

In the Matter of a Dispute Resolution Proceeding before Eli Gedalof pursuant to Article 6 of the Memorandum of Agreement

B E T W E E N :

THE UNIVERSITY OF TORONTO

(the “University”)

- and -

THE UNIVERSITY OF TORONTO FACULTY ASSOCIATION

(the “Association”)

UNIVERSITY’S ARBITRATION BRIEF

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INTRODUCTION

1. This is a dispute resolution proceeding related solely to salary, benefits and workload pursuant to Article 6 of the Memorandum of Agreement between the University of Toronto (the “University”) and the University of Toronto Faculty Association (the “Association”), a copy of which is attached at **Tab 1**. The issues in dispute are set out in Schedules “A” and “B” to the Memorandum of Settlement between the University and the Association dated January 25, 2022 (the “January 25, 2022 Memorandum of Settlement”), which is attached at **Tab 2**.

2. The scope of this dispute resolution proceeding is set out in paragraph 5(a) of the January 25, 2022 Memorandum of Settlement, which is reproduced in its entirety below:

5 – YEAR 3 – INTEREST ARBITRATION FOR SALARY, BENEFITS AND WORKLOAD FOR THE PERIOD JULY 1, 2022 TO JUNE 30, 2023

(a) Pursuant to and in accordance with paragraphs 13 to 28 of Article 6: Negotiations of the MOA the parties agree to refer salary, benefits and workload matters for the one year period July 1, 2022 to June 30, 2023 as set out in Schedules “A” and “B” attached hereto to an interest arbitration dispute resolution process on the terms and conditions set out below.

3. The University and the Association have agreed on the specific proposals that each of them will present in this dispute resolution proceeding. Schedule “A” of the January 25, 2022 Memorandum of Settlement lists the Association’s proposals. Schedule “B” sets out the University’s proposals. The University has since withdrawn the proposals in paragraphs 2(a) through 2(e) of Schedule “B”.

4. In entering into the January 25, 2022 Memorandum of Settlement, the University and the Association have reserved their respective rights to make submissions on the following issues:

(a) the arbitrability of the opposing party’s proposals, in whole or in part, having regard to Article 6 of the Memorandum of Agreement;

- (b) the interpretation and application of the *Protecting a Sustainable Public Sector for Future Generations Act, 2019* (“Bill 124”), which is attached at **Tab 3**, and whether or not any or all of the opposing party’s proposals are, in whole or in part, permissible compensation increases that could be awarded by a Dispute Resolution Panel, pursuant to Bill 124; and
- (c) whether or not a Dispute Resolution Panel can or cannot remain seized or retain jurisdiction over any or all matters in dispute in the event that Bill 124 is declared unconstitutional, or is otherwise modified or repealed with retroactive effect, and if so, whether a Dispute Resolution Panel ought to do so.

THE PARTIES

5. The University of Toronto (the “University”) is the most distinguished university in Canada. It is consistently ranked as the top university in Canada and among the top universities worldwide. The University regularly attracts top-tier students and faculty both nationally and internationally and is fully affiliated with 9 teaching hospitals.

6. The University is also Canada’s largest university. Spread across three campuses: the downtown University of Toronto St. George campus, the University of Toronto Mississauga (UTM) in the west, and the University of Toronto Scarborough (UTSC) in the east, the University’s student enrolment exceeds 97,000. It employs approximately 3,550 faculty and librarians, 13,650 unionized employees and a further 3,960 non-unionized employees.

7. The depth and breadth of academic programs offered by the University is unmatched across Canada. The University offers programs in 18 academic divisions, including 14 professional faculties. It offers over 700 undergraduate programs and over 300 graduate programs at either the masters or doctoral levels. There are approximately 130 academic units at the University (including single-department faculties, departments, and extra-departmental units called EDU A’s and EDU B’s) in which faculty members hold appointments across the University. The Faculty of Arts and Science on the St. George Campus is comprised of 29 departments, 7 colleges, and 43 interdisciplinary centres, schools and institutes and encompasses a broader range of disciplines than any other university in Canada.

8. The University's Library system is comprised of 40 libraries across the University's three campuses. It is one of the top three research libraries in North America. The University's library system has the largest collections of print and electronic holdings in Canada, which includes over 12.4 million physical holdings, more than 2.8 million electronic books, 182,000 electronic journals, and rich primary source materials, approximately 31,000 linear metres of archived material and 1.5 petabytes of electronic data.

9. The Association represents full-time and part-time Tenured/Tenure Stream faculty members, full-time and part-time pre-continuing status and continuing status Teaching Stream faculty members, and faculty members holding full-time Contractually Limited Term Appointments (CLTAs) and part-time appointments, and Permanent Status/Permanent Status Stream librarians, part-time librarians, and non-permanent status contractually limited term appointed librarians employed by the University.¹

THE APPOINTMENT OF FACULTY AT THE UNIVERSITY

10. The appointment of full-time faculty members at the University is subject to and governed by the *Policy and Procedures on Academic Appointments* (the "PPAA"). A copy of the PPAA is attached at **Tab 4**. The PPAA sets out the procedures that apply to faculty appointed to each of the Tenure Stream and the Teaching Stream. These two streams have distinctly different focuses and responsibilities, which are addressed in more detail below.

11. As set out in section 6 of the PPAA, an applicant for a pre-tenure appointment in the Tenure Stream must "show evidence of her or his ability to undertake independent scholarly activity, such as the successful completion of a doctoral programme or other scholarly or professional work regarded by the division or department as equivalent." A candidate for a Tenure Stream appointment must also be prepared to present evidence

¹ In Article 1 of the Memorandum of Agreement, the term "faculty members" refers to persons appointed under the *Policy and Procedures on Academic Appointments* or the *Policy and Procedures on Employment Conditions of Part-Time Academic Staff*. The term "librarians" refers to persons appointed under the *Librarians Policy* or the *Policy on Part-Time Librarians*.

of their teaching ability or potential, as well as evidence of their promise of future intellectual and professional development.

12. The PPAA's references to consideration of a candidate's research, teaching and promise of future intellectual and professional development when considering applicants for a Tenure Stream position reflect the criteria listed in subsection 13(d) of the PPAA, that the University uses when determining whether tenure will be awarded. Subsection 13(d) of the PPAA provides that:

Clear promise of future intellectual and professional development must be affirmed for tenure to be awarded. Demonstrated excellence in one of research (including equivalent and creative or professional work) and teaching, and clearly established competence in the other, form the second essential requirement for a positive judgment by the tenure committee. Only outstanding performance with respect to University service should be given any significant weight and, even then, only if there are no substantial reservations relating to the research, teaching and future promise criteria.

13. Relatively recent amendments to the PPAA have added specific provisions that address the appointment of Teaching Stream faculty. Faculty appointed to the Teaching Stream play an important role in the delivery of the University's academic program, with their specific focus on providing students with excellent teaching. The PPAA prescribes different criteria for the appointment of candidates to Teaching Stream positions, having regard to the teaching-focused objectives of appointments in this stream. In this respect, section 30(i)(a) of the PPAA provides that:

The ranks of Assistant Professor, Teaching Stream (Conditional); Assistant Professor, Teaching Stream; Associate Professor, Teaching Stream; and Professor, Teaching Stream are to be held by faculty members whose duties normally consist of teaching students who are in degree programs or the Transitional Year Program, and other professional and administrative activities related to teaching. Faculty members in the teaching stream may have direct responsibility for the administration of one or more large undergraduate courses or for the co-ordination of undergraduate programs at both the departmental level and in College-based programs. The expectation of faculty members in the teaching stream is that they bring a dimension of teaching excellence and educational innovation that enhances undergraduate or graduate education and adds significantly to the quality of the student experience. Where the position requires graduate teaching, an appointment to a University graduate department will also be made.

Other cross-appointments to departments on other campuses may also be made, with or without salary, where appropriate.

14. The performance of Teaching Stream faculty is necessarily focused on their teaching work, in a manner consistent with the nature and purpose of their appointments.

Article 30(vi) of the PPAA confirms that:

Performance will be assessed on teaching effectiveness and pedagogical/professional development related to teaching duties, in accordance with approved divisional guidelines on the assessment of teaching. Administrative service will be considered, where such service is related to teaching duties or to curricular and professional development.

15. Teaching Stream faculty are not eligible for an award of tenure under the PPAA. Rather, if a faculty member in the Teaching Stream can demonstrate that they have met the standard of excellence in teaching and have shown evidence of continued and demonstrated future pedagogical/professional development, they will receive a continuing status appointment at the University.

16. The focus on teaching excellence and pedagogical/professional development referenced in the appointment requirements for faculty in the Teaching Stream are reflected in the criteria that a Teaching Stream faculty member must meet in order to be granted a continuing status appointment at the University. Subsection 30(xii) of the PPAA describes a continuing status appointment as follows:

A continuing appointment provides a safeguard for free enquiry and discussion, the exercise of critical capacities, honest judgment and independent criticism of matters both outside and within the University. It entails acceptance by the University of the obligation to perform his or her functions as a member of the faculty. The performance of a teaching stream member with continuing status shall be reviewed annually in accordance with the normal divisional practice for all faculty.

17. A vast majority of faculty at the University hold tenured appointments at the ranks of Professor or Associate Professor, or continuing status appointments at the ranks of Professor, Teaching Stream, or Associate Professor, Teaching Stream, or an appointment at the rank of Assistant Professor or Assistant Professor, Teaching Stream that will include a review for tenure or continuing status, having regard to the applicable

stream-specific criteria referenced above. The table below provides further information on the number of faculty members who hold these appointments.

Faculty Holding Continuing Appointments by Rank			
Professor	1,084	Professor, Teaching Stream	23
Associate Professor	688	Associate Professor, Teaching Stream	251
Assistant Professor	466	Assistant Professor, Teaching Stream	141
Assistant Professor (Conditional)	21	Assistant Professor, Teaching Stream (Conditional)	7
Total Appointments	2,259		422

Source: University of Toronto, Facts and Figures 2021, Part G, p. 68. **Tab 5**

18. The University also employs faculty who hold full-time contractually limited appointments (“CLTAs”). Ordinarily, a faculty member holding a CLTA will be employed for a term of 1, 2, or 3 years. A CLTA’s term may be extended in appropriate circumstances and with Provostial approval, but its total length cannot normally exceed 5 years. Faculty appointed to the Teaching Stream on a contractually limited term basis will be assigned an academic rank that reflects their Teaching Stream appointment. The table below provides further information on the number of faculty members who hold CLTAs.

Faculty Holding CLTA Appointments by Rank			
Professor	115	Professor, Teaching Stream	0
Associate Professor	45	Associate Professor, Teaching Stream	0
Assistant Professor	79	Assistant Professor, Teaching Stream	67
Assistant Professor (Conditional)	6	Assistant Professor, Teaching Stream (Conditional)	8
Total Appointments	245		75

Source: University of Toronto, Facts and Figures 2021, Part G, p. 69. **Tab 5**

19. The University also employs approximately 148 part-time non-Teaching Stream faculty members who are not members of the Tenure Stream but whose roles include the full duties of the Tenure Stream faculty: research, teaching and service, and approximately 241 part-time Teaching Stream faculty members. These part-time faculty members are not eligible for tenure or continuing status under the PPAA. The terms and conditions of their employment are subject to and governed by the *Policy and Procedures on Employment Conditions of Part-Time Faculty*, a copy of which is attached as **Tab 6**. These faculty members are normally appointed for terms of up to one year, but may be appointed for a term that is as long as two years. The University may choose to renew a faculty member's appointment for one or two years on an ongoing basis. If a part-time faculty member's appointment is renewed for six successive years, they may be considered for a continuing part-time appointment, which entitles a part-time faculty member to notice and additional compensation in the event that their continuing appointment is terminated without cause.²

20. Like the PPAA, section 7(b) of the *Policy and Procedures on Employment Conditions of Part-Time Faculty* establishes different continuing appointment assessment processes and standards for faculty who are appointed in the Teaching Stream, in comparison with faculty whose appointments are outside of the Teaching Stream.

THE APPOINTMENT OF LIBRARIANS AT THE UNIVERSITY

21. Full-time librarians at the University are appointed in accordance with the *Policies for Librarians*, which is attached at **Tab 7**. Each such librarian is appointed to one of four ranks: Librarian I, II, III, or IV. A librarian hired at the rank of Librarian I receives a probationary appointment of one to two years. A Librarian I who establishes a record of successful performance during their probationary period will be eligible for promotion to the rank of Librarian II and an extended appointment of three years or less, depending on the librarian's previous experience.

² *Policy and Procedures on Employment Conditions of Part-Time Faculty*, *supra* at section 13(b) requires the University to provide two months' working notice of termination and severance pay of one month's pay per completed year of service to any part-time faculty member with a continuing appointment that is terminated without cause.

22. Following a librarian's promotion to the rank of Librarian II, they are considered for permanent status in the third year of their appointment. Librarians appointed at the rank of Librarian III or IV who are not granted permanent status at the time of their appointment will be considered for permanent status in the first year of their appointment. A librarian who is granted permanent status receives a continuing full-time appointment which the University cannot terminate except for reasons of financial stringency or exigency, the librarian's inability to carry out their duties, or for cause.

23. When a librarian is assessed for a promotion in rank, their performance is assessed using the five criteria of: effective performance in their area of responsibility; academic achievement and activities; professional achievement and activities; effectiveness of service to the Library and the University; and promise of continuing growth and overall performance as a librarian. When a librarian is considered for a promotion to the rank of Librarian II, the assessment of the effectiveness of their performance will be the primary criterion. The remaining criteria are given increasing weight as further promotions are sought, but with the criterion of "effective performance in their area of responsibility" remaining significant.

24. As set out in sections 48 through 50 of the *Policies for Librarians*, librarians who hold contractually limited-term appointments will have the length of their appointment, rank and salary clearly stated in their letter of appointment. Contractually limited-term appointments are normally used only in circumstances where a librarian is hired for a special project of a fixed duration, or to temporarily replace a librarian on leave. In such circumstances, the length of a contractually limited-term appointment will not normally exceed three years.

25. The terms and conditions of part-time librarians are set out in the *Policy on Part-Time Librarians*, which is attached at **Tab 8**. The ranks of Librarian I, II, III, and IV and the criteria used for promotion through these ranks set out in the *Policies for Librarians* apply to part-time librarians. However, part-time librarians are not eligible for permanent status, save and except for full-time librarians who have sought and been approved for a part-time appointment.

26. A part-time librarian’s initial appointment is for a fixed term of one year or less. The University is not obligated to renew any such appointment. If a part-time librarian’s annual appointment is renewed on three successive occasions, the part-time librarian may apply for a three-year part-time appointment. The granting of a three-year part-time appointment must be preceded by a review of the part-time librarian’s performance. If such an appointment is granted, a part-time librarian may continue to apply for its renewal every three years. Each such renewal is at the University’s discretion.

27. The table below provides more detailed information on the University’s complement of librarians, organized by rank.

Librarians Holding Permanent Status Stream and Part-Time Appointments, by Rank			
Permanent Status Stream		Non-Permanent Status (Part-Time or CLTAs)	
Librarian I	5	Librarian I	4
Librarian II	30	Librarian II	8
Librarian III	87	Librarian III	9
Librarian IV	20	Librarian IV	N/A
Total Appointments	142		21

Source: University of Toronto, Facts and Figures 2021, Part G, p. 70. **Tab 5**

PRINCIPLES APPLICABLE TO THIS DISPUTE RESOLUTION PROCEEDING

28. This proceeding is subject to and governed by Article 6 of the Memorandum of Agreement and established interest arbitration principles that have been referenced in awards under that Article between these parties for approximately 40 years. These principles are: replication, gradualism, total compensation, and demonstrated need.

THE JURISDICTIONAL LIMITS IMPOSED BY ARTICLE 6

29. A dispute resolution proceeding under Article 6 of the Memorandum of Agreement is subject to clear and specific jurisdictional restrictions. Paragraph 19 of Article 6 states that:

The jurisdiction of the Dispute Resolution Panel shall encompass only those unresolved matters relating to salaries, benefits and workload that have been referred to it by the parties.

30. There may be a wide range of unresolved matters between the parties concerning issues that are separate and distinct from “matters relating to salaries, benefits and workload.” However, no such disputes can be determined by a Dispute Resolution Panel under Article 6.

31. Several of the proposals that the Association has sought to pursue in this Article 6 dispute resolution proceeding are not “matters relating to salaries, benefits and workload” and, therefore, fall outside the jurisdictional limits imposed by Article 6. The University submits that a Dispute Resolution Panel lacks jurisdiction to award any of the following Association proposals in this proceeding, in whole or in part:

- (a) **Association Proposal 8** – Requiring the University to “establish a central fund to provide research and teaching supports to members taking pregnancy and parental leave or adoption/primary caregiver leave”;
- (b) **Association Proposal 10** – Requiring the University to “develop and implement a mechanism for reporting on leaves taken by, or accommodations given to, faculty members and librarians to care for family members” and to prepare an anonymized report concerning these issues for the Association;

- (c) **Association Proposal 14** – Requiring the University to “conduct an annual audit of UTFA members’ claims against the ‘reasonable and customary’ limits applied by Green Shield (or other provider) and provide a report to the Association on an annual basis”;
- (d) **Association Proposal 18** – Requiring the University to recognize a central health and safety committee as “a committee that fulfils the legislative requirements of the *Occupational Health and Safety Act* and has the powers of a Joint Health and Safety Committee”; and
- (e) **Association Proposal 20** – Requiring that “where notice has been given pursuant to Article 6 of the Memorandum of Agreement, all terms relating to salaries, benefits and workload shall remain in effect until final resolution is reached by settlement or award.”

32. The University has particularized its preliminary jurisdictional objections concerning each of these proposals in the submissions related to each such proposal below.

THE PRINCIPLE OF REPLICATION

33. The dispute resolution process in Article 6 of the Memorandum of Agreement is designed to replicate the negotiated outcome that the University and the Association would have reached through free collective bargaining, which includes the imposition of economic sanctions through a legal strike or legal lockout. The principle of replication is foundational to the interest arbitration process generally and is expressed in Article 6(16), which requires that any award:

shall attempt to reflect the agreement the parties would have reached if they had been able to agree.

