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)

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SUBMISSION OF THE UNIVERSITY OF BRITISH COLUMBIA

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IX. CONCLUSION
I. INTRODUCTION

[1] As agreed by the parties, this submission will set out the University’s position on all issues in dispute between the parties. With respect to the issue of salary and/or benefit increases, the University’s submission is made subject to its submission on ability to pay filed on July 13, 2015. If the University does not have an ability to pay more than the salary increases it has proposed (which it says is the case) then there is no need to consider the criteria set out in Article 11.02 (e) of the collective agreement.

[2] This submission is in two parts. We first deal with the criteria set out in Article 11.02 (e) of the Framework Agreement, assuming an ability to pay, which the Board will apply in determining salary and benefits. The University’s submission is that the criteria set out in Article 11.02 (e) do no support a salary increase beyond the University’s proposal, even if there is an ability to pay.

[3] We then provide the University’s submissions on outstanding non-monetary proposals that have been referred to arbitration. The University’s submission is that the Arbitration Board should decline to award any of the non-monetary proposals, based on the test that has been set out in the case authorities. Alternately, we provide the University’s submission on the Association’s non-monetary proposals and its own proposals.

II. THE FACTORS – SALARY AND BENEFITS

[4] The criteria set out in Article 11.02 (e) are as follows:

...If the Arbitration Board is satisfied that the University has the ability to pay the cost of an award, it shall base its award on the following criteria:

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

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

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

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

[5] In the University of British Columbia v. Faculty Association of the University of British Columbia, (Interest Arbitration 2013), unreported, Colin Taylor, Q.C., July 24, 2013 (the “Previous Award”) the arbitrator held that Article 11 mandates an “adjudicative” model of interest arbitration: paragraph 7. As stated at paragraph 9:

[9] If the “ability to pay” threshold is passed, the second half of Article 11.02(e) establishes the criteria upon which the arbitration board “shall base its award”, providing an exhaustive list of four factors.
In this regard, Article 11.02(e) is distinguishable from the mandate under the Fire and Police Services Collective Bargaining Act, R.S.B.C. 1996 c.42 which the University relies on to support the applicability of a “replication” model. The mandate in that case provides that an arbitrator must “have regard to” a non-exhaustive list of criteria, and “(g) any other factor that the arbitrator or arbitration board considers relevant” (Nelson (City) –and- Nelson Professional Fire Fighters Assn. (Wage Grievance), [2010] B.C.C.A.A.A. No. 174, para.5). It is therefore open to the arbitrator to consider any factor that might have influenced the parties’ ultimate hypothetical settlement in the particular circumstances (i.e., replication). Article 11.02(e), on the other hand, stipulates that the award must be based on the exhaustive list of enumerated factors. It is the “purely adjudicative” model described by the Munroe board.

As stated in the University’s ability to pay submission, the University is proposing a five year collective agreement having a term July 1, 2014 to June 30, 2019, with salary increases of 5.5% over the term as follows:

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

In addition, the University proposal includes the Economic Stability Dividend: if actual real GDP growth for the Province is one percentage point above forecast real GDP growth, then a 0.5 per cent wage increase would result, beyond whatever wage increase had been negotiated in the contract.

This proposal is consistent with the PSEC mandate with which the University must comply and for which the University is funded. The University is not funded for any compensation increases beyond the mandate.

While the Previous Award described a continuation of Lump Sum Payment of 1% (provided for in Article 5, Part 2 of the collective agreement) as being part of the status quo, it is nonetheless a reality that this 1% paid in each year of the proposed agreement is a general salary increase applied to the bargaining unit. Each continuing member of the bargaining unit will receive a lump sum payment of 1% of their annualized salary as at June 30. Sessionals receive a lump sum payment of 1% of their actual earnings in the
past academic year (July 1 to June 30). Accordingly there is already a built-in general wage increase in the collective agreement.

[10] The University is proposing that effective July 1, 2015 and each July 1 to and including July 1, 2018, a retention fund of $500,000 be put in place in accordance with Article 6 of Part 2 of the collective agreement (Tab 1 of Ability to Pay Submission), such that the July 1st salary increases for 2015, 2016 and 2017 would be reduced by 0.1%.

[11] We turn then to deal with each of the criteria applicable to the adjudication of salary for members of the faculty bargaining unit.

A. *The need for the University to maintain its academic quality by retaining and attracting Faculty Members, Librarians, and Program Directors of the highest caliber*

[12] On this criterion, the Previous Award held as follows:

[113] I turn finally to the first-enumerated factor: “the need for the University to maintain its academic quality by retaining and attracting Faculty Members, Librarians and Program Directors of the highest caliber”. To some extent, this criterion overlaps with the one addressed above, and it is dealt with there. Having said that, I acknowledge the University’s submission that there is much more to an individual’s decision to come to (or remain at) U.B.C. than salaries and benefits.

[114] In addition, as noted by the Kelleher board, recruitment and retention is affected by expenditures on both sides of the “reasonable balance” ledger;

Moreover, as the University’s counsel argues, attracting and retaining faculty is not simply a function of salaries. There are other expenditures which the University must make which have an impact on the ability of the university to attract and retain faculty: adequate support staff, up-to-date equipment and funding for research are examples.

(p.12)

[13] The Previous Award found that the actual number of resignations and the number of applicants for each position was the most reliable evidence addressing this criterion:

[116] The University relies on the number of actual resignations, which is small, and the number of applicants for each position, which is large, and submits these demonstrate it does not have a recruitment and retention problem.

[117] I find the University’s numbers of actual resignations to be the most reliable evidence, and I accept the University’s submissions that it does not presently have a general recruitment and retention problem.

[14] The current data leads to the same conclusion. The following table shows the number of resignations over the years:
Number of Resignations from UBC Faculty Association Bargaining Unit

<table>
<thead>
<tr>
<th>Faculty</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>Grand Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fac. of Pharmaceutical Sciences</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>Faculty of Applied Science</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Faculty of Arts</td>
<td>2</td>
<td>2</td>
<td>1</td>
<td>2</td>
<td>7</td>
</tr>
<tr>
<td>Faculty of Dentistry</td>
<td></td>
<td></td>
<td></td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Faculty of Education</td>
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<td></td>
<td>2</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Faculty of Forestry</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Faculty of Land &amp; Food Systems</td>
<td>2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Faculty of Law</td>
<td>1</td>
<td></td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Faculty of Medicine</td>
<td>7</td>
<td>13</td>
<td>8</td>
<td>7</td>
<td>35</td>
</tr>
<tr>
<td>Faculty of Science</td>
<td>3</td>
<td>5</td>
<td>4</td>
<td>1</td>
<td>13</td>
</tr>
<tr>
<td>The Sauder School of Business</td>
<td>4</td>
<td>4</td>
<td>1</td>
<td>4</td>
<td>13</td>
</tr>
<tr>
<td>UBCO - Faculty of Management</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td></td>
<td>9</td>
</tr>
<tr>
<td>UBCO-Barber School Arts &amp; Sciences</td>
<td>1</td>
<td>2</td>
<td></td>
<td>4</td>
<td>7</td>
</tr>
<tr>
<td>UBCO-Faculty of Health &amp; Social Devmt</td>
<td>2</td>
<td>3</td>
<td></td>
<td>1</td>
<td>6</td>
</tr>
<tr>
<td>UBCO-Faculty of Applied Science</td>
<td></td>
<td>3</td>
<td>1</td>
<td></td>
<td>4</td>
</tr>
<tr>
<td>Grand Total</td>
<td>27</td>
<td>39</td>
<td>27</td>
<td>30</td>
<td>123</td>
</tr>
</tbody>
</table>

[15] Similarly, the following table shows that there is a large number of applications for each position:

Recruitment Statistics for Tenure Track Faculty at UBC
Nationally advertised positions in both 2012/2013 and 2013/2014

Prepared by Faculty Relations -- July 2015

<table>
<thead>
<tr>
<th>Faculty / Unit</th>
<th>Applicants</th>
<th>Advertised Positions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arts</td>
<td>3623</td>
<td>43</td>
</tr>
<tr>
<td>Law</td>
<td>194</td>
<td>11</td>
</tr>
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<td>Pharmacy</td>
<td>218</td>
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<tr>
<td>Land and Food</td>
<td>244</td>
<td>10</td>
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<td>Dentistry</td>
<td>11</td>
<td>2</td>
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<tr>
<td>Education</td>
<td>500</td>
<td>23</td>
</tr>
<tr>
<td>Sauder</td>
<td>1524</td>
<td>13</td>
</tr>
<tr>
<td>Applied Science</td>
<td>1433</td>
<td>21</td>
</tr>
<tr>
<td>Science</td>
<td>2402</td>
<td>30</td>
</tr>
<tr>
<td>Medicine</td>
<td>547</td>
<td>48</td>
</tr>
<tr>
<td>UBCO</td>
<td>2032</td>
<td>47</td>
</tr>
<tr>
<td>Total</td>
<td>12728</td>
<td>208</td>
</tr>
</tbody>
</table>
Accordingly, the data does not support a salary increase on the basis of the University's ability to attract faculty members, librarians, and program directors of the highest caliber.

The University is proposing to set aside 0.1% of the increase for the Retention Fund recognized in Article 6 of Part 2 “Salaries and Economic Benefits”, which has been a term of the collective agreement for years. The University is proposing an increase in the Retention Fund from $400,000.00 to $500,000.00 per year. The Previous Award provided for a Retention Fund of $200,000.00 in the first year and $400,000.00 in the second year.

The Previous Award accepted the appropriateness of such funds, and made it clear that in providing for targeted retention increases this does not in any way suggest there is a recruitment or retention problem that would support a general salary increase:

I also accept the University's argument that general retention (relevant to a general wage increase) is different from specific, targeted retention issues that may arise at a university, and thus the fact that the University has engaged in targeted retention efforts, and earmarked a small proportion of its increase for that purpose, does not assist the Association's case. It is not surprising that there would be particular areas where retention would be a concern, it is the type of practice the University has engaged in for some time, and the fact that the University has earmarked 0.05% and 0.10% of its proposed increase for such situations does not demonstrate that a larger general wage increase is necessary.

Prior collective agreements provided the University with the flexibility it requires to deal with specific retention cases. For example in the 2006-2010 agreement the Retention Fund was $3.2 million over the four years.

It would therefore be appropriate therefore to apply $500,000 to the Retention Fund in each year of the proposed agreement, which would result in a reduction of 0.1% of the July 1st salary increases for 2015, 2016 and 2017.

The University experienced a significant growth in the number of international students for the coming academic year (fiscal year ending March 31, 2016) resulting in increased revenue to the University. The revised Tabs in the University's ability to pay submission reflect forecast changes in the future growth of international students to reach the same total growth by the end of the proposed term of the collective agreement. The growth in the number of international students is not limitless and must be regulated to ensure that all students have the best educational experience possible within the resources available to the University.
[22] Further, as indicated in the University’s ability to pay submission, a portion of the revenues brought in by international students will go to enhance the quality and status of the University by funding strategic hires of senior faculty in key areas. The models presented in the University’s ability to pay submission make different assumptions about international student tuition increases over future years each with a forecast as to strategic hires that will be enabled by the increase in revenue.

[23] The University will lead evidence at the arbitration hearing with respect to these forecasts. Our point here is that neither the Retention Fund nor the expenditure of funds on strategic hires are indicators that retention and recruitment is a problem at UBC that requires redress through a general salary increase.

[24] Stated differently, there is no basis in the evidence to suggest that salary increases greater than the University has proposed are required to retain or attract faculty of the highest caliber.

B. Changes in the Vancouver and Canadian Consumer Price Indices;

[25] The Previous Award addressed the time frame over which changes in the Vancouver and Canadian CPI are to be addressed. The Board held that the assessment was to be made with respect to data and trends that are relevant to the renewal agreement.

