IN THE MATTER OF AN ARBITRATION

BETWEEN:

University of British Columbia

(“University” or “UBC”)

AND:

Faculty Association of the University of British Columbia

(“Faculty Association” or “Association”)

(Interest Arbitration 2015)

____________________________

REPLY SUBMISSION OF THE UNIVERSITY OF BRITISH COLUMBIA

(October 7, 2015)

____________________________

COUNSEL FOR THE UNIVERSITY OF BRITISH COLUMBIA

Thomas A. Roper, Q.C.
Jennifer S. Russell

Roper Greyell LLP
800 Park Place
666 Burrard Street
Vancouver, BC
V6C 3P3

Tel: (604) 806-0922
Fax: (604) 806-0933
Table of Contents

1. Introduction  
   2. SUMMARY OF ISSUES ON WHICH AGREEMENT HAS NOT BEEN REACHED  
      2.03 Salary  
      2.03.4 Retention Fund  
      2.04 Benefits  
         2.04.1 Vision Care  
         2.04.2 Tuition Fee Waiver  
         2.04.3 Professional Development Reimbursement Fund  
         2.04.4 Extended Health for Post-71 Employees  
      2.05 Faculty Association’s Language Proposals  
         2.05.1 Elimination of Dates Pertaining to the Annual Payment of the Career Advancement Plan (CPI, Merit and PSA)  
         2.05.2 Definition of Full Time Sessional Lecturer  
         2.05.4 Reappointment Rights for Lecturers  
         2.05.5 Workload  
         2.05.6 Anonymous Comments  
         2.05.7 Dean’s Advisory Committee  
         2.05.8 Length of the Agreement  
      2.06 University’s Language Proposals  
         2.06.1 Elimination of Sessional Lecturer Classification, Creation of New Classifications  
         2.06.2 Removal of Tenured Assistant Professors  
         2.06.3 Probationary Period for Librarians  
         2.06.4 Term Administrative Appointments for Heads in the Library  
   3. Application of Article 11 of the Framework Agreement  
   4. The University’s “Ability to Pay” an Award for 2014-2016  
      4.04 Inclusion of Non-bargaining unit members  
      4.05 Inconsistent Measurements of New Hires and Terminations  
      4.06 Misrepresentation of Growth Rates  
      4.07 Inflated Projected Faculty Growth in FY 2016  
      4.09 Ms. Joy’s Report  
   5. Jurisprudence and the “Ability to Pay”  
   6. Criteria to be considered once ability to pay is established  
      6.02 The Need for the University to Maintain its Academic Quality by retaining and Attracting Faculty of the Highest Calibre  
      6.03 Changes in the Vancouver and Canadian Consumer Price Indices  
      6.04 Changes in B.C. and Canadian Average Salaries and Wages  
      6.05 Salaries and Benefits at other Canadian Universities of comparable academic quality and size  
   7. Detailed analysis of salary and benefit issues on which agreement has not been reached.  
      A) GWI (Proposal)  
      B) Increases to Salary Scales (Proposal 1)  
      C) Minimum Lecture Salary (Proposal 2)  
      D) Retention Fund (Proposal 1)  
      F) Improvements in Vision Care (Proposal 6)
G) Tuition Fee Waiver (Proposal 7)  
H) Professional Development Reimbursement Fund (Proposal 8)  
I) Extended Health For Post-71 Employees (Proposal 9)  

8. Detailed analysis of UBCFA Language Proposals on which agreement has not been reached  
   a. The University has demonstrated an ability to bargain effectively and resolved a number of issues;  
   b. There is no compelling need for the changes requested;  
   c. The issues raised are complex, and there is insufficient information before this arbitration board for it to be satisfied that the changes should be made; and  
   d. It would be appropriate to make trade-offs for the changes requested.  

A) Elimination of Dates Pertaining to the Annual Payment of the Career Advancement Plant (CPI, Merit and PSA) (Proposal 3)  
B) Definition of Full-Time Sessional Lecturer (Proposal 2)  
C) Right of First Refusal for Sessional Lecturers (Proposal 12)  
D) Right of Reappointment for Lecturers (Proposal 13)  
E) Workload Issues (Proposal 11)  
F) Anonymous Student Comments (Proposal 19)  
G) Dean's Advisory Committee (Proposal 18)  
H) Length of the Agreement (Proposal 26)  

9. Detailed Analysis of Proposal Advanced by the University on which agreement has not been Reached  
   a) Sessional Lecturers (UBC Proposal 5)  
   b) No Tenured Assistant Professors (UBC Proposal 6A)  
   c) Library (UBC Proposal 9)
This is the University’s Reply to the Submission of the Faculty Association dated August 31, 2015. We felt that the easiest and most helpful way in which we could respond would be to use the same headings and numbering of the Association’s submission, recite the passage of the submission to which we are responding and then provide our response.

Where we do not respond to the submission it is because we believe that University’s Submission dated August 31, 2015 addresses the point.

The italicized paragraphs are sections replicated from the Association’s submission; with our responses in square brackets “[ ]”.

Many of the Association’s arguments appear in both the “summary” and “detailed analysis” sections of its submission. In those instances, we have responded to those submissions only once.

1. INTRODUCTION

1.4 On July 28, 2015 the parties met to exchange final proposals on outstanding items on which agreement has not been reached and which have not been withdrawn.

The meeting that occurred on July 28, 2015 was for the parties to exchange the proposal they were taking to arbitration, from amongst their proposals that had been exchanged and discussed in collective bargaining. What in fact occurred was the Faculty Association provided some proposals that used language that the University had not seen before, and which had not been the subject of collective bargaining.

We refer the Board to paragraphs 96 to 101 of our August 31st submission.

Throughout its submission, the Association accuses the University of causing “significant mischief”, including, for example, at paragraphs 2.04.4, 2.06.2, 7.48, 8.104 and 9.11. It is unclear what the Association means by this phrase other than that the University was unwilling to accept the proposal in question.

The Association has also accused the University (and its administrators) of deliberate misconduct, of attempting to avoid its legal obligations, and of mistreating faculty members. The University has responded to some of these unfounded allegations in the body of its submission below. None of these allegations has any merit and the Association has failed to provide any evidence to support them. They are unnecessary, inflammatory and offensive. The University is disappointed that the Association has reverted to such rhetoric after what it believed was a productive and collegial round of bargaining.
2. SUMMARY OF ISSUES ON WHICH AGREEMENT HAS NOT BEEN REACHED

2.03 Salary

2.03.1

e) The Association submits that the Arbitration Board cannot evaluate the criteria of Article 11.02(e) with any accuracy past the end of a two-year term, and should not award more than a two-year term.

[9] If it was true that the criteria in Article 11.02 (e) of the agreement could not be evaluated beyond two years, the parties would have expressly limited the duration of any arbitrated agreement to two years.

[10] A two year agreement would mean that the parties would be again in collective bargaining next year. The University submits that it is not in the interests of either party to be in perpetual collective bargaining, and so a multi-year agreement is entirely appropriate.

d) The University has proposed no increase in the minimum salary scale for Librarians.

[11] The University has proposed an increase in the minimum salary scale for the bargaining unit, which includes Librarians. The minimum salary scale for Librarians will therefore be increased by the GWI proposal made by the University. The University has no idea as to why the Association would make this comment when it is patently untrue. This allegation was not raised in bargaining.

2.03.4 Retention Fund

c) The Association submits that the retention fund, in the years that it has existed, has primarily served the same purpose as the Merit and Performance Salary Adjustment ("PSA") funds, but without the collegial processes that those funds have as safeguards against administrative abuse. The Association strongly objects to the continuation of a provision that the parties have not agreed on since the expiration of the 2008-2010 Collective Agreement.

d) The Association would view the granting of retention funds to the University as a concession, as it would not have agreed to this (and did not agree to this) during the normal course of collective bargaining.

[12] The Retention Fund does not serve the same purpose as Merit and PSA. There are many faculty who are deserving of Merit and/or PSA for whom retention is not, at present, an
issue. They may be working in a particular area where the current demand for leading scholars is not the same as in other areas where the demand is high.

[13] The reason there was no retention fund in the 2010-2012 agreement is because the government mandate provided for no increases in salary. The University was precluded by the mandate from providing increases through the Retention Fund or otherwise.

[14] Labelling a granting of retention funds as a concession does nothing to advance the discussion, particularly when the Retention Fund is already a feature of the existing collective agreement.

2.04 Benefits

2.04.1 Vision Care

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

[15] The University proposed certain benefit increases as optional offsets to the proposed GWI and Retention Fund. The University advised the Association that it is not opposed to further increases in these benefit areas, so long as the cost was offset in the total cost that would be funded by the government mandate. Alternative proposals made by the University were simply examples as to what certain benefit increases would look like in terms of adjusting the GWI.

[16] By way of overview response to the Association’s submission on benefit enhancement, it is difficult to make comparisons with other comparable universities as there is no way of knowing what the trade-offs were in the total compensation package.

[17] In the Ipsos Survey referred to by the Association, only 23% of faculty disagreed or strongly disagreed with the statement “I believe that the benefits at UBC are as good as or better than the benefits offered by other similar institutions.”

2.04.2 Tuition Fee Waiver

c) As this is a matter that has no real cost to the University, and one that would make it easier to recruit and maintain faculty members, we believe the Arbitration Board should award this change to the Tuition Fee Waiver benefit.

---

11 The full survey is at Tab A.
[18] The Association’s tuition fee waiver for spouses has a real cost to the University. Given that they have already achieved graduate degrees, it is unlikely that many of the existing faculty will utilize this provision so it is more accurately described as a benefit for their children. If faculty members are able to transfer the benefit to their spouses (who may or may not have completed higher levels of education) this has the potential to lead to a more substantial use of the tuition waiver.

2.04.3 Professional Development Reimbursement Fund

b) *The University is proposing no raise in the annual limit of professional development reimbursement.*

[19] Again, the University has made a proposal to increase professional development reimbursement, as an option that would be offset in the University’s proposed GWI.

2.04.4 Extended Health for Post-71 Employees

c) *The current situation causes significant mischief which could be alleviated at very minor cost.*

[20] It is unclear to the University what the Association means by “significant mischief”. The University is not opposed to providing travel coverage to faculty over age 71 but again, any cost must be offset from the University’s GWI proposal. Extended Health Benefits for age 71 will have an additional cost, given actuarial determinations about utilization. Costing this proposal would require a negotiation with Sunlife (the University’s benefits provider) which has not yet been done.

[21] No employee group at UBC has dental, extended health and emergency travel coverage beyond age 71.

2.05 Faculty Association’s Language Proposals

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

a) *The Association proposes eliminating reference to specific years in the language on Career Progress Increments ("CPI"), Merit, and PSA increments to ensure that those increments are paid on time. (UBCFA Proposal #3) The University has not accepted this proposal.*

[22] The University is proposing the continuation of PTR in the renewal collective agreement, with dates to reflect payments of CPI on July 1st of each year.

[23] While PTR may be have been continued in successive agreements, it provides a significant salary increase for the bargaining unit at significant cost to the University.
Because salary increases for the bargaining unit must meet an ability to pay threshold test and then meet the criteria of Article 11.02 (e) it is important that PTR, (CPI, Merit and PSA) be renegotiated every year.

[24] As can be seen from the position taken by the Association in this case, that anything modified in the collective agreement is a "concession", it is important that the total compensation package be open for renegotiation for each renewal of the collective agreement. In the event the parties are unsuccessful in reaching agreement, it is important that an arbitration board see the University agreeing to PTR as a part of the total salary that a faculty member receives, in assessing whether the University has an ability to pay and, if so, in the application of the criteria for increases set out in Article 11.02 (e). The change in dates (not their removal) is part of the compensation agreed to by the University when it renegotiates a new Collective Agreement.

[25] Maintaining the dates in the collective agreement makes it clear that PTR is not a given and that it must be renegotiated as part of the overall compensation package to which faculty members are entitled.

2.05.2 Definition of Full Time Sessional Lecturer

a) The Association proposes defining a full-time Sessional Lecturer as one who teaches nine credits per term or an equivalent combination of credits and different types of academic activities. (UBCFA Proposal #2) The University has not accepted this proposal.

[26] As is described in detail in paragraphs 31 and 147 to 151, below, course credits are a student-based metric. They do not represent the degree of time and work that is required of an instructor and are not an appropriate measure of what constitutes equivalent teaching loads across different faculties. Given the various factors that go into what constitutes a full time teaching load, it is appropriate for this to be done on a faculty-by-faculty basis.

2.05.4 Reappointment Rights for Lecturers

b) The Association submits that the language of the Agreement makes clear that Lecturers are not truly intended to be treated as temporary employees. However, because they are continuing employees on a series of short contracts they are effectively "at-will" employees with no right to notice or severance.

[27] There is no language in the Collective Agreement that supports the assertion that "Lecturers are not truly intended to be treated as temporary employees". Nor has the Association provided any evidence in support of this statement or pointed to any particular language in the Collective Agreement.
Contrary to this submission, Article 7.03(b) of Part 4 of the Collective Agreement specifically provides for notice periods (or pay in lieu) for Lecturers on a scale depending on their years of consecutive service to the University.

2.05.5 Workload

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

b) The resulting non-teaching term is not only traditional at UBC but also almost universal in university practices and collective agreements.

c) The non-teaching term is the traditional period in which much of the faculty member's scholarly activity, educational leadership activities, course preparation, and professional development occur, all matters upon which members are evaluated for the purposes of salary increments, tenure, and promotion. Allowing UBC to change this traditional arrangement arbitrarily has created an environment in which individual members, or group of members, can be denied the same opportunity to perform the activities on which they are primarily evaluated.