34. In the most recent interest award between these parties, Arbitrator William Kaplan held that a Dispute Resolution Panel is required to give the greatest weight to the replication principle when fashioning an award under Article 6 of the Memorandum of Agreement.³ His application of the replication principle to the Article 6 dispute resolution process is reproduced below:

³ *Governing Council of the University of Toronto and UTFA*, June 29, 2020 (Kaplan). **Tab 9**.

In determining the outstanding issues, all of the usual criteria have been taken carefully into account, most especially replication: the replication of free collective bargaining. It is noteworthy that Article 6(16) of *The MOA* requires the award of an interest arbitrator to “attempt to reflect the agreement the parties would have reached if they had been able to agree.”⁴

35. Arbitrator Kaplan’s observations concerning the centrality of the replication principle to the Article 6 dispute resolution process is consistent with the approach taken by other Dispute Resolution Panels for more than thirty (30) years. The first Dispute Resolution Panel award that followed the introduction of Article 6(16) into the Memorandum of Agreement was issued on December 23, 1986.⁵ In that award, Arbitrator Donald Munroe noted that:

Subsequent to the publication of the Burkett award, the parties engaged in protracted negotiations about the content of Article 6. Eventually, in December 1984, the parties agreed to a substantial re-wording. Among other things, the criteria for decision were altered. Indeed, they were deleted. Now, the obligation on the part of the panel is to:

...attempt to reflect the agreement the parties would have reached had they been able to agree (Article 6(16))... taking into account the direct cost or saving of any change or modification of any salary or benefit (Article 6(19))...

By that formulation, the parties moved away from the adjudicative model of interest arbitration, agreeing instead to the adoption of the so-called “replication model”: where the decision maker is to try to replicate the agreement that the parties themselves would have reached if they had been left to the ordinary devices of collective bargaining – including economic sanctions. Put simply, at what point would the Association and its membership have settled rather than commence or continue a strike (if the strike option had been available)? At what point would the University have settled rather than commence or continue a lockout (if the lockout option had been available)? In theory, the answers to those two questions are the same. And, the task of the decision-maker, upon a review of the evidence and the submissions of the parties is to determine the likely point of common ground.

While that may be a difficult task, and one for which an objective measurement of success may be impossible to construct, the modern arbitral consensus is that the replication model does represent the ideal.

⁴ *Governing Council of the University of Toronto and UTFA*, June 29, 2020 (Kaplan), *supra* at 3.

⁵ *Governing Council of the University of Toronto and UTFA*, December 23, 1986 (Munroe) **Tab 10**

That is because, of any of the models for third party intervention, it is the least inimical to the accepted norm of free collective bargaining. Accordingly, it helps to maintain the acceptability – to employers and employees alike – of interest arbitration as an alternative to strikes and lockouts in public or essential industries.

It is perhaps important to observe that the shift from the adjudicative model to the replication model does not mean that the process of decision-making has become undisciplined. What it does mean is that the decision-maker is no longer simply to identify the criteria – either contractual or jurisprudential – around which to pivot a detached and dispassionate award. Rather, **the essential function of the decision-maker becomes the identification of factors which likely would have influenced the negotiating behaviour of the particular parties in the actual circumstances at hand. It is the dynamic mix of those factors which produces the end result.**⁶

[Emphases added]

36. Approximately ten (10) years later, Arbitrator Munroe reaffirmed the central role that the replication principle plays in the dispute resolution process under Article 6 of the Memorandum of Agreement. He emphasized that while the jurisdictional parameters of this process have been limited by the parties' agreed-upon language, within these agreed-upon jurisdictional parameters, the replication principle must be applied.⁷

37. A subsequent dispute resolution panel chaired by former Chief Justice Warren Winkler also emphasized the importance of applying the replication principle to dispute resolution proceedings under Article 6 of the MOA. After reviewing the relevant authorities concerning this principle, including those of Arbitrator Munroe referred to above, Chief Justice Winkler held that:

There is a single coherent approach suggested by these authorities which may be stated as follows. The replication principle requires the panel to fashion an adjudicative replication of the bargain that the parties would have struck had free collective bargaining continued. The positions of the parties are relevant to frame the issues and to provide the bargaining matrix. However, it must be remembered that it is the parties' refusal to yield from their respective positions that necessitates third party intervention. Accordingly, the panel must resort to objective criteria, in preference to the subjective self-imposed limitations of the parties, in formulating an award.

⁶ *Governing Council of the University of Toronto and UTFA*, December 23, 1986 (Munroe), *supra* at 5-7.

⁷ *Governing Council of the University of Toronto and UTFA*, June 18, 1996 at 6 (Munroe) **Tab 11**

In other words, to adjudicatively replicate a likely “bargained” result, the panel must have regard to the market forces and economic realities that would have ultimately driven the parties to a bargain.⁸

38. The University and the Association have agreed that the one year period to which this proceeding applies is the third year of the Bill 124 moderation period. As is set out in more detail below, the University and the Association have both proposed a salary increase of one percent (1%) across-the-board effective July 1, 2022. Moreover, as set out in paragraph 5(f), of the January 25, 2022 Memorandum of Settlement, the University and the Association have agreed that:

In connection with proceedings before the DRP, for the purposes of the 1% cap on compensation during the 12 month period under Bill 124 from July 1, 2022 to June 30, 2023, the “residual” amount available in connection with an across-the-board salary increase of 1% for any other compensation increases that may be awarded by the DRP is \$612,060 in total – i.e. under Bill 124 the DRP would not have jurisdiction to award other compensation increases that had a total cost of more than \$612,060 for the period July 1, 2022 to June 30, 2023.

39. Even in an unrestricted collective bargaining process, with legal strike and lockout options available to the parties, their negotiations would nevertheless be constrained by the compensation restrictions imposed by Bill 124. In other words, the Association’s proposals regarding salary and benefit enhancements would remain subject to these same restrictions.

40. In the present proceeding, the workload proposals in Association Proposals 1(J) and 1(K) do not in any way accord with the replication principle, which in and of itself is the basis on which both of these proposals must be dismissed. Neither proposal would be awarded in an ordinary collective bargaining process, where the Association could commence and continue strike activity in pursuit of these demands.

⁸ *Governing Council of the University of Toronto and UTFA*, (2006), 148 L.A.C. (4th) 193 at para. 17 (Winkler) **Tab 12**

41. First and foremost, any of the Association's proposals that affect Teaching Stream faculty only impact approximately fifteen percent (15%) of the Association's membership. It is inconceivable that an employee group where the remaining eighty-five percent (85%) of the Association's membership would resort to strike activity and endure the economic hardship of foregoing their salaries and benefits, and an accompanying reduction in their pension entitlements in order to secure modified workload arrangements that would not benefit them at all, and would benefit only the Teaching Stream faculty.

42. As set out by Arbitrator Donald Munroe in his earlier Article 6 dispute resolution award dated December 26, 1986, the purpose of a dispute resolution proceeding under Article 6 of the Memorandum of Agreement "is to try to replicate the agreement that the parties themselves would have reached if they had been left to the ordinary devices of collective bargaining – including economic sanctions. Put simply, at what point would the Association and its membership have settled rather than commence or continue a strike (if the strike option had been available)?"

43. When this question is asked in respect of the Association's proposals to impose a rigid workload formula and to cap the teaching workload of Teach Stream faculty, the simple and straight-forward answer is that the Association would have reached a negotiated settlement that did not include any of these proposals, rather than commencing or continuing a strike, if such an option were available. As set out above, it is inconceivable that the current complement of faculty and librarians would be willing to permanently lose salary (and incur the impact of such a salary loss on their pensions) by engaging in a legal strike concerning the Association's proposals for a rigid workload formula and/or a restriction on the teaching workload assigned to Teaching Stream faculty.

44. Second, several of the Association's proposed amendments to the *Workload Policy and Procedures for Faculty and Librarians* (the "WLPP")⁹ seek to dismantle its localized structure, and replace it with University-wide standards and strictures. The parties have already agreed, through the language included in Article 8 of the

⁹ *Workload Policy and Procedures for Faculty and Librarians*, Tab 13.

Memorandum of Agreement, that workload assessments and arrangements are to be completed based on workload policies established collegially at the unit level and the related assessments conducted within individual academic units. The establishment of University-wide standards would be fundamentally inconsistent with and indeed directly conflict with the principles and processes through which the University and its faculty members and librarians have approached this issue for many years.

45. Third, as is set out in greater detail below, the Association has pursued requests to impose rigid workload standards and/or limits on the teaching component of workload that can be assigned to Teaching Stream faculty on numerous occasions, including in earlier Article 6 proceedings. It has been unable to achieve these aspirational objectives through bilateral negotiations with the University.

THE PRINCIPLE OF GRADUALISM

46. Not only do these workload proposals offend the replication principle, their “breakthrough” nature also violates the principle of gradualism. Interest arbitrators, and Dispute Resolution Panels appointed under Article 6 of the Memorandum of Agreement are loath to award any breakthrough proposals to a party when and where that party could not likely secure that same proposal through free collective bargaining.

47. As noted above, the University and the Association have a mature bargaining relationship dating back more than for 40 years. In this context, a Dispute Resolution Panel should award only minor and gradual changes, if any, to existing salary, benefits and/or workload arrangements that the parties have not agreed upon through the negotiation and mediation stages of the Article 6 process. Interest arbitrators and Dispute Resolution Panels appointed under Article 6 of the Memorandum of Agreement have consistently reasoned they should award only gradual changes to the existing terms and conditions of employment, if any. This dispute resolution process cannot and should not be used by either party to secure changes that are aspirational, drastic and/or

unprecedented, where both parties did not accept the implementation of such changes through bilateral negotiations or mediation.¹⁰

48. The principle of gradualism is inward-looking. When determining whether or not a party's proposal ought to be characterized as a type of breakthrough proposal that should be attained only through free collective bargaining, interest arbitrators contrast the nature of the proposal at issue with the terms and conditions of employment already enjoyed by the affected employees. The assessment of whether or not a proposal is properly characterized as a breakthrough item is not determined by examining whether one or more external agreements at other institutions include similar entitlements or language.¹¹

49. The more that a proposal can objectively be characterized as an extraordinary improvement to existing terms and conditions of employment, the more likely that the proposal will offend the principle of gradualism and will not therefore be awarded at interest arbitration or in the instant dispute resolution proceeding, regardless of whether the proposing party may point to some other collective agreement that might include similar language.¹²

50. These observations regarding the gradualism principle were highlighted by Arbitrator Kaplan in the following paragraph in his 2020 award concerning these parties:

Gradualism is also relevant. In general, absent exceptional circumstances, interest arbitrators do not award breakthrough proposals, particularly in mature bargaining relationships. Breakthroughs are best left for the parties to reach on their own, without arbitral intervention absent exceptional circumstances justifying a deviation from this well-established principle.¹³

51. In addition to being fundamentally at odds with the principle of replication, the Association's workload proposals also offend the gradualism principle. Arbitrator Kaplan reached this same conclusion in 2020 in respect of two of the Association's proposals, which sought to fundamentally restructure and restrict the ways in which faculty workload

¹⁰ *Via Rail*, (2009), 101 C.L.A.S. 146 at para. 28 (M. Picher). **Tab 14**.

¹¹ *McMaster University*, [2015] O.L.R.D. No. 27 at para. 8. **Tab 15**.

¹² *New Horizon Systems Solutions*, [2005] O.L.A.A. No. 301 at paras. 18-19 (M. Picher) **Tab 16**

¹³ *Governing Council of the University of Toronto and UTFA* (Kaplan), *supra* at 3.

determinations are made. In the 2020 Article 6 dispute resolution proceeding before Arbitrator Kaplan, the Association sought the following changes to the WLPP. The Association's proposed new language, with which the University did not agree, is highlighted in yellow:

Article 2.18 (currently Article 2.14 of the WLPP)

Written assignments of workload. Each member will be provided with a written assignment of his/her ~~their~~ workload duties on an annual basis by no later than June 30th which includes details of teaching and service. This includes the member's percentage FTE appointment, and details of the member's teaching and service assignments (including the proportion of the member's overall responsibilities the member is expected to undertake relating to each of teaching and service, or in the case of librarians, professional practice and service). Where an individual's assignment is materially different from the unit's workload norms, standards or ranges, the variation and the reason for it should be identified in the individual member's written assignment of workload, subject to any confidential accommodation agreements. All written assignments for each Unit will be collected in the Office of the Unit Head and made readily available for review at the request of any member of the Unit or Association.

Provided it is technologically practical to do so, the University and UTFA will discuss in Joint Committee and endeavour to agree on copies being posted on a unit internet site or other password-protected website, accessible to UTFA and its members in the applicable unit, subject to any confidential accommodation agreements, with a target implementation date of January 1, 2020.

..

Article 7.2

Scholarship in the Teaching Stream Scholarship refers to any combination of discipline-based scholarship in relation to or relevant to the field in which the faculty member teaches, the scholarship of teaching and learning, and creative professional activities. Normally, scholarship and/or pedagogical/professional development accounts for no less than the service component of a Teaching Stream faculty member's workload; each faculty member is entitled to reasonable time for scholarship and/or pedagogical/professional development in determining workload as set out in paragraph 30(x)(b) of the PPAA*.

* e.g. discipline-based scholarship in relation to, or relevant to, the field in which the faculty member teaches; participation at, and contributions to,

academic conferences where sessions on pedagogical research and technique are prominent; teaching-related activity by the faculty member outside of his or her classroom functions and responsibilities; professional work that allows the faculty member to maintain a mastery of his or her subject area in accordance with appropriate divisional guidelines.

52. By advancing these two proposals, the Association requested the imposition of mandatory and rigid workload weightings for each faculty member's teaching and service responsibilities. The Association's proposed changes to Article 7.2 of the WLPP had the effect of imposing a *de facto* cap on the amount of teaching work that could be assigned to Teaching Stream Faculty.

53. Arbitrator Kaplan did not award the Association's proposals. He described their incompatibility with the principles of replication and gradualism as follows:

The evidence, however, does not make out a case for the Association's proposed rigid workload formula, or for limitations on the teaching of teaching stream members. As the Association observes in its brief, the workload of faculty and librarians is inherently fluid and cannot be rigidly quantified or measured according to units of time. It evolves within a year and over years. Experience indicates that faculty have a very clear idea of expectations, especially for PTR evaluation.

Consistent with the replication principle, this award attempts to achieve the outcome that would have been arrived at had this dispute run its course and that does not encompass awarding these Association proposals. Moreover, while the Association describes its proposals as modest and gradual, the changes sought are major. They are just the sort of significant changes that the parties should reach voluntarily.¹⁴

54. The workload proposals that the Association put before Arbitrator Kaplan in 2020 are not identical in language to those that the Association is currently pursuing in Proposals 1(J) and 1(K). However, the purpose and intent of these current proposals are the same as those which Arbitrator Kaplan rejected in his earlier award. As before, the Association continues to pursue proposals that Arbitrator Kaplan correctly described as a "rigid workload formula" and "limitations on the teaching of teaching stream members"

¹⁴ *Governing Council of the University of Toronto and UTFA, (Kaplan), supra* at 7.

and, as before, there is no basis to support the awarding of these proposals, in whole or in part.

55. In the time since Arbitrator Kaplan dismissed the Association's earlier workload proposals, there have been no material developments in the assignment of workload to faculty members and/or librarians that can justify awarding the current iteration of these proposals that the Association has advanced in this proceeding. Arbitrator Kaplan's earlier determinations that proposals of this nature offend the principles of replication, gradualism, and demonstrated need remain apposite and should be followed.

56. In this current process, the Association has again sought to amend the WLPP by mandating that all Unit Workload Policies quantify the distribution of effort in a normal workload in specific percentages for teaching, research, and service (Association Workload Proposal 1(J)). The Association has also proposed that the teaching performed by all Teaching Stream faculty be capped at one hundred and fifty percent (150%) relative to the teaching load assigned to Tenure Stream faculty in the same academic unit (Association Workload Proposal 1(K)). The University's position on these two proposals is unchanged. Neither can be supported using the replication principle and neither is consistent with the gradualism principle. Arbitrator Kaplan reached these same conclusions in the prior Dispute Resolution Process and the same result should now follow.

57. The Association's workload proposals that seek to superimpose university-wide standards on the ways in which workloads are assigned and assessed also contravene the gradualism principle. These parties have adopted a system where workload assignments, comparisons and alterations are achieved at the local level – within an academic unit with longstanding, organically-developed practices and understandings. An adoption of any or all of these proposals would represent a fundamental shift in the form, content, and administration of the WLPP.

58. In summary, the workload proposals advanced by the Association would represent extraordinary “breakthrough” proposals that fundamentally depart from a well-established understanding of how these parties have addressed workload issues. The Association’s workload proposals are a transparent attempt to impose a rigid workload formula on approximately 130 academic Units across the University of 60% teaching, 20% discipline-based scholarship in relation to, or relevant to, the field in which the teaching stream faculty member teaches, and 20% service for Teaching Stream faculty members, and a workload of 40% research and creative professional work, 40% teaching and 20% service for all Tenure Stream faculty. This is an aspirational effort by the Association to fundamentally change the status quo, which is accompanied by a separate and equally aspirational proposal to limit the teaching workload of all Teaching Stream faculty such that no Teaching Stream faculty member could be assigned a teaching load of not more than 150% of the assigned teaching load of Tenure Stream faculty members in the same academic Unit. There is nothing “gradual” about the Association’s proposals in this regard.

59. The Association’s proposals, if adopted, would immediately and profoundly affect the assigned teaching loads of many faculty members as collegially determined by the faculty members in those academic Units in their own department workload policies developed and established under the WLPP. The imposition of these proposals would represent a profound departure from the long-standing approach to the determination of workload, including the teaching workload assigned to faculty members across the University.

60. If for any reason, the Association’s workload proposals are not dismissed as being contrary to the replication principle, there can be no doubt that they can and should be dismissed as being contrary to and inconsistent with the principle of gradualism.