[90] Both the CPI and general wage increase criteria are prefaced with the phrase “changes in”. They do not specify precisely since when – e.g., the term of the last collective agreement, or the time of the last round of bargaining, in which the parties last had an opportunity to revisit the matter. A purposive interpretation suggests a holistic and practical assessment directed at ascertaining general levels and trends that are relevant to the period of this collective agreement.

[26] The previous Board looked at the two years prior to the arbitration hearing and the projections made by the Bank of Canada: paragraphs 91 and 92.

[27] As the following table shows changes in Canadian and Vancouver CPI over the past two years have been very low and generally well under 2%.

<table>
<thead>
<tr>
<th>Date</th>
<th>Canada index</th>
<th>annual % change</th>
<th>BC index</th>
<th>annual % change</th>
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<tr>
<td>Jan-11</td>
<td>117.8</td>
<td>2.3</td>
<td>114.8</td>
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<tr>
<td>Feb-11</td>
<td>118.1</td>
<td>2.2</td>
<td>115.2</td>
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<td>Mar-11</td>
<td>119.4</td>
<td>3.3</td>
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<td>Apr-11</td>
<td>119.8</td>
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<tr>
<td>May-11</td>
<td>120.6</td>
<td>3.7</td>
<td>117.1</td>
<td>3.1</td>
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<tr>
<td>Jun-11</td>
<td>119.8</td>
<td>3.1</td>
<td>116.5</td>
<td>2.7</td>
</tr>
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</table>

<table>
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<tr>
<th>Date</th>
<th>Vancouver index</th>
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<tr>
<td>Jan-11</td>
<td>115.8</td>
<td>2.4</td>
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<tr>
<td>Feb-11</td>
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<td>Mar-11</td>
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</tr>
<tr>
<td>Jul-15</td>
<td>127.3</td>
<td>1.3</td>
</tr>
</tbody>
</table>

Source: Statistics Canada, CANSIM Table 326-0020 Consumer Price Index, monthly (2002=100)
July data is latest available as of August 27, 2015.
The Canada CPI has been trending around an annual change of 1% since the beginning of this year, with the B.C. and Vancouver inflation rates slightly lower. Further, both the Canadian and Vancouver CPI increases have been trending down over the past 12 months.

Inflation, Annual % Change in the Consumer Price Index

Another point to be made based on this data is that the general salary increases over the term of the last collective agreement imposed by the Previous Award, of 2.45% in each year of the agreement (July 1, 2012 to June 30, 2014) exceeded changes in the Vancouver and Canada Consumer Price Indices.

<table>
<thead>
<tr>
<th></th>
<th>Canada</th>
<th>BC</th>
<th>Vancouver</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>0.9</td>
<td>-0.1</td>
<td>0.2</td>
</tr>
<tr>
<td>2014</td>
<td>2.0</td>
<td>1.0</td>
<td>1.1</td>
</tr>
<tr>
<td>2015 year-to-date (Jan-July)</td>
<td>1.0</td>
<td>0.8</td>
<td>0.9</td>
</tr>
</tbody>
</table>

Source: Statistics Canada, CANSIM Table 326-0020.
July data is latest available as of August 27, 2015.

This of course could not have been known at the time the Previous Award was rendered but it has proved to be the case – a fact that we submit should be taken into account when determining salary increases over the term of the next collective agreement.
[31] In terms of projections for inflation over the coming years, the University’s salary proposal is in line with the changes that are forecasted for Canadian CPI increases:

**Canadian CPI Inflation Forecasts, % change**

<table>
<thead>
<tr>
<th>Organization</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bank of Canada, Monetary Policy Report</td>
<td>1.1</td>
<td>1.9</td>
<td>2.0</td>
<td>na</td>
</tr>
<tr>
<td>BC Ministry of Finance, 2015 Budget</td>
<td>1.6</td>
<td>2.0</td>
<td>2.0</td>
<td>2.0</td>
</tr>
<tr>
<td>BMO Economics</td>
<td>1.2</td>
<td>2.0</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>CIBC Economics</td>
<td>1.2</td>
<td>2.3</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>RBC Economics</td>
<td>1.1</td>
<td>2.5</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Scotiabank Economics</td>
<td>1.3</td>
<td>2.2</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>TD Economics</td>
<td>0.8</td>
<td>2.2</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Average of above forecasts</td>
<td>1.2</td>
<td>2.2</td>
<td>2.0</td>
<td></td>
</tr>
</tbody>
</table>

Sources: forecasts are from listed documents and bank forecast publications off of respective websites

[32] The same is true for projections for British Columbia CPI increases:

**British Columbia CPI Inflation Forecasts, % change**

<table>
<thead>
<tr>
<th>Organization</th>
<th>2015</th>
<th>2016</th>
<th>2017</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>BC Ministry of Finance, 2015 Budget</td>
<td>1.6</td>
<td>1.9</td>
<td>2.0</td>
<td>2.0</td>
</tr>
<tr>
<td>BMO Economics</td>
<td>1.0</td>
<td>2.1</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>CIBC Economics</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>RBC Economics</td>
<td>0.9</td>
<td>2.3</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Scotiabank Economics</td>
<td>na</td>
<td>na</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>TD Economics</td>
<td>1.0</td>
<td>2.1</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Economic Forecast Council*</td>
<td>1.4</td>
<td>1.9</td>
<td>na</td>
<td>na</td>
</tr>
<tr>
<td>Average of above forecasts</td>
<td>1.2</td>
<td>2.1</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Sources: forecasts are from listed documents and bank forecast publications off of respective websites

* The Economic Forecast Council is an average of 14 forecasts prepared for the BC Ministry of Finance for budgeting purposes.

[33] Again, we point out that an annual 1% lump sum payment is built in to Article 5, Part 2 of the agreement. It may be “status quo” but it is a real 1% increase in compensation to members of the bargaining unit in each year of the collective agreement. The University’s proposed increases are on top of that.

C. **Changes in British Columbian and Canadian Average Salaries and Wages**

[34] The same conclusions can be drawn from the data regarding changes in the B.C. and Canadian average salaries and wages.

[35] The salary increases awarded to the faculty bargaining unit in the Previous Award met or exceeded changes in the B.C. and Canadian average salaries and wages over the term of
that agreement. As well, Average Weekly Earnings in B.C. are increasing at a lower rate than other Canadian jurisdictions.

**Average Weekly Earnings, 2011-2015**

<table>
<thead>
<tr>
<th>Year</th>
<th>Canada</th>
<th>British Columbia</th>
<th>Alberta</th>
<th>Saskatchewan</th>
<th>Ontario</th>
</tr>
</thead>
<tbody>
<tr>
<td>$</td>
<td>%</td>
<td>$</td>
<td>%</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>2011</td>
<td>850.15</td>
<td>2.3</td>
<td>819.71</td>
<td>986.56</td>
<td>814.32</td>
</tr>
<tr>
<td>2012</td>
<td>869.49</td>
<td>2.3</td>
<td>841.54</td>
<td>1015.00</td>
<td>844.56</td>
</tr>
<tr>
<td>2013</td>
<td>884.71</td>
<td>1.8</td>
<td>850.23</td>
<td>1045.25</td>
<td>881.39</td>
</tr>
<tr>
<td>2014</td>
<td>908.84</td>
<td>2.7</td>
<td>869.80</td>
<td>1089.98</td>
<td>906.08</td>
</tr>
<tr>
<td>2015*</td>
<td>928.78</td>
<td>2.6</td>
<td>886.69</td>
<td>1110.45</td>
<td>947.07</td>
</tr>
</tbody>
</table>

Source: Statistics Canada, CANSIM Table 281-0026 Survey of Employment, Payrolls and Hours (SEPH), average weekly earnings, all employees, excludes overtime. *note 2015 are year-to-date data (January to June) and % change is calculated as the average for Jan-June over the same period in 2014. June data are the latest available as of August 27, 2015.

[36] Both the absolute increases in BC and Canadian Average Salaries and Wages and the trend do not support salary increases beyond the University’s proposal, particularly when the collective agreement already provides for an annual 1% lump sum increase in salaries in each year of the proposed agreement.

D. Salaries and benefits at other Canadian universities of comparable academic quality and size.

[37] In the Previous Award, the arbitrator accepted that it was appropriate to include in the group of comparable universities the University of Victoria and SFU, and to exclude UNBC.

[38] It was also accepted that the inclusion of UBCO significantly distorts the comparison between UBC and its national comparators, and therefore UBCO should be excluded.

[39] The data that was presented in the last arbitration showed that “[s]alaries at UBC have fallen somewhat behind its relative place in terms of academic quality”: paragraph 104. That is not the case now.

[40] This criterion does not address “changes” in salaries and benefits but rather the actual wages and benefits provided by other comparable Canadian universities.

[41] In the July 1997 Arbitration Award between these parties, *University of British Columbia and Faculty Assn. of the University of British Columbia*, [1997] B.C.A.A.A. No. 793 (Larson), the relative position of UBC was noted as follows:
In terms of the average salaries of all professorial ranks, however, UBC pays higher than most other universities except Simon Fraser, McMaster, the University of Toronto and Waterloo (at page 22).

[42] As the table at Tab A shows, UBC has increased its position with respect to faculty salaries with an average annual salary second only to the University of Toronto.

[43] We have enclosed the data considered in the Previous Award and the current data, to show that there is no basis for an argument now that UBC salaries have fallen behind comparator universities.

[44] The criterion agreed to in the collective agreement restricts the comparison to other Canadian universities of comparable academic quality and size. Comparisons with universities outside Canada are not a relevant factor under the agreement.

[45] The University of Victoria recently concluded a collective agreement with its faculty with the same general wage increases over the same term, as are proposed by the University in this arbitration.

[46] As the data at Tab A demonstrates UBC faculty salaries remain substantially higher than the salaries at SFU and the University of Victoria. That gap would widen if an increase beyond the University’s proposal was awarded in this case.

[47] Because the University of Victoria and SFU are comparators, it is relevant to understand the economic context in which these universities (including UBC) operate. The University of Victoria settlement, and UBC’s proposal in this arbitration, reflects the PSEC mandate both for duration of the agreement and for general salary increases. As can be seen from the document at Tab B settlements in other post-secondary institutions are consistent with the PSEC mandate.

[48] We appreciate that the PSEC mandate is not one of the criteria set out in Article 11.02 (e) but it is relevant in that it informs what is occurring at the comparator universities in British Columbia.

III. FACULTY ASSOCIATION SALARY PROPOSAL

[49] The Association has put forward wording changes in its salary proposal that were not provided to the University in collective bargaining. The Association is proposing modifications to the language as to who is entitled to salary increases and to CPI, merit, and PSA. The University does not know whether these proposed changes are substantive or not. If they are substantive, then there will be cost implications to the University.
[50] For example the University does not know what the Association intends by “base academic salary”, or whether this new proposal expands entitlement to increases beyond those who were continuing members of the bargaining unit on June 30 of a given year.

[51] For reasons developed fully below, arbitration is not the place to introduce new proposals or language changes that have not been seen by the opposite party. A party is entitled to understand and negotiate about proposals in collective bargaining; not be presented with them in arbitration. Our submissions in this regard are set out fully below in the section “The Faculty Association’s Modified Proposals”.

[52] We submit that it would not be appropriate for the Board to entertain any language changes that were not tabled by the Association in collective bargaining.

[53] With respect to the Faculty Association’s proposal to increase salaries by 3% in each year of a two year agreement, the University submits that none of the criteria set out in Article 11.02(e) of the Agreement support such an increase, and we rely on the analysis set out in paragraphs 12 to 49 above.

