IN THE MATTER OF AN ARBITRATION PURSUANT TO THE COLLECTIVE AGREEMENT BETWEEN THE UNIVERSITY OF BRITISH COLUMBIA AND FACULTY ASSOCIATION OF THE UNIVERSITY OF BRITISH COLUMBIA

BETWEEN:

UNIVERSITY OF BRITISH COLUMBIA

(the "University" or "UBC")

AND:

FACULTY ASSOCIATION OF THE UNIVERSITY OF BRITISH COLUMBIA

(the "Association")

SUPPLEMENTAL SUBMISSION OF THE UNIVERSITY OF BRITISH COLUMBIA

1. As stated in the University's reply submission, the Faculty Association did not provide its position with regard to the University's non-monetary proposals in its original submission. In the result, the University has prepared this supplemental submission to provide the Arbitrator with the University's response to the Faculty Association's position. Unless stated otherwise, all paragraph and section references are to the Faculty Association's reply submission.

2. The University does not agree with the Association's suggestion in section 8 that the replication model cannot be used to determine non-monetary language issues or that the Arbitrator should instead apply the criteria set out in section 11.02(e).

3. As stated on page 12-13 of the University's primary submission, the Faculty Association's argument that there is no free collective bargaining when one party is constrained by government mandates was rejected by the UBC interest arbitration board in 1989: University of British Columbia v. Faculty Association of the University of British Columbia, unreported, September 26, 1989, Getz, Kelleher, Ladner.

4. The test to be applied is whether there is a "compelling reason to make the change" in question. Relevant to this analysis is whether there is sufficient information before the arbitrator to be satisfied that the changes in question should be made, and whether the next round of bargaining is imminent. Finally, the arbitrator should ask whether it would be appropriate to make trade-offs for the language requested: City of Surrey v. Surrey Fire Fighters' Assn. [2011] B.C.C.A.A.A. No. 50 (Tab 3, University's Book of Authorities), City of
Throughout its reply submission, the Faculty Association appears to accept this analysis by repeatedly stating that the University has failed to provide a compelling reason why the language it proposed in bargaining should be imposed by the Arbitrator. Indeed, it is the University’s primary submission that none of the language proposed – by either the Faculty Association or the University – should be imposed in interest arbitration. The non-monetary issues are best left to the parties to resolve in bargaining. Clearly the parties did not get to the end of the bargaining process or the Association would not be proposing trade-offs in its reply submission.

As stated in paragraphs 132-136 of its primary submission, the University provided its bargaining proposals – all of which are important to the University – for the purposes of providing the arbitrator with the appropriate "trade-offs" that he could award as per City of Surrey, supra should he decide to award any of the Faculty Association’s demands. To do so would be to precisely

It is only by way of appropriate trade-offs that the replication principle would be satisfied. The University would not have agreed to any of the Faculty Association’s proposals absent an equivalent reciprocal agreement from the Faculty Association on the University’s proposals.

To that end, the University was surprised to see that the Association has now provided the arbitrator with two proposals for what it claims are “fair trade[s]” by which the Sessional/PhD Student issues and Workload/Tenured Assistant Professors issues could be resolved.

These proposals were not made to the University during 21 days of bargaining. Nor were they proposed during the three sessions of mediation held with the arbitrator. The University submits that these proposals should be referred back to the parties to engage in bargaining rather than awarded in this forum. It would be inappropriate to award these proposals when the University has not yet had the opportunity to consider and respond to them in bargaining.

To award the Faculty Association any of its non-monetary proposals at arbitration when the parties had clearly not exhausted the bargaining process would be to reinforce the narcotic effect of interest arbitration.

Contrary to the Faculty Association’s assertion at paragraph 8.1.16 of its reply submission, the University was absolutely willing and able to bargain to a settlement and it believes it demonstrated as much in mediation by tabling new language with respect to the Association’s workload and equity proposals. It was the Faculty Association that failed to participate in that process and tabled no language in response. Instead, it chose to make its proposals via the arbitration process.