BILL 124 AND THE PRINCIPLE OF TOTAL COMPENSATION

61. In mediated discussions that occurred after the January 25, 2022 Memorandum of Settlement, the University and the Association reached an agreement on improvements to the University's Dependent Scholarship Program that would take effect for the period July 1, 2022 to June 30, 2023. The parties' agreement on this matter was confirmed in an e-mail from counsel for the University to counsel for the Association dated August 4, 2022, which is attached at **Tab 17**. The excerpt from this e-mail which sets out the impact of this agreement on the earlier "residual" amount of \$612,060 that had been agreed to in the January 25, 2022 Memorandum of Settlement is reproduced below:

Further to the e-mail string below the University accepts and agrees to UTFAs counter-proposal in Eli's e-mail immediately below and accordingly I confirm the parties' agreement that:

- Effective immediately the value of the Dependent Scholarship Program (the "DSP") will be increased from 50% to 65% of the amount of the academic fees for five full courses in a general Arts & Sciences program at the University of Toronto for a first undergraduate degree for U of T enrolments and for enrolments at eligible institutions other than U of T.
- This improvement to the DSP forms a part of the benefit improvements for Year 3 (i.e. July 1, 2022 to June 30, 2023) from the agreed upon "residual" amount of \$612,060 at an agreed-upon cost of \$315,000 such that the remaining "residual" for Year 3 is \$297,060.

62. The impact of the parties' agreement to improve the University's Dependent Scholarship Program during the July 1, 2022 to June 30, 2023 period at issue, coupled with the parties' related agreement that the agreed-upon "residual" referenced in the January 25, 2022 Memorandum of Agreement has been reduced from \$612,060 to \$297,060 means that the total cost of further monetary improvements available to be awarded in this proceeding cannot exceed \$297,060.

63. The requirements of Bill 124 apply to the assessment of the Association's workload proposals, specifically Association Proposals 1(J) and 1(K). Section 11 of Bill 124 sets a clear limit on the new compensation entitlements or increases to existing compensation entitlements that can either be agreed to or awarded during the applicable moderation period. Section 11(1) of Bill 124 expressly provides that:

11(1) During the applicable moderation period, no collective agreement or arbitration award may provide for any incremental increases to existing compensation entitlements or for new compensation entitlements that in total equal more than one per cent on average for all employees covered by the collective agreement for each 12-month period of the moderation period.

64. Bill 124 includes a very broad definition of the term “compensation”, which covers “anything paid or provided, directly or indirectly, to or for the benefit of an employee, and includes salary, benefits, perquisites and all forms of non-discretionary and discretionary payments.”

65. The Association’s proposals to impose strict workload formulas and to limit the teaching work performed by all Teaching Stream faculty members to not more than 150% of the teaching work performed by Tenure Stream faculty members in the same unit will give rise to two material consequences. First, many faculty members, including many current Teaching Stream faculty members, will have their teaching workload reduced without any accompanying reduction in their compensation. Second, the teaching work that was once performed by these faculty members, but which would not accord with the Association’s proposed workload formula and/or its limit on the teaching workload of Teaching Stream faculty would then need to be performed by newly hired Teaching Stream faculty.

66. The University’s hiring of additional Teaching Stream faculty to teach the courses that were once taught by its current complement of Teaching Stream faculty, but which would need to be assigned to newly hired faculty due to the Association’s restrictive workload proposals would not be a cost-neutral event. The University estimates that its hiring costs in these circumstances would require the expenditure of approximately \$9.9 million in new compensation. This would be a direct cost to the University; one that would be incurred as a direct result of the Association’s proposed rigid workload formula and its proposed cap on the teaching workload of Teaching Stream faculty members. This is an outcome that Bill 124 does not permit, which constitutes an additional reason why these proposals cannot be awarded in whole or in part.

67. More broadly, the principle of total compensation requires interest arbitrators and Dispute Resolution Panels appointed under Article 6 of the Memorandum of Agreement to focus on the overall monetary consequences of a party's proposal instead of examining such monetary consequences on an isolated item-by-item basis. The cost of a proposal will not necessarily be limited to the specific dollar value increase that is directly attributable to the proposal in and of itself. Rather, it is not unusual for a particular proposal to cause other costs that are indirectly related to that proposal to increase. The total compensation principle requires a total examination of all of the monetary consequences associated with a party's proposals.

68. In *Participating Hospitals and SEIU*¹⁵, Arbitrator Weiler provided a clear articulation of the total compensation principle and how it informs the work of an interest arbitrator. He observed that:

I have always thought it essential not to look at any such item in isolation. With rare exceptions any such proposed improvement looks plausible on its face. The Union can point to some number of bargaining relationships where this point has already been conceded. It may even be true that, taken one by one, no single revision will actually cost that much. But, cumulatively, these changes can mount up substantially. Thus, sophisticated parties in free collective bargaining look upon their settlement as a total compensation package, in which all of the improvements are costed out and fitted within the global percentage increase which is deemed to be fair to the employees and sound for their employer that year. In fact, the general wage hike itself generates corresponding increases in the vast bulk of the compensation package represented by the wages, since it increases the regular hourly rate upon which holidays, vacation, overtime and other premiums depend. This means that in any one negotiating round only limited room is left available for improvements in the scope and number of these contract revisions, and the Union must establish its own priorities among these various fringe items.¹⁶

69. A party seeking to persuade a Dispute Resolution Panel to award a particular proposal that has monetary implications must do more than point to other collective agreements where similar language may be found. A party making a proposal that would generate increases to an employer's costs – whether those costs flow directly from the

¹⁵ 46 *Participating Hospitals and SEIU*, June 1, 1981 (Weiler). **Tab 18**

¹⁶ *Ibid.*, at 18.

proposal itself, or whether they are an indirect consequence thereof - must account for all direct and indirect cost increases related to its monetary offer.

70. Despite the application of Bill 124, the principle of total compensation remains relevant to this proceeding for two reasons. First, the total compensation principle remains relevant because a decision to award the Association's proposal for a mandatory cap on teaching assignments for all Teaching Stream faculty would necessarily be accompanied by significant additional monetary costs to the University. An adoption of this proposal would leave a significant number of teaching assignments unassigned. These teaching assignments could not simply be redistributed amongst the University's existing faculty complement. Additional personnel would need to be hired to cover these teaching assignments, at significant cost to the University. This is precisely the set of circumstances that the total compensation principle is intended to address.

71. Second, the total compensation principle is engaged because of the Association's insistence that any and all improvements to benefits enjoyed by active faculty members and librarians must be passed along to all retired faculty members and librarians on the same terms. This practice has given rise to a large and increasing unfunded liability that represents a significant cost to the University, which must be addressed as part of the total compensation analysis.

THE PRINCIPLE OF DEMONSTRATED NEED

72. When a party seeks to secure a substantial change to a negotiated settlement through interest arbitration or the dispute resolution process under Article 6 of the Memorandum of Agreement, rather than by persuading the other party to accept that change through the regular give-and-take that often characterizes the negotiation process, the proposing party must present compelling evidence that there is a demonstrated need for its proposal. The proposing party must then demonstrate that its specific proposal meets that specific need.¹⁷

¹⁷ *Dufferin County Board of Education*, March 19, 1979 at 10 (Kennedy). **Tab 19**

73. The more that a party's proposal represents a material change from the status quo reached through the negotiation process, the greater the need for the proposing party to meet this rigorous two-part test. As Arbitrator Kaplan observed in his 2020 award between these parties:

Demonstrated need establishes that sought-after changes are required to meet real and pressing problems, particularly where one party seeks to change the long-standing status quo – representing, after all, decades of free collective bargaining.¹⁸

74. There is a close connection between the principle of demonstrated need and the principle of gradualism. In *Toronto Transit Commission and Amalgamated Transit Union, Local 113*,¹⁹ Arbitrator Kaplan observed that:

Amendments to a collective agreement, especially to provisions that were bargained and have been in place for a very long time, absent compelling evidence-based need, are made on a gradual basis, if at all, and almost always reflect give and take. In general, however, long-standing and freely-negotiated provisions should not be tampered with absent the strongest evidence of demonstrated need.²⁰

75. In the most recent Article 6 award between these parties, Arbitrator Kaplan found that there was no demonstrated need that supported the imposition of rigid workload quantification and classification standards, or a University-wide fixed cap on the teaching work that Teaching Stream faculty can be assigned to perform.²¹ The University submits that these same determinations are apposite to the present case. There is no factual or legal basis to support the radical alteration of the University's existing and longstanding processes used to establish unit workload policies and assignments that the Association has proposed in this proceeding.

76. As set out in more detail below, one example of the lack of demonstrated need related to the Association's workload proposals is that there have been very few workload adjudications under the WLPP since the inception of the WLPP in 2011. By design, the

¹⁸ *Governing Council of the University of Toronto and UTFA*, (Kaplan), *supra* at 4.

¹⁹ 2022 CanLII 9 (Kaplan) **Tab 20**

²⁰ *Ibid.*, at 8-9.

²¹ *Governing Council of the University of Toronto and UTFA* (Kaplan), *supra* at 6-7

WLPP contains a straight-forward and expeditious Dispute Resolution process in Article 9 thereof. Under that process, a faculty member or librarian, including any Teaching Stream faculty member, who has a complaint that the assignment of their workload is contrary to the WLPP, the Unit workload policy, or any other factors relevant to the individual, can raise their complaint with the person who assigned their workload. If the individual's workload complaint is not resolved at that stage, it can quickly be referred to a more senior administrator for review. If the complaint is not resolved at that stage, the individual can refer their complaint to the Workload Adjudicator for final and binding determination. Across and among more than 3,400 workload assignments to faculty members each academic year since the WLPP was established in 2011, there have been 2 complaints referred to and adjudicated by the Workload Adjudicator under the WLPP. It is clear that the vast majority of faculty members and librarians do not have complaints regarding the assignment of workload to them under the WLPP, the Unit Workload Policy and other factors relevant to individual faculty members, and when they do have complaints, virtually all of those complaints are resolved prior to any adjudicative process.

THE MEMORANDUM OF AGREEMENT AND LIMITS ON ARBITRAL JURISDICTION

THE ARTICLE 6 NEGOTIATION, MEDIATION & DISPUTE RESOLUTION PROCESS

77. As noted above, this dispute resolution proceeding is subject to and governed by the Memorandum of Agreement between the University and the Association. For more than 40 years, the terms and conditions of employment for faculty and librarians at the University have included the provisions of the Memorandum of Agreement. One of the purposes of the Memorandum of Agreement, set out in Article 1 thereof, is:

To maintain formally an effective and orderly procedure for the discussion and determination of salaries, benefits and workload and other significant terms and conditions of employment of librarians and faculty members contained in existing or proposed University-wide policies.

78. The final paragraph in Article 1 of the Memorandum of Agreement confirms that the University and the Association have agreed to a relationship and an agreement that is neither subject to nor governed by the *Labour Relations Act, 1995*. In so doing, they have agreed to a specific negotiation and dispute resolution process with clear limits on the subjects that can be addressed during negotiations and the jurisdiction of a Dispute Resolution Panel to hear and decide certain disputes.

Article 6 of the Memorandum of Agreement also sets out the process that the University and the Association must use when negotiating minimum salary and benefit entitlements for faculty and librarians as well as workload. Article 6(1) of the Memorandum of Agreement states that this negotiation, mediation/fact finding and dispute resolution process is to occur annually. However the University and the Association can, and frequently have, agreed to extend the term of their agreement beyond this prescribed one year period.

79. Paragraph 22 of Article 6 provides that a final and binding dispute resolution process will be used to resolve all outstanding disputes concerning salary, benefits, and workload. The specific components of the Article 6 process are summarized below:

- (a) Paragraph 1 sets out the specific terms and conditions of employment that can be addressed through this negotiation, mediation and dispute resolution process;
- (b) Paragraphs 2 through 4 address the commencement and continuation of negotiations, including the shared obligations to negotiate in good faith and to make every reasonable effort to reach an agreement;
- (c) Paragraphs 5 through 12 pertain to the mediation process which the parties have already completed;
- (d) Paragraphs 13 through 28 set out the dispute resolution process that applies when the parties are unable to reach an agreement on salaries, benefits and workload; and
- (e) Paragraphs 29 through 39 establish a discrete facilitation and fact-finding process that must be used for certain specified matters that are not salary, benefits or workload matters.

80. The dispute resolution process set out in paragraphs 13 through 28 of the Memorandum of Agreement contemplate the appointment of a three member Dispute Resolution Panel. In paragraph 5(b) of the January 25, 2022 Memorandum of Settlement, the University and the Association agreed to substitute Arbitrator Eli Gedalof in place of the three member Dispute Resolution Panel for this proceeding only. For ease of reference, this paragraph of the January 25, 2022 Memorandum of Settlement is reproduced in its entirety below:

5(b) In lieu of a Dispute Resolution Panel (the “DRP”) established pursuant to and in accordance [with] Article 6: Negotiations of the MOA, and without prejudice or precedent to either party’s position in any future round of Article 6 negotiations, the parties agree to substitute Eli Gedalof as a sole arbitrator in place of the DRP and as sole arbitrator his interest arbitration award will be treated as a unanimous report for the purposes of paragraph 22 of Article 6 of the MOA.

81. Although the parties have agreed to substitute a sole arbitrator for a three member Dispute Resolution Panel, they have not agreed to modify the jurisdictional boundaries that apply to all dispute resolution proceedings under Article 6 of the Memorandum of Agreement.

THE JURISDICTIONAL BOUNDARIES OF A DISPUTE RESOLUTION PANEL AS THEY APPLY TO BILL 124

82. The jurisdictional boundaries set out in the Memorandum of Agreement were not modified by the January 25, 2022 Memorandum of Settlement. In this regard, paragraph 19 of Article 6 of the Memorandum of Agreement states that:

19. The jurisdiction of the Dispute Resolution Panel shall encompass only those unresolved matters relating to salaries, benefits and workload that have been referred to it by the parties. The Dispute Resolution Panel shall, however, take into account the direct or indirect cost or saving of any change or modification of any salary or benefit agreed to by the parties in making its recommendation for terms of settlement.

83. Unlike interest arbitration boards that derive their jurisdiction from a statute, or rights arbitrators whose jurisdiction is rooted in a collective agreement, and augmented by the procedural and substantive powers set out in the *Labour Relations Act, 1995*, the Dispute Resolution Panel derives its jurisdiction solely and exclusively from Article 6 of the Memorandum of Agreement.

84. As noted above, paragraph 1 of Article 6 states that the negotiation, mediation and dispute resolution process is to occur annually. As such, unless the University and the Association agree to extend the temporal scope of this process to cover a period of time that is longer than one year, a Dispute Resolution Panel cannot issue a decision that purports to cover a longer term.

85. Consequently, this Dispute Resolution Panel must adhere to the fundamental jurisdictional principles that apply to all instances where a board of arbitration derives their jurisdiction from an agreement between the parties, and not through a grant of statutory authority. These principles were articulated in *Fincore Industries*²², which is attached at **Tab 21**. In this decision, Arbitrator Newman held that:

First, it must be recognized that a board of arbitration has no inherent jurisdiction. A board of arbitration can be clothed only with that jurisdiction conferred upon it in accordance with the collective agreement, and as prescribed by statute. The board of arbitration may not expand or amend its own jurisdiction and may not limit it. The Board must exercise that authority which is conferred, until, jurisdiction having been exhausted, it is without further authority in respect of the matter.²³

86. The jurisdictional boundaries established by paragraphs 1 and 19 of Article 6 are relevant to this proceeding because of Bill 124's application to this proceeding, and the ongoing legal challenge concerning the constitutionality of Bill 124 that is currently before the Ontario Superior Court of Justice. The Association addresses this issue in paragraph 4(a) of Schedule "A" to the January 25, 2022 Memorandum of Settlement, which is reproduced in full below.

²² [2000] O.L.A.A. No. 41 (Newman) **Tab 21**

²³ *Ibid.*, at para. 16.

4. Salary Increases

A. Across-the-Board Increases (ATB)

In light of the limitations imposed by Bill 124, UTFA proposes an ATB increase of 1% effective July 1, 2022.

If Bill 124 is found to be unlawful, UTFA proposes an ATB increase that is fair and reasonable in light of the unparalleled professional expectations faced by U of T faculty and librarians, trends in recent settlements in higher education, and broader economic considerations.

For clarity, UTFA's proposal to increase ATB by 1% is intended to include per course stipend rates.

87. The Association's proposal on how to address the possibility that Bill 124 may be "found to be unlawful" is subject to and governed by the jurisdictional limits that apply to this proceeding pursuant to Article 6 of the Memorandum of Agreement and the parties' agreement in the January 25, 2022 Memorandum of Settlement that this proceeding applies only to the period July 1, 2022 to June 30, 2023. In this context, the Association's proposal on how to address the possibility that Bill 124 may be "found to be unlawful" can be engaged if and only if Bill 124 is "found to be unlawful" before the completion of these proceedings. Otherwise, these proceedings would continue indefinitely, until some future date when a final determination of Bill 124's "unlawfulness" would presumably prompt the Association to propose an additional ATB increase that would apply retroactively to the period July 1, 2022 to June 30, 2023 only.

88. At present, Bill 124 is a validly enacted law that applies to these parties and to this proceeding. If Bill 124 is not "found to be unlawful" at the conclusion of these proceedings, the condition precedent included in the Association's proposal will not have been met and no further inquiry or analysis of the proposal would be necessary or permissible. The Association cannot use this proposal to extend the temporal scope of these proceedings beyond the limits established by Article 6 of the Memorandum of Agreement and the one-year term that was agreed to in the January 25, 2022 Memorandum of Settlement in an effort to address the possibility that Bill 124 might someday be "found to be unlawful."

WORKLOAD AT THE UNIVERSITY

89. There is no dispute that after the parties have completed the negotiation and mediation process set out under Article 6 of the Memorandum of Agreement, any unresolved matters relating to workload are to be referred to the Dispute Resolution Panel for final and binding determination.

90. In addressing issues of workload, the University and the Association have agreed to the WLPP. The WLPP was initially negotiated as part of the 2010-2011 negotiation, mediation and dispute resolution process in Article 6. As set out in Article 8 of the Memorandum of Agreement, any amendments to the WLPP must be made through the negotiation, mediation and dispute resolution process in Article 6 of the Memorandum of Agreement.