There is no demonstrated need, or compelling reason, to include this provision in the Collective Agreement. Generally, it will be the case that faculty members will have a clear term without teaching responsibilities. However, that may not be the case in all areas of the University. Where faculty teach in all three terms, their overall teaching obligation remains the same, and they have the same opportunity as other faculty to meet their research and service obligations.

The fact that the Association says that this is "traditional" at the University suggests that, in general, there is no problem in this regard and therefore no need to codify this as an inflexible requirement in the Collective Agreement. To do so would impede the University from providing year round instruction in those departments where it is necessary.

d) The Association also proposes that Lecturers have a workload maximum that is defined as requiring no more than eight 3-credit courses or equivalent per academic year. (UBCFA Proposal #11) The University has not accepted this proposal.

As stated in our primary submission, the "credits" that make up a full time teaching load vary between faculties and departments because "credit" does not define a level of work or engagement by the faculty member but rather is a student-based metric. There is no demonstrated need, or compelling reason, to include this provision in the collective agreement.
e) There is currently no limit on the number of courses that a Lecturer, once hired, can be assigned. The implications are that faculty hired into this classification can have the amount of work they are expected to perform increase without any increase in compensation, something that cannot occur with Sessional Lecturers.

[32] There are no examples of which the University is aware where Lecturers have been asked to teach more courses than a full-time load, for no extra remuneration. There have certainly not been any formal grievances filed related to this issue.

[33] On the contrary, the Sauder School of Business initiated a policy putting a cap on the number of courses that could be taught because Lecturers were choosing to take on more than a full-time load given that they were being paid by the course. This cap was implemented out of concern for the well-being of Lecturers given the amount of work they were taking on and for the experience of the affected students. The Association raised concerns that this was an instance of the University forcing Lecturers to teach more courses without an increase in pay. When the Association did not accept the University's explanation of the policy, they were advised if they filed a grievance, it would be dealt with on an expedited basis. No grievance was filed.

[34] In addition, the University negotiates its contracts with Lecturers on an annual basis. That means that the salary a Lecturer will receive is linked to a specific number of teaching credits for that year. Those contracts are not changed mid-year such that Lecturers are asked to work more for the same salary.

2.05.6 Anonymous Comments

b) Currently there are no explicit restrictions on the use of anonymous comments.

[35] This assertion is incorrect. There is an explicit restriction on the use of anonymous comments in the Senate Policy on Student Evaluation of Teaching (Tab J, University's Primary Submission). That restriction states that malicious or otherwise inappropriate comments will be discarded. Further procedures are also in place to identify and remove abusive or inappropriate comments upon request. Moreover, there are explicit requirements established by Senate about how anonymous comments are to be used.

c) The Association believes anonymous comments and material that has not been obtained following required or other recognized procedures have absolutely no probative value and should not be considered when addressing personnel decisions.

[36] The University has been using anonymous student comments since approximately 1976. They are now collected by way of a process prescribed by the University Senate. This is clearly material that is obtained following "required" or "recognized" procedures.
The Association’s Proposal 18 was limited to prohibiting the use of anonymous comments in the tenure and promotion process. In this paragraph, the Association also appears to be requesting that the Arbitration Board also order that “other” material that has not been obtained through “required or other recognized procedures” be excluded from all “personnel decisions”. If so, the University objects to this request as it was not raised in bargaining or included in the Proposals that the Association referred to the Arbitration Board.

A proposal that anonymous comments be excluded from any personnel decision is also illogical. For instance, it makes no sense that information provided to the University through student comments could not be the basis for an investigation leading to potential disciplinary action. If the comments were unwarranted or unreliable, that would be determined during the University’s investigation, and/or determined through the grievance process if there was a dispute.

2.05.7 Dean’s Advisory Committee

a) The Association proposes introducing a standard process for electing members to the Dean’s Advisory Committee. (UBCFA Proposal #18) The University has not accepted this proposal.

b) Currently the Collective Agreement has a provision to elect members to that Committee (Part 4, Article 5.10(c), p.77) but no mechanism for conducting the elections.

c) This anomaly creates an environment in which the intention and wording of the Collective Agreement can be frustrated by the Dean.

The collective agreement currently provides for a Dean’s Advisory Committee with 50% of the members appointed and 50% elected. The implication of the Association’s request that voting be regulated or subject to a procedure, is that elections may be “rigged” or frustrated by the University’s Deans.

The Association’s submission is insulting, and no evidence has been advanced to support it.

The University is not opposed to the inclusion of mechanisms for the election of committee members but it is unable to agree to it within the context of a proposal that includes a prohibition on the use of anonymous student comments. The University is willing to include such mechanisms because they are already in place in many units and it would ensure consistency across the University. The University’s willingness to agree to such a proposal is in no way motivated by any concern about impropriety on the part of its Deans.
2.05.8 Length of the Agreement

b) The Association submits that the Arbitration Board cannot even begin to evaluate the criteria of Article 11.02 (e) with any accuracy past the end of a two-year term. The University cannot accurately project expenditures and bargaining unit salaries even one year into the future, let alone four years into the future.

[42] We repeat our earlier observation that if there was merit to this assertion, the parties would have agreed in the Collective Agreement to limit the term of collective agreements to a maximum of two years.

[43] The Association's unnecessary comment about the University's expenditure forecasting is answered by the University's response to the Joy Report, dated September 18, 2015.

2.06 University's Language Proposals

2.06.1 Elimination of Sessional Lecturer Classification, Creation of New Classifications

a) The University has proposed massive changes to the Collective Agreement provisions concerning contract academic staff: (UBC Proposal #5) The Association has not accepted this proposal.

[44] As we develop more fully below, the University is indeed putting forward a substantive proposal concerning contract academic staff. The issues raised by the Association cannot be effectively resolved by implementing interim measures that grant further rights to the Association's members while the parties supposedly work towards a new model that will deal with the real issues in future rounds of bargaining. Those interim measures would simply entrench the current problems and likely make such a global resolution impossible. The University's proposal is comprehensive and addresses the interests of the Association, Lecturers and Sessional Lecturers (many of whom will be converted to Lecturers) and the University.

b) The proposed changes would eliminate a classification in which as many as 1,000 employees a year are employed, and create two new classifications.

[45] The assertion that the University is proposing the elimination of a classification in which as many as 1000 employees a year are employed is misleading. The University is proposing to rename the classification of Sessional Lecturers as "Contingent Faculty" and effectively use them as true contract teachers, as intended. While the classification is changing, the people within that classification are certainly not all losing their jobs. A large percentage of the University's current Sessionals would be converted into Lecturers with better jobs and greater job security who would play a more integrated role in the University's teaching mission.
[46] Although there would certainly be some job loss associated with the University’s proposed model, the Association’s proposals would also result in job loss as Sessionals with greater seniority accrue greater course entitlements and eliminate opportunities for their less senior – although perhaps better qualified - colleagues.

c) The University has not only asked for a major breakthrough that represents an enormous concession demand...

[47] The University does not see its proposal as a “concession” for the Association, let alone an “enormous concession demand” as suggested in subparagraph (c). Rather, it has provided a balanced model that resolves issues that are of mutual concern.

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

[48] The Association has proposed to grant further job security to both Sessionals and Lecturers by implementing a seniority system for work allocation. If such a system was awarded, the parties would be unable to resolve the “remaining issues” in bargaining. There is no leaving these issues for resolution at a later date if the Association’s proposals are granted. It would simply result in the further entrenchment of what both parties agree is an untenable situation.

2.06.2 Removal of Tenured Assistant Professors

a) The University has proposed changes to CA, Part 1, Article 2.03 (p. 63) that would eliminate the ability of University to grant tenure at the rank of Assistant Professor (UBC Proposal #6a). The Association has not accepted this proposal.

b) The University is asking for an enormous concession, one that would fundamentally change the meaning of the tenure criterion, a criterion that has been in place at UBC for decades.

c) The University has not presented clear and compelling evidence as to the harm tenured Assistant Professors bring to the achievement of the educational mission of the University. On the other hand it is clear what mischief will result from the removal of this option. Being denied tenure is tantamount to being terminated.

[49] The University disagrees that this proposal represents an “enormous concession” on the part of the Association. As stated in paragraph 223 of the University’s primary submission, this proposal would not affect a large number of members of the bargaining unit. Since 2004/05, there have only been 27 Assistant Professors granted tenure without promotion to Associate Professor.
The University is not seeking to change the meaning of the tenure criterion. The University is seeking to uphold the standards of excellence required to grant an individual a lifetime appointment. Such appointments should not, in the University’s submission, be granted to those individuals who have been unable to achieve the standards required for promotion to Associate Professor. To be promoted to Associate Professor, an individual must demonstrate “evidence of successful teaching and of scholarly activity beyond that expected of an Assistant Professor” including “sustained and productive scholarly activity”. Lifetime appointments should not be granted to individuals who have not demonstrated this level of performance.

Again, the reference to “mischief” is baffling. A denial of tenure today, and in the future, is accompanied by a terminal year, and then termination of appointment. That is what denial of tenure has always meant, and what it will mean in the future.

2.06.3 Probationary Period for Librarians

a) The University has proposed to lengthen the probationary period for Librarians from three years to five years. (UBC Proposal #9) The Association has not accepted this proposal.

b) This is the first time the University has made this proposal in bargaining. The Association is unaware of any problems or issues arising from the current probationary period and the University has not presented any. The current probationary period is typical, or even long, by industry standards.

c) Increasing the length of a probationary period for any employee by any length of time, let alone by two years, is an enormous concession and therefore the Association strongly submits that the Arbitration Board not award this proposal.

With respect, although the Collective Agreement refers to a “probationary period” for Librarians; it is effectively a pre-tenure period. It is not a “probationary period” in the traditional sense, but is instead the evaluation period for granting tenure, which is essentially a lifetime appointment.

The University’s proposal will bring the pre-tenure period more in line with regular faculty and rectify the issues discussed in its initial submission: it will provide a sufficient period of time to properly evaluate librarians before granting lifetime appointments, and also grant those librarians under evaluation sufficient time to address problems and meet the required performance standards.

2.06.4 Term Administrative Appointments for Heads in the Library

a) The University also proposes a Letter of Understanding ("LOU") concerning term administrative appointments for New Heads in the Library.
b) The Association submits that an LOU on such a complex matter, that expires at the end of a Collective Agreement (which the Association believes should be June 30, 2016) should not be awarded by an Arbitration Board.

[54] The complexity of the matter is precisely why the University has proposed that the LOU should be continued.

[55] The parties share a desire to resolve this issue. Given that they were unable to do so, the parties agreed to the LOU in the last round of bargaining, hoping that it would only be a temporary bridge until they were able to conclude a final resolution in this round of bargaining. Unfortunately, no such resolution was reached.

[56] In the University’s view, given that a final resolution has not yet been reached, it makes sense to maintain the interim solution that the parties negotiated. The Association recognized the benefit of the LOU in the previous round of bargaining and there is no evidence that it has caused any problems. No complaints were raised and the University submits that this bridge should be maintained until the parties get to their final solution.

3. APPLICATION OF ARTICLE 11 OF THE FRAMEWORK AGREEMENT

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

[57] It is important to remind the Board that the collective agreement does not refer to the GPOF but rather to the University’s “general purpose operating funds”. There has not been a GPOF since FY13. It is also important to stress that the collective agreement provides for a salary award that “preserves” [not “increases”] a reasonable balance between the salary of bargaining unit members and other expenditures.

3.14 The Association submits that the rationale underlying the preservation of a reasonable balance is to ensure that, over time, salaries of faculty will not lose ground as a result of the University's spending priorities. As the Boards in the 1994 (Kelleher, Tab 3, Book of Authorities), 1997 (Larson, Tab 4, Book of Authorities), and 2013 (Taylor, supra, Tab 1, Book of Authorities) Awards recognized, it is the historical examination of faculty salaries as a percentage of the Operating Fund expenditures that permits an ongoing judgment as to whether the equilibrium between faculty salaries and other expenditures has been preserved.

[58] We agree that it is the “historical examination” of the ratio that is required. When the Board reviews the ratios it will observe an upward trend or, as we have said in our Reply
to the Joy Report, there has been “ratio creep”. Looking at the ratios historically, the conclusion is that the University’s proposal preserves a reasonable balance. The Association’s proposal would continue the ratio creep and is beyond the University’s ability to pay.

[59] While the Faculty Association here points to an “historical examination”, at paragraph 3.16 it points to “the highest ratio in the range” and in paragraph 4.02 it’s reference point is “the recent historic high of 26.1%”. With respect, the historical examination is not a search for the highest ratio, but rather to see where the reasonable balance lies and whether the salary increase being awarded “preserves” that balance as opposed to inching the ratio ever higher.

3.16 In the three most recent Arbitration Awards between the Parties pursuant to Article 12 (since renumbered as Article 11) of the Framework Agreement (p. 13) ("the 1994 Kelleher Award," "the 1997 Larson Award," and "the 2013 Taylor Award"), the Arbitration Board agreed with the proposition that where the historical balance between bargaining unit salaries and other expenditures is preserved by an award, the University is deemed to have the ability to pay, and that the historical balance was never intended to reflect ratios to the 2nd and 3rd level decimal point. Using the University's reasoning, if there is an "existing ratio" of (say) 25.6%, does that mean that a return to a previous ratio of (say) 26% would exceed the reasonable balance? The Association argues that it would not. Similarly, given the nature of the ratios, and the absurdity of carrying them out to multiple decimal place, if the highest ratio in the range is 26%, it might not be unreasonable to have a future ratio of 26.4%. The emphasis in the Collective Agreement is on "reasonable balance," not the last decimal point.