Notwithstanding the above, the University disagrees with the Faculty Association that its proposed resolutions to the Sessional/PhD issues and the Workload/Tenured Assistant Professors issues represent “fair trades”. On the contrary, they would constitute capitulations on the part of the University. The University certainly would not have agreed

to these proposed exchanges in bargaining and therefore respectfully submits that they should not be awarded at arbitration pursuant to the replication principle.

13. The University disagrees with the Faculty Association’s position with respect to the University’s specific bargaining proposals, and makes the following submissions in reply. The University has not addressed every assertion made by the Association but this does not imply agreement with the same.

14. The fact that the parties disagree so strongly on the merits of their respective proposals and what might constitute a “fair trade” exemplifies why the Arbitrator should decline to award any of the parties’ non-monetary proposals and leave them instead for bargaining.

A. **Re: Criteria for Appointment, Reappointment, Tenure and Promotion**

15. The University’s proposal with respect to the criteria for promotion and tenure decisions is intended to reflect the standards that are currently expected of faculty members at UBC. The University does not agree that these modifications would have a negative impact on the Association’s membership. The University agrees with the Association that on the whole the University’s faculty members are of the highest caliber and it proposes only to ensure that the language of the Collective Agreement reflects the expectation of excellent performance.

16. The Association’s argument at paragraph 6.1.14 and 6.1.15 that adding the word “demonstrated” to “ability to direct graduate students” to the criteria for promotion to Associate Professor would make it impossible for faculty members in departments without graduate programs to be promoted to that rank is, with respect, flawed. How can the University assess the “ability to direct graduate students” in such a department any better than it could assess a “demonstrated ability to direct graduate students”? Faculty members are assessed based on the duties required of them pursuant to the particular department to which they belong. Under the new language – which better reflects the requirements of an appointment to Associate Professor – the Collective Agreement would continue to be applied as appropriate according to departmental expectations of its faculty members.

17. For the same reason, the addition of the requirement that a candidate for full professorship “show high quality in graduate student supervision” would not impede the success of candidates for full professorship in programs without graduate students. Collective agreement language must be understood within the appropriate departmental context.

18. The University further submits that the number of graduate students at the University is irrelevant to the issues before the Arbitrator as it has nothing to do with the terms and conditions of employment of faculty members.

19. Finally, the University is surprised that the Association would dispute the University’s proposal to delete the language that states that “it is expected that some persons will not obtain [the rank of full professor]”. The University would expect that its proposed deletion of a statement discouraging this promotion would be welcomed. Faculty members who achieve the rank of Associate Professor have no expectation of being promoted to the top rank in their stream under the current language. The University is seeking to encourage the promotion of excellent faculty members rather than imply that further promotion should not be expected.
B. Eligible Voting Members

20. The University's proposal with respect to promotion and tenure voting eligibility rules is intended to reflect its view that the teaching stream of appointments is not inferior to the research stream as was the case in the 2010 agreement. The University is building two complements of faculty, each with their own value and importance to the University's mission.

21. The University submits that the Association's submissions with respect to this proposal contradict this concept of equality. The Association appears to devalue the contributions of those members whose focus is on teaching and give them lesser status as compared to the research faculty.

22. The Association submits at paragraph 6.2.06 that article 3.06(c) of the Agreement on Conditions of Appointment for Faculty allows someone who "fails to achieve tenure as an Assistant Professor" to be tenured as a Senior Instructor. The University does not view this provision in the same way. Article 3.06(c) is not designed to provide an easier or lesser role for someone who was unsuccessful (i.e. "fails") in the research stream. An Assistant Professor who cannot meet the standards required of the research stream should be denied tenure, not moved to the teaching stream. The Association's interpretation implies that the teaching stream is somehow of lesser value or less rigorous. This is not the case. This provision is instead to be used – only in "special cases" – to reclassify a faculty member whose record demonstrates excellent teaching and exceptional educational leadership rather than a research focus.

