The University repeats its position at Paragraph 197 that should the Arbitrator see fit to award any of the Faculty Association's proposals, then under the replication principle, "it would be necessary to also award one or more of the University's outstanding non-monetary proposals." The Association is not opposed to this principle, and below the Association proposes some of those "trade-offs" for the arbitrator to consider. We did not propose trade-offs in all cases, however, because in some cases what we have proposed is industry standard language and should be awarded on principle.

A) A Proposed Resolution to the Sessional vs. Ph.D. Issues

- 8.1.11 The Faculty Association is prepared to offer an exchange to the University: a limited opportunity for Ph.D. students to teach, which would meet the needs of the University, in exchange for Sessionals being able to accrue more work, for which they would be qualified and the right of first refusal.
- 8.1.12 The Association's proposal to be considered at arbitration on this matter is at **Tab 29**.
- 8.1.13 We have proposed a new article on Ph.D. students, rather than simply accepting the University's proposal for the reasons we spell out in Paragraphs 7.7.14 and 7.7.15. We would never agree to allow Ph.D. students unlimited access to teaching courses without being members of the bargaining unit.
- 8.1.14 We believe that we are proposing a fair trade to effectively resolve this issue. We understand that it is important to the University's educational mission to offer teaching

opportunities to its PhD students, but respecting that the Faculty Association has a duty of fair representation to its Sessional s, we submit that our proposal is fair: giving Ph.D. students a limited tenure in our bargaining unit is a concession to us.

- 8.1.15 Should the arbitrator determine that this issue needs more time to be adjudicated, the Association would be amenable to an extra day at arbitration for each side to present arguments, or to a facilitated joint committee that would have adjudication as the final step if the parties could not reach resolution by November 1, 2013.

B) A Proposed Resolution to the Workload and Tenured Assistant Issues

- 8.1.16 The Association is aware that we have simultaneously proposed "industry standard" workload language while opposing the University's "industry standard" proposal for eliminating tenured Assistant Professors. The Association understands the value to both Parties of Collective Agreement language that more closely mirrors that of our major comparators. That is why we are willing to propose a trade-off of our workload language for the University's proposal on the removal of tenured Assistant Professors, (See our proposal at **Tab 29** which includes language on both proposals – pages 1-3 on workload, and pages 4-5 on the removal of tenured Assistants). We believe that this is precisely the sort of trade-off the parties would have been able to come to on their own if the University had been willing and able to bargain to a settlement.

- 8.1.17 There are two small items that flow from this that would have to be part of the trade. First, the date of the implementation of the new rules for tenure would need to be July 1, 2016, in order not to change the rules for Assistant professors who are currently relatively close to the tenure decision. This has been included in our proposal at **Tab 29**.

- 8.1.18 The second item concerns the codification of the longstanding practice of extending a faculty member's appointment until the parties have reached a settlement where an appeal of a tenure denial is ongoing. With the removal of the tenured Assistant Professor, we can anticipate appeals when faculty members are denied tenure. The Association believes it is just and reasonable to appeal a denial of tenure. As such, language that allows an individual to remain appointed at UBC pending the outcome of the grievance (as was proposed in our submission and included at **Tab 14** of the Association's Book of Evidence), is part of this trade off. This same language has therefore also been included in the new proposal at **Tab 29** to make it easier to see the full tradeoff in this matter.

9. Conclusions

A) Monetary issues

- 9.01 The Association submits, based on the evidence provided by Ms. Joy, in both her Report and her Reply, that the University does have an ability to pay the costs of all of the Associations monetary proposals, under Article 11.2 of the *Framework Agreement*, which states "the University's need to preserve a **reasonable balance** between the salary of members of the bargaining unit and other expenditures."
- 9.02 The Association has further provided a clear analysis of the criteria set out in Article 11.2(e)i-iv, to show there is compelling evidence to award the monetary proposals put forward by the Association.