3.17 The University in its July 13, 2015 submission on "Ability to Pay" paragraph 38 argues, contrary to its argument in paragraph 17 (noted above), that an "appropriate point of comparison" is the average of the ratios for the period 2010- 2014. The Association notes that there is no support for this novel suggestion in either the Collective Agreement, nor in previous Arbitration Awards.

3.18 The Association submits that the "reasonable balance" is not mechanically delimited by the historic range of ratios, but rather that the Arbitration Board must insure that an Award does not unreasonably disrupt the balance as evidenced by the historic range of ratios. The Agreement was not meant to restrict the Board to any specific formula regarding previous ratios.

[60] As noted above, the Association explicitly seeks to enshrine ratio creep with its submission in paragraph 3.16.
It has been the conclusion of past arbitration decisions between these parties, reviewed in the Previous Award, and the conclusion of that Award itself, that “balance” is in fact the “ratio” and it is the ratio that determines ability to pay. The Previous Award adopts the decisions of the Getz Board, the Kelleher Board, and the Larson Board that maintaining the “ratio” in balance delimits the University’s ability to pay, save for compelling reasons to divert from that conclusion. The University had previously argued against a mechanical application of the ratio, but the Association’s arguments prevailed such that ability to pay is indeed a formulaic examination of the ratio that determines ability to pay:

In its introductory submissions, the University observes that the “ability to pay” inquiry in the broad sense has not been a happy experience for public sector employers, and it submits, correctly, that the “reasonable balance” test insulates it from those effects by limiting the inquiry. However, the point here is that those limits similarly benefit the Association. This point was made in the seminal April 1989 decision of the Getz arbitration board, inter alia in its remarks as to what is sauce for whom. The limits of Article 11.02(e) benefit both parties. If an award would preserve a “reasonable balance” between faculty salary and other expenditures in the University’s general purpose operating funds, then absent compelling reasons why that would result in an unsound or unjust assessment of the University’s actual ability to pay, that is determinative. Like the prior arbitration boards, I have found no sufficient cause for departure in this case. (Previous Award, paragraph 52)

The reference to the Mount Allison University case is unhelpful, because the language of Article 11.02 (e) has been expressly interpreted by prior arbitration boards as being a formula-driven exercise in determining ability to pay.

4. THE UNIVERSITY’S “ABILITY TO PAY” AN AWARD FOR 2014-2016

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

Again, the collective agreement does not refer to the GPOF, but rather to the University’s general purpose operating funds.

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

[64] We noted previously the problem with ratio creep, which will continue with the approach the Association advocates, of looking to the highest previous ratio to establish a new plateau of “reasonable balance”.

4.04 Inclusion of Non-bargaining unit members

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

4.04.2 Prior to the 2010-2012 round of bargaining a member who took on administrative duties assisting the Dean was generally called an "Associate Dean." That was not a classification. In the 2010-2012 bargaining round the Association was concerned that the duties of Associate Deans had evolved beyond normal service duties and become a position that should be recognized in the Collective Agreement. The Association proposed a new Article in Part 4 that would provide the terms and conditions of members with "Associate Dean" administrative responsibilities (UBCFA Proposal #7 in 2010). The University counter-proposed that the work that these members perform should be taken out of the bargaining unit and given to a new excluded position called "Associate Dean." The Association accepted this proposal and agreed to add "Associate Dean" to the list of excluded positions in Appendix A (pg. 27).

4.04.3 The University is now claiming, in its Ability to Pay submission, that salaries of UBC non-bargaining unit members, Associate Deans, who are in excluded positions clearly listed in Appendix A, should be included in the "salary of members of the bargaining unit." This is incorrect by the plain meaning of the language of the Collective Agreement and an obvious attempt to misrepresent the ratio of salaries of bargaining unit members to expenditures.

4.04.4 The salaries of Associate Deans are not determined by the Collective Agreement. They are covered by UBC Policy 31 on Executive compensation. They are not entitled under the Collective Agreement to the GWI that the Board awards and do not receive the same increase as members of the Association.

[65] The University disagrees that a specific classification of Associate Dean was negotiated; however, whether or not the Associate Deans have been a specific classification in the bargaining unit is not relevant and therefore not helpful to a determination of the issues in
dispute in this case. We do agree that Associate Deans were always in the bargaining unit and were paid a stipend in addition to their bargaining unit salary. What in fact happened in bargaining was that it was recognized by both parties that Associate Deans were involved in some “management” decisions and it was appropriate therefore to remove them from the bargaining unit to avoid any perceived conflict of interest which the parties agreed to. The Association makes it sound like a new position was created outside the bargaining unit which was not the case. Associate Deans’ bargaining unit salaries (ie their salary as faculty members) continue to be paid and they continue to receive an additional stipend.

[66] Associate Deans’ salaries have always been in the numerator and, indeed, were in the numerator for FY13 and FY14 for the ratios confirmed in the Previous Award, even though Associate Deans were listed on Appendix A to the Framework Agreement. There was no argument by the Association for their removal in that proceeding. Second, their salaries must be included going forward (or removed from prior years) otherwise a ratio comparison would be rendered meaningless. Third, Associate Deans will receive any GWI awarded to the bargaining unit. Associate Deans receive a regular academic salary plus a stipend for their excluded duties. Finally, Appendix A contains this note:

Any academic administrator who re-enters the bargaining unit will not lose any previously accrued rights and privileges. The member’s employment in the bargaining unit is deemed to be continuous.

[67] It is therefore appropriate to continue Associate Deans’ salaries in the numerator. If the Board was to rule that Associate Deans’ salaries should be out of the numerator, then their salaries must be removed from previous years’ numerators as well, for comparison purposes. The claim that the University is attempting to misrepresent the ratio by including the salaries of Associate Deans in the number, is insulting. As any reasonable person would understand, to compare ratios with past years (ie apples to apples) it is necessary to either keep Associate Deans in, or exclude them from past years. Given that they continue to hold a faculty position in the bargaining unit and will return to the bargaining unit, and will be entitled to GWI increases, it is appropriate to include their salaries in the analysis.

4.05 Inconsistent Measurements of New Hires and Terminations

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

[68] The historical data used to project growth (Tab 5.6 of UBC's Ability to Pay submission) was based strictly on bargaining unit salaries paid from the Operating Fund, as ability to pay is assessed on the basis of the University's general purpose operating funds. In contrast, the data provided by UBC on August 25 was in response to a request from the Faculty Association for all faculty hires/terminations, regardless of the source of funding for the position. The latter would therefore include positions funded not only from the Operating fund, but also from Research, Endowment and Specific Purpose funds.

[69] In addition, the historical data in Tab 5.6 was derived from changes between a snapshot of bargaining unit salaries paid from the Operating Fund from one fiscal year-end to the next. So, for example, if a position was being funded from the Research fund the previous year and changed to being funded from the Operating Fund in the current year, this would be treated as a "new hire" in the current year. However, since this would have been an existing employee, it would not have been included in the data provided on August 25. The opposite scenario would provide a similar discrepancy between the two sets of data.

4.06 Misrepresentation of Growth Rates

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

<table>
<thead>
<tr>
<th>Year</th>
<th>Positions</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY12</td>
<td>29</td>
</tr>
<tr>
<td>FY13</td>
<td>20</td>
</tr>
<tr>
<td>FY14</td>
<td>15</td>
</tr>
<tr>
<td>FY15</td>
<td>-3</td>
</tr>
</tbody>
</table>

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

[70] The University dropped 2006 from the analysis because it was anomalous. It is not possible to isolate every academic unit or operating division to see if they are growing or
shrinking, as the Association suggests with respect to UBCO. The University is looking at overall growth; some areas will have a net expansion while others will have a net reduction in bargaining unit faculty at any given time. That is why the University uses overall averages.

4.07 Inflated Projected Faculty Growth in FY 2016

4.07.1 The University has projected an increase in net new positions of 63 for FY 2016 based on its inflated projected "normal" faculty growth rates (53) and a number of "extra" strategic positions (10). This latter number is effectively completely arbitrary and presumes that none of the growth in previous years was strategic.

4.07.2 With the exception of the build out of UBCO, which was funded by the government, government grants to UBC have been static, at best. Any growth in the number of faculty members, outside of UBCO, has only been possible because of profits UBC makes on its international education businesses and other non-grant sources, and use of the operating surpluses. Whatever the source, the decision to grow is definitionally strategic.

4.07.3 Every year UBC hires new faculty at the rank of full Professor. These can only be described as "strategic." Between April 1, 2015 and July 15, 2015 UBC hired 10 full professors, which can only be described as "strategic hires." That may be the total number of full professors hired in the fiscal year, or it may not be. But the University cannot project "normal" faculty growth based on previous hires which clearly included strategic hires, and add another, completely arbitrary, level of strategic hires as it has done in its submission.

[71] The University is differentiating hiring as “normal” as opposed to “strategic” in the following way. Normal hiring refers to the normal projected growth in faculty of approximately 1.9% of the bargaining unit year over year. This hiring is made at an average salary of $90,000.00. These hires are funded from the University’s regular operating funds. The “strategic” hires that the University is projecting, are hires that will be made of senior faculty in strategic areas to enhance the academic standing of the University. This will fulfill a commitment made to students, requiring an increase in tuition for international students, to hire senior faculty to become the top university in Canada and to enhance its global stature. The funding for these positions will come from international student tuition.

4.07.5 As Table 2 shows, even in 2012 which, partly due to UBCO, was an unusually large net growth year, faculty net growth in the fiscal year after July 15 was only slightly more than twice net growth up to and including July 15. In the past two years net growth after July 15 has been 0 and -14, respectively. The University’s projection of 63 net new hires for FY15 implies 8 times as many net new hires will occur in the last 17/24 of the fiscal year as
occurred in the first 7/24 of the fiscal year (7). This is all out of proportion with recent history. It is more likely that, based on the data provided by the University, by the end of the fiscal year net new hires will be closer to 10 than 63.

[72] It is not reasonable to suggest that a 3.5 month period is representative of the growth anticipated from either normal or strategic hires for a fiscal year.

[73] For the period April 1, 2015 to October 1, 2015 there were 151 new hires and 113 terminations, for a net growth of 38. This compares to the University’s full year forecast for FY16 of 53 net new hires, excluding strategic hires.

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

[74] The University has used the information set out by the Association in its submission and rerun the turnover analysis set out at Tab 5.6 of the University’s ability to pay submission. The result is that the average turnover savings over the last 5 years (2011 to 2015) would be 0.6% as opposed to 0.5%, which would mean a reduction of $270,000 in the numerator for FY16. This would have no effect on the ratio.

[75] Accordingly the University did not “significantly underestimate future turnover savings”.

4.09 Ms. Joy’s Report

[76] It was our understanding that the ability to pay arguments would be addressed in the separate submission exchange schedule. This was the agreement between the parties as captured in the correspondence exchange between counsel for the University and counsel for the Association\(^2\). It was on that understanding that our Reply to the Joy Report was filed on September 18, 2015.

[77] The submissions filed on August 31 were to address the outstanding issues assuming that the University had an ability to pay. However, in this section the Association makes further submissions on ability to pay.

[78] Recently, counsel for the Faculty Association advised us that, contrary to the agreement we had reached, the Association would not be filing its Reply submission on October 5 but later, on the basis that it needed more time to respond to the University’s ability to pay submission. We objected to this because this submission exchange (August 31 and

\(^2\) Attached at Tab B.
October 5) was to assume the University had the ability to pay, and was to address the other criteria in Article 11.02(e) and address the other outstanding issues between the parties.  

[79] We are concerned that in is Reply submission the Association will make further submissions on ability to pay, with the University having no ability to respond. Effectively the Association has chosen to make submissions on ability to pay on both sets of submission and unilaterally dictated when it would file its Reply submission; making a mockery out of the agreements that had been reached, and feeling no obligation to apply to the Board for an extension.

[80] The University therefore requests the opportunity to respond any submissions made by the Association in its Reply (filed contemporaneously with this submission) which we have not previously dealt with.

5. JURISPRUDENCE AND THE “ABILITY TO PAY”

[81] The review of case authorities on ability to pay is, respectfully, irrelevant to this proceeding. The parties have defined what ability to pay means in Article 11.02 (e) of the collective agreement, that in turn has been interpreted and determined by arbitration boards under this collective agreement.

[82] As noted in earlier awards, it is because an employer theoretically always has an ability to pay by reallocating other expenditures, that Article 11.02 (e) defines what the allocation should be to faculty bargaining unit salaries. The percentage allocation defines ability to pay. It is an allocation that is to be preserved; a reduction in allocation means there is an ability to pay more, an increase in the allocation means there is no ability to pay.

[83] None of the principles set out in the excerpts from the jurisprudence cited by the Association have any relevance to the ability to pay determination to be made in this case. Allocation of resources is regulated by the “ratio”.

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

6.02 The Need for the University to Maintain its Academic Quality by retaining and Attracting Faculty of the Highest Calibre

6.02.1 The University’s offer of GWT for 2014-2016 does not advance the objective of maintaining the academic quality of the University as set out in its vision statement.

3 See the correspondence exchange at Tab C.
6.02.2 In the 2012 Arbitration the University took the position that “there is no general retention issue, but rather a need to address specific cases” (University Reply Brief, 2012 Arbitration, paragraph 39). The Association disagrees with both assertions.