23. Historically, Article 3.06(c) has been used rarely except at UBC's Okanagan campus where it has been applied in approximately half a dozen cases in the campus's short history. This reflects the different make-up of the faculty complement at UBCO. Many faculty members were hired into a college environment specifically for their teaching excellence. When UBCO began its transition to a research-intensive environment, faculty members were asked to try to modify their activities to fit the existing research-intensive faculty ranks. For certain members, this fit was not obvious. However, those faculty members are making extremely valuable contributions to the University through their teaching and educational leadership. Their reclassification to the teaching stream is in no way a demotion or a reclassification to a lesser rank as implied by the Association.

24. The Association refers to an excerpt from the minutes of the UBC Senate's February 13, 2013 meeting where a policy was approved allowing Professors of Teaching to supervise graduate students provided they meet the relevant criteria. As is evident from the complete set of minutes on this topic (a copy of which is attached as Exhibit A) there was no discussion or debate on this topic. This was an administrative rather than a substantive proposal and its purpose was only to ensure that Professors of Teaching had the same ability to supervise graduate students as Senior Instructors following the creation of this new rank. As stated by the presenting senator, this was simply "a logical adjustment given the addition of this new rank last year."

25. The University denies that Professors of Teaching are equivalent to Assistant Professors. Assistant Professor is an entry-level position. Professor of Teaching is the highest rank in the teaching stream. Nor is the Professor of Teaching the first rank in the teaching stream that can supervise graduate students as suggested by the Association at paragraph 6.2.09. Senior Instructors have the same rights in this regard as Professors of Teaching.
26. The supervision of graduate students is not inherently indicative of superior status of research faculty as suggested by the Association. The supervision of graduate students is not part of the standard duties of teaching stream positions as it is for the research faculty. Qualified individuals in the teaching ranks may do so, but they are not expected to do so. The fact that the expectations of the teaching ranks are different from the research faculty does not make those ranks inferior.

27. The existing without prejudice agreement should not be rolled over as proposed by the Association in paragraph 6.2.11. This document was agreed to out of practical necessity before the parties had a full opportunity to consider this issue. It does not properly reflect the realigned status of the two streams in the professoriate. Rather, it creates a lesser status for the highest rank in the teaching stream who are unable to vote in regard to promotion and tenure decisions for any research faculty.

28. The Collective agreement needs to ensure that this new rank is respected and ensure that the equivalency of the two streams not be undermined. In order to promote the educational leadership that members of the teaching stream must demonstrate in order to be appointed, those individuals cannot be seen as leaders and not as holding lesser appointments in the eyes of colleagues or students. The University is disappointed that the Association is seeking language that treats these ranks as inferior to research faculty.

C. Broader Representation on Departmental Standing Committees

29. The Faculty Association suggests at paragraph 6.2.14 that voting rights on Departmental Standing Committees must remain solely with faculty members because this is a “fundamental feature of collegial governance”. In the University’s view, it in no way detracts from collegial governance for the members of a department to collectively decide to afford voting rights to, for instance, a respected First Nations elder or a graduate student in appropriate circumstances. On the contrary, allowing a Faculty Committee to decide who should participate in the decision regarding whether a new colleague should be admitted to their ranks or promoted epitomizes the spirit of collegial governance. It takes into account that a university is a complex, diverse place where all viewpoints are to be encouraged and respected.

30. The University’s proposal would in no way obligate eligible voting members in a department to grant voting rights to anyone other than themselves. It would merely give them the right to collectively decide to do so in appropriate circumstances.

D. Salaries for Members Seconded to the Bargaining Unit

31. The Association states that the University’s proposal with respect to the costs associated with granting course releases for faculty members seconded to the bargaining unit should not be awarded because it would “significantly increase the cost of course release for union officers”. The University is well-aware of the significant costs associated with such course releases; they are currently borne by the affected University departments. The University is simply proposing a more equitable – not even equal – sharing of the costs associated with this practice which is for the sole benefit of the bargaining unit.
32. The University seeks to be able to object course releases to faculty members where it would cause undue hardship to a department and disagrees that its concerns in this regard are "pure fiction". Nor does the proposal constitute interference in the administration of a bargaining unit.