[54] The Association is also proposing that there be a minimum salary scale for Sessionals, defining “full time” as nine credits per term. Currently, full time sessional work varies between faculties and departments with the minimum salary reflecting the difference as to the number of credits that is equivalent to full time. The collective agreement currently provides for minimums as follows (Article 4, Part 2, page 41):

<table>
<thead>
<tr>
<th>Step</th>
<th>Credits per term for full-time</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>6</td>
</tr>
<tr>
<td>1</td>
<td>$3,133</td>
</tr>
<tr>
<td>2</td>
<td>$3,169</td>
</tr>
<tr>
<td>3</td>
<td>$3,207</td>
</tr>
<tr>
<td>4</td>
<td>$3,247</td>
</tr>
<tr>
<td>5</td>
<td>$3,286</td>
</tr>
<tr>
<td>6</td>
<td>$3,324</td>
</tr>
<tr>
<td>7</td>
<td>$3,360</td>
</tr>
<tr>
<td>8</td>
<td>$3,399</td>
</tr>
</tbody>
</table>

[55] The Faculty Association proposal is to define full time as 9 credits and pay all Sessionals the nine credit rate (plus 3% increase in each of the two years of their proposed collective agreement) for each credit they teach.

(00378872;1)
This would result in a significant increase in compensation for Sessionals in faculties where 15 credits is full time, and less compensation in faculties where 6 credits is full time.

Alternately, if all Sessionals were to teach a maximum of 9 credits as full time, the University would have to add more Sessionals (at more cost) in those faculties where full time is currently more than 9 credits.

The Association is also proposing a minimum salary for 12 Month Lecturers. This would create a cost for the University over and above the 3% salary increase that is also being proposed.

The University’s costing of the Faculty Association’s salary and minimum scale demands are at Tab C. The University simply cannot incur the costs associated with these proposals.

**IV. CONCLUSION ON SALARY INCREASES**

The University submits that its offer, which is at the limit of the PSEC mandate that will be funded by the Government, is consistent with the criteria set out in Article 11.02(e). Even if the University had the ability to pay more, the criteria against which this case is to be adjudicated do not support salary increases beyond those the University is proposing.

**V. FACULTY ASSOCIATION’S BENEFIT PROPOSALS**

The Faculty Association has made proposals to increase vision care, to provide tuition fee waivers for spouses, increase professional development funds, and provide extended health to post-age 65 members.

These proposals all have cost implications for the University. At Tab C we provide cost information relating to these proposals.

Because the University’s salary proposal is at its ability to pay, the University has proposed to the Faculty Association that there could be an offset of salary increases for benefit improvements. The University proposed three alternatives with different benefits and options:

- A salary increase proposal with an increase in vision coverage to $300 in any 24 month period and a modification to the tuition fee waiver. This alternative is attached at Tab D.
• A salary increase proposal with an increase in vision coverage to $400 in any 24 month period and a modification to the tuition fee waiver. This alternative is attached at Tab E.

• A salary increase proposal with an increase in the Professional Development Reimbursement Fund to $1,200, an increase in vision care coverage to $300 and a modification to the tuition fee waiver. This alternative is attached at Tab F.

[64] The University has not costed the Association’s proposal with respect to extended health benefits for faculty members working after the normal retirement age. Those costs are difficult to quantify and are potentially significant. Any cost of such benefits would have to be offset in the University’s salary proposal.

[65] Similarly, it is difficult to know how many faculty members’ spouses would take advantage of free tuition and the recruitment benefit to the University of offering these waivers is unlikely to justify the costs.

[66] The University cannot commit to providing extended health benefits to members working beyond the normal retirement date. Currently, those benefits are offered “in accordance with the terms” of the University’s benefit plans. The Association seeks specific language making the provision of extended health benefits unlimited by age.

[67] The University currently provides extended health benefits pursuant to a contract with Sun Life Financial which contains an upper age limit of 71 years of age for eligibility. The University would be required to negotiate any change to that upper limit with Sun Life, and the cost of doing so is unknown. The University cannot agree to contractual language in its collective agreement that it cannot guarantee that it will be in a financial position to provide. Nor should such language be awarded by the Arbitration Board given this uncertainty.

VI. THE PARTIES’ NON-MONETARY PROPOSALS
A. Overview

[68] In addition to a general wage increase, the Association has sought to have a number of other proposals awarded by interest arbitration, including a number of “non-monetary” language proposals.

[69] It is the University’s primary submission that the appropriate resolution of all non-monetary proposals is to determine that none should form part of the award. There is no compelling need for the changes requested; none is so urgent that the parties cannot wait to resolve the same in the next round of collective bargaining; the issues raised are
complex and many of them constitute breakthrough language that is inappropriate to be awarded at interest arbitration; there will be insufficient information before this Arbitration Board for it to properly analyze the issues involved and be satisfied that the changes should be made; and, perhaps most importantly, it would be appropriate to make trade-offs for the changes requested and it is the parties themselves who are best suited to decide appropriate trade-offs.

[70] The appropriate forum for those trade-offs to be made is by the parties themselves in collective bargaining. In a related issue, some of the versions of the proposals submitted by the Faculty Association to the Arbitration Board for adjudication were not tabled in bargaining. This is discussed in further detail below. The University submits that this constitutes a misuse of the interest arbitration process. The Panel should not reward the Association by granting proposals that it failed to table in bargaining and that were instead strategically developed after bargaining had closed.

[71] In the alternative, in the event that the Arbitration Board sees fit to award any of the Association’s language proposals, the University has submitted proposals of its own to provide the Board with the necessary and appropriate trade-offs. The University’s proposals were all tabled - in their current form - in collective bargaining.

B. Principles of Interest Arbitration

[72] There has been much written on interest arbitration. It has been heavily criticized because of its “narcotic effect” on negotiations, and the fact that unions typically see interest arbitration as a vehicle to necessarily get more, not less, than what they could achieve during the negotiations phase of the process. There is very little incentive on a union to settle in negotiations – the narcotic effect – when there is an expectation that they will do no worse than they would do if they accepted the employer’s last offer in bargaining; and indeed expect to get something through arbitration that the employer was not willing to give.

[73] In this round of bargaining, the parties successfully worked through many difficult issues and in the spirit of good faith bargaining and a cooperative relationship agreed on a large number of revisions to the collective agreement. It is the University’s position that but for the ability to place unresolved issues before the Interest Arbitration Board, the parties would have ratified a collective agreement. In other words, it was the narcotic effect of interest arbitration that likely caused negotiations to break down.

[74] In light of these concerns, interest arbitrators have consistently stated that interest arbitration is an inherently conservative exercise. The approach interest arbitrators in this province take in determining whether to award a proposed language change is well-
established. As stated by Arbitrator Germaine in Nanaimo (City) v. Nanaimo Professional Firefighters, Local 905 of the International Assn. of Firefighters (Interest Arbitration Grievance), [2014] B.C.C.A.A.A. No. 3, there is a ‘well-travelled terrain’ of applicable principles and it is these principles that were applied by Arbitrator Taylor in the Previous Award with respect to non-monetary proposals.

[75] Arbitrator Taylor determined at paragraph 131 that with respect to proposals beyond the general wage increase, the question the Arbitration Board must ask is who is best situated to make the decisions and trade-offs in question: the arbitrator or the parties themselves?

[76] In these circumstances, the answer is the parties themselves, as Arbitrator Taylor accepted in the Previous Award, finding as follows at paragraphs 132 – 133:

[132] The University and the Association are sophisticated parties with a mature bargaining relationship and a long history of self-governance. They have a commendable record of resolving their issues and reaching agreement without the need for a third party to order their affairs.

[133] If it were otherwise, there might be a greater need for management by a third party. However, that is not the case. While the Association correctly observes that the parties have not been able to reach agreement on such issues in this round of bargaining, that has not been the case in other rounds, and I am not persuaded that any of the issues raised are of sufficient urgency that the parties should not be given another chance to resolve the issues themselves. It is their Agreement, and they deserve that chance.

[77] The same result should follow in this case. As noted above, the parties had a very productive round of bargaining and successfully reached agreement on a number of difficult issues, some of which had been referred to interest arbitration in the previous round of bargaining. Those issues include:

- Sabbatical for Instructors (Part 3, Article 2): Instructors need only one year of full time service in an eligible rank, instead of two years to be eligible for a sabbatical.

- Definition of “Educational Leadership” (Part 4, Article 4.04): The parties added an extensive definition for educational leadership.

- Periodic and Non-Periodic Reviews (Part 4, Articles 1, 2, 5, 9, 13): The parties clarified the timing and process for periodic and non-periodic reviews.

- Representation Rights in Investigations (Part 1; Part 4, Article 10; Part 5, Article 9): This amendment codifies the University’s practice of informing faculty of their right to bring representation to any meeting where discipline may be imposed.
Equity Language added to Scholarly Activity (Part 4, Article 4.03): The parties incorporated some language to recognize diverse contributions with respect to scholarly activity.

The parties changed the title of “Instructor I” to “Acting Assistant Professor” (Part 4, Article 3; Part 1, Article 1.01; Part 4, Article 5.01).

Amendments to Appendix A – Exclusions from the Bargaining Unit (Part 1): The parties corrected some errors in the list of exclusions and made a clarification for academic administrators.

Eligibility to Vote on Appointment, Reappointment, Tenure and Promotion (Letter of Understanding): The parties changed and realigned the ranks for voting, including the Educational Leadership stream.

President’s Right to Consult (Part 1, Article 5.14): The parties resolved with whom the President may consult regarding appointment, reappointment, tenure and promotion.

Maternity/Parental/Adoptive Leave Pre-tenure (Part 3, Article 1): The parties resolved how a faculty member who becomes a parent receives a tenure clock extension.

Preservation of Past Rights and Practices (Part 1, Article 17): The parties clarified the difference between consultation with the Faculty Association as a union and consultation with faculty members as part of collegial governance.

[78] In paragraphs 128-130 of the Previous Award, Arbitrator Taylor accepted in full the following submissions made by the University. He agreed that the principles contained therein applied to all of the proposals submitted to arbitration by both sides, beyond the award of general wage increase:

[128] The University submits:

...In City of Richmond v. Richmond Fire Fighters Assn., [2009] B.C.C.A.A.A. No. 106, Arbitrator McPhillips discussed the reasons which make it difficult to adjudicate terms other than wages and term of the agreement:

74 With respect to the other issues in this dispute there are four general observations to be made. The first is whether this Award should address those matters at all. Generally, interest arbitration awards will deal with such issues only if there is a clear and compelling reason to do so: Greater Victoria Labour Relations Association [1993] B.C.C.A.A.A. No. 31, October 28, 1993 (Ready); City of Vancouver, December 21, 1983 (McColl); City of Campbell River, supra; City of Burnaby, supra.

...
76 The third consideration is these are costs and language items which generally require trade-offs with other terms in the Agreement to be made by the parties themselves and it is difficult to do that in this setting.

77 The final point is that this Collective Agreement will expire in approximately three months and the parties will soon have another opportunity to address directly the matters of concern to them and the bargaining history is that is what they have done.

(emphasis added by the University)

[129] After citing further case authorities, the University submits:

132. It is the University's primary submission that the appropriate resolution to all non-salary proposals is to determine that none should form part of the award. All of the factors referred to by Arbitrator McPhillips in City of Surrey, supra, apply to these circumstances:

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

b. 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;

c. It would be appropriate to make trade-offs for the changes requested; and

d. The next round of bargaining is imminent.

133. In regard to the latter factor, the parties agree to a two year term for the current collective agreement. By the time this matter is resolved, the parties will be back at the bargaining table in six months' time at most. None of the non-monetary proposals is so pressing that it cannot be left for bargaining in January of 2014 when the appropriate trade-offs can be freely negotiated by the parties.