[84] The Association may disagree with this assertion, but it was accepted in the Previous Award. The University had, and continues to have, no recruitment and retention problem that would support a general salary increase under this criterion.

6.02.4 Evidence from the University's Workplace Experiences Survey, conducted in November 2013 and administered by Ipsos Reid, one of the world’s leading survey research firms, asked faculty to indicate the degree of agreement with the statement "UBC is successful in retaining the best faculty." This is a new question so there are no previous responses with which to compare it. Only 28% of all faculty members agreed or strongly agreed with that statement.

[85] The Survey\(^4\) shows that 70% of faculty members agreed or strongly agreed with the statement or were ambivalent or did not know.

[86] 32 % of faculty who responded to the survey said they actively searched for a position outside of UBC in the past 3 years, but of those only 39% said that the reason was “to increase salary”.

[87] Only 19% of faculty disagreed or strongly disagreed with statement that “UBC is successful in attracting the best faculty”.

[88] The data aligns with shows that there is no generalized retention problem. Where the “best faculty” are being recruited elsewhere, the Retention Fund provides the University with an ability to retain them.

6.02.5 The University has proposed a retention fund of $500,000 in each of the second, third and fourth years of a proposed five-year agreement. The Association is proposing no retention fund for either year of a two-year agreement. The parties agreed to a retention fund in 1998-99, and again between 2001/02 and 2009/10. The 2010-2012 Agreement contained no retention fund and the Association strongly opposed the University’s proposal for a retention fund in the last round of bargaining. However, the Arbitration Award included a retention fund of $200,000 in 2012/13 and $400,000 in 2013/2014.

[89] As mentioned earlier, the 2010-2012 did not contain a retention fund, as the government mandate did not permit any increase in salaries.

6.02.6 The University, in paragraph 39 of its 2012 reply brief says: "The use of allocated funds for retention purposes demonstrates two points: that funds are needed for specific

\(^4\) Tab 1
cases in particular disciplines and markets where adjustments must be made, and that the strategy works." In terms of the latter argument, there is no evidence that the strategy works, since there is no way of knowing which members who received retention awards would have left but for those awards. There is not even a requirement for members to be in receipt of an offer from another university in order to receive a retention award. The Association is well aware that some members are approached by other universities and that many members could easily find positions at other universities if they sought them. That is the nature of being at a top research university. However, there is simply no way of knowing how many, if any, members would have left but for the retention award, and the University provides no such evidence.

[90] The numbers of people leaving the University are low, so it can be assumed that the strategy works. There is no evidence that the strategy of using a Retention Fund is not working.

6.02.7 In terms of the argument "that funds are needed for specific cases in particular disciplines and markets where adjustments must be made," the Association recognizes that occasionally average salaries in particular disciplines at UBC diverge from the national trend, and that highly productive members are most likely to be headhunted. However, the Association submits that the existing Merit fund and PSA fund are specifically designed to deal with exactly those problems, and that if the problem to be solved was one of a particular discipline, the University would propose a specific market adjustment, as it has in the past.
UBC Faculty Association NOTE: Paragraph 91 was redacted for public release to protect the privacy interests of selected faculty members.
6.03 Changes in the Vancouver and Canadian Consumer Price Indices

6.03.10 As demonstrated above, the only reasonable basis for projecting inflation in the future is the Bank of Canada target, which is 2%. We note that the core CPI inflation rate between July 2014 and July 2015 was 2.4%, indicating that the low all-item inflation rate during that period was caused by the "volatile" items, particularly gasoline prices, which by their very nature, are unpredictable in even the short term. The University’s proposed G WI of 0.9% as of July 1, 2015 is thus well below any reasonable projection of CPI inflation for the second year of the Agreement. The Association believes that the criteria of 11.03(2)(e), taken together, justify an increase above CPI inflation rates. We see no justification for a G WI in 2015/2016 below any reasonable expectation of CPI inflation rates.

[92] When assessing this criterion, we submit that the board must take into account the lump sum payment of 1% of annual salary that all members of the bargaining unit will receive. We appreciate that this provision exists in the collective agreement and, to that extent, is “status quo”, but it is no different than a COLA clause of 1%. It is 1% of real money that goes to the faculty member. The Faculty Association at paragraph 6.05.332 of its submission factors in lump sum payments for the purpose of comparing salary increases negotiated at other universities:

6.05.32 It is difficult to make exact comparisons when some settlements have G WI that are a combination of percentage and fixed dollar amount increases unless the settlement explicitly values the fixed dollar amounts in percentage terms as the UBC settlement of 2006-2010 did. However, by valuing the fixed amounts as a percentage of the average salary, as listed in Table 11, we are able to obtain a reasonably good estimate. The average salary increase, over the three years in question was 5.73%, slightly higher than the settlement at UBC.

[93] There is no rational basis for suggesting that the 1% lump sum payment should not be considered when addressing Canadian and Vancouver CPI.

[94] On the University’s proposal, faculty will receive a 0.9% increase in their salary and a lump sum equivalent to 1% of their salary. This exceeds CPI changes 2015 and the University’s proposal, with the 1% lump sum continuing, will continue to offset inflation. This applies to everyone in the faculty bargaining unit including Sessionals, Lecturers and Librarians.

6.03.12 However, for the purposes of protecting faculty salaries against inflation, the proposed retention fund does not function as a G WI. The retention fund only provides increases to a very small percentage of members, and is not evenly allocated among different classifications. For example, no Sessional Lecturers, of whom the University employs as many as 1,000 in any given year, have ever been given a retention award. Since 2006/07 there have been 499 retention
awards. (Prior to 2006 the University did not always include rank information when they reported the awards, and in two of the years since 2006 the Association and the University came to an agreement that did not include a retention fund). Only one award (0.2%) was given to a Lecturer. Only 8 awards (1.6%) were given to members in any rank in the Educational Leadership stream. None has been given to a Librarian or a Program Director. In contrast, in April 2015, of 2,933 members in the bargaining unit, excluding Sessional Lecturers, 234 (8%) were Lecturers, 247 (8.4%) were in the Educational Leadership stream and 94 (3.2%) were Librarians or Program Directors.

[95] The fact that only a small number of faculty members have received Retention Funds demonstrates that the issue is not one of general retention but rather specific cases.

6.04 Changes in B.C. and Canadian Average Salaries and Wages

6.04.2 Unlike the use of the Consumer Price Index to measure price inflation, which is clearly mandated by the Collective Agreement, there is no specifically defined measure of wage and salary inflation mandated by the Agreement. The standard measure is Statistics Canada's Average Weekly Wage Rate for all employees, all occupations, both sexes, age group 15 years and over, which is produced by the Labour Force Survey (LFS). The LFS data are based on the reported "usual wages or salary of employees" and most closely match the Collective Agreement language "Salaries and Wages." As the Association's bargaining unit includes both full-time employees and a very significant number of part-time employees, we submit that the "all employee" rate is the appropriate one, but we have included the "full-time only" rates for comparison purposes.

6.04.3 Table 5 presents average annual wage and price inflation, in Canada and BC, for recent years, measured each July. (The entire monthly series for July 2011 to July 2015 can be found in Tab 2 of the Binder of Evidence.)

6.04.4 As Table 5 indicates the LFS all-employee inflation rate between July 2014 and July 2015 was 3.6% for Canada and 3.1% for BC, or an average of 3.35% between the two jurisdictions. This closely aligns with the first year of the renewal Collective Agreement.

[96] The Association bases its submission regarding this criterion, on the Labour Force Survey (LFS). The University submits that this is not the appropriate data to use in assessing this criterion. Rather, the appropriate data are in the Survey of Employment, Payroll and Hours.

[97] Statistics Canada conducts two major surveys each month to measure and monitor national, provincial and regional labour markets. The Labour Force Survey (LFS) is a survey of households (or individuals) and the Survey of Employment, Payroll and Hours (SEPH) is primarily a census of administrative data provided by businesses.
A brief description of both surveys taken from directly from documentation produced by Statistics Canada follows. It explains the population of the two surveys, how they are conducted, and their different strengths. The documentation indicates that SEPH data are designed and intended to track wages and specific industry detail. The LFS data, on the other hand, are designed to monitor overall employment growth and labour force demographics.

In assessing the accuracy of the data regarding wages, it is important to understand that the foundation of SEPH data are administrative files from the Canada Revenue Agency. For LFS it is from a survey of individuals who are asked what their weekly, monthly or annual earnings are.

Below is a section taken from the Labour Force Survey given to individuals.

Earnings block

LFI_Q200
If 110 is not “Employee”, go to 300
If subsequent interview and no change in 110, 114, 115, 116, 117, 118, go to 300
Now I’d like to ask a few short questions about ...’s earnings from his/her [new] job [at name of employer].
Is he/she paid by the hour?

LFI_Q201 — Does he/she usually receive tips or commissions?
If yes, go to 204
LFI_Q202 — [Including tips and commissions,] what is his/her hourly rate of pay?
Go to 220
LFI_Q204 — What is the easiest way for you to tell us his/her wage or salary, [including tips and commissions,] before taxes and other deductions?
Would it be yearly, monthly, weekly, or on some other basis?
If “Yearly”, go to 209
If “Monthly”, go to 208
If “Semi-monthly”, go to 207
If “Bi-weekly”, go to 206
If “Weekly” or “Other”, go to 205
LFI_Q205 — [Including tips and commissions,] what is his/her weekly wage or salary, before taxes and other deductions?
Go to 220
LFI_Q206 — [Including tips and commissions,] what is his/her bi-weekly wage or salary, before taxes and other deductions?
Go to 220
LFI_Q207 — [Including tips and commissions,] what is his/her semi-monthly wage or salary, before taxes and other deductions?
Go to 220
LFI_Q208 — [Including tips and commissions,] what is his/her monthly wage or salary, before taxes and other deductions?


Further confirming the different intent and strengths of the two data sources Statistics Canada states:
Together, five surveys tell a more complete story of current labour market events. These surveys are: the Labour Force Survey (LFS, record number 3701), the Survey of Employment, Payrolls and Hours (SEPH, record number 2612), Employment Insurance Statistics (EIS, record number 2604), the Job Vacancy Statistics (JVS, record number 5202), and the Job Vacancy and Wage Survey (JVWS, record number 5217). The LFS focuses on its strengths: timely data on the labour market, including the unemployment rate and demographic analysis. SEPH reports, which come out later each month, show greater detail on non-farm industry employment and earnings...


A table summarizing differences between the two surveys is presented below. Note the line describing major outputs which aligns SEPH with “Employment and Earnings” and the LFS with “Labour force, employment, unemployment...”:

<table>
<thead>
<tr>
<th>Table 8.1</th>
<th>Features of Labour Force Survey (LFS) and Survey of Employment, Payrolls and Hours (SEPH)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Comparison by</td>
<td>LFS</td>
</tr>
<tr>
<td>Population</td>
<td>Non-institutionalized civilian population aged 15 and over.</td>
</tr>
<tr>
<td>Type of survey</td>
<td>Monthly sample survey of approximately 56,000 households.</td>
</tr>
<tr>
<td>Major outputs</td>
<td>Labour force, employment, unemployment, by province, and associated rates with demographic details.</td>
</tr>
<tr>
<td>Reference period</td>
<td>Calendar week that includes the 15th of the month.</td>
</tr>
<tr>
<td>Employment concept</td>
<td>Estimate of employed persons (multiple jobholders are counted only once). Includes individuals absent from work without pay.</td>
</tr>
<tr>
<td>Employment definition differences</td>
<td>Includes the unincorporated self-employed, unpaid family workers, agriculture, forestry, fishing and hunting, religious organization workers, private household workers, international and other extraterritorial public administration and workers absent without pay.</td>
</tr>
<tr>
<td>Size of month-to-month change in employment for a statistically significant movement</td>
<td>+/- 46,000 for 90% confidence (updated twice a year).</td>
</tr>
<tr>
<td>Benchmark adjustment to survey results</td>
<td>No direct benchmark for employment. Adjustment to underlying population every 5 years to the Canadian Census.</td>
</tr>
</tbody>
</table>

1. Except for November and December, when the reference week is often one week earlier.
2. In fact, there is a mix of different periods, since pay period lengths and dates vary between employers and even between groups of employees working for the same employer. In all cases, the information for the most recent pay period is used in processing the administrative data.

The following documentation from Statistics Canada, explains the SEPH which the University has used in its analysis:

**Description**

The Survey of Employment, Payrolls and Hours (SEPH) provides a monthly portrait of the amount of earnings, as well as the number of jobs (i.e., occupied positions) and hours worked by detailed industry at the national, provincial and territorial levels.

SEPH data provide the principal input to labour income estimates: they also serve as a proxy output measure for about 15% of real gross domestic product and 'nominal' gross domestic product. SEPH data are also used by the Canada Revenue Agency (CRA), to revise the maximum pensionable earnings and retirement savings plan contribution limits, and by the private sector, for contract escalations and wage rate determinations. (emphasis added)

Monthly survey estimates are produced by a combination of a census of payroll deductions, provided by the Canada Revenue Agency, and the Business Payrolls Survey (BPS), which collects data from a sample of 15,000 businesses. The BPS also collects information about job vacancies, supplemental to the SEPH (see Job Vacancy Statistics, record number 5202).

**Sampling**

Two of the variables of interest are collected by census method: total monthly payroll employment and monthly payrolls are extracted monthly from the Canada Revenue Agency Payroll Deduction (PD7) administrative source. The payroll deduction source includes all employers with remittances for employee income taxes, CPP/QPP, and Employment Insurance contributions.