91. The WLPP was most recently amended by Arbitrator Kaplan's June 28, 2020 award.

ARTICLE 8 OF THE MEMORANDUM OF AGREEMENT – THE STARTING POINT

92. In determining any unresolved matter relating to workload, the University submits that the Dispute Resolution Panel must first review and consider the parties' existing arrangements regarding workload, and how these arrangements have evolved over time. The need for the Dispute Resolution Panel to begin its analysis in this manner is supported by Article 8 of the Memorandum of Agreement, which is reproduced in its entirety below.

Article 8 – Workloads and Working Conditions

The parties agree that no faculty member shall be expected to carry out duties and have a workload unreasonably in excess of those applicable to faculty members within the academic division or department (in multi-departmental divisions) of the University of Toronto to which such faculty member belongs.

In the interest of research and scholarship, faculty members shall not be required to teach formal scheduled courses for more than two terms in any academic year and those terms normally shall be the Spring and Fall terms. Summer teaching shall continue to be voluntary and on an overload basis. However, nothing in this Article shall be interpreted to alter substantially the

current arrangements for integrated summer teaching in those departments and divisions where this is now the practice. Nor shall this Article be construed to preclude faculty members from voluntarily agreeing to rearrange their teaching schedules so as to include summer teaching as part of their teaching loads where this is acceptable to them and the colleges, divisions or departments (in multi-departmental divisions) offering summer courses.

The University of Toronto agrees to continue to use its best efforts to ensure that there is an adequate level of support for faculty members relating to working conditions amid equitable distribution of support among members of the same academic division or department (in multi-departmental divisions).

Amendments to Article 8 will be made in accordance with and are part of the process under Article 6 of the Memorandum of Agreement.

Workload is subject to this article and the Workload Policy and Procedures for faculty and librarians negotiated pursuant to Article 6.

93. In recognition of the unrivalled breadth of academic programming offered by the University across its 18 academic divisions, which include over 130 academic units – single department faculties, academic departments within multi-department faculties, extra-departmental units – and the many ways in which these academic programs are structured and delivered, Article 8 of the Memorandum of Agreement repeatedly emphasizes that workload must be assessed and determined locally, having regard to the norms and standards set within an “academic division or department (in multi-departmental divisions).” The University agreed to amend the Memorandum of Agreement to include workload in the Article 6 negotiation, mediation and dispute resolution process on the Association’s agreement to preserve the fundamental principles related to the delivery of the academic mission determined collegially at the unit level with the approval of the Dean responsible for the overall division budget. This emphasis on the assessment and determination of workload at the local level is expressed in six (6) specific ways within Article 8:

- (a) The determination of an academic unit’s workload policy including workload norms, standards and ranges are determined by the members of that academic unit through a collegial process. The head of the academic unit, such as the Chair of a Department then assigns individual workloads in accordance with the applicable collegially determined workload policy,

- (b) The assessments and comparisons of faculty members' respective duties and workloads are determined at the divisional or departmental level (in cases involving multi-departmental divisions).
- (c) The determination of whether or not a faculty member has been assigned workload that is unreasonably in excess of the workload assigned to their peers is determined by examining the workload assignments of the faculty member's peers within their division or department (in cases involving multi-departmental divisions).
- (d) The fact that formal scheduled courses are normally delivered in the Spring and Fall terms remains subject to current arrangements in specific divisions and departments (in the case of multi-departmental divisions) where there is a current practice of offering integrated summer teaching.
- (e) Faculty members can engage in summer teaching as part of their normal teaching load, where such arrangements are acceptable within the college, division or department (in the case of multi-departmental divisions) in which the faculty member performs their teaching.
- (f) The University's commitment to continue to use its best efforts to ensure that there is an adequate level of support for faculty members relating to working conditions amid equitable distribution of support is assessed at the divisional or departmental level (in the case of multi-departmental divisions.)

THE PARTIES' NEGOTIATED THE WORKLOAD POLICY AND PROCEDURES

94. As part of the Article 6 negotiation, mediation and dispute resolution process for the period July 1, 2009 to June 30, 2011, the University and the Association negotiated the WLPP and agreed to add the final two paragraphs to Article 8 of the Memorandum of Agreement:

Amendments to Article 8 will be made in accordance with and are part of the process under Article 6 of this Memorandum of Agreement.

Workload is subject to this Article and the Workload Policy and Procedures for faculty and librarians negotiated pursuant to Article 6.

95. A copy of the WLPP initially agreed to by the parties is attached as Schedule “B” to the dispute resolution panel award issued by Martin Teplitsky for the time period July 1, 2009 to June 30, 2011.²⁴

96. In the time since the parties first agreed to the WLPP, it has been amended from time to time. These amendments have been incremental and need-specific. They have not undermined or altered the central themes addressed in the WLPP.

CENTRAL THEMES IN THE WORKLOAD POLICY AND PROCEDURES

97. There are five central themes that are addressed throughout the WLPP: (1) the autonomy of individual academic units; (2) flexibility; (3) collegiality; (4) transparency; and (5) accountability.

Theme 1 - Workload Issues must be Addressed on a Unit-by-Unit Basis

98. Consistent with the locally focused language that the parties used to address workload in Article 8, the WLPP is Unit-based. Paragraph 2.4 of the WLPP defines the term “Unit” as follows:

2.4 “Unit” for the purposes of this Policy is a single-department faculty, a department within a multi-department faculty, an Institute, Centre, or School with Extra Departmental Unit A or B (EDU:A or B) status including the ability to appoint members of the teaching staff, or a College where the primary appointment of a faculty member is held in the College.

99. Each Unit under the WLPP is headed by a Unit Head, which is defined in section 2.4 of the Policy as:

the Dean, Chair, Director or Principal of a Unit who has been appointed under the *Policy on the Appointment of Academic Administrators*.

²⁴ *Governing Council of the University of Toronto and UTFA*, October 5, 2010 at Schedule “B” (Teplitsky).
Tab 22.

100. Every faculty member and librarian must be included in a Unit. The WLPP then requires each Unit to engage in the following process:

(a) Establish a Unit Workload Policy Committee

The composition of the Unit Workload Policy Committee must be “established through a collegial process that provides a reasonable opportunity for all members of the unit to have input regarding which members shall serve on the Committee.”

The membership of the Unit Workload Policy Committee is to be “reasonably reflective of the membership of the Unit”. Each Unit Workload Policy Committee should be structured in a way that is reflective of the types of appointments held by those within the Unit.

(b) Ensure that the Unit Workload Policy Committee creates and maintains a Unit Workload Policy.

Each Unit Workload Policy is to be developed by the members of that Unit, with every member having an opportunity to provide their input to the Unit Workload Policy Committee on the form, content and proposed modifications to this policy.

In developing a Unit Workload Policy, the Unit Workload Policy Committee must ensure that it is consistent with Article 8 of the Memorandum of Agreement, the Unit’s own operating obligations, the University’s operating obligations, and the rights and obligations of its members.

Once a Unit Workload Policy has been developed, it must be approved by the appropriate University administrator. The approval process is structured in such a way as to require ongoing collaboration by the Unit’s members if a proposed Unit Workload Policy is not approved.

The Association is provided with copies of all approved and rejected Unit Workload Policies along with any written responses that follow a Unit Workload Policy’s rejection.

(c) Append the Unit Workload Policy to all of the Unit’s offers of appointment and renewal letters, so that prospective members of the Unit, and members whose appointments have been renewed, are made aware of the policy.

(d) Communicate the Unit Workload Policy to all members of the Unit and ensure that it remain accessible to all members of the Unit.

- (e) Provide for a meeting between each Unit member and the Unit Head before the Unit Head assigns workload to the Unit member in accordance with the WLPP, the Unit Workload Plan, and other factors that are relevant to the individual Unit member.
- (f) Supply each member of the Unit with a detailed written assignment of their workload duties by June 30 of each year. This written assignment must include the Unit member's percentage appointment and details of their teaching and service (or for librarians, details of their professional practice and service).
- (g) Inform any Unit member whose workload assignment is "materially different from the Unit's workload norms, standards or ranges" by particularizing the specific workload variation(s) and providing written reasons in support of same, subject to any confidential arrangements concerning the accommodation of a Unit member.
- (h) Foster transparency within each Unit by requiring that all written workload assignments be available for review within the Unit by any member of that Unit, or the Association, subject to any confidential arrangements concerning the accommodation of a Unit member.
- (i) Review the Unit Workload Policy every three years, within the Unit.

101. The structure of the University of Toronto and the extensive breadth of academic programming that it offers within its Faculties, Departments, Colleges, Institutes, Centres and Schools requires this decentralized approach to workload policy development, review and modification. The members of a Unit are uniquely positioned to make determinations on how their Unit Workload Policy Committees and Unit Workload Policies are to be structured, administered and updated.

102. Just as each Unit is responsible for the composition and membership of its Unit Workload Policy Committee and the Unit Workload Policy that is prepared, paragraph 4.0 of the WLPP empowers each Unit to determine the balance among the three principal components of a faculty member's activities: teaching, research and service, subject to the requirements in Article 8 of the Memorandum of Agreement and the WLPP.

103. In order for each Unit to conduct its own assessment of the teaching component of normal workload, Article 4.2 of the WLPP requires that the relevant factors related to the performance of teaching be examined. Paragraph 4.2 provides each Unit with a non-exhaustive list of factors to consider such as class size, mode of delivery, and the level and/or hours of teaching assistant support provided. There are other factors that require an examination of a Unit member's overall teaching load, such as the expected total number of students in all of a Unit member's courses, the mix of course levels that they are assigned to teach, and their responsibilities as graduate student supervisors or their membership in graduate supervision committees. Other course-specific factors focus on the particular nature of the course, the assignments and supervisory work associated with the course, and whether or not the course is one that has been newly developed or required to be delivered on short notice.

104. Here again, a determination of which factors are to be used in determining the teaching component of normal workload, and the relative weight to be given to each such factor is left to each individual Unit to determine in the context of the relevant academic programs. The specific ways in which courses are delivered can vary Unit-to-Unit and even course-to-course within a Unit. The WLPP eschews formalistic calculations and University-wide comparisons in favour of affording greater autonomy to each Unit.

105. The WLPP uses the same approach for the establishment of the service component of workload. This component of workload can be satisfied through the performance of work within and outside of the University through the leadership of or membership in a wide variety of councils, committees or other organizations. Each member of a Unit is expected to take on an "equitable share of administrative responsibilities", and the ways in which such shares are measured are left to each Unit to determine.

Theme 2 – Flexibility in the Approach to Assigning Workload

106. The workload of faculty members and librarians has a high degree of fluidity. Within any Unit, these workloads can change during an academic year, as well as over the course of several academic years. For example, an individual faculty member's workload may be balanced against the workload of other faculty members in their academic unit over the span of several years as opposed to focusing solely on one particular year. This type of broader balancing may occur in academic units where one or more large-enrolment courses are assigned to different faculty members each year on a rotating basis. There are a multitude of factors that can lead to changes in a faculty member's workload. These realities militate against any attempt to impose the substitution of fixed temporal measurements or standardized formulae in place of the current and longstanding unit-specific workload assignment processes. The WLPP instead requires that this task be addressed flexibly, having regard to the changing personnel, programs, priorities and resources in a given Unit at a given time. The absence in the WLPP of overly prescriptive language as to how workload is to be calculated under a Unit Workload Plan is important in this regard. An overly formulaic approach to workload issues would be fundamentally at odds with the values of the University, including respect for the academic autonomy of each academic unit, for collegiality and for the process and procedures that Units have used to determine workload for over a decade.

Theme 3 – Collegiality in Staffing Committees and Formulating Policies

107. Each academic unit must establish a Unit Workload Policy Committee to create and maintain the Unit Workload Policy. The composition and membership of each Unit Workload Policy Committee is determined by the Unit in a collegial manner. Each member of the Unit should have a reasonable opportunity to provide input on which members will serve on the Unit Workload Policy Committee.

108. In developing a Unit Workload Policy, the members of the Unit Workload Policy Committee must invite their colleagues in the Unit to contribute their ideas and viewpoints. Once it is finalized, the Unit Workload Policy must be disseminated to all members in the Unit. The review and revision of these Unit Workload Policies must be completed in a

collegial manner with all updated Unit Workload Policies communicated to all members of the Unit and to the Association.

Theme 4 – Ensuring that Workload Assignments are made in a Transparent Manner

109. The WLPP advances the theme of transparency in several ways. First, each Unit member is entitled to consult about their workload with the Unit Head, or in the case of a librarian, the person to whom they report, and to receive their annual workload assignment in writing. A member's workload assignment must set out their annual teaching and service responsibilities. This provides each Unit member with a document against which their actual workload in these areas can be compared with other Unit members. The provision of a written workload assignment to each Unit member therefore increases the level of transparency between each Unit member and their Unit Head.

110. The WLPP also provides for transparency within each Unit. This is accomplished by allowing all of the members within each Unit to access and review all of the Unit's written assignments of workload. A Unit member who is concerned that their workload is unreasonably high compared to others within their Unit has the opportunity to address those concerns by reviewing the workload assignments given to their colleagues within the Unit for the same period of time.

111. The WLPP also allows anyone who feels that their assigned workload contravenes either the WLPP or their Unit Workload Policy to initiate a complaint under the WLPP's dispute resolution process. Unresolved complaints made under this process are referred to the Workload Adjudicator for final and binding determination. In this way, decisions concerning a Unit member's workload remain subject to a neutral decision-maker's assessment and determination.

Theme 5 – Providing Accountability if the Relevant Polices are Breached

112. If a faculty member or librarian is of the view that their workload is contrary to the WLPP or their Unit Workload Plan, or any other factors relevant to them, Article 10 of the WLPP provides an expedited process whereby a faculty member or librarian can either resolve their complaint by means of a mutually agreed-to settlement, or a final and binding adjudication. A faculty member must first raise their complaint with the person who assigned their workload. If the complaint remains unresolved, and the complainant is in a multi-departmental faculty, it can be referred to the Dean. If the complainant is in a single department faculty, their complaint can be referred to the Provost. A librarian whose workload complaint is unresolved at first instances can forward their complaint to the Chief Librarian.

113. Workload complaints that remain unresolved after this second level of discussion can then be referred to the Workload Adjudicator. Pursuant to Article 10.4 of the WLPP, the Workload Adjudicator must be a current or retired University faculty member, librarian or administrator whose appointment is agreed to by the University and the Association. The Workload Administrator may establish their own procedure in dealing with workload complaints, but is required to consult with both the complainant and the individual who assigned their workload and any other individuals whom the Workload Adjudicator deems relevant to consult.

114. In the course of this consultation process, the Workload Adjudicator is required to review the workload complaint in the context of Article 3.1 of the WLPP, the complainant's Unit Workload Plan, and any other factors relevant to the complainant. The Workload Adjudicator may also require the production of documents that they deem relevant to the complaint. At the conclusion of this consultation and review process, the Workload Adjudicator is empowered to issue a final and binding determination of the complaint. They can issue an appropriate remedy if they find that a faculty member or librarian was issued an improper workload.

115. The University has issued approximately 3,400 to 3,500 workload assignments per academic year since the WLPP were first implemented in 2011. During this eleven year period, there have been only 2 workload adjudications. This fact underscores the lack of demonstrated need for any significant and wholesale changes to the WLPP proposed by the Association.

116. The fact that there has been a continued dearth of Workload Adjudications over more than a decade indicates that an overwhelming majority of faculty members do not have complaints that their workloads contravene the WLPP, their Unit Workload Policies, or other factors relevant to them. It also indicates that if and when such complaints do arise, they are almost always resolved after discussions with the individual who assigned the workload and/or the Dean/Provost. This evidence supports the University's view that there is no need to make drastic alterations to the form or content of the WLPP as the Association has proposed.

GRADUAL CHANGES TO THE WORKLOAD POLICY AND PROCEDURES

117. Since the University and the Association first agreed to the WLPP in 2011, they have agreed to certain changes to its form and content. Over time, the parties have agreed to changes to the WLPP concerning:

- (a) the ways in which Unit members can provide input to Unit Workload Committees regarding the Unit Workload Policy;
- (b) the role of the Dean's office and the Provost's office in assisting Unit Workload Committees with the development or review of the Unit Workload Policy;
- (c) the circulation of approved Unit Workload Policies to the Association and to cognate units;
- (d) the factors that can be used to consider the teaching component of normal workload under paragraph 4.2; and
- (e) the assessment of workload for CLTA faculty and CLTA librarians.

118. In addition to the changes that the parties have agreed to, Dispute Resolution Panels have awarded certain changes to the WLPP. Such changes have been consistent with the interest arbitration principles of replication, gradualism and demonstrated need. For example, in his award regarding the period July 1, 2018 to June 30, 2020, Arbitrator Kaplan found that the WLPP needed to be amended in order to address specific concerns regarding transparency in the assignment and distribution of workload. In addressing this specific issue, Arbitrator Kaplan wrote that:

Association members should have their workload written down and available for review and comparison, subject to confidentiality requirements such as, for example, where an accommodation plan is in place. It is only fair that faculty members know how workload is distributed, particularly where it is asserted that workload distribution has a negative impact on members of equity seeking groups. The change awarded here, together with what was agreed upon at mediation for electronic access to all written assignments within an academic unit (subject to any confidential accommodation agreements), will provide full transparency on individual and relative workloads.²⁵

119. The specific language that Arbitrator Kaplan awarded is set out for ease of reference below:

Amend Article 2.18 (currently Article 2.17 of the WLPP) as follows:

Written assignments of workload. Each member will be provided with a written assignment of their workload duties on an annual basis that includes the member's percentage appointment and details of teaching and service or, in the case of librarians, professional practice and service, by no later than June 30th. Where an individual member's assignment is materially different from the unit's workload norms, standards, or ranges, the variation and the reason for it should be identified in the individual member's written assignment of workload, subject to any accommodation agreements. All written assignments...²⁶

120. The change awarded by Arbitrator Kaplan to the WLPP is consistent with the principles of replication, gradualism and demonstrated need. Adding language to the WLPP that requires the documentation of circumstances where a faculty member's assignment is materially different from the norms, standards, or ranges of workload within

²⁵ *Governing Council of the University of Toronto and UTFA*, (Kaplan), *supra* at 5-6.