134. Furthermore, many of the non-monetary proposals made by the parties involve extremely complex issues that are not readily analyzed and addressed by way of interest arbitration. They have potential consequences that are not always evident on the face of the proposals which require careful consideration and assessment. The non-monetary proposals are better suited to the give and take of collective bargaining where the parties will have time to fully consider and negotiate the various competing interests involved.

135. In particular, the Faculty Association is looking for significant breakthroughs in terms of language and practice in its proposals. For example, the Association seeks major changes to the terms and conditions of employment for Sessionals and Lecturers. They also seek to implement new and extensive procedures for conducting investigations at the University and create a new process for workload allocation. These significant and complex proposals (which are discussed in detail below) are not appropriate for interest arbitration. They represent the very sort of breakthroughs that neither party can expect from the inherently "conservative exercise" of interest arbitration.
I agree with and accept that submission, and find it applies to all of the proposals from both sides, beyond the award of general wage increase.

These same factors apply in this round of interest arbitration and the University submits that the same result should follow. Amongst its various proposals, the Association is again seeking to obtain major changes to the terms and conditions of employment for Sessionals and Lecturers and additional workload language. For the first time, they are seeking to eliminate the consideration of anonymous comments in student evaluations of teaching from the tenure and promotion process. These are complicated issues that should be discussed and resolved by the parties through negotiation.

Arbitrator Lanyon recently applied these well-established principles to a similar result in Vancouver (City) Police Board v. Vancouver Police Union (Collective Agreement Renewal), [2014] B.C.C.A.A.A. No. 95. In that case, the parties agreed that issues remaining in dispute with respect to a renewal collective agreement were to be determined by interest arbitration under the Fire and Police Services Collective Bargaining Act.

With the exception of four items (discussed below), Arbitrator Lanyon refused to address the non-monetary issues in dispute because of the principles underlying the conservative nature of the interest arbitration process:

60 ... As stated, interest arbitration is a conservative process. It works best when the differences referred to a third party are few in number. Mature collective bargaining relationships, such as the one before me, have crafted a collective agreement over a good number of years. During numerous rounds of collective bargaining the parties have arrived at many different and difficult trade-offs. For an interest arbitrator to delve too deeply into that collective agreement, without any knowledge of those trade-offs, may potentially upset this delicate balance achieved over many years. The increases in these remaining issues sought by the Union are substantial. The proposed cuts sought by the Employer are equally substantial. Having read the parties' extensive submissions, and listened to their comprehensive arguments, I have decided to limit this Award to the Wages and Term of the agreement. I therefore decline to address all other proposed changes to the collective agreement.

The four exceptions to Arbitrator Lanyon's general refusal to address all remaining outstanding proposals were: the establishment of two committees which had only the power of recommendation, such that any final decision on the respective matters could only be made by the employer and union jointly; and two amendments to the collective agreement already agreed to by the parties.

In light of the above, it is the University's primary submission that the Arbitration Board should decline to award any of the parties' proposals. All of the factors referred to by
Arbitrator McPhillips in *Surrey and Surrey Fire Fighters’ Assn.*, [2011] BCCAAA 50, Arbitrator Lanyon in *City of Vancouver, supra*, and most importantly, the Previous Award, apply to these circumstances:

a. There is no compelling need for the changes requested and none of them is so urgent that it cannot wait for the next round of collective bargaining;

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

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

[84] None of the non-monetary proposals in this case is so pressing that it cannot be left for bargaining when the appropriate trade-offs can be freely negotiated by the parties.

[85] As is evident from the discussion below, many of the non-monetary proposals made by the parties involve complex issues that are not readily analyzed and addressed by way of interest arbitration. They have potential consequences that are not always evident on the face of the proposals which require careful consideration and assessment. The non-monetary proposals are better suited to the give and take of collective bargaining where the parties will have time to fully consider and negotiate the various competing interests involved.

[86] The issues involved are also best resolved by the parties themselves because they have the necessary expertise to properly consider those competing interests. For example, the promotion and tenure process is highly specialized and complex. Determining what constitutes “excellence in teaching” is an academic decision and the matter of how anonymous student comments should factor into those assessments is a matter the parties should resolve themselves.

[87] The Faculty Association is looking for other significant breakthroughs in terms of language and practice in its proposals. For example, the Association seeks major changes to the terms and conditions of employment for Sessionals and Lecturers. These proposals – as well as the new limits on workload allocation the Association seeks – are not appropriate for interest arbitration. They represent the very sort of breakthroughs that neither party can expect from the inherently “conservative exercise” of interest arbitration.

[88] In the alternative, in the event that any of the Faculty Association’s non-monetary proposals are to be awarded (in whole or in part) the University advances a number of its own proposals which may be used to replicate the “trade-offs” that would have been
made in free collective bargaining. Those proposals are described in paragraphs 201 – 249 below. The University has also provided a brief description of its position with respect to the Faculty Association’s non-monetary proposals.

C. The Faculty Association’s Modified Proposals

[89] Of further concern to the University is that several of the Faculty Association’s proposals, as described below, were never tabled in bargaining in the format presented to the Arbitration Board. The Association’s modifications to their proposals are significant and substantive, and the University objects to this attempt to bargain through the interest arbitration process. In the University’s view, this is a strategy to obtain more by way of the interest arbitration process than the Association could achieve in bargaining — a motive arbitrators have been clear is to be strongly discouraged.

[90] Article 11.02(b) of the Agreement clearly states that the parties “shall submit to the Arbitration Board the items on which agreement has not been reached”. In the University’s submission, this provision requires that the parties agree that bargaining has concluded and they have failed to reach agreement, i.e. they have reached impasse. If the parties have further proposals to make, then it seems clear that impasse has not yet been reached.

[91] Interest arbitration should be the last resort when bargaining fails and not a step in the bargaining process. The parties were clear on the first day of bargaining that if there were any outstanding matters once bargaining concluded, then they would meet to exchange the proposals that would be presented to the Arbitration Board. This was not intended to be an opportunity to further modify proposals and re-engage the bargaining process. It was intended to avoid the confusion and unnecessary submissions that arose in the last round of interest arbitration.

[92] In the last round of bargaining and interest arbitration, the University objected to the fact that, without notice to the University, the Association significantly altered a number of its non-monetary proposals from those it submitted to the Arbitrator prior to mediation and from those it had tabled in bargaining.

[93] Given that there was little movement on the tabled proposals during 21 days of bargaining and three mediation sessions, the University was surprised to see that the

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1 Prior to the last round of interest arbitration, the parties engaged in mediation and on March 25, 2013, the Arbitrator requested that the parties provide to him a list of the outstanding issues and the last position of the parties on each issue. Each party did so on April 4, 2013. It was the University’s understanding and expectation that those proposals were the Association’s final proposals and that, absent any agreement reached in mediation, they reflected the position the Association would take at arbitration.
Association had made significant revisions to certain proposals in its submission to arbitration.

[94] The University objected to this exercise primarily on the basis that the parties had not had the opportunity to fully negotiate the issues in dispute and in doing so fully exhaust the process of negotiation. It argued that interest arbitration should be an avenue when all else fails and not a substitute for what the parties should do themselves, and that the Faculty Association should not be rewarded in interest arbitration for what they chose not to table between the parties.

[95] In this round of bargaining, the parties fully exhausted the process of negotiations and settled a Memorandum of Agreement as to which of their proposals were withdrawn and which could go before the Arbitration Board for adjudication. A copy of that Memorandum of Agreement is at Tab G.

[96] As stated above, the parties agreed to meet to exchange the proposals they would be taking to arbitration after bargaining concluded and that all discussions at the bargaining table were without prejudice. In the University’s submission, this meant that the parties could refer any unresolved proposal to arbitration so long as the proposal had been tabled in bargaining. In other words, the parties agreed that they were not required to submit their final proposals, but could revert back to any version that they had tabled. That way, the Arbitration Panel would not know if a party was submitting a first or a last proposal.

[97] This process was designed to encourage real and meaningful bargaining. In the University’s submission this was largely successful given that the parties managed to reach agreement on many important and challenging issues. The Association appears to agree given the following blog entry that it posted on February 1, 2015:

The bargaining team would like our members to know that this round of bargaining was a much more pleasant and productive experience than the two previous rounds. Both the Association and the University engaged in open, honest dialogue and worked very hard to come to agreement on a number of very important issues. Though we wish more had been resolved, we enter the arbitration phase pleased with what we’ve accomplished, so going to arbitration should not be considered a failure in any way.

[98] Notwithstanding the above, the Association has submitted proposals to the Board which were not tabled at any time during bargaining. The Association must know that the University would not have accepted those proposals or it would have, presumably, tabled them in bargaining. Thus, the purpose for revising their proposals must be to strategically obtain more at interest arbitration than they could in bargaining.

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2 http://www.facultyassociation.ubc.ca/bargainingupdate.php
Allowing the Association to change its position after the conclusion of bargaining will have a chilling effect on the parties’ bargaining relationship moving forward and will increase reliance on the interest arbitration process as the parties will be encouraged to hold back their final positions, knowing that they can simply change proposals prior to interest arbitration to make them more palatable for the Arbitration Board.

In *Yarrow Lodge Ltd. (Re)*, [1993] B.C.L.R.B.D. No. 463, the Board stated as follows:

The essential ingredient, and indeed the very essence, of free collective bargaining, is the ability of each party to compromise. The "corrosive" or "chilling" effect that compulsory arbitration has on collective bargaining is that the parties become increasingly less willing to compromise. If, at the end of the day, each of the contracting parties knows that a third party will decide the final terms and conditions of employment, one or both will not want to disclose their final position. This is because to move, a party may be giving up ground unnecessarily, when an arbitrator finally decides to "split the difference". Thus compromise is actually seen as prejudicial. Further, by not moving, the party still has something available for the sake of "compromise". Moreover, the negotiators for each side do not have to make the tough compromises which may prove politically difficult within their own constituencies. The tendency therefore will be not to compromise, and instead hand the problem over to the arbitrator who will, of course, be blamed for any adverse decision. In-deed, not to take such a course of action will be painted as politically naive. This is the corrosive or chilling effect of compulsory arbitration on negotiation.

Further, not only do the parties avoid compromise, but their proposals are framed in relation to the position which they intend to take at arbitration and what they perceive to be the arbitrator’s past awards. The result is a "narcotic effect" upon negotiations, in which the parties become increasingly reliant upon arbitration to settle their agreements rather than engaging in meaningful collective bargaining. Instead of compromise providing the momentum for the conclusion of a collective agreement, it is, once again, seen as only prejudicial.

In light of the above, the University submits that none of the Association’s modified proposals should be awarded in order to discourage both the “chilling” and the narcotic effect of interest arbitration.

**VII. THE FACULTY ASSOCIATION’S NON-MONETARY PROPOSALS**

The Faculty Association has made a number of proposals, none of which should be awarded at interest arbitration pursuant to the tests set out in *City of Richmond and Richmond Fire Fighters Assn.*, [2009] B.C.C.A.A.A. No. 106 (McPhillips) and *City of Surrey, supra*. There is no clear and compelling reason for the proposed amendments; the potential impact of the amendments is significant and complex; they should be the subject of collective bargaining so that the appropriate trade-offs can be negotiated; and none of them is so compelling that the parties cannot wait to address them in bargaining.
This is particularly true given that, as discussed above, in numerous cases, the specific proposals submitted to Arbitration by the Faculty Association were not tabled in bargaining. Such proposals are indicated as “modified proposals” and discussed further below.

The following constitutes a brief summary of the University’s position with respect to the Faculty Association’s outstanding bargaining proposals. The Faculty Association’s proposals are at Tab H.

A. **Proposal 11: Workload Part 1, Article 13**

**modified proposal**

The Association has proposed adding two clauses to Article 13 of Part 1 of the *Agreement*. The first relates to a “non-teaching term” for all tenured and tenure-track faculty members and the second sets a maximum workload for Lecturers.