Payroll Deduction data are spread across provinces and industry using the enterprise profile in the Statistics Canada Business Register. The Business Register (BR), is a list of all businesses in Canada, updated each month by Statistics Canada, using data from various surveys, business profiling and administrative data.

Other key variables, including number of hours worked, are collected by the Business Payrolls Survey (BPS) which collects monthly data directly from a
sample of establishments drawn from the BR. The initial BPS sample is made up of 15,000 establishments out of a population of 1 million establishments. The sample is stratified according to geography (province), industry (North American Industry Classification System, level 3 or 4) and number of employees in the establishments. Some units are permanently in the sample; most remain in the sample for one year only. Every month, one-twelfth of the sample is refreshed. Once removed from the sample, most units remain out of sample for at least one year.

Source:

[104] The following is documentation from Statistics Canada for the LFS which the Association has used in its analysis.

**Description**

The Labour Force Survey provides estimates of employment and unemployment which are among the most timely and important measures of performance of the Canadian economy. With the release of the survey results only 10 days after the completion of data collection, the LFS estimates are the first of the major monthly economic data series to be released.

The Canadian Labour Force Survey was developed following the Second World War to satisfy a need for reliable and timely data on the labour market. Information was urgently required on the massive labour market changes involved in the transition from a war to a peace-time economy.

The main objective of the LFS is to divide the working-age population into three mutually exclusive classifications - employed, unemployed, and not in the labour force - and to provide descriptive and explanatory data on each of these.

LFS data are used to produce the well-known unemployment rate as well as other standard labour market indicators such as the employment rate and the participation rate. The LFS also provides employment estimates by industry, occupation, public and private sector, hours worked and much more, all cross-classifiable by a variety of demographic characteristics. Estimates are produced for Canada, the provinces, the territories and a large number of sub-provincial regions. For employees, wage rates, union status, job permanency and workplace size are also produced. For a full
listing and description of LFS variables, see the Guide to the Labour Force Survey (71-543-G), available through the "Publications" link above.

These data are used by different levels of government for evaluation and planning of employment programs in Canada. Regional unemployment rates are used by Employment and Social Development Canada to determine eligibility, level and duration of insurance benefits for persons living within a particular employment insurance region. The data are also used by labour market analysts, economists, consultants, planners, forecasters and academics in both the private and public sector.”

Source:
m=8&dis=2&SDDS=3701

[105] We note that the above description does not mention contracts or other wage settlements whereas the commentary of SEPH explicitly recognizes “contract escalations” and “wage determinations” as a use for the data.

[106] The series that the Association has chosen, to measure wage increases, comes from CANSIM, Table 282-0069. A major concern, as reported in the footnote 1 for that data series, is that it includes bonuses as part of an individual’s pay. Bonuses can result in significant changes in overall compensation.

[107] Footnote 1 to the series states: “Beginning January 1997, information is collected on the usual wages or salary of employees at their main job. Respondents are asked to report their wage/salary before taxes and other deductions, and include tips, commissions and bonuses. Weekly and hourly wages/salary are calculated in conjunction with usual paid work hours per week.

[108] Finally, there is the question of volatility of the different data series coming from the two surveys. The graph below plots the annual average wage increase since 2007 for BC according to the LFS (Table 282-0069) and SEPH (281-0026). As is evident, even using annual averages the LFS series is unrealistically volatile. The recent data in particular are difficult to explain with the average wage growing by 3.1% in 2013 then plummeting to 0.3% in 2014 and then surging to 4.0% in 2015 (using data through to August). Economic circumstances in BC were very similar in 2013 and 2014 so it is very unlikely that economy-wide average wage growth fluctuated to this extent. In contrast the wage increases indicated by the SEPH data (basically between 1% and 2.5%) are a much better reflection of the similar economic circumstances that prevailed over the past few years.
Accordingly, the University submits that the Statistics Canada series it has used, SEPH, is the better data that addresses the criteria in the collective agreement.

That series shows an increase in average annual wages in BC of 2% and 2.6% for Canada rather than the 3.1% and 3.6% reported in the series used by the Association.

6.05 Salaries and Benefits at other Canadian Universities of comparable academic quality and size

The University makes two overarching points in response the Association’s submission on this criterion. First, the Association is working with out-of-date data. Current data shows that UBC is paying its faculty in line with comparable Canadian universities. Second, the criterion applies to universities of comparable academic quality and size. While international rankings might be helpful in positioning Canadian Universities internationally, the relevant consideration is how UBC salaries compare with salaries of Canadian universities of comparable academic quality and size.

6.05.5 UBC is a member of the U15 Group of Canadian Research Universities, an organization that represents its members' interests, primarily in the area of research funding, with governments at various levels. In Table 6, we report the national and international rankings of UBC and the other members of the U15 group in eight different international rankings. (An explanation of the methodology of each of the rankings, and its source, can be found in Appendix A.) An examination of those 15 universities illustrates a significant gap between the top three (Toronto, UBC, McGill) and the second tier of seven universities, which, in turn, is significantly above the third tier of five U15 universities.
Table 6 shows UBC second to Toronto and ahead of McGill, McMaster and Alberta. Table 7 shows UBC second to Toronto and ahead of Montreal, Laval, Ottawa and Alberta. Table 8 shows UBC second to Toronto and ahead of Calgary and Alberta. Compare those rankings to Tab A in the University's submission dated August 31, 2015. Please note that the salary data at Tables 10 and 11 is 4 years old.

The data at Tab A of the University’s submission filed on August 31, 2015 shows that average professoriate salaries are second only to the University of Toronto.

The Association has produced Table 12 which we reproduce below:

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

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>UBC</td>
<td>3.3%</td>
<td>3.3%</td>
<td>0%</td>
<td>0%</td>
<td>2.5%</td>
<td>2.5%</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Alberta</td>
<td>4%</td>
<td>4.8%</td>
<td>4.8%</td>
<td>1.8%</td>
<td>2%</td>
<td>1%</td>
<td>1.65%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Calgary</td>
<td>4.5%</td>
<td>4.5%</td>
<td>0%</td>
<td>2%</td>
<td>2%</td>
<td>0%</td>
<td>0%</td>
<td>2%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dalhousie</td>
<td>3%</td>
<td>3%</td>
<td>3.4%</td>
<td>1.3%</td>
<td>1.3%</td>
<td>1.8%</td>
<td>2%</td>
<td>1.75%</td>
<td>1.5%</td>
<td></td>
</tr>
<tr>
<td>Laval</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>3%</td>
<td>.75% (Min)</td>
<td>.75% (Min)</td>
<td></td>
</tr>
<tr>
<td>Manitoba</td>
<td>3%</td>
<td>3.4%</td>
<td>$500</td>
<td>1%</td>
<td>2.9%</td>
<td>2.9%</td>
<td>2%</td>
<td>2%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>McGill</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>1% pension offset</td>
<td>$1,250 + 1% pension offset</td>
<td>1.5% + $1,850</td>
<td>1.5% + $1,925</td>
<td></td>
</tr>
<tr>
<td>McMaster</td>
<td>3%+ $750</td>
<td>3%+ $750</td>
<td>3%+ $750</td>
<td>1%+ $2000</td>
<td>1%+ $2000</td>
<td>1% pension offset</td>
<td>Equal to government public sector rate</td>
<td>Equal to government public sector rate</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Montreal</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td>2%</td>
<td>3.5%</td>
<td>3.5%</td>
</tr>
<tr>
<td>Ottawa</td>
<td>4.1%</td>
<td>3.5%</td>
<td>3%</td>
<td>1.7%</td>
<td>2%</td>
<td>2%</td>
<td>2%</td>
<td>1.25%</td>
<td>1.5%</td>
<td></td>
</tr>
<tr>
<td>Queen's</td>
<td>3.2%</td>
<td>3.2%</td>
<td>3.2%</td>
<td>1.3%</td>
<td>1.5%</td>
<td>1.5%</td>
<td>2.5%</td>
<td>1%</td>
<td>1.25%</td>
<td>1.5%</td>
</tr>
<tr>
<td>Saskatchewan</td>
<td>$3000</td>
<td>5.3%</td>
<td>4.5% + $300</td>
<td>4% + $300</td>
<td>4% + $300</td>
<td>1%</td>
<td>2.25%</td>
<td>2.25%</td>
<td>2.75%</td>
<td></td>
</tr>
<tr>
<td>Toronto</td>
<td>$3,150</td>
<td>2.3%</td>
<td>2.3%</td>
<td>1% + $1000</td>
<td>1% + $1520</td>
<td>1% + $1815</td>
<td>n/a</td>
<td>n/a</td>
<td>n/a</td>
<td></td>
</tr>
<tr>
<td>Waterloo</td>
<td>3% + $400</td>
<td>3% + $400</td>
<td>0%</td>
<td>0%</td>
<td>3%</td>
<td>3%</td>
<td>1.95%</td>
<td>1.95%</td>
<td>1.5%</td>
<td></td>
</tr>
<tr>
<td>Western</td>
<td>3%</td>
<td>3.3%</td>
<td>1.5%</td>
<td>1.5%</td>
<td>1.5%+ $800</td>
<td>1.5%+ $800</td>
<td>1.25% (scale) + .81% (lump sum)</td>
<td>1% (scale) + .78% (lump sum)</td>
<td>1% (scale) + .76% (lump sum)</td>
<td>1% (scale) + .56% (lump sum)</td>
</tr>
</tbody>
</table>

n/a Data not available.

Source: CAUT Facts and Figures and individual Collective Agreements on Association websites.
Table 12 shows that the University's proposal is in line with salary increases at comparable universities. The Previous Award gave the UBC faculty the highest salary increase for both 2012-13 and 2013-14 amongst comparable universities (Manitoba, Saskatchewan and Waterloo were higher, but are not a comparable universities). The Table also shows that McGill faculty will receive 0% increase for the next three years. Montreal will receive 2% and then whatever the public sector receives.

The factoring in of lump sum payments, as the Association does at paragraph 6.05.32, further supports why the 1% lump sum payment at UBC must be factored in to any settlement comparisons or comparison with CPI changes or changes in average weekly wages. As noted by the Faculty Association in this table, lump sum payments represent a salary increase which must be taken into account.

6.05.34 It is obvious that faculty at UBC have not gained ground on faculty at the University of Toronto, and in fact that little has changed in the salary rankings in the past three years with the possible exception of upward movement by the University of Saskatchewan and the University of Manitoba.

The fact is, the salary increase granted by the Previous Award has repositioned UBC faculty in terms of the comparison with other comparable universities.

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

"In terms of overall compensation at UBC and its relative position among other top Canadian research universities, UBC has fallen somewhat behind although the statistics published in such venues as Maclean's do not give an accurate picture of the comparative placement of salaries by academic rank. The differences where they exist can be partly explained by the market realities of the various disciplines at the University, including UBC Okanagan, and significantly explained by the Provincial Government mandates I have mentioned above."

(Redacted Letter from Lisa Castle, dated March 12, 2013, Tab 3, in the Book of Evidence, emphasis added)

The Association is reprising the same argument it made in the previous arbitration. Ms. Castle's letter was written in March 2013. As a result of the Previous Award, which exceeded the increases received at comparable universities, it is no longer the case that UBC has fallen behind other top Canadian research universities.
6.05.45 The arbitrated salary settlement for the 2012-2014 Collective Agreement did little to close the gap between faculty salaries at UBC and our comparator institutions, which means that Ms. Castle’s statement that we were behind in 2013 continues to be true.

[119] This statement is simply inaccurate.

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

A) GWI (Proposal)

7.03 The University’s benchmarking for former President Toope’s salary resulted in him being one of the highest paid in 2008, 2010, and 2012, second in 2011 and 2009, and third in 2007. Former President Gupta’s salary was benchmarked in the same way by the Board of Governors. Unfortunately there is no additional comparative data available at this time.

[120] What the University pays its President is not one of the criteria upon which this case is to be adjudicated.

[121] We have not investigated the claims made by the Association, as they are simply not relevant to any determination the Board must make in this case.

7.05 Table 11 on page 45 shows how far UBC salaries had fallen behind the University of Toronto and other comparators by 2011, the last time Statistics Canada published national salary data. Table 12 on page 46 shows recent salary settlements at the University of Toronto and other comparators. The general increase proposed by the Association for the 2014-2016 contract years (3 percent and 3 percent, see proposed language in Tab 3, in the Book of Evidence) is a quite reasonable way to help faculty salaries at UBC meet the objective of maintaining pace with the University of Toronto, and reduce the current disparity between UBC and some of its comparator institutions. The proposed increase will not make UBC faculty salaries comparable to the University of Toronto, but it will address the inflationary increase since 2014, as well as settlements at comparator institutions and move UBC a little closer in line with the University of Toronto, while at the same time preserving a reasonable balance between the overall cost of the salary proposal and other expenditures from the GPOF.

[122] As stated earlier, the salary information in the Association’s Tab 11 is for 2010/2011. More current data, in the University’s August 31st submission Tab A, shows how UBC faculty salaries compare with other universities. The Previous Award held that SFU and UVic were appropriate comparators. The Association’s proposal exceeds all of the criteria set out in Article 11.02 (c). There is no recruitment or retention problem that requires addressing. The proposal exceeds existing inflation and projected inflation. It exceeds changes in BC and Canadian average salaries and wages and is beyond what comparable Universities are receiving by way of settlements.
7.08 Although the University represents the 1% lump sum payment as part of its "overall wage increase," it is not. It is simply an element of the Collective Agreement. The Parties previously negotiated and agreed that, annually, 1% of total wage compensation is withheld from the semi-monthly pay-cheques and paid out as a lump-sum on the last day of the academic year. It does not lead to a GWI.