²⁶ *Governing Council of the University of Toronto and UTFA*, (Kaplan), *supra* at 7.

that faculty member's unit is a gradual change. This gradual change advances the principles and processes of unit-based decision-making, flexibility, transparency and accountability that have characterized the WLPP since its inception. This change responded to a demonstrated need to apply these themes in a specific and identifiable way and was not realistically an issue that would have been taken to an impasse.

121. In contrast, many of the Association's proposals in the present proceeding seek to fundamentally change the ways in which workload is assigned and determined. The University submits that, consistent with related decisions and findings as cited in these submissions, such proposed changes should be considered with especial regard to the established principles of replication, gradualism, demonstrated need, and where applicable, total compensation.

UTFA PROPOSAL 1 (B) – WORKLOAD – TECHNICAL SUPPORT

UTFA PROPOSAL

Amend Article 4.2 of the WLPP by adding:

- Level and/or hours of technical and/or pedagogical support for online teaching

UNIVERSITY'S RESPONSE

122. The University has reviewed and considered the Association's proposal. It agrees to add the Association's proposed language to Article 4.2 of the WLPP.as follows:

4.2 Teaching Considerations. In considering the teaching component of normal workload, relevant factors include the following, if applicable:

- Class size;
- The expected total number of students in all of a member's courses;
- Course coordination and program direction;
- The mix of course levels (introductory, upper year, graduate, etc.);
- The nature of the course (e.g., team-taught, inclusion of writing intensive or critical skills components, first-year seminars, foundation courses, etc.);
- Mode of delivery;
- Contact hours, including in-class and outside of formal scheduled class time;
- Advising duties or equivalent;
- Tutorial, lab, or studio direction or equivalent;
- Supervision of teaching assistants or equivalent;
- Level and/or hours of teaching assistant support;
- **Level and/or hours of technical and/or pedagogical support for online teaching;**

- Marking/grading responsibilities or their equivalent;
- Course preparation, including but not limited to extraordinary course preparation such as new courses, "short notice", preparation of courses delivered by alternate modes, and for courses which are cancelled;
- Supervision of senior essays or their equivalent;
- Directed reading courses and independent studies courses or their equivalent;
- Graduate supervision, including but not limited to supervision of dissertations, theses or equivalent, and including membership on graduate supervision committees in capacities other than primary supervision.

UTFA PROPOSAL 1 (D) – WORKLOAD – TA SUPPORT

UTFA PROPOSAL

Amend the WLPP to establish:

1. Minimum standards that apply University-wide for access to TA support based on class size, i.e. establish upper limits on the size of courses delivered without access to TA support.
2. Scaled hours of TA support in relation to total number of students in a class using a common, University-wide formula.
3. A requirement that each Division establish a process for increased and equitable distribution of TA support to members with enrolment above the minimum standard (limit) consistent with D(2).

UNIVERSITY'S RESPONSE

Access to Teaching Assistant Support is determined by Multiple Factors, not just Class Size

123. In the first paragraph of its proposal, the Association seeks to introduce new language into the WLPP that would mandate University-wide standards for access to Teaching Assistant support – based on the consideration of one factor only: class size. The Association claims that the purpose of this proposal is to “establish upper limits on the size of courses delivered without access to TA support.”

124. The Association's proposal requires that this University-wide standard related to access to Teaching Assistant support be based solely on class size. Class size is only one of the relevant factors included in the list of non-exhaustive factors that can be used to consider the teaching component of normal workload under paragraph 4.2 of the WLPP. The Association's proposal suggests that any other factor that might be relevant to determining how Teaching Assistant resources are to be allocated should not and would not be considered.

125. The University submits that this aspect of the Association's proposal runs contrary to the WLPP's emphasis on having each Unit make such determinations for itself. The Association's proposal presumes that each Unit across the University, regardless of the content, structure, and the specific pedagogical means and ends of their academic programs, should be subjected to a single quantitative formula to determine how Teaching Assistant resources are to be allocated within the Unit. This presumption should not be imposed on each and every Unit across the University.

126. The Association's proposal also disregards the University's decentralized budgeting process, where each Unit can determine how best to meet its pedagogical needs within its resource allocation. A Unit may decide to allocate a significant portion of its budget to the hiring of Teaching Assistants, but it may also decide that the acquisition of new technology to assist in the delivery of in-person and online courses is a higher budgetary and pedagogical priority. The adoption of the Association's proposal could reduce the degree of autonomy currently enjoyed by individual Units to address these issues in the context of their local academic program and pedagogical needs, since they may be forced, through the adoption of a University-wide standard concerning access to Teaching Assistants, to assign a certain portion of their budgets to address this specific requirement.

127. As well, the utilization and assignment of Teaching Assistants within an academic unit will primarily depend on the relationship between the undergraduate enrolment levels within the academic unit and the number of graduate students admitted by that academic unit and the fields of specialization of these graduate students on a year-to-year basis. An academic unit's undergraduate enrolment levels and its graduate student admission levels are not linked. An increase or decrease in an academic unit's undergraduate enrolment levels does not mean that there will be a corresponding change in the number of graduate students admitted.

128. Teaching Assistant work is performed predominantly by graduate students who, as part of the graduate funding package they receive from the University, are required to perform this work within their field of specialization. If graduate students are admitted to an academic unit that does not have a supportable level of undergraduate enrolment in courses within its graduate students' field(s) of specialization, the academic unit may need to assign Teaching Assistant work using factors other than class size in order to ensure that its graduate students are meeting the requirements associated with their funding packages.

129. In addition, decisions concerning the funding that is allocated to Teaching Assistant support, and the allocation of Teaching Assistant support to specific courses, are made by considering a number of operational and pedagogical factors rather than applying a rote formula that is tied to class size only. Individual instructors of large enrollment courses and small enrolment courses alike may choose to utilize specific educational technology tools or services to deliver their courses in ways that substantially modify their reliance on Teaching Assistants. A formula that requires the assignment of Teaching Assistants based on class size alone would be inconsistent with providing Units and individual instructors with the academic autonomy they expect in making pedagogically-sound decisions.

130. When determining how Teaching Assistant resources are allocated, the primary consideration is of the pedagogical decisions made by course instructors; these decisions are not necessarily driven by or connected to the number of students enrolled in the course. Instead, these factors include:

- (a) whether or not a course has lab components that may require students to be supervised by individuals other than the course instructor;
- (b) a course's hours of instruction, because certain courses, including introductory language courses, may not have the same enrolment levels as introductory humanities courses, but may have language practicum sessions that are delivered by Teaching Assistants;
- (c) specific course work and methods of evaluation, because courses where students are evaluated using multiple written assignments and not electronically-marked tests and examinations may require increased

Teaching Assistant support to assist with the review and marking of these written assignments; and

- (d) the workload assignments of specific faculty members in a given year, because a faculty member may be assigned workload including the delivery of new courses that require additional preparation time such that they will need additional Teaching Assistant resources, regardless of how many students happen to be enrolled in their courses.

131. The University acknowledges that collegial discussions amongst the members of a Unit and decisions made by a Unit Workload Policy Committee may result in a Unit Workload Policy that includes norms, standards or ranges that, once surpassed, would make access to Teaching Assistant support automatic – or at least prioritized. Any Unit that decides that to set such norms, standards or ranges which make sense within the specific context of that Unit, is and remains free to do so (e.g., for purposes of budget forecasting), subject to the requirements in Article 8 of the Memorandum of Agreement and the terms of the WLPP. However, any such determinations should continue to be based on the specific pedagogical considerations that the Unit’s members have identified and emphasized.

132. Most Unit Workload Policies do not include a quantitative formula for the assignment of Teaching Assistants. For example, the Unit Workload Policy for the Department of Mathematics in the Faculty of Arts & Science, which is attached at **Tab 23**, commits to allocating “appropriate TA support” to undergraduate courses. Exactly how this requirement will be met is left to each academic unit to determine. Moreover, since Unit Workload Policies are reviewed every three years, and an academic unit may require year-to-year flexibility in how its Teaching Assistant resources are allocated, applying a quantitative formula to this exercise would undermine the year-to-year flexibility that may be required and that Units and instructors have come to rely on.

133. The Association’s attempt to make an inextricable and exclusivist connection between class size and an entitlement to access Teaching Assistant support disregards the flexible way in which all aspects of the teaching component of normal workload are to be assessed within each Unit. It also disregards the other pedagogical components of

teaching (e.g., the types of assessments that may be used) that a Unit may use to determine how best to allocate its Teaching Assistant support.

Class Size is not the sole determinant of Teaching Assistant Support

134. The second and third paragraphs of the Association's proposal seek further incursions into and erosions of the Unit-level autonomy set out in the WLPP and the further quantification of the level of Teaching Assistant Support based solely on class size. Not only is the Association demanding the establishments of "upper limits on the size of course delivered without access to TA support", it also wants to mandate that other courses that do not meet these "upper limits" must also have the course's Teaching Assistant support determined only by examining the number of students enrolled.

135. Each Unit is best situated to determine how much of its budget is to be allocated to Teaching Assistant support and which of its courses most benefit from such support. These determinations may be driven, at least in part, by an assessment of course enrolment figures. That said, the University submits it is a gross oversimplification of the pedagogical decisions that are made in deciding how courses are best delivered to create and institute an inflexible formula that applies to all courses. Such an approach would override every other aspect of how these courses are taught, the learning objectives and modes of assessment of these courses, and the academic programs through which these courses are offered.

136. In summary, the Association has not demonstrated that all high-enrolment courses across the University require automatic access to Teaching Assistant support. The WLPP should not be altered in a way that would impose this type of rigid formula.

UTFA PROPOSAL 1 (G) – WORKLOAD – MANDATORY UNIT WORKLOAD POLICY FACTORS

UTFA PROPOSAL

Add a new clause to Article 2 of the WLPP as follows:

2. X Unit Workload Policies shall include consideration of the following factors:

- a) mode of delivery;
- b) level and/or hours of technical and pedagogical support for on-line teaching;
- c) level and/or hours of technical support for professional practice;
- d) class sizes;
- e) level and/or hours of TA support;
- f) the expected total number of students in all of a member's courses;
- g) new or alternative mode or short notice course preparation;
- h) graduate supervision.

UNIVERSITY RESPONSE

137. In this proposal, the Association is again seeking to insert concepts of rigid and formulaic decision-making into a policy framework where Unit-level autonomy and flexibility are of fundamental importance. All but one of the factors that the Association wants to add to Article 2 of the WLPP relate to the teaching component of faculty members' workload and are already addressed in the non-exhaustive list of factors that can be used when considering such matters. The sole factor not already included in Article 4.2 is the "level and/or hours of technical support for professional practice", which is specific to Librarians, and which can be addressed as necessary, through the application of Article 8.1(a) of the WLPP.

138. For ease of reference, Articles 4.2 and 8.1 of the WLPP are set out in full below.

Teaching considerations. In considering the teaching component of normal workload, relevant factors include the following if applicable:

- Class size;
- The expected total number of students in all of a member's courses;
- Course coordination and program direction;

- The mix of course levels (introductory, upper year, graduate, etc.);
- The nature of the course (e.g., team-taught, inclusion of writing intensive or critical skills components, first-year seminars, foundation courses, etc.);
- Mode of delivery;
- Contact hours, including in-class and outside of formal scheduled class time;
- Advising duties or equivalent;
- Tutorial, lab, or studio direction or equivalent;
- Supervision of teaching assistants or equivalent;
- Level and/or hours of teaching assistant support;
- Marking/grading responsibilities or their equivalent;
- Course preparation, including but not limited to extraordinary course preparation such as new courses, "short notice", preparation of courses delivered by alternate modes, and for courses which are cancelled;
- Supervision of senior essays or their equivalent;
- Directed reading courses and independent studies courses or their equivalent;
- Graduate supervision, including but not limited to supervision of dissertations, theses or equivalent, and including membership on graduate supervision committees in capacities other than primary supervision.

8.1 Librarian workload is a combination of tasks assigned and tasks determined through collegial interaction and self direction. While the pattern of a librarian's professional activity may vary from individual to individual, the following three activities constitute a librarian's principal responsibilities:

- (a) Professional practice for the Library, including teaching that has been requested or approved by a Librarian's manager. In considering the teaching component of normal workload for librarians, relevant factors include the factors set out in Article 4.2, if applicable.
- (b) Research and scholarly contributions, including academic, professional and pedagogical contributions or activities.
- (c) Service, which should be broadly understood to include service to the University, Library, and the profession.

139. The current language in Article 2 of the WLPP that addresses the content of a Unit Workload Policy requires that each such policy include:

workload norms, standards or ranges appropriate to the Unit and consistent with the terms of this WLPP and the Memorandum of Agreement.

140. The content and formulation of the “norms, standards or ranges” to be included in a Unit Workload Policy must be determined by a collegial process within the Unit. These are not components that should be centrally imposed or prescribed on a University-wide basis, nor should the formulation of a Unit’s “norms, standards and ranges” be subject to the mandatory consideration of a fixed set of factors which may not be relevant in all units.

141. The listed factors that the Association wants to make mandatory at the time that a Unit Workload Policy is first formulated are already addressed at a more appropriate place within the WLPP. All of the Association’s proposed factors pertain to teaching, in the case of faculty, and one specific factor addresses professional practice in the case of librarians. A review of the non-exhaustive list of factors in Article 4.2 (and the application of this list to librarians under Article 8.1(a)) demonstrates that the parties have already decided that these factors should be considered when applicable to the assessment of the teaching and professional practice components of workload.

142. Moreover, Article 4.2 of the WLPP addresses each of the Association’s proposed factors concerning faculty teaching workload in a way that is more consistent with the central themes of the WLPP. Rather than requiring each Unit to consider all of the factors in an enumerated list as the Association has proposed, Article 4.2 of the WLPP states that only the factors relevant to that Unit’s consideration of teaching need to be considered. Article 4.2 also recognizes that a Unit may have additional factors that impact its assessment of teaching considerations that can and should be considered. These flexible elements are missing from the structure and content of the Association’s proposal.

143. The University submits that each Unit should decide which factors are applicable and most relevant to the assessment of the teaching and professional practice components of workload in the context of its academic program. These aspects of the WLPP need not be changed in the ways that the Association has proposed.

UTFA PROPOSAL 1 (H) – WORKLOAD – EQUITABLE COURSE RELEASE

UTFA PROPOSAL

Add a new clause to Article 1.2 to the WLPP to provide for equitable course release and course credit for service and teaching in excess of unit norms:
Assignment of individual workload based on the principle that comparable work will be weighed in the same manner, and teaching/service release(s) will be granted equitably within units.

UNIVERSITY’S RESPONSE

144. The Association’s proposal that “assignment of individual workload based on the principle that comparable work will be weighed in the same manner” already appears in the final bullet point in Article 1.2 of the WLPP and need not be repeated.

145. In the remainder of its proposal, the Association seeks to connect the assignment of course releases and “course credit for service and teaching” to instances where a faculty member or librarian performs “service and teaching in excess of unit norms.” The Association also seeks to add language to the WLPP mandating that the assignment of such “teaching/service release(s) will be granted equitably within units.”

146. The University’s submissions will address three (3) specific aspects of the Faculty Association’s proposal. First, the University will examine how teaching releases may be provided and why there should be no automatic or formulaic entitlement to teaching release based on an argument that an individual faculty member or librarian has performed “service and teaching in excess of unit norms.” Second, the University will explain how the suggestion that a member’s “excessive” service workload should be offset by a reduction in a separate component of that member’s workload is inconsistent with how the WLPP is intended to operate. Third, the University will address the fact that the treatment of course releases is a matter best left to individual Unit Workload Policies, as opposed to general statements embedded in the WLPP.

Course Releases do not function as automatic rewards for Teaching in Excess of Unit Norms

147. The Association's proposal suggests that an individual's teaching above the normal teaching load must be addressed by providing the individual with some form of subsequent course release. The Association's proposal runs contrary to how instances involving overload teaching (i.e. teaching assignments that exceed an academic unit's norms) are addressed. A faculty member who voluntarily takes on overload teaching assignments in excess of the norms established in their Unit Workload Policy is compensated with stipends accordingly. Faculty members who take on overload teaching may agree to accept a course release in lieu of this stipend. In light of these existing arrangements, which respect and affirm the academic autonomy of faculty members when addressing the issue of teaching work that exceeds a unit's normal teaching load, the demonstrated need for the Association's proposed changes to the WLPP is absent.

148. The Association's attempt to establish an automatic connection between a faculty member's workload and the availability of one or more course releases is not contemplated by the WLPP. This is because the circumstances that give rise to the availability of course releases involve the consideration of factors unrelated to workload and require year-to-year assessments within each Unit based on the precise makeup of the Unit's membership, including the number of early-career faculty and librarians included therein, the number of administrators that may require a reduced teaching load during their administrative appointment based on their administrative work, and other Unit-specific factors.

149. For example, section 9 of the PPAA entitles Tenure Stream faculty who have passed their initial review to request an adjustment to their teaching and service workload for one academic term, in order to focus on preparing for tenure consideration. Normally, this workload adjustment provides such members with one academic term free of teaching and service obligations. Similar provisions are available to Teaching Stream faculty under section 30(viii) of the PPAA.

150. In certain Units, the administrative workload associated with the position of Chair or Director may require the provision of a reduced teaching load. Such matters are determined collegially, within each Unit and where relevant, in consultation with the Dean, and are deliberately not prescribed by the WLPP, since the administrative structure and operation of the University's Units vary considerably, as does the administrative work related to specific leadership positions within a Unit.

151. The Association's proposal also disregards the fact that the equitable assignment of workload is a concept that can be and is measured over a longer period of time than a single academic year. Individual academic units may determine that certain teaching assignments may, in a single year, constitute "teaching in excess of unit norms". These assignments should instead be considered over a longer period of time to determine if this aspect of workload is assigned equitably within the Unit. For example, the assignment of an intensive first-year course may be assigned to a different faculty member each academic year. If the Association's proposal were applied to this arrangement, the faculty member assigned to teach this course in any one year could be found to have a teaching workload in excess of the Unit's norms for that particular year. That faculty member in turn would have a resulting claim to a course release, without regard to the fact that the particular course assignment at issue is part of a longer-term workload cycle, whereby the responsibility for this particular course is spread out equitably among several of the Unit's members.