While these two clauses were contained in more comprehensive proposals tabled in bargaining, at no time did the Association table a workload proposal that contained only these two clauses. As stated above, the University objects to this practice and says that the Association should not be awarded a language proposal that it failed to table in bargaining.

The determination of workload is a fundamental aspect of management rights. The University is unwilling to fetter these rights to a greater degree than already exists under the *Agreement*. The University respectfully submits that the Arbitration Board should not interfere with those rights in these circumstances. Any new workload language should be the subject of negotiations between the parties in the next round of bargaining.

The language proposed by the Faculty Association would only serve to reduce flexibility and collegiality and instead create prescriptive rules that are more in keeping with an industrial model of workload management than a university. The collective agreement presently codifies a commitment to a reasonable and equitable distribution of workload for faculty (Article 13.02(a)).

This new language could impact the University’s ability to provide an excellent educational experience to its students. UBC wants to ensure that the best teaching happens in the courses it offers. Article 13 provides the necessary balance between allowing the University flexibility, and ensuring that faculty members are assigned reasonable and equitable workloads. The assignment of workload should be done in a collegial manner by allowing the multitude of diverse academic units to develop a
reasonable and equitable distribution of workload that meets their needs rather than by way of prescribed University-wide mandates.

B. **Article 13.04 - Non-Teaching Term**

[110] The Association seeks language that would require the University to provide all faculty members with a full trimester free of teaching responsibilities.

[111] This language is unworkable in that it may prevent the University from providing certain programs it currently provides, reduce its flexibility and unnecessarily hamper its ability to adapt to the changing realities of university education across North America.

[112] There are a number of programs at the University that run 11 or 12 months of the year including programs in the Faculty of Education and the Faculty of Medicine (e.g. Occupational Therapy). The language proposed by the Association could bring some of those programs to a halt.

[113] Across North America, universities are moving to trimester systems in which a university’s significant physical assets can be put to full use during the summer term. This reflects changing student expectations and financial realities. UBC itself is also developing innovative online and professional courses and gradually increasing its offerings of educational opportunities throughout the year.

[114] UBC cannot agree to language that could interfere with existing programs and preclude it from making the most effective use of its resources today and in the future. Nor should such language be awarded in interest arbitration.

C. **Article 13.05 - Fixed Maximum Teaching Load for Lecturers**

[115] The Faculty Association also seeks to impose a fixed maximum teaching load for Lecturers of no more than 8 three credit courses.

[116] Again, workload allocation is a fundamental management right. The current language provides for collegial consultation in the development of workload policies and assignments, and broad-based limitations on workload are not in keeping with these provisions.

[117] Article 13.01(b) of Part 1 of the Agreement states as follows:

> Academic units vary in their contributions to the University. As such, it is understood that what constitutes normal workload will vary from one unit to another.

{00378872;1}
The language proposed by the Association would be inconsistent with this provision which was negotiated precisely to reflect the reality that it is impossible to directly compare workloads from unit to unit. The nature and style of the classes taught across units vary considerably.

The concept of “credit hours” is a metric tailored to students and not to the time or the intensity of the work involved for faculty. Setting a maximum workload based on a student-focused metric is problematic. It may be that a “typical course” in some units has a fixed number of lecture hours, office hours, and marking hours (both of the last two items being dependent on student numbers), but there are all kinds of variations around campus and within departments. Work assignments should certainly be fair, but in order to ensure such fairness, flexibility must be maintained.

In making teaching assignments, the University must consider its operational requirements and those of the applicable academic unit as well as the input of the members of the academic unit. The current language in the Agreement achieves the necessary balance and gives due consideration to these factors.

Due the nature of the work and learning in the different disciplines, a full-time workload is necessarily constituted differently between the faculties, i.e. nine credits per term is a full-time load in the Faculty of Arts, but it is more than a full-time load in the Faculty of Law (6 credits). It would be unfair to both faculty and students if all faculties were forced to provide the same number of credits per term to all course instructors.

In addition, faculties such as Applied Science and Education, where a full-time load is 15 credits per term, would face significant financial burdens if they were forced to reduce the credits required for all Lecturers, continue to pay them at the same rate, and hire new faculty to fill all of the vacancies. Addressing what may be a higher teaching workload in certain faculties is better addressed by way of comprehensive bargaining solutions rather than the broad brush stroke of an interest arbitration award that would implement sudden and disruptive change.

The fact that the Association’s proposal seeks a standard maximum course load of 8 three credit courses “or the equivalent” suggests that the Association recognizes this reality to some extent and acknowledges that a “one size fits all” approach does not work in a university setting.

The existing workload language is relatively new to the Collective Agreement, having been adopted only in 2010. There are currently two pending grievance arbitrations related to workload issues under this new language. Given that the existing language is
still being tested, the University submits that the imposition of additional workload language at this time is unwarranted.

[125] The potential impact of the Association’s proposed language is significant and potential impact may be significant and difficult to quantify. Moreover, it is entirely inconsistent with the collegial decision-making model that is at the heart of a University and reflected in the specific language of the Agreement.

[126] Not only is there no clear and compelling reason for changing the workload language, there are sound reasons for having different credit assignments in the various disciplines. There is also insufficient background information available to allow for a fulsome analysis of the complex issues in play that would be necessary for the Arbitration Board to impose new language in this regard.

[127] In the University’s submission, no further language regarding workload should form part of the award.

D. Proposal 12: Right of First Refusal for Sessionals Lecturers

Part 7, Article 6

Proposal 13: Right of Reappointment for Lecturers

Part 4, Articles 2, 3

** modified proposals**

[128] The Association has proposed changes to both the conditions of employment for Sessional Lecturers and for Lecturers. These two proposals – and the terms and conditions of employment for Sessionals and Lecturers – are inextricably linked and cannot be considered in isolation.

[129] As is described in detail below, the matter of the “Sessional Agreement” raises numerous highly complex issues with significant consequences. The degree of analysis necessary to ensure a workable and fair resolution to Sessional issues simply does not lend itself to interest arbitration. There is no question that there are issues that require resolution, but the University submits that interest arbitration is not the appropriate forum for that to take place. Rather, it must be left to the parties to negotiate a mutually acceptable solution to the various issues related to the Sessional Agreement. The University is committed to this endeavour.
In the result, the University’s primary submission is that neither the University’s nor the Faculty Association’s proposals with respect to Sessionals and Lecturers ought to form part of the award, either in whole or in part.

For the reasons that follow, the University submits that issues are simply too complex to be determined by adjudication. Moreover, as described below, the Association has modified its proposals from those tabled in bargaining and the full consequences of its proposals were not explored by the parties in that forum.

In the alternative, if the Arbitration Board wishes to address Sessional issues in this interest arbitration, then the University submits that its comprehensive proposal with respect to Lecturers and Sessionals (University Proposal 5, discussed below) should be awarded. It is a proposal that addresses the interests of both the University and its faculty members in a comprehensive manner and would provide a workable model for the future.

Our reply submission on this alternative position will be highly dependent on the Association’s response to the University’s referral of this comprehensive proposal to the Arbitration Board.

The University’s proposal would create more Lecturer positions for the existing contract faculty, increase their job security and more substantially integrate the University’s Lecturers into the long-term mission of the institution while simultaneously reducing the University’s reliance on temporary contract faculty who have more tenuous connections to the University and to provide those faculty members with better jobs, albeit potentially for fewer individuals.

E. Article 6 – Sessional Assignments

The Association has proposed language regarding additional rights for Sessional Lecturers to course assignments.

Contrasting the Faculty Association’s proposals with the University’s proposal with respect to Sessionals and Lecturers highlights a fundamental conceptual difference between the two approaches. Overall, the University is seeking to reduce its current reliance on temporary contract faculty who have more tenuous connections to the University and to provide those faculty members with better jobs, albeit potentially for fewer individuals.

In contrast, the Association seeks to provide greater course entitlements to Sessional faculty and to remove the University’s ability to consider their past performance in
assigning further work. In other words, the Association is taking steps to entrench the University’s reliance on Sessionals and to create for them a seniority-based career path.

[138] It does not make sense for the University to implement such a career path. The Association’s proposals would effectively create a two-tiered system where the professoriate achieves tenure based on a standard of excellence and Sessionals achieve job security based on an industrial model of seniority.

[139] Sessionals are valued members of the University community who help the University maintain its flexibility and ability to provide qualified instructors for all courses. Sessionals also ensure that the University’s research faculty have the opportunity to excel in their endeavours through teaching releases, leaves of absence, and study leaves. Flexibility will be significantly hampered if the University is required to offer further job security to Sessionals, who are often not hired based on the standard of excellence.

[140] More specifically, the Association seeks to modify Article 6.01 to remove the language that allows the University to consider the quality and effectiveness of the work a Sessional has performed in making sessional assignments. Instead, it seeks to have Sessional course assignments made based only on seniority so long as the Sessional is “qualified” to perform the work.

[141] This runs contrary to the University’s mandate of excellence. The assessment process for a Sessional appointment is already less rigorous than that required for the appointment of a regular faculty member. This reflects the casual nature of a Sessional appointment. To move to an industrial length-of-service assignment process is untenable, particularly when it is combined with the greater reappointment and course assignment rights proposed by the Association.

[142] The Association also seeks to modify Article 6.1 and Article 6.2 to include a right of first refusal for Continuing and Non-Continuing Sessionals to any “additional” courses for which they are notionally “qualified” up to a full time appointment on a greatest length of service first basis. The Association has eliminated any reference to quality and effectiveness of work performed in the assignment of this work. This proposal would again prevent the University from appointing the best candidate for a given teaching assignment in favour of the candidate with the most seniority, regardless of past performance.

[143] The University has always maintained that Sessional Lecturer work should not create an expectation for long term teaching and a career at UBC. By nature, Sessional Lecturer appointments are intended to be “fill-in” appointments to deal with changing teaching
needs within Departments. They are intended to cover gaps in the University’s professoriate ranks due to absences such as maternity and sick leaves, sabbaticals, unexpected growth, and emerging areas of study.

[144] This intent is specifically reflected in the language of the Collective Agreement which reads as follows (in item C of the preamble to Part 7 of the Agreement with respect to Conditions of Appointment for Sessional Faculty Members):

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

[145] As stated above, in the University’s submission, there is a fundamental conceptual disagreement between the parties with respect to the role of Sessional faculty members at UBC. There is no question that Sessionals are valued members of the University’s teaching team; however, the University has clearly confirmed its position that Sessional teaching is not a career path at UBC. The University is unwilling to further entrench its reliance on temporary contract teaching appointments by creating greater course rights for Sessionals.

[146] In addition to the above, the Association’s proposal may be inconsistent with the parties’ ongoing commitments to each other.

[147] On January 11, 2011, the parties agreed to refer issues relating to the interpretation of the Sessional Agreement to arbitration. With the assistance of mediator/arbitrator Rod Germaine, the parties reached an agreement over one year later (on February 29, 2012). A copy of the “Germaine Agreement”, redacted pursuant to an agreement between the parties regarding the use of this document, is contained at Tab I. This agreement was reached following the exchange of extensive written submissions and a lengthy mediation process.

[148] It is unclear how the Faculty Association’s proposals will interact with the Germaine Agreement. They appear contradictory and the University submits that it would be entirely inappropriate for an Interest Arbitration Board to impose new language in a collective agreement which is inconsistent with the parties’ other commitments.