[123] The proposition set out in this paragraph is indefensible. The idea that because a built in lump sum payment, calculated annually at 1% of each bargaining unit employee's salary including GWI, is in the collective agreement and therefore should be ignored is ludicrous. It means that a COLA clause in a collective agreement that produces an annual lump sum payment would not be considered in assessing whether there was an increase in salary that offset inflation, simply because the provision exists in the agreement and has not been renegotiated.

[124] The 1% is applied to each faculty members actual salary; that is, the member's salary including GWI. Were the Board fail to take this into account, it would be misapplying the criterion set out in the collective agreement. Specifically, it would be considering changes in the Vancouver and Canadian Consumer Price Indices without taking into account that these changes are offset by a 1% lump sum payment on each faculty member's salary. It would be considering changes in BC and Canadian Average Salaries and Wages without taking into account that every year (so long as this provision remains in the collective agreement) faculty members receive 1% of their salary (which is inclusive of GWI). And to make a valid comparison of salaries at other Canadian universities of comparable academic quality and size, the lump sum payment must be considered because it is part of the members annual salary.

[125] As we note above, the Faculty Association includes lump payments at other universities when demonstrating the salary increases faculty at those universities received (see Table 12). It is indefensible to say that the 1% lump sum payment made to each member of the faculty bargaining should not be considered as an increase in salary.

[126] In its bargaining blog, the Association discusses the 1% lump sum payment. While the University disagrees with much of what is said in the blog, it notes that the Association understands the salary benefit of the 1% payment:

In fact, the University did propose converting the 1% lump-sum payment into a 1% GWI, and the Association was willing to do that, but at a fair price. The annual 1% lump sum is only equivalent to a 1% GWI for individual members at the time of the conversion. For the Faculty Association as a whole the two are not equivalent. Currently UBC must make a 1% payment to every member now, and anyone who is hired in the
future. By contrast, a 1% GWI only applies to members who are here at the time it is made. Members hired in the future would not receive it.

***

We are quite convinced that if we traded the 1% annual lump-sum payment for a 1% GWI, future members would, on average, not see their starting salaries rise fully by 1% over what they otherwise would have been. So the annual lump sum payment continues, an artifact of Collective Agreement provisions that soon will be completely forgotten.

This view simply confirms why the 1% lump sum must be factored in, together with GWI when assessing the University’s proposal against CPI, average weekly wage increases, and salaries at other comparable Canadian universities.

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

[127] The University does not take issue with the PTR. However, the University respectfully asks the Board to carefully consider the annual lump sum payment. It should not be ignored in assessing the question of salary increases that should be awarded to the bargaining unit. Rather this provision already provides an increase of 1% of salary to each and every member of the bargaining unit; an increase that should be considered when comparing the total increase that faculty will receive, as against CPI changes, average weekly wage changes and when comparing UBC salaries to other comparable universities.

B) Increases to Salary Scales (Proposal 1)

7.13 The University has proposed no increase in the minimum salary scale for Librarians. However, there is a long history of raising the salary scales for Librarians by the amount of GWI. Thus it would be inequitable and unreasonable for the University not to continue this practice.

[128] The University proposed an increase to all bargaining unit faculty members, which includes, and has always included, Librarians. The minimum salary scale for Librarians will increase with the GWI proposed by the University over the term of the collective agreement. The University is unsure why the Association would assert otherwise in its submission.
C) Minimum Lecture Salary (Proposal 2)

7.16 The University has proposed the introduction of a minimum salary for Lecturers of $59,350 (undated), such minimum salary to be prorated. (UBC Proposal #5). The language for this proposal can be found in Tab 4, in the Book of Evidence.

[129] The minimum salary proposal was made by the University as part its comprehensive proposal dealing with Lecturers and Sessionals. It was not a stand-alone proposal.

D) Retention Fund (Proposal 1)

7.24 The Association submits that the retention fund, in the years that it has existed, has primarily served the same purpose as the Merit and PSA funds, but without the collegial processes that those funds have as safeguards against administrative abuse. The Association strongly objects to the continuation of a provision that the parties have not agreed on since the expiration of the 2008-2010 Collective Agreement.

7.25 The Association would view the granting of retention to the University as a concession, as it would not have agreed to this (and did not agree to this) during the normal course of collective bargaining. Thus the Association would expect a comparable concession demanded from the University by the Arbitration Board should it grant retention to the University.

[130] As we have pointed out in paragraphs 12 - 14, the retention fund does not serve the same purpose as the Merit and PSA funds. It is a fund that needs to be available to the University on short notice to deal with flight risks.

[131] If a concession is something that a party would not otherwise have agreed to in bargaining then the Association is demanding concessions from the University in all of the proposals it has brought to this arbitration proceeding.

F) Improvements in Vision Care (Proposal 6)

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

[132] The University’s proposal to increase vision care was an option presented to the Association to demonstrate how the available salary increases could be offset by benefit improvements if that is what the Association would prefer. It was not a stand-alone proposal.
G) Tuition Fee Waiver (Proposal 7)

7.37 The University emphasizes retention problems when they request retention money—our members have repeatedly told us that a spousal tuition waiver are both a recruiting and a retention issue. The "Comparative Summary Table Tuition Benefits" in Tab 6 in the Book of Evidence, indicates the use of this at other institutions.

7.38 The Association has also proposed that in the event that a member passes away while their dependent child is enrolled in UBC, the child will continue to be eligible for up to the maximum tuition waiver credits. The University agrees with this proposal, and has included it in its Ability to Pay submission in Tab 2, page 3. While this more logically should have been included in the list of items the Parties agreed to, the University apparently wanted the Arbitration Board to make this Award.

[133] The question of spousal tuition waiver has not been raised in any case where recruitment or retention was an issue. That is, it is not something that has been identified as important to a candidate.

[134] The University put this in all three of its alternate proposals, as part of an offset to GWI if the Association wanted to use some of the available salary increase for benefit improvements. This was not proposed or agreed to as a stand-alone proposal.

H) Professional Development Reimbursement Fund (Proposal 8)

7.45 The Association submits that this proposal be awarded on the basis of replication and comparability as per 11.02(e)(iv). Ability to pay is not an issue here, as this will not affect the balance between wages and other expenditures but the Association notes that the total cost of this proposal, if granted in full, will be no more than $2.2 million. While not trivial, it is certainly a reasonable expense for an institution with annual operating revenues of over $2 billion. The Association notes that Professional Development is an investment in the productivity of employees and thus brings benefit both to employees and employer. The guidelines for expenditure of PD funds reads: "These expenses must relate to activities that enhance the performance, ability, or effectiveness of a Member's work at the University." (http://www.hr.ubc.ca/faculty-relations/compensation/professional-development-reimbursement-fund/#2)

[135] Any improvement in this fund will have cost implications for the University and would have to be offset against GWI.

I) Extended Health For Post-71 Employees (Proposal 9)

7.49 The Association submits that ability to pay is not at issue here, as ability to pay is narrowly defined in the Collective Agreement in terms of a reasonable balance between the
salary of members of the bargaining unit and other expenditures. Nonetheless we note that the cost of our proposal is trivial. The amount UBC charges faculty to maintain their extended health benefits when they are on personal leave (the "normal employer cost") is $128.28 per month*. In April 2015 a total of only 50 otherwise eligible members were over 71, and thus the cost to cover those members while they are employed by the University would be $77,280 per year. This is a trivial expense for an organization with operating revenues in excess of two billion dollars.


[136] The cost of providing extended health benefits to post-71 faculty is not “trivial”. Determination of the cost would require negotiation with the University benefit provider (Sunlife) and that has not occurred.

7.51 The Association submits that the University denies this proposal not because of the cost, which is trivial, but as an attempt to discourage older workers from maintaining employment, as is their right under the Collective Agreement and the Human Rights Code of BC. It also leads to the ridiculous situation where faculty members over age 71 who travel to conferences, to present their work and represent the University, are not covered by travel insurance. This is an unreasonable burden to place on faculty members.

[137] The suggestion that to not have post-71 extended health benefit coverage is a violation of the Human Rights Code is inflammatory and untrue. Section 13 of the Human Rights Code specifically exempts “a bona fide group or employee insurance plan, whether or not the plan is the subject of a contract of insurance between an insurer and an employer.” The parties have agreed to a benefit plan that does not provide extended health benefits after age 71. The Association agreed to such a plan. To now say that the University’s is denying this proposal as an “attempt to discourage older workers from maintaining employment” in contravention of the Code is simply offensive.

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

[138] This section of the Association’s submission largely duplicates the arguments that appear earlier in its submission. To the extent that the Association has repeated its arguments, the University sees no need to respond twice.

[139] Contrary to the Association’s suggestion in paragraphs 8.01 – 8.03 that replication and “demonstrated need” are the criteria that are to be used by arbitrators to guide them with respect to non-monetary proposals in interest arbitration, the University submits that the criteria are as set out in paragraphs 128 – 130 of Arbitrator Taylor’s Previous Award.
[140] Again, it is the University’s primary submission that none of the proposals put forward by either party should be awarded because:

a. The University has demonstrated an ability to bargain effectively and resolved a number of issues;

b. There is no compelling need for the changes requested;

c. The issues raised are complex, and there is insufficient information before this arbitration board for it to be satisfied that the changes should be made; and

d. It would be appropriate to make trade-offs for the changes requested.

It is these factors (in addition to the expected timing of the next round of bargaining) that the University submits are to be applied by this Arbitration Board. “Demonstrated need” is not one of the relevant factors.

A) Elimination of Dates Pertaining to the Annual Payment of the Career Advancement Plant (CPI, Merit and PSA) (Proposal 3)

8.10 The Association is proposing eliminating reference to specific years in the language of when CPI, Merit, and PSA increments are paid to ensure that those increments become effective July 1 of each year (proposed language is in Tab 9, in the Book of Evidence). Typically the University withholds these increases until after the new Collective Agreement is ratified, even though the payment of the increases has been an ongoing feature of the Collective Agreement.

[141] We refer to our submission above, at paragraphs 22 - 25 where we provide our response to the Association’s proposal to remove the dates from the Career Advancement Plant. Given the components of the Plan (which are not the same for other employee groups at UBC) the Faculty plan (which includes Merit and PSA) is negotiated for the term of the particular collective agreement and there is no compelling reason to change it.

8.11 The Association contends that the University has an incentive to withhold making payouts in order to earn interest on the money until it is paid out.

[142] This claim was the subject of a blog posting by the Association which was subsequently withdrawn.6

[143] The Faculty Association retracted this allegation in the following March 13, 2015 blog posting:

In our bargaining blog this week, we discussed our proposal to remove the contract-specific dates on which PTR increases (CPI, Merit, and PSA) are implemented so that faculty members would receive anticipated annual

6 http://www.facultyassociation.ubc.ca/bargainingblog.php
salary increases even when we have not finished negotiating the next collective agreement. While the University has not agreed to this proposal, President Gupta has assured the Faculty Association that interest accrued on our delayed salary increases has nothing to do with the University’s position on this issue. We accept unequivocally his assurances. [emphasis added]

[144] The University is very surprised to see this claim being made again in the Association’s submission, which we expect will be posted on its website given that the Association posted full copies of all submissions in the last round of interest arbitration.\(^7\)

8.16 The Association notes that paying PTR before collective bargaining is complete does not create any administrative difficulties for UBC and is administratively simpler than making retroactive payments. In this current round of bargaining, as well in the 2012 round, the University has agreed to pay PTR before the Collective Agreement was settled, but in both cases it waited a year before doing so. The Joint message regarding 2012 PTR payments, dated March 5, 2013, and the Joint message regarding 2014 PTR payments, dated March 13,

[145] When the University pays PTR before a retroactive GWI, there is a huge impact on all staff involved. The “increase” computer software is not designed to process increases separately that are effective as of the same date as PTR. Indeed, when the University processed the GWI separately for the 2012 increase there were countless problems and errors, many of which had to be fixed manually, resulting in a doubling of time and work. The increase program is immensely complicated and would take huge amounts of time and money to re-program.

[146] If bargaining proceeds to interest arbitration as here, and if the Board was to grant a retroactive increase, then the University has to do two complete processes to effect payment: one for PTR effective July 1 and a second for any retroactive salary increase to July 1. The results will need to be fully reviewed manually as any unresolved errors would result in either underpayment or overpayment. This is a tremendous amount of work both centrally and within the academic units as well.

B) Definition of Full-Time Sessional Lecturer (Proposal 2)

8.20 The only function of the "full-time" definition is to determine the minimum salary per course that Sessional Lecturers can be paid, and their access to pension and health and welfare benefits. The effect of the Association’s proposal, if awarded, would be that thenceforth all Sessional faculty would have the same minimum scale.

\(^7\) http://www.facultyassociation.ubc.ca/bargainingupdate2012.php
[147] Again, as the University has repeatedly stated, course credits are a student-based metric. They do not represent the degree of time and work that is required of an instructor and are not an appropriate measure of what constitutes equivalent teaching loads across different faculties.

8.23 Because Sessional Lecturers need to have a minimum of a half-time appointment to be entitled to pension and health and welfare benefits, Sessional Lecturers in Faculties where full-time is defined as 6 credits receive pension and health and welfare benefits if they teach a single course. Sessional Lecturers in Faculties with a 15-credit definition for full-time need to teach 2.5 courses (normally 3, as half courses are rare) in order to qualify for pension and health and welfare benefits. This is highly inequitable, as well as unreasonable.