152. Requiring each Unit to connect the granting of course releases to teaching in excess of its norms would unreasonably and unnecessarily detract from the autonomy afforded to Units regarding these matters. Concerns about the potentially uneven or inequitable distribution of course releases within a Unit are already contemplated and remedies are already provided under the existing language in the WLPP: these can already be addressed through a review of all written workload assignments within a Unit, pursuant to Article 2.17 of the WLPP, and/or the commencement of workload complaint under Article 10 thereof, if necessary.

An excess Service Workload is not automatically offset by reductions in Teaching Workload

153. The University submits that instances where the service component of an individual's workload has exceeded Unit norms should not result in an automatic reduction to another component of their workload. Rather, faculty members or librarians who exceed Unit norms regarding the service component of their workload can receive corresponding reductions to that part of their workload in subsequent years. A requirement that course releases would be made mandatory in these circumstances would constitute a significant and unnecessary alteration of how the separate components of an individual's workload are addressed using the WLPP and would be inconsistent with the principles of replication, gradualism and demonstrated need.

154. Furthermore, it is important to emphasize that the WLPP does not quantify the service component of workload in the same manner as teaching. It would therefore be extremely difficult to discern exactly which service assignments would constitute an "excessive service workload" that would merit a reduction in teaching workload under the Association's proposal. The WLPP already enables individuals to discuss the service component of their workload with their Unit Head with a view to addressing and potentially offsetting any particularly burdensome service assignment with an appropriate workload reduction in a given year.

UTFA PROPOSAL 1 (I) – WORKLOAD – ANNUAL WORKLOAD DOCUMENTS

UTFA PROPOSAL

In order to enhance transparency and the equitable distribution of workload within a Unit, add a new Article 3.X to the WLPP as follows:

3. X Each Unit shall prepare, on an annual basis, a Unit Workload Document setting out:

(i) the assigned teaching and assigned service workload for each member in the Unit;

(ii) for each course that a member teaches, the assigned teaching credit, the mode of delivery, the class size, and level and/or hours of TA support; and

(iii) for each member any teaching release and the reason for it (e.g. pre-tenure course reductions), subject to any confidential accommodation agreements.

The Unit Workload Document will be provided to all members of the Unit and to UTFA by June 30th of each year.

UNIVERSITY RESPONSE

155. In the negotiation, mediation and dispute resolution process in respect of the period between July 1, 2018 and June 30, 2020, the parties addressed the need to provide members of each Unit with further and better access to the workload assignments of their peers within their Unit. In this regard, the University and the Association agreed to add the following language to Article 2.17 of the WLPP:

Provided it is technologically practical to do so, the University and UTFA will discuss in Joint Committee and endeavour to agree on copies [of written assignments for each unit] being posted on a unit internet site or other password-protected website, accessible to UTFA and its members in the applicable unit, subject to any confidential accommodation agreements, with a target implementation date of January 1, 2020.

156. In his subsequent award, Arbitrator Kaplan recognized that the parties had agreed to this additional measure of workload transparency, and determined that an additional change was required. Arbitrator Kaplan wrote that:

Association members should have their workload written down and available for review and comparison, subject to confidentiality requirements such as, for example, where an accommodation plan is in place. It is only fair that faculty members know how workload is distributed, particularly where it is asserted that workload distribution has a negative impact on members of equity-seeking groups.²⁷

157. This amendment to Article 2.17 of the WLPP requires the provision of written reasons in all cases where an individual member's workload assignment is "materially different from the Unit's workload norms, standards or ranges." In awarding the amended language, Arbitrator Kaplan held that "the change awarded here, together with what was agreed upon at mediation for electronic access to all written assignments within an academic unit (subject to any confidential accommodation agreements), will provide full transparency on individual and relative workloads."²⁸

158. Importantly, the focus of Arbitrator Kaplan's analysis and award was on the provision of transparency regarding individual and relative workloads. He did not require each unit to provide a more granular assessment of each course that each member of a Unit teaches, in terms of its assigned teaching credit, mode of delivery, class size and level and/or hours of teaching support, as the Association has now proposed. Such requirements conflate the value of providing transparency at the level of each member's workload assignment with an inappropriate prioritization and focus on specific factors regarding the teaching component of workload. Such a conflation, and the inappropriate prioritization of certain factors that may affect the teaching component of workload, do not necessarily provide a full or accurate comparative picture of whether or not workload is being assigned in accordance with the WLPP.

²⁷ *Governing Council of the University of Toronto and UTFA*, (Kaplan), *supra* at 5-6.

²⁸ *Ibid.*, at 6.

159. In response to the Association's proposal and its interest in enhancing transparency with respect to the assignment of workload, the University proposes that Article 2.17 of the WLPP be amended as follows:

2.17 Written assignments of workload. Each member will be provided with a written assignment of their workload duties on an annual basis that includes the member's percentage appointment and details of teaching and service or, in the case of librarians, professional practice and service, by no later than June 30th. Where an individual member's assignment is materially different from the unit's workload norms, standards, or ranges, the variation and the reason for it should be identified in the individual member's written assignment of workload, subject to any accommodation agreements. All written assignments for each Unit will be made available for review by any member of the Unit or the Association in a Unit specific password protected electronic/on-line format approved by the Office of the Vice-President & Provost, subject to any confidential accommodation agreements. ~~collected in the Office of the Unit Head and made readily available for review at the request of any member of the Unit or the Association. Provided it is technologically practical to do so, the University and UTFA will discuss in Joint Committee and endeavour to agree on copies being posted on a unit internet site or other password-protected website, accessible to UTFA and its members in the applicable unit, subject to any confidential accommodation agreements, with a target implementation date of January 1, 2020.~~

160. The University submits that its proposed changes to the WLPP will increase transparency with regard to the assignment of workload because it would provide every member in each academic Unit with the ability to review all of the written workload assignments made within their Unit using a secure online application. Access to this application would also be made available to the Association.

161. Whereas the Association's proposal would require the preparation of a separate "Unit Workload Document" which appears to prioritize only a small number of the teaching considerations listed in Article 4.2 of the WLPP, the University's proposal would increase the accessibility of the workload documents with which faculty members and librarians are already familiar. The ability of faculty members and librarians to review these documents, which already include particulars of workload assignments within the academic Unit that are materially different from the applicant workload norms, standards, or ranges, would provide each faculty member and librarian with detailed information on

the workload assignments that have been provided to their colleagues. This would necessarily enhance transparency in a more practical and effective manner than the approach suggested in the Association's proposal.

UTFA PROPOSALS 1 (J) AND 1(K) – WORKLOAD – DISTRIBUTION OF EFFORT IN UNIT WORKLOAD POLICIES AND WORKLOAD LETTERS & TEACHING STREAM COURSE LOAD

UTFA PROPOSAL 1(J)

Amend Article 2.0 of the WLPP to ensure Unit Workload Policies quantify the distribution of effort in a normal workload in percentages for faculty (e.g. 40/40/20; 60/20/20) and librarians.

Amend Article 2.16 of the WLPP to require workload letters to include a members' distribution of effort and additional details regarding teaching and service assignments.

UTFA PROPOSAL 1(K)

Add a new Article 7.X to limit Teaching Stream teaching load relative to Tenure Stream teaching load within a unit to not more than 150%.

UNIVERSITY'S RESPONSE

162. These proposals are the Association's latest attempts to impose a rigid quantitative formula on the workload of faculty, by way of a cap on the teaching component of that workload for Teaching Stream faculty. The Association has sought to impose this cap in two ways:

- (a) by assigning all Teaching Stream faculty a "distribution of effort" whereby sixty percent (60%) of their workload is assigned to teaching, twenty percent (20%) is assigned to scholarship, and the remaining twenty percent (20%) is assigned to service.

The Association's proposed "distribution of effort" proposal for Teaching Stream faculty appears to be based on an attempted comparison of the workload generally assigned to Tenure Stream faculty (forty percent (40%) teaching, forty percent (40%) scholarship and twenty percent (20%) service.) As set out in more detail below, the University disputes the validity of this attempted comparison.

- (b) by mandating that no Teaching Stream faculty member can be assigned a teaching load that exceeds one hundred and fifty percent (150%) of the teaching load assigned to Tenure Stream faculty within this same unit.

163. During the negotiation process that led to the enactment of the WLPP and in negotiations between these parties that have occurred since that time, it has been an aspirational objective of the Association to obtain language mandating a workload formula of 60% teaching, 20% research and 20% service for Teaching Stream faculty members as well as a cap on the teaching workload that can be assigned to Teaching Stream faculty members. The Association pursued these aspirational objectives in the most recent Article 6 dispute resolution proceeding between these parties, the Association's aspirational objectives were rejected by Arbitrator Kaplan.

164. The Association did advance two proposed amendments to the WLPP through the dispute resolution process in respect of the period July 1, 2018 to June 30, 2020. These two earlier Association proposals have already been referenced in the University's submissions. For ease of reference, they are reproduced again below:

Article 2.18 (currently Article 2.14 of the WLPP)

Written assignments of workload. Each member will be provided with a written assignment of his/her their workload duties on an annual basis by no later than June 30th which includes details of teaching and service. This includes the member's percentage FTE appointment, and details of the member's teaching and service assignments (including the proportion of the member's overall responsibilities the member is expected to undertake relating to each of teaching and service, or in the case of librarians, professional practice and service). Where an individual's assignment is materially different from the unit's workload norms, standards or ranges, the variation and the reason for it should be identified in the individual member's written assignment of workload, subject to any confidential accommodation agreements. ~~All written assignments for each Unit will be collected in the Office of the Unit Head and made readily available for review at the request of any member of the Unit or Association.~~

Provided it is technologically practical to do so, the University and UTFA will discuss in Joint Committee and endeavour to agree on copies being posted on a unit internet site or other password-protected website, accessible to UTFA and its members in the applicable unit, subject to any confidential accommodation agreements, with a target implementation date of January 1, 2020.

..

Article 7.2

Scholarship in the Teaching Stream Scholarship refers to any combination of discipline-based scholarship in relation to or relevant to the field in which the faculty member teaches, the scholarship of teaching and learning, and creative professional activities. **Normally, scholarship and/or pedagogical/professional development accounts for no less than the service component of a Teaching Stream faculty member's workload; each faculty member is** entitled to reasonable time for **scholarship and/or pedagogical/professional development** in determining workload as set out in paragraph 30(x)(b) of the PPAA*.

* e.g. discipline-based scholarship in relation to, or relevant to, the field in which the faculty member teaches; participation at, and contributions to, academic conferences where sessions on pedagogical research and technique are prominent; teaching-related activity by the faculty member outside of his or her classroom functions and responsibilities; professional work that allows the faculty member to maintain a mastery of his or her subject area in accordance with appropriate divisional guidelines.

165. Arbitrator Kaplan did not award either of these proposals. As noted above, he found that the Association's proposals represented major adjustments to the ways in which the parties had determined workload issues, and that they were fundamentally inconsistent with the established interest arbitration principles of replication, gradualism and demonstrated need.

166. The Association's prior unsuccessful pursuit of proposals intending to quantify workload and to restrict the teaching component of Teaching Stream faculty members' workload have never been accepted by the University, nor have they been awarded. The University submits that a proper application of the replication principle means that this same result must follow in the present case.

No Demonstrated need for “Protected Research Time” for Teaching Stream Faculty

167. One rationale that the Association has offered alongside its prior attempts to impose rigid workload standards is that faculty in the Teaching Stream do not currently have “protected time” for research, and that twenty percent (20%) of their workload should, in each instance, be allocated to that component. Underlying this proposal, and the Association’s accompanying demand to limit the teaching performed by Teaching Stream faculty relative to their Tenure Stream colleagues, is an attempt to draw equivalencies between its characterization of the workload assigned to Tenure Stream faculty and the strictures that the Association wants to apply to the workload of Teaching Stream faculty.

168. The University’s response to these assertions is fourfold. First, the Association’s suggestion that Tenure Stream faculty have a normal workload of 40% research, 40% teaching and 20% service is not a workload concept. Second, the Association’s attempt to draw equivalencies between the workload of Tenure Stream faculty and the workload of Teaching Stream faculty is flawed: it overlooks important distinctions between these two appointments and the accompanying expectations for the performance of research or creative professional development. Third, the Association’s attempt to draw a direct comparison between the teaching work performed by Tenure Stream faculty and the teaching work of Teaching Stream faculty also overlooks the fact that Tenure Stream Faculty perform teaching work in the form of graduate student supervision that is not measured as “full course equivalents”. Fourth, an objective assessment of the teaching and service workload typically assigned to Teaching Stream faculty demonstrates that there is already sufficient time available to these faculty members to independently engage in what the PPAA describes as “pedagogical/ professional development.”

The Association's Reference to a "40/40/20" Workload for Tenure Stream Faculty is not a Workload Concept

169. The WLPP does not include any language that addresses the research and scholarship that Tenure Stream faculty are required to maintain. The WLPP deals only with the teaching and service components of workload. The suggestion that Tenure Stream faculty have a "normal workload" consisting of 40% research, 40% teaching and 20% service appears nowhere in the WLPP.

170. Reference to a Tenure Stream faculty member's performance of 40% research, 40% teaching and 20% service is a construct that is sometimes used in the course of the University's Progress-through-the Ranks ("PTR") process. The PTR process is entirely separate and distinct from the processes that are used to address workload issues. Concepts that are sometimes used in the PTR process should not be transplanted into any workload processes.

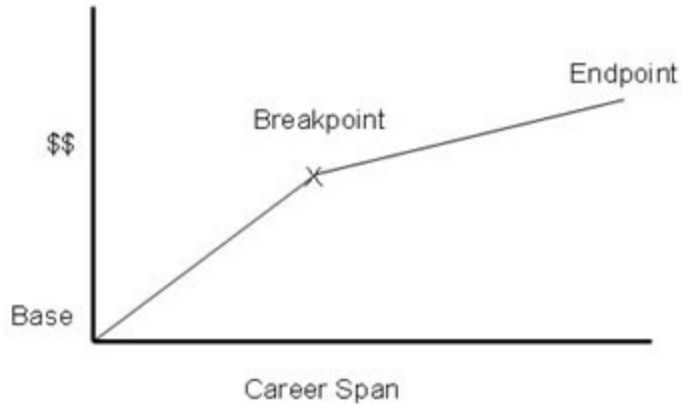
171. PTR was introduced almost 50 years ago, in 1973. Its purpose is to provide faculty members and librarians with a merit-based award to recognize individual accomplishments in research, teaching, and service. No faculty member or librarian is entitled to a PTR award in any year. Rather, PTR awards are provided to faculty members and librarians based on an assessment of their academic contributions in the prior academic year relative to their peers.

172. The money that the University distributes to faculty and librarians as PTR awards is divided into three separate funds, which are described below:

- (a) **Tenure-Stream, Part-Time and CLTA Faculty Fund** – This fund is available to faculty in the Tenure Stream and the Non-Tenure Stream with the rank of Professor, Associate Professor, Assistant Professor, and Assistant Professor (Conditional), including those on contractual limited term appointments;
- (b) **Teaching Stream Faculty Fund** – This fund is available to faculty members who have a Teaching Stream appointment at the rank of Professor – Teaching Stream, Associate Professor – Teaching Stream, Assistant Professor – Teaching Stream, Assistant Professor (Conditional) – Teaching Stream and all part-time Teaching Stream faculty;

- (c) **Librarians Fund** – This fund is available to all librarians who hold a rank of Librarian I, II, III or IV, including those on contractually limited term appointments.

173. An understanding of the PTR process begins with an understanding of the three concepts as expressed in the diagram below: (1) the base, (2) the breakpoint, and (3) the endpoint.



174. In the PTR process, the base represents the minimum salary, or “salary floor” that applies to the specific group included in each of the three PTR funds listed above. The endpoint represents the salary of this same group at the time of their retirement. The line between these two points, bisected by the breakpoint, represents an individual’s salary progression over the course of their career. As set out in the diagram, the rate of increase between the base and the breakpoint is greater than the rate of increase between the breakpoint and the endpoint. In this way, the PTR process provides for accelerated salary progress in the earlier stages of a faculty member or librarian’s career.

175. The starting salaries offered to individuals continues to vary widely by discipline. An individual who receives a high starting salary and begins their career with a sustained period of high achievement will reach the breakpoint at a comparatively early stage of their career.

176. Each of the three PTR funds referred to above is subdivided into three pools. The first pool is for individuals with a current salary below the breakpoint. The second pool is for individuals with a current salary above the breakpoint. The third pool, often described as the "Dean's Merit Pool", valued at 5% of the total PTR pool, is used to reward outstanding contributions or exceptional merit. PTR awards from this third pool are in addition to PTR awards based on the salary-based pool.

177. Except for the 5% Dean's Merit Pool, the amount of money allocated to each PTR pool is ordinarily calculated by taking the number of full-time equivalent individuals in each pool, and multiplying that number by the agreed-upon monetary increment for that pool. The increments used in the pools that are below the breakpoint are higher than those that apply to the PTR pools above the breakpoint.

178. In order to determine which faculty members and librarians will receive a PTR increase in any given year, each faculty member and librarian is required to complete and submit an Annual Activity Report and an updated curriculum vitae to the head of their academic unit (the Chair in multi-departmental faculties, or the Dean in single department faculties), and a librarian's supervisor in the case of librarians. The purpose of these documents is to provide updated information on an individual's research, teaching and service contributions, with a view to emphasizing the changes in activity from the prior year. As set out in the University's Academic Administrative Procedures Manual:

The Activity Report should be more than just a listing of an individual's research and scholarship, teaching and service contributions. In assembling the information for the activity report, individuals should be clear on the changes in activity from the previous year and should be asked to articulate the progress made in the year on work-in-progress if it has not appeared in the year. Individuals should comment on the significance of their activities, where needed. The report may be supplemented with other evidence of the significance of the activities such as reviews of monographs, or a well-developed research plan that may have been part of a grant submission. An individual should also include information on the direction of his or her research, where needed. Materials on teaching activity should include course outlines and evaluations, and can include

curricular innovation and a teaching dossier. The development of a teaching dossier is to be encouraged for all faculty.²⁹

179. The Dean of each Faculty, the departmental chairs in multi-department Faculties, and the supervisors of librarians are responsible for making PTR recommendations for the faculty and librarians included in their academic unit. While this responsibility cannot be delegated, the use of advisory committees to assist in making such recommendations is recommended, including the use of separate advisory committees. The evaluation process used in each academic unit is left to the members of the academic unit to determine using a collegial process and must be clearly communicated in writing to all members in the academic unit.