[149] For instance, the Association’s proposal states that Continuing Sessionals are to be assigned courses as per Article 5.2(b). Then, it requires the University to give a right of first refusal to “additional” courses to Continuing Sessionals up to a full time load, based only on seniority and a notional qualification to teach the same. These assignments appear to take priority over the assignment of any courses to Non-Continuing Sessionals.
If the University’s understanding of the Association’s proposal is correct, then it is the University’s submission that the proposal is inconsistent with the Germaine Agreement which clearly grants a right of reappointment to a single course to all Non-Continuing Sessionals. Pursuant to Article 22 of that agreement, the assignment of a single course takes priority over any additional courses assignments to Continuing Sessionals over and above their individual continuing course entitlements. Pursuant to the Association’s proposal, it would be possible that by filling up Continuing Sessionals to full time with courses they are qualified to teach, it may eliminate available courses to grant reappointment to a Non-Continuing Sessional.

That said, the Association’s proposal is unclear. The Association also appears to use the language of “additional” course assignments in a manner that is inconsistent with the Germaine Agreement and the agreed interpretation of the Collective Agreement. The Germaine Agreement makes it clear that “additional course assignments”, as that language is currently used in Article 6.4 of the Collective Agreement, refers to courses that subsequently become available after the normal scheduling of courses takes place (see Article 23 of the Germaine Agreement) and not to additional courses that could be assigned during that initial scheduling process over and above a particular Sessional’s individual course entitlement.

We say that the Association’s proposals “appear” inconsistent with the Germaine Agreement because the University is uncertain what the Association intends to achieve with its proposal. It may be that the Association’s proposal only seeks to grant a right of first refusal to Continuing Sessionals in priority over Non-Continuing Sessionals for the “additional courses” as that term is used in the Germaine Agreement.

This confusion has arisen, in part, because the parties did not discuss this proposal in bargaining. This proposal was not tabled in its current form during the bargaining process.

The various possible interpretations of the Association’s proposal and the manner in which they interact with the Germaine Agreement highlight the complex nature of the “Sessional issue” and demonstrate why changes to the terms and conditions of employment for Sessionals are not amenable to the blunt instrument of interest arbitration.

The University submits that the Association’s Sessional proposal is unworkable and should not be awarded by the Arbitration Board because it does not meet the accepted arbitral criteria and because it was not properly the subject of collective bargaining.
These issues are not ones that can or should be resolved in this forum. They are extremely complex and no changes should be made to the Collective Agreement that have not been carefully analyzed and negotiated. There is insufficient evidence and information available in this arbitration to ensure that these issues are properly analyzed and all potential consequences considered.

F: Article 2.02 and 3.01 - Term Appointments without Review/Lecturer

The Association has also proposed language related to Lecturers that cannot be readily addressed in isolation from the terms and conditions of employment for Sessional Lecturers. For the same reasons discussed with respect to the Association's proposals regarding Sessionals, the University submits that the Arbitration Board should decline to award language of this nature to the Association.

The Faculty Association has proposed that Lecturers be granted a general right of renewal of appointment subject only to certain conditions including lack of funding, teaching performance, discontinuance or non-scheduling of a course or section of a course, or just cause.

Currently, Lecturers are appointed on an annual contractual basis with no right of renewal (although some Lecturers are, in practice, appointed to consecutive 12 month terms on a long-term basis). They are the only bargaining unit appointment open to the University that does not carry with it renewal rights. They are therefore critical to the University's ability to respond to temporary and unexpected circumstances without creating an ongoing relationship with the faculty member in question.

Lecturers are often hired because an academic unit needs more courses to be taught than its tenure track faculty can perform. Lecturers also "fill the gaps" and help units address such issues as maternity, sick or other leaves of absence, growth, and emerging areas of study. Appointments without renewal rights are necessary to the University’s ability to respond to these demands.

As long as Sessional Lecturers have a right of renewal, the University cannot grant a similar expectation of renewal to Lecturers.

Should the Arbitration Board determine that it would be appropriate to award a right of renewal to Lecturers, then the University submits that the Sessional Agreement must be modified to remove any right of reappointment for Sessionals to ensure that the University retains the flexibility it requires. It would be untenable for both Lecturers and Sessionals to have reappointment rights.
The University’s comprehensive proposal with respect to Sessionals and Lecturers (discussed below) would provide the job security for Lecturers that the Association seeks, but it would also allow for the necessary quality review, and promote the development of fully engaged faculty members with a strong, ongoing connection to the University.

In terms of Sessionals, the University’s proposal limits any ongoing rights, making this category of work truly temporary as was always intended. It also limits the University’s ability to rely on Sessionals as a “quick fix” for an academic unit’s scheduling problems. It requires units to organize the available teaching work so that Lecturers are provided with ongoing full time work.

The Association has also proposed language that sets criteria for making initial appointments to the rank of Lecturer. It is illustrative to compare this language to the criteria proposed by the University in its comprehensive Sessional proposal which reads as follows:

2.03(e)(i) Lecturers are expected to demonstrate excellence in teaching and service, or strong promise of excellence for a first appointment, as outlined by the criteria set out in Articles 4.02 and 4.04 of Part 4 Conditions of Appointment for Faculty.

The Faculty Association’s language is inconsistent with the standards of excellence that the University strives to maintain. Appointing Lecturers pursuant to the standards proposed by the Association, and also granting them ongoing reappointment rights is untenable.

The Association’s proposal should not be awarded, not only because it does not meet the relevant arbitral tests but also because it was submitted to the Arbitration Panel despite the fact that it was not tabled in this format in bargaining. While the University has certainly seen the elements of this proposal in bargaining, it was never tabled in this format. The issues related to Sessionals and Lecturers should be referred back to the parties for bargaining.

G. Proposal 18 – Procedures for Appointment, Reappointment, Tenure and Promotion

Part 4, Article 5

***modified proposal***

The Faculty Association is seeking to modify Article 5.06 of Part 4 of the Collective Agreement to exclude anonymous student comments from being considered as part of the tenure and promotion process.
The University respectfully submits that the Arbitration Board cannot award this proposal because it has no jurisdiction to do so further to the B.C. Court of Appeal’s decision in Faculty Association of the University of British Columbia v. University of British Columbia, 2010 BCCA 189; leave to appeal refused [2010] SCCA 232.

The use of anonymous student comments for teaching evaluation purposes was established by way of the Policy on Student Evaluation of Teaching promulgated May 16, 2007 by the University Senate (“Senate Policy”) a copy of which is at Tab J. The Senate Policy arose as part of a larger strategy to support and foster quality teaching and learning at UBC. The guiding principles that led to the Policy were that evaluation of teaching should be student-focused, and that the products of evaluations be used to inform teachers on how they can continuously improve their practice and to support the University efforts to monitor and nurture its teaching and learning environments.

As per the Senate Policy, student evaluation of teaching has four major goals:

1. To provide data that will be used to continuously improve the student’s learning experience.
2. To provide students, departments, faculties and the University with a source of data about the overall quality of teaching.
3. To provide teachers with information on their teaching performance and to assist with the further development of their teaching.
4. To provide the University with data on the quality of teaching to be used for operational purposes, including but not limited to assessment of faculty for merit and/or performance adjustment salary awards, promotion, tenure and institutional recognition. (emphasis added)

The Senate Policy further states that:

a. “the data collected will be used by UBC employees designated with the authority for the assessment of faculty for merit and/or performance adjustment salary awards, promotion, tenure and institutional recognition;” and

b. “Heads or Directors of teaching units, or their delegates, shall use the results of teaching evaluations as one component in assessing teaching performance... for the purposes of recommendations concerning tenure and/or promotion.”

Finally, the Senate Policy mandates that the instruments used to obtain student evaluations shall carry a copy of this statement:

The University recognizes the importance of high quality teaching for the academic preparation of its students and accordingly requires that teachers be annually evaluated by procedures which include provision for assessments by students. Students are advised...
that submissions containing malicious or otherwise inappropriate comments will be discarded.

Except for confidential questions used solely for the benefit of an individual teacher, the University will use data from student evaluations of teaching to improve the learning environment of the University. In addition the University will use this data for operational purposes, including but not limited to assessment of faculty for promotion, tenure and institutional recognition. (emphasis added)

[174] The University Act, R.S.B.C. 1996, Ch. 468 establishes a bicameral system of governance pursuant to which the Board of Governors and Senate have independent spheres of statutory power. An Arbitration Board established under a collective agreement negotiated pursuant to the statutory powers of the UBC Board of Governors cannot interfere with the Senate’s statutory power to make academic decisions.

[175] The Senate has exercised its powers to promulgate a policy that states that the data that is collected by way of student evaluations – which includes anonymous student comments - will be used for the assessment of faculty for, inter alia, promotion and tenure purposes. The only exceptions are that data collected by way of confidential questions, used solely for the benefit of an individual teacher, will not be used and that malicious or inappropriate comments will be discarded.

[176] The parties have no jurisdiction to interfere with this Senate Policy by way of their collective agreement. Nor does this Arbitration Board.

[177] Even if the Arbitration Board was empowered to make the requested language change, the University submits that such a change is unnecessary and unwarranted.

[178] The University understands that the Association’s primary concern with respect to the use of student comments is that a faculty member’s colleagues end up privy to inappropriate, racist or other embarrassing comments during the tenure and promotion review process. This was described in the Faculty Association’s April 15, 2015 bargaining blog posting:

We have had complaints from faculty members that some students use anonymous comments to make hateful and occasionally racist and sexist comments about faculty members. In our view, student comments should only be seen by the faculty member, because students have no accountability when they write unsigned comments. Moreover, allowing scurrilous comments to be seen by other faculty members in a tenure and promotion process without the permission of the member amounts to University-sanctioned bullying.

[179] These concerns are unwarranted. There are strict privacy procedures in place that limit access to student comments. Moreover, the Senate has specifically mandated that any
inappropriate or malicious comments be discarded. In addition, there are sound policy reasons why student comments must be anonymous.

[180] The following chart describes who has access to which modules of student evaluation forms, where the X indicates access to the results of a particular module. This depiction is contained in the Senate Policy.

<table>
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<th>Stakeholder Representative</th>
<th>Individual Teacher</th>
<th>Department Head or Designate</th>
<th>Dean/Head of School or Designate</th>
<th>University Designate</th>
<th>Students/AMS</th>
</tr>
</thead>
<tbody>
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[181] In compliance with applicable privacy laws, results for individual instructors are released only with their consent.

[182] The "University Module" contains six questions that are standard to every student evaluation form which are referred to as the University Module Items ("UMIs"):

1. The clarity of the instructor's expectations of learning.
2. The instructor's ability to communicate the course content effectively.
3. The instructor's ability to inspire interest in the subject.
4. The fairness of the instructor's assessment of learning (exams, essays, tests, etc.)
5. The instructor's concern for students' learning.
6. The overall quality of the instructor's teaching.

[183] The UMIs do not have comments associated with them. They request only that a numerical value be assigned.

[184] Where a faculty or department has created questions which request student comments, those comments are only released to the individuals mandated by the Senate Policy (generally, the faculty member in question and his/her Dean and/or Head) and other individuals with written authorization to obtain them. Those other individuals are usually administrators who gather the information on the Head's or Dean's behalf.
In addition, while the University encourages instructors to agree to publish the results of the UMI’s on a secure University website, it is entirely the instructor’s decision whether those results are posted.

If a faculty member receives comments from students that are inappropriate, racist or malicious, those comments are removed from the evaluations as per the Senate Policy. If there are comments that were not already removed and are of concern to the faculty member, those comments can be expunged from the record before the Head or Dean releases the comments to the Departmental Committee for use in the tenure and promotion process. This is a matter that can be addressed in a collegial manner between a faculty member and his or her Head.

The University does not use or rely on comments that are racist or inappropriate in the tenure and promotion process. There is no need for blanket language that prohibits the use of student comments that provide valuable information and feedback from students that would otherwise go unheard.

In the University’s submission, comments provided by students are of critical importance. Not only do they put numerical scores in context (they may, for example, reveal that poor scores are the likely result of, for example, the class being scheduled early in the morning, racism, or a group of students who have “ganged up” on a professor), they are an integral part of the University’s goal of excellence in teaching, provide a forum for students to provide feedback, and in some cases are vital in identifying poor or inappropriate teaching methods.