[148] The Association’s submission suggests that Sessionals are not being paid equally for equivalent work. The University denies this allegation: as is evident from the Minimum Salary Scale for Sessional Lecturers, all Sessionals are paid equally for a full time teaching load in their specific faculty.

[149] The Association bases its submission on the concept of a standard three credit course which does not exist across the University. As the University has repeatedly stated, “credits” are a student-based metric; they do not reflect the work and time required of the instructor. It is not possible to directly compare three-credit courses in, for example, Law, Medicine, and the Faculty of Arts and call them equivalent in terms of workload. There are many factors that go into establishing a “full time” teaching load and this is appropriately done on a faculty-by-faculty basis based on faculty-specific requirements.

[150] It is similarly impossible to compare the minimum salary scale for Sessionals in faculties with 15 credit full time definitions to the scales at other Universities and find the scale lacking without further information about how those universities have quantified and calculated the value of a three credit course.

8.29 Based on the preponderance of the evidence, the Association submits that the above proposal should be awarded on the basis of replication and demonstrated need. The proposal should also be awarded on the basis of equity. There is no justification for some of the Association’s members to have to teach five three-credit courses per term to earn the same minimum salary as members who need teach just two three-credit courses per term. The minimum salary should be standard across the campus, and it would remain the case that Faculties can pay more than the minimum.

[151] As stated above, the issue of “credits” is being confounded in the Association’s submission. Credits are a value given to the student for successfully completing the course. It is not a measure of time spent by the faculty member teaching the course.
What constitutes full-time teaching (in terms of number “credits”) differs between faculties.

[152] The Association’s proposal would result in inequities as to how Sessional Lecturers are paid for a full time teaching load.

C) Right of First Refusal for Sessional Lecturers (Proposal 12)

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

[153] The Association has omitted from its submission the following paragraph in the preamble:

The University and the Faculty Association recognize that Sessional Faculty Appointments are determined by institutional realities which affect the availability of Sessional Faculty Appointments.

[154] The parties recognize that Sessional Lecturers are appointed to meet the temporary teaching needs of the University. The nature of the teaching required and the occasions on which teaching is required are variable. The parties have negotiated a limited right to Sessional reappointment in the Collective Agreement and in the agreement mediated by Rod Germaine. The University cannot give greater reappointment rights to Sessionals and retain the flexibility required in terms of who is appointed and when they are appointed.

8.32 Sessional Lecturers, while a small percentage of the bargaining unit’s total wage bill, contribute enormously to the undergraduate teaching function of the University. In departments such as Economics and English and in the Faculties of Education and Commerce, Sessional Lecturers teach the majority of undergraduate students. According to the Canadian Association of University Teachers between 40 and 60 per cent of undergraduate teaching in Canada is done by Sessional Lecturers (also called Adjuncts or Contract Academic Staff at other universities).

[155] The University’s reliance on Sessional Lecturers is an area of mutual concern to the University and the Association. It has prompted the University’s comprehensive proposal to reduce the number of true temporary contract instructors to the necessary minimum and provide better jobs to its teachers.

[156] UBC actually compares very favourably to the statistics cited by the Association with respect to the amount of undergraduate teaching done by Sessionals across Canadian universities. In fact, only approximately 20% of undergraduate credits are taught by Sessionals at UBC (compared to the 40-60% stat the Association quoted for “contract academic staff” across Canada). The percentage of graduate courses taught by Sessionals at UBC is even lower.
8.33 Because Sessional Lecturers are paid per course credit, or equivalent, it is crucial that they be able to access available courses in order to have access to the equivalent of a full-time job.

[157] This statement reflects disparity between the Association’s conceptual approach to Sessionals and that of the University. It is only crucial that Sessionals be provided access to full-time jobs if the parties are seeking to entrench the University’s reliance on Sessionals and create a career path for that group. The University has been very clear that it values the contributions of its Sessionals, but it has no desire or ability to implement such a career path. Instead, the University has proposed to establish a career path for Lecturers.

[158] In addition, the fact that Sessionals are paid “per course credit or equivalent” demonstrates an acceptance and recognition that full-time constitutes a different number of “credits” in different units.

8.34 Prior to 2011 there was a dispute between the Parties as to the meaning of a Sessional Lecturer’s right to reappointment. On January 11, 2011 the Parties entered into an agreement to arbitrate differences regarding the assignment of courses. The Association contended that Sessional Lecturers were entitled to available work based on what they had previously taught and that this was common practice in some departments. (See excerpt from FA’s "Sessional Work at UBC" and an email from a departmental administrator to a sessional outlining this practice in Tab 11, in the Book of Evidence.) Evidence presented at that arbitration, however, led the Association to accept the University’s position of a much more limited right of reappointment. The Parties came to a consent agreement about what the current language in the Collective Agreement meant.

[159] The University is unclear as to the purpose of the above submission. The Association has provided what the University believes is an irrelevant and incorrect email from 2006 (long before the arbitration in question) and is acknowledging that the evidence presented at that arbitration demonstrated that the University’s interpretation of the right of reappointment of Non-Continuing Sessionals was correct. The parties entered into a consent agreement about the meaning of the Sessional Agreement and the University was unwilling to agree to any further rights for Sessionals.

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

[160] In the University’s view, nothing has changed since the 2011 arbitration.
[161] The University submits that an application of the replication theory demonstrates why the Faculty Association’s proposal should not be accepted. The issue of the extent of reappointment rights was hotly contested between the parties, was grieved by the Association and, as a result of an extensive submission process, a mediated agreement was reached with the assistance of Rod Germaine. The University was unwilling to agree to any additional rights for Sessionals at that time and there is no reason to think that through collective bargaining the University would have agreed to the Association’s proposal in this round of bargaining.

[162] To Association seeks to undo the Germaine Agreement and give a right of reappointment to Sessional (and to Lecturers) up to full time appointments, thereby removing any latitude the University requires to appoint other more suitable applicants where the need arises. There is no basis for suggesting that the University would agree to this proposal at this time when it was unwilling to do so in 2011.

[163] Nor is there any need for the Association to use such inflammatory language. The University takes offense to the suggestion that it treats its employees poorly. In addition, the alleged “poor treatment” referenced in this paragraph is the result of a consent award regarding a negotiated agreement about the rights of Sessionals to which the Association is also a party.

D) Right of Reappointment for Lecturers (Proposal 13)

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

[164] The submission made by the Association, including but not limited to the paragraph reproduced above, supports the University’s comprehensive proposal to create a new model where Lecturers are treated as regular faculty, and there is a much smaller group of contingent faculty who provide the necessary temporary, fill-in teaching.

8.48 The Association submits that Lecturers are not truly employed on one-year contracts, but employed on continuing "almost-at-will" contracts. By virtue of issuing Lecturers annual appointments" that specify termination dates the employer is circumventing the need to provide members with even minimal notice of termination.

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

[165] This submission is patently untrue.

[166] As per the requirements of the Collective Agreement, Lecturers are indeed hired pursuant to one year contracts. The University does not deny that some Lecturers are hired year after year on similar terms, but the Association’s own submission that the University has provided Lecturers with certain unnecessary benefits such as retirement options (that are not required under the terms of the Collective Agreement) demonstrate that the University does not treat its Lecturers as “at will” employees.

[167] Indeed, Article 7.03(b) of Part 4 of the Collective Agreement explicitly provides for notice periods (or pay in lieu) for Lecturers that reflect their periods of continuous service to the University.

[168] Nor is there any evidence that the University is attempting to “circumvent” or “avoid” the need to provide severance or notice of termination and the University takes issue with this language. The University is fully complying with the terms of the negotiated Collective Agreement (to which the Association is a party) and indeed, often going beyond its obligations under the Agreement.

[169] In addition, the University did not “create” these conditions of employment for Lecturers; the parties did by way of their negotiated collective agreement.

[170] The University is seeking to implement a comprehensive proposal that meets the objectives of the Association and creates greater job security and integration for its Lecturers.

8.53 Based on the preponderance of the evidence, the Association submits that the above proposal should be awarded on the basis of replication and demonstrated need. The University has created a class of employment that has absolutely no rights.

[171] Again, the University did not create this class of faculty; the parties did. The Collective Agreement is a mutual document.

[172] There is no basis for suggesting that the University would agree to the Association’s proposals in bargaining and those proposals should not be awarded on the theory of the replication model.

[173] The proposal made by the University addresses the status of Lecturers, meets the objectives of the Association and the interest of Lecturers, and recognizes a category of temporary instructor (“Contingent Faculty”) to meet temporary teaching needs. The
Association’s proposal would only entrench problems that are in need of a comprehensive solution.

E) Workload Issues (Proposal 11)

8.56 Workload has long been identified by members as a major problem, both in surveys of our members and in the Workplace Experience Surveys conducted by Ipsos Reid for the University (Tab 13c, in the Book of Evidence). In fact, workload was identified by Faculty Association members as the top priority in the question "In your opinion, what should be the top three priority areas for improvement within your unit?" Workload was also identified as the largest source of stress in the survey, by 43 percent of members. The Association has proposed to add two clauses to Article 13 in CA, Part I (p. 17) that will solve two of the most important problems (Tab 13, in the Book of Evidence).

[174] There is no question that workload has been identified as an issue for faculty members at UBC. However, the University submits that there are very few professional workplaces where employees would not say (when prompted accordingly) that they are concerned about, or experiencing stress, related to their workload.

[175] The results of the Ipsos Reid survey relied on by the Association must be put in context. First, the questions that the Association relies on were not open-ended. Not only did the survey require that respondents identify “areas for improvement” (in other words, it presupposes that the respondents think that there are areas that need to be improved) and aspects of work that have been a source of stress (same presumption), but it suggested a number of possible responses. The first suggested item on the list in both cases was “workload”.

[176] When the open-ended question “What is the most significant change that could be made to improve your work experience at UBC in the next 5 years” was posed, only 16% of the Association’s members responded with “workload/flexibility/schedule”. In comparison, 23% responded that they would prefer greater resources/support/technology.

[177] The University does not deny that workload has been identified as an issue for some faculty members; however, it does not agree that the Association’s proposals are a workable or effective way to address that issue.

8.58 With respect to the Association’s proposal on one non-teaching term, unlike most employees, individual faculty members have no assigned daily or weekly hours. Their workloads consist of assigned courses, largely self-assigned service, and entirely self-assigned scholarly activity or, in the case of instructors, educational leadership. Because tenure, promotion, and merit awards are largely based on members' productivity in the areas of scholarly activity or educational leadership, members need sufficient time to pursue these activities. In addition, all faculty members are judged on their teaching, which requires, among other things, command over subject matter, familiarity with recent developments in the field, and preparedness. Faculty
need adequate time to maintain currency in their area and adequate time to prepare for the work of the "teaching terms." Lack of sufficient time leads to overwork and lack of appropriate work-life balance. Because Faculty have had the right to a non-teaching term for many years, it is time to codify the historic nature of this and put the right into the Collective Agreement.

[178] The Association concedes that the general practice is for faculty to have a non-teaching term. There is no identified problem or "compelling reason" to enshrine this in the Collective Agreement. By doing so, the Board would be imposing a restriction on the University as to how it utilizes its resources which may hamper the University in terms of meeting student demand, remaining competitive with other Universities, and its ability to attract funding. As noted in section 8.64 of the Association’s submission:

...the University is under increasing pressure to make more use of the summer term. This is due to the way the Province computes space use when it comes to its assessment of the University's requests for capital for new buildings, etc. "Summer use" is listed as one of the key drivers in the University's ten-year financial plan (http://president.ubc.ca/files/2011/10/10yrplan2011oct.pdf), and increasing the summer use of each campus by 50% is listed as a "portfolio action" in UBC's current Strategic Plan (http://jstrategicplan.ubc.ca/the-plan/sustainability/).

[179] The need for the flexibility to assign work in the summer term as necessary is not only about the efficient use of the University’s assets, it also allows the University to meet its customer needs and to compete with other Universities who are increasingly offering year round programs.

[180] Moreover, there is no suggestion that the overall amount of work being assigned to faculty members is increasing. The workload is simply being spread over a different period of time (three terms rather than two). No faculty member is being given less time to prepare for their teaching, or pursue their research or other scholarly activities. It is unclear to the University how spreading a teaching load over three terms allegedly leads to overwork and a lack of work-life balance.

8.60 Assigning full-time members teaching in all three terms is completely unnecessary for the functioning of any program in the University. Because UBC is a large university with large departments, and because so many courses are taught by Sessional Lecturers, who do teach in all three terms, it is entirely possible for every program to function with full-time faculty members teaching their entire year's teaching obligations in two out of the three traditional four-month terms, or equivalent.

[181] The programs that currently (and may in future) require teaching in all three terms are not limited to undergraduate courses that can be taught by Sessional Lecturers. Many of the
courses taught in the summer months are professional courses, such as the part-time MBA and international MBA programs at Sauder which both have coursework that can only occur between May and August.

8.62 A term free of teaching for the purposes of scholarly activity and educational leadership duties is so much the norm both in research-intensive universities and in teaching-intensive universities that the University would face a major recruitment and retention issue should this practice cease at UBC.

[182] The University has never suggested that this practice will cease entirely. On the contrary, as acknowledged by the Association, most faculty members teach in only two terms and will likely continue to do so. The University must simply retain the flexibility to provide instruction in all three terms as is necessary now and as may be necessary in future. The Association’s assertion that failing to include the rigid restriction on teaching that they have proposed will cause retention and recruitment issues is entirely speculative.