180. The Academic Administrative Procedures Manual describes the PTR evaluation procedure that must be used in each academic unit as follows:

Each unit head must provide the unit's faculty members with a clear statement outlining the procedure to be followed for the evaluation of PTR. The statement should include a description of the mandate and membership of any advisory committees used. Further, the unit head shall communicate, in writing, to each faculty member of the unit, the relative weight of the various activities of teaching, research and service, the format to be used for the Activity Report, as well as any unique aspects of the evaluation process for the unit.

The University Chief Librarian or their designate will provide each librarian with a clear statement outlining the performance assessment procedures that will be followed including the format for the activity report, and the rating scale that will be used for the evaluation of PTR. A librarian's supervisor will recommend the rating for the librarian for PTR purposes. For librarians in the central library system, at UTM and at UTSC, ratings will be reviewed for consistency by review committees in each of those units. For librarians outside of the central library system, UTM or UTSC, ratings will be decided by the unit head. The membership of the review committees will be announced.

This communication shall be distributed to the members of the unit at the beginning of the academic year (i.e. July 1st).

²⁹ University of Toronto, Academic Administrative Procedures Manual, <https://www.aapm.utoronto.ca/academic-administrative-procedures-manual/academic-salary-administration/#assess>

181. Consistent with its approach to workload, the process used to arrive at annual PTR recommendations for faculty and librarians emphasizes the importance of autonomy at the academic unit level. The PTR process allows each academic unit to determine the evaluation procedure that will be followed, and the relative weight that will be assigned to the activities of teaching, research and service within this evaluation process for faculty (and the rating scale that will be used for librarians, having regard to the specifics of their respective appointments).

182. In making these determinations, some but not all academic units have opted for a relative weighting scale that assigns 40% of available marks to a faculty member's teaching, 40% of available marks to their research and scholarship and 20% to their service. An historical example of how this particular approach has been used can be found in the University of Toronto at Scarborough's *PTR Assessment Process – Best Practice Guidelines for Chairs 2012-2013* document, which is reproduced at **Tab 24**.

5. Communication of the Formula for Assessment

5.1 Tenure Stream Staff

The relative weight of teaching, service and research/creative professional achievement (tenure stream) or pedagogical/professional development activity (teaching stream) must be communicated clearly. For tenure stream staff, most units in the Arts and Science divisions employ a simple statement based on a ten-point scale: 4 points for research/creative professional achievement; 4 points for teaching; and 2 points for service. However, there are variations to this scheme, normally with more or less emphasis on teaching or research. In rare instances, the formulas can be adjusted to recognize longstanding academic administrative service (for example, for an undergraduate coordinator) where such duties are onerous enough to negatively impact on teaching or research. In cases where a variance to the usual scheme is appropriate, the altered weightings must be discussed with the faculty member, and confirmed in writing, as soon as they are known and ideally at the beginning of the assessment year. You should communicate any such variances to the Dean when you submit your salary increase information to Human Resources Services.

183. There is no similar reference to this type of rating scale anywhere in the WLPP, because it is a scale that is used by certain academic units for an entirely separate and distinct purpose – the assessment of whether or not an individual will qualify for a PTR increase in a given academic year. This exercise was never intended to and should not now be transposed into the framework that applies to the assessment and determination of workload. The assessment of the teaching and service components of workload that are included in the WLPP seek to ensure that these workload components are distributed in a fair and equitable manner within each academic unit. The assessment of research, teaching and service in the PTR process are designed to measure each individual's activity in these areas in order to ascertain whether or not activity in these areas qualifies the individual for a particular compensation increase during the relevant assessment period.

The Treatment of Research and Creative Professional Development differs markedly between Tenure Stream and Teaching Stream appointments

184. As was already referenced in the introduction to these submissions, in order for a Tenure Stream faculty member to be awarded tenure, they must meet the following criteria, which are set out in section 13(d) of the PPAA:

- (a) demonstrated excellence in either research (including equivalent and creative or professional work) or teaching;
- (b) clearly established competence in the other; and
- (c) clear promise of future intellectual and professional development.

185. The PPAA mandates that a Tenure Stream faculty member cannot be granted tenure unless they meet a certain evaluative standard in respect of their research. If a candidate has shown clearly established competence in teaching, they must meet the standard of demonstrated excellence in research. If a Tenure Stream candidate meets the standard of demonstrated excellence in teaching, they must still show that their research meets the standard of clearly established competence. Consequently, the establishment and development of a research program during a Tenure Stream candidate's pre-tenure employment is an essential aspect of their appointment.

186. Section 13(a) of the PPAA details the important part that a candidate's research / creative professional development has been assigned in the tenure review process.

13. Tenured appointments should be granted on the basis of three essential criteria: achievement in research and creative professional work, effectiveness in teaching, and clear promise of future intellectual and professional development. Contributions in the area of university service may constitute a fourth factor in the tenure decision but should not, in general, receive a particularly significant weighting.

a) Achievement in research or creative professional work is evidenced primarily, but not exclusively, by published work in the candidate's discipline; in this context, published work may include books, monographs, articles and reviews and, where appropriate, significant works of art or scholarly research expressed in media other than print. It may also be evidenced by various other types of creative or professional work, including community service, where such work is comparable in level and intellectual calibre with scholarly production and relates directly to the candidate's academic discipline. Research also encompasses unpublished writings and work in progress. Scholarly achievement may be demonstrated by consideration of theses or other material prepared or written under the candidate's direct supervision. In some exceptional cases, weight should be given to "unwritten scholarship" of the type displayed in public lectures, formal colloquia and informal academic discussions with colleagues.

187. These same requirements do not apply to Teaching Stream faculty. The focus of Teaching Stream appointments is on demonstrated excellence in teaching and the performance of professional and administrative duties related to teaching. Instead of requiring the assessment of a Teaching Stream faculty member's research / creative professional development as part of a Continuing Status Review, section 30(vi) of the PPAA confirms that the performance of Teaching Stream faculty is assessed using a more focused set of criteria:

30(vi) Performance will be assessed on teaching effectiveness and pedagogical/professional development related to teaching duties, in accordance with approved divisional guidelines on the assessment of teaching. Administrative service will be considered, where such service is related to teaching duties or to curricular and professional development.

188. Teaching Stream faculty members are not expected to develop and advance a research program that is independent of their teaching duties. Instead, the pedagogical and professional activities in which they engage are to be related to the teaching duties that are at the centre of their appointment.

189. When a Teaching Stream faculty member undergoes a continuing status review, they are not required to demonstrate any research-related achievements. Excellence in teaching must be demonstrated and evidence of continuing future pedagogical/professional development must be shown. A Teaching Stream candidate for continuing status may choose to submit “discipline-based scholarship in relation to, or relevant to, the field in which the faculty member teaches” in order to show their continuing pedagogical/professional development, but may choose to meet this requirement without submitting any such research or scholarship. In accordance with section 30(x) of the PPAA:

A positive recommendation for continuing status will require the judgment of excellence in teaching and evidence of demonstrated and continuing future pedagogical/professional development.

(a) Excellence in teaching may be demonstrated through a combination of excellent teaching skills, creative educational leadership and/or achievement, and innovative teaching initiatives in accordance with appropriate divisional guidelines.

b) Evidence of demonstrated and continuing future pedagogical/professional development may be demonstrated in a variety of ways e.g. discipline-based scholarship in relation to, or relevant to, the field in which the faculty member teaches; participation at, and contributions to, academic conferences where sessions on pedagogical research and technique are prominent; teaching-related activity by the faculty member outside of his or her classroom functions and responsibilities; professional work that allows the faculty member to maintain a mastery of his or her subject area in accordance with appropriate divisional guidelines.

190. These important evaluative differences between Tenure Stream and Teaching Stream faculty demonstrate that the two classes of appointment do not have the same emphasis on or need for time that is dedicated to the pursuit of research or creative professional development. Proposals that seek to obscure or eliminate these important distinctions between Tenure Stream appointments and Teaching Stream appointments are inconsistent with the principles of replication, gradualism and demonstrated need. They should, therefore, not be awarded.

The Teaching Work of Tenure Stream Faculty is not quantified in the same way as Teaching Work performed by Teaching Stream Faculty

191. As part of the teaching component of their workload, Tenure Stream faculty engage in classroom teaching that is measured using “full course equivalents” (“FCEs”). However, this type of teaching does not fully account for the teaching work that all Tenure Stream faculty are expected to perform. The teaching work performed by Tenure Stream faculty is also expected to include the supervision of graduate students. While some Teaching Stream faculty may supervise graduate students, such supervision generally does not include doctoral students and is not quantitatively comparable to the graduate student supervisory work that Tenure Stream faculty are expected to perform.

192. As set out in more detail below, in disciplines where the receipt of research grants and the accompanying supervision is more commonplace, there is often a wider gap between the teaching assigned to Tenure Stream faculty that is measured in FCEs, and the teaching work assigned to Teaching Stream faculty that is measured in FCEs. Gaps of this nature, however, are regularly filled with the teaching work associated with Tenure Stream faculty member’s supervision of graduate students.

193. The Association’s demand that the teaching load of Teaching Stream faculty members be limited to no more than 150% of the teaching load of Tenure Stream faculty members in the same unit seeks only to quantify and compare teaching work performed by Tenure Stream and Teaching Stream faculty members that can be measured in FCEs. This quantification and comparison do not properly account for the teaching work that is part of Tenure Stream faculty members’ supervision of graduate students.

Teaching Stream faculty already have sufficient time for Pedagogical/Professional Development

194. The Association's demand for a University-wide Teaching Stream workload standard of 60% teaching, 20% research and 20% service cannot be supported by a claim that Teaching Stream faculty are not afforded sufficient time for pedagogical / professional development. The teaching component of workload assigned to Teaching Stream faculty already leaves ample room for the pursuit of pedagogical and professional activities.

195. There are three terms in the University's academic year. These terms are:

- (a) the fall term (September – December)
- (b) the winter term (January – April)
- (c) and the summer session (May – August)

each of which is either thirteen (13) or fourteen (14) weeks in length.

196. Article 8 of the Memorandum of Agreement provides that no faculty member can be required to teach formal scheduled courses in more than two terms in any academic year. Due to the teaching limits imposed by Article 8 of the Memorandum of Agreement, faculty members, including those in the Teaching Stream, can be assigned formal scheduled teaching work for a maximum of 28 weeks in a 52-week academic year. Faculty members are entitled to 4 weeks' vacation each academic year. In the remaining 20 weeks of the academic year, faculty members are not responsible for performing any scheduled teaching. This period of time accounts for 38% of the academic year.

197. A normative teaching workload for a Teaching Stream faculty member consists of 3 half-courses in a term. Each of these half-courses generally involves 3 hours of classroom time per week, for a total of 9 classroom hours in each week in a term. Using a 40 hour work week, the performance of in-class teaching for this normative Teaching Stream workload accounts for less than 25% of a 40 hour work week. This arrangement would allow a Teaching Stream faculty member 31 hours in each work week to prepare for in-class teaching, hold office hours, complete their administrative service relating to teaching duties or curricular and professional development, and to engage in

pedagogical/professional development, including what the PPAA describes as “discipline-based scholarship in relation to, or relevant to, the field in which the faculty member teaches.”

198. If a Teaching Stream faculty member is assigned a teaching workload of 4 half-courses in a term, that work would generally account for 12 hours per week of in-class teaching time, which would account for 30% of the hours in a 40-hour work week. A Teaching Stream faculty member with this assigned teaching workload would have 70% of their work week to perform the other facets of their workload, including pedagogical/professional development.

199. During the two terms in which a Teaching Stream faculty member is assigned to teach formal scheduled courses, and in the remaining term, which must remain free from such work, there is – both in term-specific and aggregate ways – ample time for Teaching Stream faculty to engage in the pedagogical/professional development component of their workload. There is no demonstrated need to amend the WLPP to ensure that Teaching Stream faculty have sufficient time to pursue this component of their workload. Such time is already provided.

Mandating Rigid Workload Structures and imposing a cap on Teaching for Teaching Stream Faculty are inconsistent with the Gradualism Principle

200. It cannot be disputed that the University and the Association have, in prior negotiations and mediations, agreed to amend the WLPP. These amendments addressed specific concerns, including how faculty members and librarians could contribute to the development and updating of their Unit Workload Policies, the circulation of these Unit Workload Policies to cognate units and to the Association, and the factors that can be considered when the teaching component of workload is assigned. These amendments show that both the University and the Association have an openness to the incremental adjustment and updating of this important policy, where the underlying circumstances so warrant.

201. The Association's proposed imposition of University-wide workload formulae accompanied by a hard cap on the teaching component of workload for every Teaching Stream faculty member cannot be described as the type of incremental changes that these parties have regularly adopted, or that a Dispute Resolution Panel ought to award in the face of one party's opposition thereto. It would constitute a fundamental change to a process aimed at ensuring the fair and equitable distribution of the teaching and service component of workload within each academic unit. The University has not used any type of formula to calculate or quantify the time that faculty spend on research, scholarship or equivalent professional work in the Tenure Stream, or continuing future pedagogical/professional development in the Teaching Stream. Such determinations are rightly left to individual faculty members. Overall, the Association's proposed changes would cause a fundamental shift in the structure and operation of the WLPP that is at odds with the gradualism principle.

The Financial Consequences of these Proposals cannot be Ignored

202. The awarding of the Association's proposed cap on the teaching workload for Teaching Stream faculty would be accompanied by significant financial consequences to the University. There is no material dispute between the parties that many academic Units in the University have assigned teaching workload to Teaching Stream faculty that currently exceeds 150% of the teaching workload assigned to Tenure Stream faculty in the same academic Unit. There is also no material dispute between the parties that if the Association's related proposal were awarded, the teaching workload of these Teaching Stream faculty members would be reduced and any teaching assignments currently performed by Teaching Stream faculty that would exceed the Association's proposed cap would need to be performed by others, which would require the University to hire additional Teaching Stream faculty.

203. The University's hiring of additional Teaching Stream faculty members to complete the surplus teaching work that would result from the awarding of the Association's proposal, would necessarily be accompanied by increased costs. The University estimates that the surplus teaching assignments that the awarding of the Association's proposal would create would necessitate the hiring of approximately 197 full-time equivalent Teaching Stream Faculty, at an estimated cost of over \$9.9 million.

UTFA PROPOSAL 1 (L) – WORKLOAD – TEACHING AND SERVICE RELEASE

UTFA PROPOSAL

Amend Article 3.2 of the WLPP to require units to provide some teaching and service release for pre-tenure/pre-continuing status faculty members prior to their interim reviews and some professional practice and service release for pre-permanent librarians.

UNIVERSITY'S RESPONSE

204. In this proposal, UTFA is seeking to require every academic Unit at the University to expand the teaching and service releases that Tenure Stream faculty and Teaching Stream faculty already receive by requiring that releases be provided prior to interim reviews, in addition to the teaching and service releases that are already required to be granted following a successful interim or probationary review before Tenure Stream faculty are reviewed for tenure and Teaching Stream faculty are reviewed for continuing status.

205. In the context of librarians, their current workload policy, which is attached at **Tab 25** states that each librarian is expected to spend a significant majority of their working time on professional practice. This workload policy states that:

Librarians will normally spend approximately 10% - 20% of their time on a combination of service, research and scholarly contributions. The remaining workload (80% - 90%) will consist of professional practice for the Library. In assigning these responsibilities, the unit head will take into account the expectation that librarians will have time to engage in research and scholarly contributions and service.

206. When librarians are evaluated for promotion from Librarian I to Librarian II, effective performance is the primary criterion. When they are evaluated for promotion to Librarian III and/or an award of permanent status in accordance with Article 7 of the University's *Policies for Librarians*, the factor that is given the most prominence is whether or not the librarian is performing effectively in their area of responsibility. To be granted permanent status, librarians must also demonstrate academic achievement and activities;

professional achievement and activities; effectiveness of service to the Library and the University; and promise of continuing growth in overall performance as a librarian. Even when a librarian is considered for promotion at the higher ranks, however, the assessment of the librarian's performance of their everyday work or practice is a significant and essential component of the criteria. An assessment of that work would be hampered by the provision of additional releases at this early career stage.

Teaching and Service Release entitlements for Tenure Stream Faculty

207. Upon appointment, section 8 of the PPAA states that a Tenure Stream faculty member is ordinarily provided with a four-year contract which the University is under no obligation to renew.

208. During a Tenure Stream faculty member's initial appointment at the University, they undergo a performance review which is held no later than May 1 of the penultimate year of their initial appointment. This review is conducted by a committee of the Tenure Stream faculty member's academic peers. Section 8 of the PPAA describes the nature and purpose of this performance review as follows:

The review of such an initial appointment should be essentially different in purpose and procedures from a tenure review. The committee should consider two questions:

- (a) Has the appointee's performance been sufficiently satisfactory for a second probationary appointment to be recommended?
- (b) If reappointment is recommended, what counselling should be given to the appointee to assist him or her to improve areas of weakness and maintain areas of strength?

The procedures of the review committee should be made known to the appointee, but they cannot be rigidly defined for the University as a whole. Rather, the procedures should be flexibly designed by each division or department with the aim of eliciting and considering all possible relevant information. Course evaluation should be considered and also signed opinions of individual students if these are available. Written comments from other department members, formally or informally acquainted with the appointee's teaching or scholarship, should be solicited. **Normally no later than 30th June, the appointee should be asked to submit an account of research or creative professional activity which has been**

completed or undertaken since the time of initial appointment; however, lack of substantial achievement in this area since appointment should not, in itself, be a cause for non-renewal of contract. The appointee will not normally be required to complete the submission prior to August 31. Notice that the contract will or will not be renewed on the following July 1 must be given in writing no later than November 30.