B) Non-monetary issues

- 9.03 In considering our non-monetary proposals, we ask that the arbitrator remember the words of Mr. Munroe, from the article the University entered into evidence, and which we referenced at Paragraph 2.12. As he notes, the parties are not able to engage in free collective bargaining because of interference by the Provincial Government. Because of this it would be difficult to use a purely replicative model in determining the award, even for language issues. The Collective Agreement can offer some guidance here in that it establishes the need to consider Canadian universities of comparable academic quality and size as an important determinant in making the award. The Faculty Association has, where appropriate, used these comparators to show how the language we've proposed is already in place at a number of the universities that are our major competitors.
- 9.04 The University has mischaracterized our non-monetary proposals as "significant breakthroughs." That is simply incorrect.. The Faculty Association's proposals are eminently reasonable, incremental, and backed up with strong evidentiary support. We believe the arbitrator can adjudicate all of these issues with the evidence at hand. Our non-monetary proposals either mirror language in the agreements of our major comparators, seek internal equity and parity for members of our bargaining unit, or support basic labour principles.

C) Comparability

- 9.05 We are seeking modest gains in our Workload proposal (Association's earlier submission, pages 59-63) to bring us closer to the language of the University of Toronto, Canada's top research-intensive university and our closest comparator. Many of our other comparator institutions also have workload language similar to what we seek (see **Tab 11** in the Association's Book of Evidence).
- 9.06 In our proposals on the Career Advancement Plan, the Association is proposing to eliminate the term-certain date when the increments are paid out and replace it with an annual date. This is standard at all of our comparator institutions for which data are available, and all universities in BC (Association's earlier submission, page 54; **Tab 8**, Association's Book of Evidence).

D) Internal Equity and Parity Proposals

- 9.07 In some of our workload proposals we are seeking equity among members of the bargaining unit. Thus we propose some basic workload protections for members who are cross-appointed to different departments/faculties and equity in workloads between members on our two campuses.
- 9.08 Our proposals on administrative leave for Heads in the Library (Association's earlier submission, page 52), extending pension benefits to all Sessionals (page 49), and granting reappointment rights for Lecturers (page 65) are all designed to seek equity and parity between members of the bargaining unit. It is unreasonable to have members of the same bargaining unit treated inequitably.
- 9.09 In our proposal on Merit, the Association is proposing the possibility of a .5 increment to the increments that already exist for merit (Association's earlier submission, page 55). This

proposal, which has no cost associated with it, will provide for a broader allocation of merit to faculty who have meritorious performance, and there is no cost to this proposal.

- 9.10 To reduce inequities among members of the bargaining unit due to salary compression, we have proposed capping Career Progress Increments (CPI) at \$1500 and redistributing the excess to all members of the bargaining unit who are eligible to receive CPI (Association's earlier submission, page 56). While cost neutral, this would allow members whose increments were paid out at much lower amounts to have some of their salary compression addressed.

E) Basic Labour Principles

- 9.11 We are also seeking some basic rights for members, language that is standard in many unionized workplaces. We seek Representational Rights for individuals who find themselves under investigation (Association's earlier submission, page 57).
- 9.12 For Sessionals, the Association is seeking the Right of First Refusal to allow this group of employees to compete for work for which they are qualified and to have priority over external candidates for Lecturer positions that become available (Association's earlier submission, page 63). We view these as basic workplace rights, allowing current employees to have access to work as it becomes available before hiring new employees.
- 9.13 Our proposal to codify the longstanding practice of allowing an individual to maintain his or her appointment at the University while grieving a tenure denial (Association's submission, page 66) causes no harm to the University (our evidence at **Tab 14** shows this is a rare event) and yet has a significant impact on the lives, professionally and personally, of the faculty members going through this process.

F) Other issues

- 9.14 The University has made no objections to our proposal that in the event that a member passes away while their dependent child is enrolled in UBC, the child will continue to be eligible up to the maximum tuition waiver credits (Association's earlier submission, page 51).
- 9.15 The University has made no objections to our proposal that existing tuition waivers may be transferred from members to their spouse or partner (Association's earlier submission, page 51).
- 9.16 The University has made no objections to our proposal to allow members of the Instructor stream to have the same access to sabbatical leave as members of the professoriate, rather than forcing Senior Instructors to wait longer than Assistant Professors do (page 67).
- 9.17 The University has not objected to our proposal to remove the possibility of secondment of bargaining unit members to the University's bargaining team (Association's earlier submission, page 67).

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

Dated at Vancouver, BC, May 24th 2013

Allan E. Black, Q.C.

Counsel for the University of British Columbia Faculty Association