Another important factor is that the comments are not restricted. Students can and do provide comment about all aspects of the course experience, from the concrete (“lab 7 was a waste of time”) to the intangible but important (“I am afraid to ask questions in class”). Conversely, if specific questions are asked, one only finds out about what one asks about, and therefore important information can be missed: (Rando, W. L. (2001).
Writing teaching assessment questions for precision and reflection, in K. G. Lewis (Ed.), *Techniques and strategies for interpreting student evaluation* (Theme Issue). *New Directions for Teaching and Learning, 87*, 77-83).

[191] For illustrative purposes, the comments received from students fall in the following categories in order of frequency:

- Instructor skills
- Interaction with students
- Dynamics in class
- Assessment
- Workload
- Course content
- Classroom facilities

[192] Subjective comments can cross the line. However, as described above, there are clear procedures in place for addressing such situations.

[193] Extensive research on university campuses across North America has been carried out for approximately 50 years with respect to processes for student evaluation of teaching. For two recent comprehensive reviews see: Benton and Cashin 2012, Idea paper 50; Gravestock and Greenleaf 2008 Report for the Higher Education Quality Council of Ontario. The latter authors point out:

> As we will see in Section 3: Current Policy and Practice in North America, there are variations in format and practice across institutions. However, certain elements are almost universal. Course evaluation forms are most commonly distributed at the conclusion of a particular unit of instruction. They are almost always anonymous (or, less frequently, confidential) and most frequently incorporate both qualitative and quantitative responses. In general, faculty are removed from the process of collecting course evaluation data and typically are unable to access the ratings until the final grades for all students have been submitted.

[194] This research has demonstrated that three important factors to increasing response rates are:


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3) Carrying out short mid-term evaluations (e.g. two questions like “What you like me to do more of in this class?” and “What you like me to do less of or stop doing in this class?”) followed by the instructor discussing the results in class, and then changing how the course is being delivered accordingly drives end of term completion rates up more effectively than any other measure or combination of measures (Wachtel, H.K. (1998) Student evaluation of college teaching effectiveness: A brief review. Assessment & Evaluation in Higher Education, 29(2), 191-121). The AMS at UBC is sponsoring an information campaign to try to persuade professors to adopt this policy.

[195] The University in no way wants to undermine the value of anonymous student comments by divorcing them from the tenure and promotion process, because it may reduce student confidence that their comments are taken seriously and thereby reduce response rates.

[196] Moreover, this proposal has been substantively altered since bargaining closed. For instance, the Association has specifically referenced “SEOT and TEQ evaluations” as material that is not to be considered in Article 5.06(e). The Association has also altered its language to include both “solicited and unsolicited” anonymous comments. The University is uncertain whether this is intended to be a substantive change from previous proposals and what the meaning or intent of this language is. It should have been tabled in bargaining.

[197] The Association has also slightly altered the last line of its proposal with respect to Article 5.10(c) to read that “members of the DAC shall serve for specified and staggered terms”. This language appears to have been taken, in part, from previous University proposals. The University is not adverse to staggered terms for DAC members or the procedural changes to article 5.10(d) but it could not agree to that language if it was packaged with the removal of anonymous student comments from the tenure and promotion process.
H. Proposal 26: *Duration of Agreement*

Part 1, Article 25

[198] The Association proposes a two year term for the Collective Agreement. This means that the parties would be back in bargaining in February/March of 2016 which is at most six months from the date of this submission. This does not allow for the stability that the parties need. Nor does it allow sufficient time for the new language bargained this round to take effect and for the parties to gauge its efficacy before going back to the bargaining table.

[199] The University and the Association had a very successful round of bargaining this year and they have agreed to implement a large amount of substantial new language to the collective agreement described in paragraph 77, above and the MOA attached at Tab G. The parties need time to evaluate these changes after they take effect before returning to the bargaining table.

[200] A five year agreement, as proposed by the University, would only take the parties to early 2019 before bargaining would resume. This is a reasonable period of time between rounds of bargaining. The Association’s proposal would keep the parties in perpetual bargaining as the parties would need to immediately begin bargaining preparations once the Arbitration Board’s decision is issued.

VIII. THE UNIVERSITY’S NON-MONETARY PROPOSALS

[201] As stated above, it is the University’s position that the Arbitration Board should decline to award any non-monetary proposals at arbitration. Rather, the award should be limited to resolving the financial dispute between the parties and any non-monetary proposals should be referred back to the parties for resolution by way of the give-and-take of collective bargaining.

[202] In the alternative, should this Board see fit to award any of the Faculty Association’s proposals, either in whole or in part, then the University submits that in order to ensure that the award replicates free collective bargaining, it would be necessary to also award one or more of the University’s outstanding non-monetary proposals. The University would not have agreed to any of the Faculty Association’s non-monetary proposals in bargaining without a reciprocal agreement from the Association on one or more of the University’s proposals.

[203] Thus, for the purpose of providing this Arbitration Board with the requisite “trade-offs” in the event that it chooses to award any one (or part of) the Faculty Association’s non-
monetary proposals, the University’s final proposals are described below. The University’s proposals are also at Tab K.

[204] These proposals were developed and proposed at the bargaining table consistent with the University’s guiding Principles and Values for Collective Bargaining, a copy of which is at Tab L. These proposals support the University’s overall objective of encouraging, inspiring and valuing the highest standards for the University in keeping with the spirit and intent of Place and Promise: The UBC Plan, a copy of which is also at Tab M.

[205] The University seeks to uphold the standards of excellence necessary for the University to maintain and increase its standing on the highly competitive global stage. This goal of ensuring and rewarding excellence at the University underlies not only the University’s own proposals, but also its concerns about some of the Faculty Association’s proposals.

[206] A University is only as good as its faculty members; they are essential to its success. UBC values the excellent relationship it currently enjoys with its faculty members which is managed pursuant to the core principles of collegiality, shared governance, and flexibility. These principles reflect the traditional nature of a University as an independent community of scholars dedicated to excellent teaching and the pursuit of knowledge. The University’s collective agreement must support and further these core principles. They are essential to the success of the institution.

B. Proposal 7: No Tenured Assistant Professor
Part 4, Article 2

Ending the Practice of Tenure at the Assistant Professor Rank

[207] In its Proposal 7, the University seeks the revision of the existing tenure and promotion process to allow for tenure only in conjunction with promotion to the rank of Associate Professor. Currently, faculty members may be granted tenure as Assistant Professors. This is not in line with the University’s mandate of excellence. It is also inconsistent with ranking and tenure systems at comparable universities.

[208] None of the universities in Canada with which UBC competes (i.e. the tier one research institutions) including McGill University, the University of Toronto, the University of Alberta, Queen’s University or the University of Western Ontario allow for tenured Assistant Professors. Rather, tenure is awarded only in conjunction with or following an appointment to the rank of Associate Professor. UBC seeks to implement equivalent standards for its professoriate.

[209] In fact, contrary to UBC’s current system, many universities that have uncoupled tenure and promotion decisions, such as several of the Ivy League schools in the United States,
have done so in the opposite manner: a candidate may receive a promotion to Associate Professor, but still be denied tenure.

[210] This practice has proved confusing for external reviewers who find it difficult to relate to this possibility.

[211] Tenure and promotion are linked, but tenure is the key decision when it comes to a faculty member’s career and the University’s interests as an institution.

[212] An Assistant Professor can currently achieve tenure in one of two ways under Article 2.03(f)(i) and (ii) of the Agreement on Conditions of Appointment for Faculty:

- if the Assistant Professor is promoted to Associate Professor at any time before or in the seventh year, in which case the promotion comes with tenure; or
- if a recommendation is made in the seventh year the faculty member may be granted “a tenured appointment at the rank of Assistant Professor” (that is, without promotion to Associate Professor).

[213] A tenured appointment is essentially a lifetime appointment. The language of Article 3.06 of the Agreement on Conditions of Appointment for Faculty establishes the standards required to achieve an appointment as an Assistant Professor as follows:

...completion of academic qualifications, and evidence of ability in teaching and scholarly activity. Evidence will ordinarily be required to demonstrate that the candidate for an appointment or promotion is involved in scholarly activity, is a successful teacher, and is capable of providing instruction at the various levels in his or her discipline, but it is sufficient to show potential to meet these criteria. (emphasis added)

[214] The threshold test for promotion to the rank of Assistant Professor from Senior Instructor was considered by Arbitrator Gordon in University of British Columbia v. Faculty Association of the University of British Columbia (Chiu-Duke grievance), [2005] B.C.C.A.A.A. No. 66. At paragraph 89, the arbitrator held that to obtain an appointment as an Assistant Professor it was sufficient to show:

... a minimal level of participation in, or quantity of, scholarly activity ... I find the parties intended the level of participation in, or quantity of, scholarly activity for promotion to Assistant Professor to be relatively low or small ...

[215] This language – and the language of the Assistant Professor which is an entry level position – does not support a lifetime appointment. It describes an individual who has the potential to be, for instance, a successful teacher and a successful scholar. Tenure should
be based on proven performance at the required standard. In other words, a lifetime appointment should at least reflect the standards required to obtain a promotion to the rank of Associate Professor which are stated as follows in Article 3.07:

...evidence of successful teaching and of scholarly activity beyond that expected of an Assistant Professor. The candidate for appointment or promotion will be judged on teaching...on sustained and productive scholarly activity, on ability to direct graduate students, and on willingness to participate and participation in the affairs of the Department and the University.

[216] In University of British Columbia v. Faculty Assn. of the University of British Columbia (Tenure Policy Grievance), [2007] B.C.C.A.A.A. No. 175, Arbitrator Taylor discussed the nature of “tenure” at a university and reviewed a number of respected authorities on the subject. Those authorities included the Supreme Court of Canada’s decision in McKinney v. University of Guelph, [1990] 3 S.C.R. 229, in which the Court spoke of the "rigorous initial assessment" which should precede the awarding of tenure given the significant commitment a university is making to its faculty members.

[217] Arbitrator Taylor also relied at paragraph 8 on University of Ottawa v. University of Ottawa et al, (1978), 84 D.L.R. (3d) 576, a case involving a denial of tenure. The Court said:

In deciding in favour of granting tenure the university makes a significant commitment to the individual faculty member. It is in the nature of a university appointment that a faculty member is virtually free from supervision. This is in part due to the impossibility of constantly monitoring and accessing the work of an academic and, in larger part, due to the notion of academic freedom. For these reasons the granting of tenure represents a high degree of trust in the faculty member and it is only upon being satisfied that this trust is warranted that the university will grant tenure. It is no doubt precisely because the granting of tenure entails a long term commitment without close supervision and review that such a long probationary appointment (as compared to the length of probationary appointments in industry) is required.

(emphasis added)

[218] It is precisely this degree of trust required of a tenured faculty member and the significant benefits afforded with tenure that demonstrates why a faculty member who has not achieved the performance standards required of an Associate Professor should not be granted tenure.

[219] The University’s goal is to ensure excellence amongst its professoriate. Allowing Assistant Professors who may not – or ultimately do not – achieve an Associate Professor ranking and the increased performance expectations of that rank, does not promote this mandate of excellence. Rather, it allows Assistant Professors to “plateau” in their
performance (which was deemed insufficient for promotion) and nonetheless remain at the University indefinitely.

[220] The *quid pro quo* of the protection of tenure is high performance expectations. The University invests considerable financial resources in its professoriate and the job market is highly competitive. The University estimates that the average cost for a tenured Assistant Professor over a lifetime appointment is approximately $3 million of public funding. This is a considerable sum to devote to an individual who has failed to demonstrate sustained and productive scholarly activity, an ability to direct graduate students, a willingness to participate in the affairs of the Department and the University and a record of successful teaching at the level expected of an Associate Professor. Nor is it commensurate with the University’s commitment to excellence.