8.69 Many of the newly appointed Lecturer positions are filled by former Sessional Lecturers. Sessional Lecturers are protected from workload abuse, because they are paid per credit. The Association deems that salaried Lecturers having no defined workload is unfair, unreasonable, irrational, inconsistent with the way the Sessional Lecturers are treated, and prejudicial to Lecturers. This change in the composition of contract teaching staff from employees paid by the course to those with similar job duties but with annual salaries and no maximum teaching load brings with it the danger of significant exploitation by the University.

[183] The University is unaware of any situation where a Lecturer has suffered “workload abuse” or suffered “significant exploitation” and the Association has provided no evidence to support this assertion.

[184] The University is aware of only one situation where Lecturers were taking on more than a full-time teaching load. As described at paragraph 33 this occurred in the Sauder School of Business in circumstances where the Lecturers themselves wanted the extra work because they were being paid for it on a per credit basis. The faculty put a policy in place to limit the number of courses taught by Lecturers because it was believed that the extra teaching load was not good for the faculty members or for the students.

[185] In light of the above, the University denies that there is any demonstrated need for the Association’s proposals. Nor should those proposals be awarded on the basis of the replication model as there is nothing to suggest that the University would have agreed to them in bargaining.
F) Anonymous Student Comments (Proposal 19)

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

[186] Student comments have been on evaluations since the 1970s. For the reasons explained at paragraphs 188 to 195 of our August 31, 2015 submission, they are an important – and carefully monitored - part of the evaluation process.

[187] The University has a policy and procedures in place that deal with any complaints of the nature that the Association is concerned about.

[188] In addition, the University is unaware of any grievances or formal complaints filed with respect to student comments on teaching evaluation forms. If the Association has indeed seen “numerous” such complaints, it has not seen fit to raise them with the University on the affected faculty members’ behalves.

[189] The irony is not lost on the University that the Association relies in its submission on various anonymous quotes from its members describing their experiences with student comments. In one instance (at paragraph 8.79), the faculty member references a discussion with “the Provost” in which s/he was supposedly told that nothing could be done to assist him/her.

[190] The University requests that the Association provide the necessary information and context if it seeks to rely on these assertions. For example, the University needs to know the identity of the Provost who made the alleged statements, to whom those statements were made and the context of the discussion in order to verify and respond to this allegation.

8.80 The Association submits that the humiliation and helplessness these members feel helps foster an environment that leads to employee burnout and emotional damage.

[191] The Association has provided no evidence in support of this assertion and the University submits that if the Association was faced with a membership – or even a single faculty member - that was experiencing “burnout” and “emotional damage”, then it would have raised these issues within an individual faculty member’s department and if it was not resolved at that level the Association would have filed a grievance.

[192] No grievances or formal complaints have been raised with the University related to the use of anonymous student comments in the tenure and promotion process.
8.82 Until fairly recently, the University typically did not use these comments, which were handwritten on paper, for personnel decisions. The change occurred when Faculties started introducing online evaluations in which students typed their comments in online forms which allowed the University to collate and distribute them easily. But there was no discussion with the Faculty Association about this change. It was arbitrarily introduced.

[193] The University submits that the use of online evaluation forms is merely a procedural rather than a substantive change. The same protections are in place as they always were and inappropriate and offensive comments are still removed from evaluation forms.

[194] Online evaluations are permitted pursuant to the Senate Policy on Student Evaluation of Teaching which permits faculties to administer the assessment tool either electronically or in a paper-based format. The Policy specifically states that “[d]ata can be collected through mechanisms as diverse as traditional paper forms and a centrally administered web-based evaluation platform.”

The University had no obligation to consult with the Association with respect to its move toward increased use of online evaluations. That said, the Senate’s Policy implementation process did include public consultation where faculty members were given the opportunity to provide input.

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

[195] The University does not include the type of comments of which the Association complains in materials that go forward in a Promotion and Tenure case. If such materials are inadvertently included, the Association has access to the student evaluations and the material in question and can require that such comments be redacted.

[196] It is also inaccurate to suggest that the University “refuses” to do anything to remedy the alleged “distress and damage” online comments cause to members when no specific examples have been raised with the University and no grievances filed to give context to these speculative concerns.

[197] The University also draws the Board’s attention to the fact that the Association has proposed only that anonymous comments be prohibited from being used in the tenure and promotion process. It has not proposed that they be excluded from use in all “personnel” decisions as suggested in this submission. Nor would such an exclusion be appropriate.
G) Dean’s Advisory Committee (Proposal 18)

8.93 Based on the preponderance of the evidence, the Association submits that the above proposal should be awarded on the basis of replication and demonstrated need. The Association submits that in the absence of such standard provisions for the Dean’s Advisory Committee, individual Deans, through intent or lack of attention, can effectively frustrate the intent of the clause. The Association is not asking for a new process, just assurances that the intended practice actually gets carried out in every Faculty at UBC.

[198] In this paragraph, the Association has repeated its offensive and unsupported allegation of election fixing on the part of the University’s Deans. These allegations are entirely without merit, inflammatory and inappropriate.

[199] The University already supports the application of the existing Collective Agreement and if the Association is aware of a breach (the University is not), then it can and should pursue a grievance.

[200] The University’s position with respect to the Association’s proposals in this regard are set out in paragraphs 38 to 40 above and will not be repeated here.

8.94 Third, the Association proposes a new clause in 8.02:

When serious concerns about the candidacy arise in the advisory committee, the Dean shall inform the candidate of that fact and the reasons therefore with sufficient particularity to enable the candidate to have a meaningful opportunity to respond and to introduce further relevant evidence. If the candidate has not already been provided with a summary of the referees’ opinions they shall be provided by the Dean. The summary shall be prepared in such a way that the identities of the referees are not disclosed.

[201] The University is not opposed to such a proposal but is unable to agree to it within the context of a proposal that includes a prohibition on the use of anonymous student comments.

H) Length of the Agreement (Proposal 26)

8.97 In the history of the relationship between UBC and UBCFA there has never been a five-year agreement, and the Association would never agree to such a long agreement. Twenty one of the previous twenty four Agreements have been for a term of one or two years. The evidence for this can be found in Tab 16, in the Book of Evidence, in "UBC/UBCFA History of Collective Agreement Terms."

[202] June 30, 2019 is only 3 ½ years from now. If a two year agreement is awarded, the parties will effectively be back in bargaining as soon as this arbitration is concluded.
[203] As can be seen from Tab 16 in the Association’s Book of Evidence there were two 4 year agreements and one three year agreement.

[204] Of the U15 universities, the following have four year agreements with their faculty Associations:

<table>
<thead>
<tr>
<th>Institution</th>
<th>Years</th>
</tr>
</thead>
<tbody>
<tr>
<td>McMaster</td>
<td>2013 – 2017</td>
</tr>
<tr>
<td>Ottawa</td>
<td>2012 – 2016</td>
</tr>
<tr>
<td>Saskatchewan</td>
<td>2015 - 2019</td>
</tr>
<tr>
<td>Queen’s</td>
<td>2015 – 2019</td>
</tr>
<tr>
<td>Montreal</td>
<td>2013 – 2017</td>
</tr>
<tr>
<td>Laval</td>
<td>2012 - 2016</td>
</tr>
</tbody>
</table>

[205] The University of Victoria recently concluded a collective agreement with its faculty for the same five year term that UBC seeks in this proceeding (2014-2019).

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

[206] The Association does not identify which issues are causing “significant mischief” or what that term is intended to convey so the University is unable to respond to this assertion.

[207] From the Association’s Table 12 one can see that Queens, Western and Waterloo have agreements extending out to 2018. The University of Victoria agreement has a term ending June 30, 2019.

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

A) Sessional Lecturers (UBC Proposal 5)

9.01 The University has proposed massive changes to the Collective Agreement provisions concerning contract academic staff (UBC Proposal #5). The effect of the proposal would be to:

   a. eliminate completely the classification of Sessional Lecturer (a classification in which approximately 1,000 different members are employed each year),
b. remove Part 7 of the Collective Agreement in its entirety,

c. create two new classifications: Contingent Faculty and Graduate Student Lecturers,

d. redefine Lecturers from the current "12 months or less" to holders of 3-year appointments

e. provide a right of reappointment for three-year Lecturers,

f. introduce a new mechanism for paying contract academic staff based on departmental workload allocations, and

g. specify that the vast majority of Sessional Lecturers (those not covered by Part 7, Article 5), who currently have a right to reappointment, will lose all rights to work and may only apply for Lecturer appointments (with probation).

[208] It is true that the University’s proposal is substantive and makes significant changes to the Collective Agreement. The nature of the “Sessional Issue” – which encompasses the concerns identified by the Association with respect to the use of Sessionals – requires significant changes. Nothing will be accomplished by making piecemeal changes to the Agreement, and in fact existing problems will only be exacerbated by the entrenchment of the current system as proposed by the Association.

[209] The University has not introduced a “new mechanism” for paying contract academic staff as suggested. The language in Article 4.03 of Part 2 of the University’s comprehensive proposal continues the current practice pursuant to Article 4? of Part 2 of the Agreement. This language is also to the Association’s benefit as it confirms that additional compensation will be paid for any amounts worked over the full time load in a Lecturer’s faculty. This would address any concerns raised by the Association with respect to the possibility of Lecturers working additional amounts without additional pay.

[210] In addition, it is misleading to suggest that the “vast majority” of Sessional Lecturers would “lose all rights to work”. As provided in the transition agreement, a large proportion of Sessionals would be transitioned into Lecturer positions with job security and reappointment rights. Some Non-Continuing Sessionals would indeed lose their positions, but the vast majority of those individuals are those who have only the right to teach a single course at the University.

[211] Similarly, the Association’s proposal would also result in job loss for some of the “one course Sessionals”.

[212] The University submits that these losses are unfortunately required in order to create significant gains and improved employment conditions for hundreds of the University’s contract teaching faculty.
b) No Tenured Assistant Professors (UBC Proposal 6A)

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

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

[213] As stated by the Association, achieving tenure requires an individual to have maintained a high standard of performance in meeting the criteria in question and to show promise of continuing to do so.

[214] Achieving promotion to Association Professor requires “sustained and productive scholarly activity”, an “ability to direct graduate students” and evidence of performance beyond that required of an Assistant Professor. This language reflects the standards that should be expected of individuals granted lifetime appointments. The language that does not reflect the standards the University should uphold is that required of an Assistant Professor.

[215] In a recent decision where a faculty member was denied promotion to Associate Professor, but granted tenure as an Assistant Professor, the President’s decision read, in part, as follows:

Overall, I do not see evidence of a level of scholarly activity sufficient to support promotion to Associate Professor. While your file reflects high quality research, I see only evidence of a modest publication record at a slow pace of productivity not yet beyond that expected of an Assistant Professor. I note gaps in your research productivity and a low level of scholarly activity in comparison to the norms for your field...

Overall, while I am satisfied that you “have maintained a high standard of performance” in your scholarly activity and “show promise of continuing to do so” which is sufficient to support the granting of tenure, you have not yet shown the “sustained and productive scholarly activity” required to support promotion. Similarly, I do not believe that your record yet demonstrates “evidence of ... scholarly activity beyond that expected of an Assistant Professor”.

[216] For reasons of personal confidentiality the University sees no need to name this individual in its submission but it is willing to provide a redacted copy of the letter in question if requested by the Association or by the Board.
Evidence of sustained and productive scholarly activity beyond that expected of an Assistant Professor should be the standard required of those scholars granted lifetime appointments. To allow otherwise suggests an unacceptable acceptance of mediocrity and is inconsistent with the practice of our comparator universities across the country.

The University maintains its position as set out in its primary submission that the granting of tenure at the Assistant Professor level should be removed from the Collective Agreement.

Granting tenure to an individual who has not yet demonstrated “sustained and productive scholarly activity” over the course of seven years is inconsistent with the University’s mandate of excellence.

9.12 The Association’s view is that the Arbitration Board should not award the removal of tenured Assistant Professors from the Collective Agreement. Under the Labour Code, the Association has a duty of fair representation to its members. Every newly hired Assistant Professor is hired under the provisions of the Collective Agreement that separate the tenure decision from the promotion decision. We would be abdicating our responsibility to these members were we to make such a concession to the University.

A primary concern of the Association’s with respect to the elimination of tenured assistant professors appears to be its “duty of fair representation” under the Labour Relations Code. The University submits that it would in no way be a breach of Section 12 of the Code to agree to this provision. The University’s proposal is not retroactive; in other words, no individual who has been tenured at the rank of Assistant Professor would lose that appointment and no individual currently involved in the tenure process would be subjected to the change. The Association has more than met its duty of fair representation to its members.

c. Library (UBC Proposal 9)

9.13 The University has proposed a number of changes to CA, Part 5, Article 2 (p. 91-93), the effect of which would be to increase the length of the probationary period for Librarians from three years to five years.

As stated above in paragraphs 51 and 52, the University is not seeking an extension to a typical “probationary period” for Librarians. This period of time is more accurately described as a pre-tenure period. The University is seeking an appropriate period of evaluation before Librarians are granted tenure.

The University also proposes a Letter of Understanding concerning term administrative appointments for New Heads in the Library. This proposal is identical to one proposed by the University in the 2012 arbitration, a proposal that was not awarded. While there are elements of
this LOU that were agreed to by the Parties, language has been included in the current version of the Collective Agreement that was not agreed to nor awarded. The inclusion of this language in the Collective Agreement was done in error.

[222] The University has no idea what the Association is referring to in this paragraph. The University is unaware of any language included in the Collective Agreement “in error”. No such error was raised in bargaining, or indeed at any time, with the University.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

October 7, 2015

[Signature]

Thomas A. Roper, Q.C.

[Signature]

Jennifer S. Russell