E. **Review by the President**

33. The University Provost is the chief academic officer of the University. Having him (or her) review appointment, tenure and promotion decisions is in no way uncollegial as suggested by the Association. The Provost is always an academic in his or her own right and is expected to return to the bargaining unit following his/her administrative appointment. Again, collegial governance allows for the University's administrators to play their respective roles; it does not require that faculty members alone make decisions with respect to academic matters.

34. It is the University's position that nothing in the Collective Agreement prevents the Provost from reviewing applications for appointment, promotion and tenure and has made its proposal without prejudice to this position. Nor does its proposal add an additional level of review to the process; the Association is aware that the Provost is already reviewing applications for tenure and promotion. The University seeks only to make the process more transparent.

35. Moreover, the fact that the University has not proposed a specific method by which the Provost would report his/her decision is irrelevant. Nothing in the Collective Agreement mandates that the Senior Appointments Committee ("SAC") report its decision in a specific manner. However, SAC prepares written notes when it reaches a negative decision so as to inform the faculty member of the basis for that decision and give him/her an opportunity to respond. The University expects that the Provost would do the same.

F. **Preservation of Past Rights and Practices**

36. At no time has the University suggested that it would or should not consult with faculty members regarding matters that affect them. It has only suggested the removal of Article 17 of the Framework Agreement which, in its view, has operated as a barrier to, rather than a facilitator of, joint discussion and consultation. Neither party has been able to clearly articulate the content of their rights under Article 17.

37. The University values the input of its faculty members on academic issues, whether they fall within the ambit of the Collective Agreement or not. However, it feels constrained by Article 17 because if it chooses to consult on a new issue (which it is not obligated to discuss with the Association), it may be establishing an ongoing obligation to do so and creating undefined potential liability for itself should it fail to "appropriately" discuss that issue in future. This Article makes the University hesitant to consult on issues outside the Collective Agreement rather than encouraging such discussion.

38. The University is unaware of a tradition of off-the-record discussions as to whether article 17 would apply on a case-by-case basis per se. However, the University has appreciated the current Association President's assurance that we need not be concerned with Article 17 during the course of her presidency.
G. **Roster of Mediators and Facilitators**

39. The Association states in paragraph 6.8.01 that the resolution of disputes between colleagues is the "sole responsibility of the University" and that it is unwilling to participate in a jointly sponsored initiative to train senior faculty members in conflict resolution and mediation skills. In the University's submission, this statement epitomizes the fundamental difference between the parties' views of how the University should be governed.

40. The Faculty Association repeatedly refers to collegial governance in support of its arguments that faculty members should play a primary role in university affairs and decision-making (e.g. re: voting on standing committees, workload policies, consultation under Article 17, etc.) In the University's view, this proposal represents a good opportunity for faculty members to actively participate in governing themselves and addressing issues that arise between colleagues rather than leaving that matter solely to the University's administration.

41. Collegial governance requires cooperation and consultation; it is not facilitated by the *us-versus-them* governance paradigm that is reflected in the Association's assertion that resolving disputes between faculty members is the sole responsibility of the University.

H. **Sessionals / Lecturers / PhD Students**

42. As described in its primary submission, it is the University's position that the issues relating to the rights of Sessionals, Lecturers, and PhD students are inextricably intertwined and cannot be awarded or considered in isolation. For the reasons described in its primary submission, the "lecturer issue" is not a stand-alone issue as suggested by the Association. Nor can certain issues related to Sessionals and PhDs be hived off and be resolved as suggested by the Association in paragraphs 8.1.11 – 8.1.15.

43. The issues involved are complex and require resolution. The Association's proposal would only address one piece of a much larger puzzle. Rather than awarding the inequitable trade-off proposed by the Association, the University submits that any award from the Arbitrator should be limited to ordering that the parties form a joint committee to consider issues relating to Sessionals, PhD students and Lecturers in order to develop a comprehensive solution.