[221] The argument often made in support of granting Assistant Professors tenure even though they may not meet the standards required to achieve a promotion to Associate Professor is that these individuals have potential but simply need a bit of “extra time” to achieve the standards required for promotion. Awarding those individuals tenure without the promotion provides them with an opportunity to succeed.

[222] In the University’s view, the current language allows faculties to be less rigorous in their selection of candidates for tenure than they should be. By granting tenure to an individual who has not demonstrated the ability to perform at the level required for promotion during the seven years they are given to do so, but who may have the potential to make up for their performance deficiencies over time is a significant risk to take with millions of dollars of public money.

[223] While certain individuals may indeed benefit from an arrangement which allows them time to make up for performance deficiencies, it is also the case that numerous Assistant Professors over the years have simply “plateaued” and have not (and likely never will) achieve a promotion. At Tab N is a spreadsheet prepared by UBC Faculty Relations which describes the 21 Assistant Professors granted tenure without promotion to Associate Professor since 2004/2005 who have since failed to achieve that promotion. Only 6 individuals have made this transition following their appointment to a tenured Assistant Professorship.

[224] That said, overall, this proposal would not affect a particularly large number of individuals at the University. The University proposes that this change be implemented effective July 1, 2017 to give incumbent tenure track Assistant Professors notice of the change.
The proposed language would also bring the tenure process for the professoriate in line with that in place for UBC’s revised teaching stream positions. Faculty members appointed to the rank of Instructor are considered for both tenure and promotion to the rank of Senior Instructor at the same time. Tenure cannot be granted without the promotion to Senior Instructor. It is inconsistent that the University’s professoriate may be eligible for tenure without promotion when the teaching stream must meet the criteria for both promotion and tenure.

Moreover, in the University’s experience, a decision to award tenure without promotion is not well-received by affected faculty members. It sends an incoherent message to a candidate in that they are being promised a job for life, but told that they are not good enough to obtain a promotion. This has proven to be de-motivating to faculty members rather than encouraging. What should have been a moment of career triumph is instead viewed as a rejection. Many faculty members grieve these decisions, despite being awarded tenure.

C. Proposal 9: Conditions of Appointment for Librarians

Part 5, Article 2

Similar values and concerns underpin the University’s proposal with respect to the conditions of appointment for librarians as were described above with respect to ending the practice of tenured assistant professors.

A “confirmed appointment” for a librarian under the Agreement is the equivalent of a tenured appointment for the professoriate. It is an appointment for life. Under the current terms of the Agreement (Article 2.02, Part 5), after a single three year probationary appointment, which carries with it the “implication that the appointee will be considered for further appointment…”, librarians are eligible to be considered for a confirmed appointment.

In the University’s view, three years is insufficient to properly evaluate an individual for a lifetime appointment with a significant cost in terms of public funding. In contrast, there is generally at least a seven year process for evaluating the professoriate to determine whether they will be granted tenure. In addition, an evaluation period of six-seven years is typical for university librarians at comparable universities across Canada.

From the perspective of the Librarian, three years does not provide sufficient time for feedback or a sufficient opportunity for a struggling Librarian to improve his or her performance in order to address concerns and meet the standard for confirmation.
The University is therefore proposing a typical six year rather than a three year
confirmation process by implementing a second "probationary" appointment period.

**D. LOU #2: Term Administrative Appointments for New Heads**

The University seeks to renew Letter of Understanding #2 with regard to Term
Administrative Appointments for New Heads in the Library.

This LOU rectified a problem that arose with how "administrative librarians" had been
hired and compensated in the past. The University had hired certain administrative
librarians with higher salaries to reflect that role. However, they retain the higher salary
even when they no longer perform the additional duties of administrative librarians.

Pursuant to LOU #2, administrative librarians would be compensated for that role by way
of a stipend over and above their regular salaries.

The University is effectively requesting that the status quo be maintained. In the last
round of bargaining, the parties agreed on the LOU as an acceptable temporary solution
to address an acknowledged problem in the Collective Agreement. It ensures that, in the
same manner as the professoriate, the principles of collegial governance are maintained
as members of the unit step into leadership roles and then return to the unit. That
temporary solution should be maintained until the parties bargain a full resolution to this
issue. The University is confident that such a resolution is possible.

**E. Proposal 5: Sessional Lecturers and Lecturers**

As described above, the University’s engagement of Sessional Faculty members and
Lecturers to perform teaching work at the University is a complicated matter that both
parties agree requires a solution.

Approximately 25% of the bargaining unit is currently contract faculty – i.e. Sessionals
and Lecturers. There are currently approximately 150 Sessionals who have worked at
UBC for more than ten years and another approximately 200 who have been at the
University for more than five years, many of whom are working full time and being
compensated on a course-by-course basis. Their teaching footprint is significant and they
play a vital role at the University.

The University conducted extensive research into the needs and role of Sessional
Lecturers in 2013/2014. Multiple in-person and phone interviews were conducted across
UBCV with the Heads of units with substantial numbers of Sessional Lecturers. Heads
were asked to comment on the ability to bundle courses currently taught by Sessionals
into full-time Lecturer positions and estimate how many remaining courses would be left-over following this bundling exercise. Heads were also asked to comment on the benefit of establishing a more secure and rigorous appointment structure for Lecturers, as well as what their continued reliance would be on true contract faculty.

[239] The message the University has received is that the various stakeholders would prefer the University to create better jobs with greater job security, even if that meant jobs for fewer people overall. The University shares the goal of creating better jobs for the people who perform a vital teaching role at UBC. It wants engaged faculty members with an ongoing connection to the University in order to promote its mandate of excellence.

[240] The challenge for the University is to address the matter of the University’s contract faculty in a manner that is both financially and educationally feasible for the University, bearing in mind its commitment to excellence and provides flexibility to the employer.

[241] This round of bargaining was not the first attempt that the parties have made to resolve what we will refer to as the “Sessional issue”. On the contrary, the parties have been discussing the issues relating to the use of Sessionals and Lecturers at UBC for many years. Some of the concerns that the parties have discussed include the following:

a. Sessionals have more job security than Lecturers and it should be the other way around.

b. Sessionals do not have sufficient quality control to warrant ongoing appointments.

c. The administrative burden associated with handling Continuing and Non-Continuing Sessional appointments is enormous and extremely complicated.

d. Sessionals are “over-used” at the University; this is partly due to their automatic reappointment rights combined with the “quick fix” nature of hiring a Sessional to fill a need in an academic unit.

[242] The University has submitted to the Board a comprehensive proposal that was developed with due consideration to all of the various concerns and issues that the parties have grappled with, including equal consideration for the employees and the employer. This proposal represents a new model that would serve the University community very well. It is a workable solution to a difficult problem that was developed over a long period of time and after careful consideration of the factors that matter to faculty members and to the University.
In brief, the University’s proposal, including the implementation plan (the Memorandum of Agreement on Transition Phase), proposes to reduce the University’s reliance on Sessionals to a minimum. Sessionals, which would be more accurately referred to as “Contingent Faculty” would play the role that they are intended to play: they would “fill in the gaps” by covering leaves of absence or other temporary circumstances (see Article 3.02(a)).

Article 3.02(b) of the University’s proposal states that a Contingent Faculty member shall only be appointed for the term of the leave of a faculty member being replaced or for a maximum of one year in other circumstances.

This reduction in reliance on contingent faculty would also be facilitated by a University-wide bundling of courses in order to create a significant number of new full time Lecturer positions. In addition, the University wants to acknowledge the importance of Lecturers by making three year commitments to Lecturers with renewal rights, rather than the 12 month appointments they currently enjoy without expectation of renewal. This would create the greater job security and engagement for the University’s teachers that all parties seek.

There is no situation where a temporary, casual workforce can be entirely eliminated; it is simply not possible. However, pursuant to this proposal, in many academic units, the number of “leftover” courses that may require such temporary, contingent faculty can be reduced to single digits.

This proposed change constitutes a full reconceptualization of the University’s teaching workforce. Incremental changes of the sort proposed by the Faculty Association simply reinforce existing problems. They are not a resolution to the “Sessional issue”.

The factors that have been taken into consideration in the University’s comprehensive proposal include the following:

a. The University has made enforceable commitments in the Agreement to create full-time or part-time Lecturer positions rather than hiring contingent faculty. This will enable the University’s administration to ensure that all academic units are committed to this common goal.

b. The University has increased Lecturers from 12 month contract positions with no right of reappointment to three year renewable appointments with significant evaluation processes built in to ensure quality and excellence.
c. The flexibility that the University requires is maintained by ensuring that there is truly temporary contract teaching available to balance out the ongoing commitments it is making to Lecturers.

d. The University is also ensuring that opportunities are maintained for graduate students to obtain the teaching experience they need to compete in the global academic market while also ensuring that they are not overused. Graduate students would be specifically referenced in the Agreement and not simply afforded opportunities by way of University Policies 42 and 75.

e. The proposal respects the service that the University’s current pool of Sessionals and Lecturers have provided to the University by way of a tiered probationary system as set out in Article 2 of the proposed Memorandum of Agreement on Transition Phase. The University would be waiving a probationary period for a large number of existing employees. All current Lecturers who have been reappointed at least once and all Continuing Sessionals would automatically be converted to Lecturers with job security. This is designed to recognize that this is a massive shift in the way the University employs its teachers that will impact numerous existing faculty members. That said, probationary periods for some are appropriate, as Sessionals are transitioned into the Lecturer role to ensure that they are a good match in that job category before the University is required to make a greater commitment to long-term employment in that role.

f. The proposal preserves the University’s ability to draw upon the expertise and contribution of external teachers (adjuncts, specialists, visiting scholars) to maintain a rich, vibrant and diverse teaching community on both a disciplinary basis and a pedagogical basis.

g. Severance would be provided to those individuals who fail to secure an ongoing Lecturer or Contingent Faculty role.

h. No individual appointed to a Lecturer role would be paid less than what they were paid as a Sessional on a per credit basis as of the date of ratification up to a full time load in their academic unit.

[249] This proposal also recognizes and takes into account the unavoidable reality that different academic units function in different ways and it is impossible to quantify a University-wide “full time” teaching load for Lecturers. The necessary flexibility is built into this
proposal by allowing for departmental definitions of full time loads. In contrast, the Association seeks to codify an unacceptable set full time load for Lecturers.

IX. CONCLUSION

[250] For all of the reasons set out above, the University respectfully submits that the Arbitration Board should limit its award to resolving the monetary dispute between the parties.

[251] The University has proposed a five year term for this collective agreement. As stated above, with a five year term the parties would likely be back in bargaining by January or February of 2019. This is a reasonable period of time between rounds of bargaining during which the parties will have the opportunity to evaluate the extensive new language they have implemented in the collective agreement.

[252] The parties had a very successful round of bargaining and resolved a number of difficult issues. There is no compelling need for any of the outstanding language proposals that is so urgent that the parties cannot wait to resolve the same in the next round of collective bargaining. In addition, the issues raised are complex and many of them constitute breakthrough language that is inappropriate to be awarded at interest arbitration. There will be insufficient information before this Arbitration Board for it to properly analyze the issues involved and be satisfied that the changes should be made; and, perhaps most importantly, it would be appropriate to make trade-offs for the changes requested, and it is the parties themselves who are best suited to decide appropriate trade-offs.

[253] The University submits that its monetary offer, which is at the limit of the PSEC mandate that will be funded by the Government, is consistent with the criteria set out in Article 11.02(e). Even if the University had the ability to pay more, the criteria against which this case is to be adjudicated do not support salary increases beyond those the University is proposing.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

August 31, 2015

Thomas A. Roper, Q.C.

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