44. This joint committee could be assisted by a neutral third party facilitator/mediator if necessary, and the University could even see a reasonable time frame being imposed for the resolution of these issues (which would need to be at least the balance of the year to allow for meaningful consultation and discussion). However, the University submits that the final decision must be left to the parties to bargain. For the reasons described in its primary submission, and as is evident from the many areas of disagreement between the parties, the University submits that issues are simply too complex to be determined in this adjudication given the limited evidence available to the Arbitrator.

45. Moreover, referring these issues to a joint committee would give the parties a fair shot at exploring and reaching a resolution themselves. What the parties learn would inform the next round of collective bargaining.
I. Other Issues

46. Contrary to the Faculty Association's assertions at paragraph 9.14 – 9.17, the University has indeed addressed all of the Association's proposals.

47. The University objected to the Association's proposal with respect to ceasing the practice of seconding bargaining unit members to the University's bargaining team in paragraphs 126 – 130 of its reply submission.

48. In its primary submission, the University took the position that any proposals with monetary implications are beyond the University's ability to pay if they were to be awarded in addition to the University's salary proposal (see, for instance, paragraph 112 - 113). With respect to the Association's proposal for tuition waivers, for example, the University argued that if those proposals were to be awarded, then the University's salary proposal would have to be reduced by the equivalent cost. The Association's proposal for tuition waivers on the death of a member was costed at Tab 11 of the University's Book of Documents. The transfer of tuition waivers to spouses or partners would also have significant cost implications.

49. With respect to study leaves for instructors, at paragraph 90 of its reply submission, the University specifically stated that it was willing to make the change requested by the Association. However, that proposal was not cost-neutral and the cost of implementing this proposal (even if it is minimal) had to be costed (as was done at Tab 11 of the University's book of documents).

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Thomas A. Roper, Q.C.  

Jennifer S. Russell

Counsel for the University of British Columbia
Vancouver Senate

Minutes of 13 February 2013

Attendance

Present: Prof. S.J. Toope (President and Chair), Ms L.M. Collins (Secretary), Mr T. Ahmed, Dean G. Averill, Dr K. Baimbridge, Dr J. Belanger, Dean M.A. Bobinski, Principal H. Brock, Mr B. Caracheo, Dr G. Chapman, Dr P. Choi, Prof. B. Craig, Dr W. Dunford, Mr P. Edgcumbe, Dr D. Farrar (Provost and Vice-President, Academic), Mr D. Fernandez, Ms V. Goyal, Dr S. Grayston, Mr S. Haffey, Rev. Dr M. Hagemoen, Dr P. Harrison, Mr M. Hunter, Dean J. Innes, Dr I. Ivanov, Dr U. Kumar, Dr B.S. Lalli, Mr P. Lee, Ms M. Leong, Dr P. Leung, Ms N. Liu, Dr P. Loewen, Ms K. Mahal, Dr P. Marshall, Mr W. McNulty, Principal L. Nasmith, Dr D. O’Donoghue, Dr K. Patterson, Dean S. Peacock, Dr N. Perry, Principal J. Plessis, Dean pro tem. S. Porter, Dr A. Riseman, Mr C Roach, Dr L. Rucker, Dr S. Singh, Dr R. Sparks, Dr S. Thorne, Ms K. Tyson, Mr D. Verma, Dr M. Vessey, Dr L. Walker, Dr R. Winds Dr D. Wilson, Mr S. Yang, Ms L. Zhu.

Regrets: Dr R. Anstee, Ms E. Biddlecombe, Dr L. Burr, Mr B. Caro, Mr B. Craig, Rev. Dr S. Farris, Dean B. Frank, Prof. B. Goold, Dean pro tem. E. Hall, Dr W. Hall, Dean R. Helsley, Dean M. Isman, Mr T. Jefferson, Dr S. Knight, Prof. B. MacDougall, Dr F. Marr, Dr W McKee, Ms M. McKenna, Ms S. Morgan-Silvester, Dr I. Parent, Dr R. Reid, Ms T. Rosseel, Dean C. Shuler, Mr A. Sihota, Dr D. Simunic, Dean R. Sindelar, Dr B. Steick, Ms S. Sterling, Dean G. Stuart, Mr M. Thom, Dr R. Wilson, Mr E. Woo.

Guests: Mr A. Arida.

Recording Secretary: Mr C. Eaton.

Call to Order

The President called Senate to order and wished everyone a happy Lunar New Year.

Minutes of the Previous Meeting

Lance Rucker
Katharine Patterson

That the Minutes of the Meeting of 12 December 2012 be adopted as presented.

Approved.

President’s Remarks
The President noted that Start and Evolution has raised over $1 billion to date and that UBC was well towards its further goal of having over 50 000 alumni participate.

With regards to new appointments, Professor Toope announced that James Ridge has been appointed Principal of the proposed international college and that Dr Angela Towle, a professor in Medicine was now Director of the UBC Learning Exchange.

At the president’s invitation, the Provost introduced Lisa Marie Collins as Associate Vice-President & Registrar pro tempore and as the registrar-select of the University of Alberta.

In terms of labour relations, the President informed Senate that the Board of Governors had ratified an agreement with the Association of Administrative and Professional Staff for 2012-2014. This agreement covers rough 3500 staff. Mediation and arbitration with the Faculty Association has been delayed due to an illness of the arbitrator. This arbitration has now been delayed to the first week of June.

Professor Toope advised Senate that UBC had recently launched an online searchable database designed to encompass aboriginal student programs in conjunction with the AUCC.

The President noted that the AUCC recently had a workshop on the role of the Senate with university governance. From that, he noted four key areas of discussion: mandate, orientation, annual planning, and opportunities for relationships with Board. He was delighted that over the last 18 months we have been working on all four of these elements at UBC.

The RUCBC has been working very hard on ensuring a public discourse and dialogue around the “Opportunity Agenda.” We have relaunched this linking it to the government jobs agenda. He viewed this as an important collaborative effort.

Senator Harrison noted that in previous years he has taken this time to note declining NSERC support for undergraduate students; he noted that this had changed this year and NSERC, at least for UBC, had increased support this year.

From the Board of Governors

The President confirmed for Senate that the following items approved by the Vancouver Senate were subsequently approved by the Board of Governors as required under the University Act:

SENATE MEETING 19 SEPTEMBER 2012

Change of the designation of the Department of Economics to the Vancouver School of Economics

New Program and associated new courses – Bachelor in International Economics, to be offered by the Vancouver School of Economics in the Faculty of Arts

Curriculum Proposals from Continuing Studies and the Faculties of Education, Graduate Studies (Faculties of Applied Science, Education and Medicine), Land & Food Systems,
and Pharmaceutical Sciences
Student Awards

SENATE MEETING 17 OCTOBER 2012
Curriculum Proposal from the Faculty of Education
Student Awards

SENATE MEETING 14 NOVEMBER 2012
Faculty of Medicine Awarded Prize- Dr. Chew Wei Memorial Prize in Cancer Research
Student Awards
Establishment of BC Leadership Chair in Cultures and Ecosystems at Risk in the Faculty of Arts

Academic Policy Committee

The Committee Chair, Dr Paul Harrison, presented.

PROFESSORS OF TEACHING AS GRADUATE STUDENT SUPERVISORS

Paul Harrison
Philip Loewen

That the Senate amend its policy on the Membership in the Faculty of Graduate Studies to allow faculty members with the rank of Professor of Teaching to supervise graduate students provided they meet the relevant criteria.

Senator Harrison noted that this was a logical adjustment given the addition of this new rank last year. He suggested that these faculty members would certainly be interested and involved in research and thus the Faculty of Graduate Studies has made this request.

Senator Singh asked if Professors of Teaching could apply for tri-council funding.

Dean Porter agreed to determine if this would be the case and report back to Senate with this information.

Approved

PROFESSIONAL STANDARDS FOR LEARNERS AND FACULTY MEMBERS IN THE FACULTIES OF MEDICINE AND DENTISTRY

Paul Harrison
Lance Rucker

That Senate approve the revised Professional Standards for Learners and Faculty Members in the Faculties of Medicine and Dentistry at the University of British Columbia as set out in the attached document.