[Emphasis added]

209. One of the primary purposes of a Tenure Stream faculty member's initial performance review is to begin to prepare them for their tenure review. This initial evaluation is designed to provide each candidate with information on how any areas of weakness in their performance could be improved during their extended appointment, and how their strong performance in other areas can be maintained, in advance of the tenure review process.

210. If a Tenure Stream faculty member meets the criteria for an extended appointment, they will usually receive a two-year extension. In the last year of this extension, they will be considered for tenure. Part III of the PPAA emphasizes that the nature of a tenure review is qualitatively distinct from the performance review that occurs during their initial appointment. The relevant excerpts from Part III of the PPAA are reproduced below.

III. Criteria for Granting Tenured Appointments

The Nature of Tenure

Tenure, as understood herein, is the holding by a member of the professorial staff of the University of a continuing full-time appointment which the University has relinquished the freedom to terminate before the normal age of retirement except for cause and under the conditions specified in Sections 27 and 28 below.

Tenure provides a necessary safeguard for free enquiry and discussion, the exercise of critical capacities, honest judgment, and independent criticism of matters both outside and within the University.

Tenure entails acceptance by a member of the University of the obligation to perform conscientiously his or her functions as a teacher and a scholar.

Tenure shall be granted only by a definite act, under stipulated conditions on the basis of merit.

12. The set of general criteria outlined below should be used as the basis for a decision on the granting of tenure. It is, however, recognized that significant differences among divisions and disciplines in the University will lead to some differences in the detailed application of these criteria. Nevertheless there should be a high degree of uniformity across the University, in standards and procedures for granting tenure. It is also recognized that the tenure committee's recommendation should be made on the evidence that is available to the committee at the time of their recommendation and should be reasonable in light of the standards that were generally applied in the division in recent years.

13. Tenured appointments should be granted on the basis of three essential criteria: achievement in research and creative professional work, effectiveness in teaching, and clear promise of future intellectual and professional development. Contributions in the area of university service may constitute a fourth factor in the tenure decision but should not, in general, receive a particularly significant weighting.

a. Achievement in research or creative professional work is evidenced primarily, but not exclusively, by published work in the candidate's discipline; in this context, published work may include books, monographs, articles and reviews and, where appropriate, significant works of art or scholarly research expressed in media other than print. It may also be evidenced by various other types of creative or professional work, including community service, where such work is comparable in level and intellectual calibre with scholarly production and relates directly to the candidate's academic discipline. Research also encompasses unpublished writings and work in progress. Scholarly achievement may be demonstrated by consideration of theses or other material prepared or written under the candidate's direct supervision. In some exceptional cases, weight should be given to "unwritten scholarship" of the type displayed in public lectures, formal colloquia and informal academic discussions with colleagues.

b. Effectiveness in teaching is demonstrated in lectures, seminars, laboratories and tutorials as well as in more informal teaching situations such as counselling students and directing graduate students in the preparation of theses. It is, however, recognized that scholarship must be manifested in the teaching function and that a dogmatic attempt to separate "scholarship" and "teaching" is somewhat artificial. Three major elements should be considered in assessing the effectiveness of a candidate's teaching: the degree to which he or she is able to stimulate and challenge the intellectual capacity of students; the degree to which the candidate has an ability to communicate well; and the degree to which the candidate has a mastery of his or her subject area.

c. An assessment of promise of future intellectual and professional development will inevitably be based on the vitality and progress the candidate has demonstrated as a teacher and scholar during his or her probationary years at this University. A positive judgment on this criterion means that the members of the tenure committee are reasonably convinced that, following the granting of tenure and the long-term commitment that it implies, the candidate will continue to make a valuable contribution to his or her discipline.

d. University service primarily means university, divisional or departmental committee or administrative work.

Clear promise of future intellectual and professional development must be affirmed for tenure to be awarded. Demonstrated excellence in one of research (including equivalent and creative or professional work) and teaching, and clearly established competence in the other, form the second essential requirement for a positive judgment by the tenure committee. Only outstanding performance with respect to University service should be given any significant weight and, even then, only if there are no substantial reservations relating to the research, teaching and future promise criteria.

211. When compared to the process used to evaluate a Tenure Stream faculty member's performance during their initial appointment, the tenure review process is far more detailed and rigorous. Candidates are required to submit a detailed dossier outlining their achievements in teaching and research or creative professional work. Written assessments from qualified internal and external assessors concerning these same facets of the candidate's appointment must be sought and obtained. All relevant documentation is then reviewed and assessed by a tenure committee comprised of the candidate's peers. The tenure committee's recommendation for or against tenure is forwarded to the President of the University, who is tasked with deciding whether or not tenure will be conferred based on whether the dossier demonstrates that the candidate has achieved the standards for an award of tenure as set out in the PPAA.

212. As noted above, one of the purposes of a Tenure Stream faculty member's interim review is to begin to prepare them for their tenure review. This initial evaluation is designed to provide each candidate with information on how any areas of weakness in their performance could be improved during their extended appointment, and how their strong performance in other areas can be maintained, in advance of the tenure review process.

213. When a Tenure Stream faculty member's initial appointment is extended, section 9 of the PPAA states that they are:

entitled to request an adjustment to their workload assignment for one academic term in order to allow them to focus on preparing for their tenure consideration and to address any advice from the review of their initial appointment. Normally this term will not include assigned teaching, or service; but the term may include assigned teaching, with the candidate's agreement, in order to address advice from their review.

214. The PPAA recognizes that the adjustment of a candidate's workload between the approval of their extended appointment and their consideration for tenure is intended to not only provide each candidate with additional time to prepare for their tenure review, but to also allow them to address any performance concerns identified in their initial performance review. While the PPAA contemplates that in many instances, these purposes are served by reducing the teaching and service components of a candidate's workload, it also acknowledges that if performance issues have arisen with respect to a candidate's teaching, they may benefit from additional teaching work in order to demonstrate that their teaching had addressed the concerns identified and that it meets the University's tenure requirements.

215. The teaching and service release entitlements provided to Tenure Stream faculty under the PPAA are provided at the appropriate time during a Tenure Stream faculty member's appointment – after they have met the basic requirements of their interim review and before their tenure review. A requirement that all academic units be forced to provide additional teaching and service release to Tenure Stream faculty members before their interim review is not only an intrusion on the autonomy of academic units under the WLPP, it undermines the importance of ensuring that Tenure Stream faculty are given

sufficient opportunities to have their teaching performance evaluated during their initial appointment, at which time, their performance is subject to a less rigorous standard.

216. The PPAA makes clear that during a Tenure Stream faculty member's initial appointment, a lack of achievement in research and creative professional activity should not, in and of itself, result in the non-renewal of a candidate's initial appointment. Consequently, there is no demonstrated need to give Tenure Stream faculty additional time to pursue research and creative professional activities during that same time.

Teaching and Service Release entitlements for Teaching Stream Faculty

217. As set out above, the duties and responsibilities of Teaching Stream faculty are qualitatively different from those of Tenure Stream faculty. As set out in section 30(ii) of the PPAA, during the search process used for Teaching Stream appointments, each candidate is required to submit their current curriculum vitae as well as several letters of recommendation indicating their capacity for scholarship as evidenced by teaching and related pedagogical and professional activities, which may but is not required to include research achievements.

218. Initial appointments to the Teaching Stream are for a term of 4 years. In the third year of their initial appointment, section 30(vii) of the PPAA requires that a Teaching Stream faculty member's performance will be evaluated in the second last year of their initial appointment, using the following process:

The review of such an initial appointment should be essentially different in purpose and procedures from a continuing status review. The committee should consider two questions:

- a. Has the appointee's performance been sufficiently satisfactory for a second probationary appointment to be recommended?
- b. If reappointment is recommended, what counselling should be given to the appointee to assist him or her to improve areas of weakness and maintain areas of strength?

219. As is the case with the evaluation of Tenure Stream faculty members' performance during their initial appointment, Teaching Stream faculty are not expected to have developed a substantial record of achievement in respect of their pedagogical/professional activity at the time of their initial performance review. In this regard, section 30(vii) of the PPAA states that:

Normally no later than the May 1, the appointee should be asked to submit their teaching dossier and an account of pedagogical/ professional activity which has been completed or undertaken since the time of initial appointment; however, lack of substantial achievement in this area since appointment should not, in itself, be cause for non-renewal of contract.

220. If a Teaching Stream faculty member has their initial appointment renewed, the renewal is generally for a period of 2 years. During this renewal period, the Teaching Stream faculty member will be considered for a continuing status appointment. The granting of continuing status does not provide the same degree of job security as the granting of tenure, but it does place considerable constraints on the University's ability to terminate such appointments. The termination of a Teaching Stream faculty member with continuing status can be for cause or due to a curricular change determined in a multi-year academic plan approved by the Vice-President and Provost, where such change removes an area or field of teaching, and only if alternate employment cannot be provided.

221. Unlike a Teaching Stream faculty member's probationary review, where lack of substantial achievement in pedagogical/professional activity will not, in and of itself, result in the appointment's termination, in order to receive continuing status, section 30(x) of the PPAA requires that a Teaching Stream faculty member must not only meet the standard of excellence in teaching, but they must also provide evidence of "demonstrated and continuing future pedagogical/professional development."

222. The continuing status review process for Teaching Stream faculty is more rigorous than the probationary review at the end of their initial appointment. Consequently, section 30(viii) of the PPAA requires that:

Upon reappointment, the faculty member will be offered an academic term to focus on preparing for continuing status review and to address any advice from the interim review. Normally this term will not include assigned teaching above $\frac{1}{2}$ of the normal teaching assignments or service, but with the candidate's agreement the term may include more than $\frac{1}{2}$ of the normal teaching assignments or some assigned service, in order to reflect feedback from the interim review.

Here again, the provision of a reduced teaching and service workload in advance of a Teaching Stream faculty member's continuing status review is reflective of the additional time required for the candidate to prepare for this specific review. The extent to which a Teaching Stream faculty member's workload is reduced for this term can also depend on the feedback they received during the interim review. For example, if the Teaching Stream faculty member's teaching skills required improvement, the completion of a more regular teaching workload could assist in providing the faculty member with additional opportunities to display the necessary improvement. These same circumstances do not arise during the time that precedes a Teaching Stream candidate's probationary review and therefore do not support a guarantee of teaching and service release at this initial stage of a Teaching Stream member's appointment.

Granting additional Professional Practice and Service Release to Pre-Permanent Librarians is antithetical to the Existing Evaluation Processes

223. The promotion of librarians through the ranks of Librarian I to Librarian IV and the conferral of permanent status on librarians are addressed in the University's *Policies on Librarians* as referred to in the introductory section of these submissions. Section 5 of the *Policies on Librarians* states that:

The basic quality which must be evident for appointment or promotion to a rank is the ability to perform at a high professional level in areas which contribute to the teaching and research objectives of the University, such as the selection, acquisition and preservation of Library materials, the bibliographic control of those materials, the accessibility of the collections

to users, the provision of instruction in using the Library' s resources and the planning and development of Library systems.

224. A librarian's performance in their area of responsibility is used as a criterion in each promotion process and is given increased weight when promotions from the rank of Librarian I to Librarian II are considered. Section 10 of the *Policies on Librarians* emphasizes that:

It is expected that successful candidates will have demonstrated the ability to use effectively their professional education and will have shown the capacity to develop and extend their professional and academic expertise.

225. In accordance with section 30 of the *Policies on Librarians*, the assessment of a librarian's work performance is also examined when permanent status appointments are considered. In assessing this specific factor as part of a permanent status review, section 31 of the *Policies on Librarians* states that:

Effectiveness in work performance shall be judged primarily, but not exclusively, on the basis of supervisory evaluations of previous performance.

226. An essential aspect of assessing a librarian's suitability for promotion is a review of their performance as librarians, particularly when they hold the ranks of Librarian I and II. Consequently, it is to the mutual benefit of both the University and a librarian being considered for promotion from the rank of Librarian I to Librarian II and a librarian being considered for permanent status to be able to demonstrate, to the greatest extent possible, that they have performed their overall work effectively. A requirement to grant additional release from the performance of this aspect of a librarian's work in their workplace militates against this important objective.

UTFA PROPOSAL 1 (M) – WORKLOAD – LIBRARIAN RESEARCH AND SCHOLARLY CONTRIBUTIONS

UTFA PROPOSAL

Amend Article 8.1(b) of the WLPP as follows:

“Research and scholarly contributions, including academic, professional, and pedagogical contributions or activities which are self-directed.”

UNIVERSITY’S RESPONSE

Amend Article 8.1(b) of the WLPP as follows:

“Research and scholarly contributions, including those academic, professional and pedagogical contributions or activities that are self-directed.”

227. The relevant language in the current Workload Policy for Librarians, which is attached at **Tab 25**, states that:

Assigned duties will vary from one librarian to another, and may also vary from one year to another, depending on the priorities set in each librarian’s annual review. In assigning responsibilities, the unit head or supervisor(s) must ensure that the unit’s goals, defined collectively by all staff in the unit, are achievable and that there is an equitable workload allocation to achieve the unit’s and the Library’s service obligations. In addition, balanced workloads should be planned that respect a librarian’s desire to fulfill service and scholarship responsibilities.

Self-directed responsibilities will consist of research and scholarly contributions. Service will be largely self-directed; it is expected that service responsibilities will be undertaken after collegial discussion between each librarian and their supervisor.

228. The language in the Association’s proposal appears to suggest that all of a librarian’s “research and scholarly contributions including academic, professional, and pedagogical contributions or activities” are or should be “self-directed.” Such an approach is not consistent with how librarians perform this specific component of workload. Not all of the “academic, professional and pedagogical contributions or activities” performed by librarians are self-directed. Such work can and often does form part of the work that

librarians are assigned and which does not therefore require any “protected time” to address. For example, several librarians serve on national committees that address issues of service collaboration, collection building, licensing, and copyright. These are important activities for the librarians who participate in this work. The work associated with these activities also results in important academic and/or professional achievements. It also builds the national and international reputation and profile of the librarians involved, and University of Toronto Libraries overall. These activities are not, however, self-directed. The participation of librarians in this important work is connected to their positions in University of Toronto Libraries.

229. The University’s proposed language seeks to provide a broader and more inclusive definition of the phrase “research and scholarly contributions” which is more likely to cover all of the scholarly and professional activities a librarian might pursue, including the important and non-self-directed work identified above. In contrast, the Association’s proposed language appears to propose a narrower definition of this same term, which could exclude these examples of non-self-directed work from an assessment of a librarian’s professional, research and scholarly contributions.

230. As well, requests made by librarians to utilize specific entitlements pertaining to engagement in research and scholarly contributions are not self-directed, but require the approval of the librarian’s supervisor and the Chief Librarian or designate. In November 2020, the University and the Association agreed to specific language concerning the utilization of Librarian Research and Professional Development days. A copy of this agreement is provided at **Tab 26**. For ease of reference, the text of this agreement is reproduced below:

1. Each librarian shall be eligible for up to 14* research and professional development days, with the prior approval of their supervisor and the University Chief Librarian or designate, to pursue self-directed research, scholarly activities, creative professional activities and/or professional development through activities including but not limited to attendance at conferences, courses or workshops.

2. Under exceptional circumstances, a librarian may apply to take more than the number of research and professional development days available as set out above. Any additional research and professional development days will require approval of the librarian's manager as well as approval of the University Chief Librarian or their designate.

3. Research and professional development days must be scheduled and approved in advance in order to ensure the operational needs of the unit or department are met. Supervisors will make reasonable efforts to accommodate the scheduling of eligible requests for research and professional development days subject to the operational needs of the unit or department.

4. In the event that the request is not approved, the basis for the decision will be provided in writing.

NOTE: The language governing eligibility for these research and professional development days will be included in the Manual of Staff Policies for Academics and Librarians and posted on an appropriate University of Toronto website.

*The number of days is subject to change based upon Salary, Benefits, Pensions, and Workload negotiations.

231. In order to make use of these Research and Professional Development days referred to in this agreed-upon language, a librarian must first obtain the approval of their supervisor and the Chief Librarian or designate. This approval is necessary for two reasons. First, it helps ensure that there is adequate coverage for services on the days when a librarian requests one or more Research and Professional Development Days. Second, this approval ensures that the work performed by a librarian during their Research and Professional Development Days is documented in order to be able to reference this work in the librarian's annual performance/PTR assessment.

232. Similarly, the language concerning a librarian's entitlement to study leave or research leave under the *Policies for Librarians* states that:

Study leave, i.e. registration in a formal program of studies, whether or not it leads to a degree, may be granted when the program of studies is of mutual benefit to the librarian and the Library.

...

Research leave may be granted when the librarian has demonstrated the potential to benefit from the leave, and when the research proposed can be made use of in the librarian's continuing employment with the University.

233. The Association's suggestion that all librarians' research and scholarly contributions are "self-directed" could be used to mischaracterize a decision to decline a librarian's request for research or study leave as an interference in the self-directed part of their work. Regardless of whether or not a librarian's request for research or study leave is connected to the research and scholarly contributions that are considered part of their workload, or their research and scholarly contributions that are self-directed, the University must retain its right to review and approve requests by librarians for Research and Professional Development Days and study and research leaves. The Association's proposed amendment to Article 8.1(b) of the WLPP casts ambiguity on the University's continued ability to exercise these rights.

234. In contrast, the University's proposed amendment to Article 8.1(b) of the WLPP recognizes that some "academic, professional and pedagogical contributions or activities" are self-directed, but that the University retains the ability to assign such activities as part of the librarians' responsibilities, as well as to approve or deny requests for time away from work in pursuit of such contributions or activities. Retaining these existing rights and ensuring that no new language in the WLPP can be interpreted in a way that might dilute or deny these rights are important objectives for the University. The language in the University's proposal is consistent with these important objectives and ought to be awarded.

UTFA PROPOSAL 4 (A) – SALARY INCREASE – ACROSS-THE-BOARD INCREASES (ATB)

UTFA PROPOSAL

In light of the limitations imposed by Bill 124, UTFA proposes an ATB increase of 1% effective July 1, 2022.

If Bill 124 is found to be unlawful, UTFA proposes an ATB increase that is fair and reasonable in light of the unparalleled professional expectations faced by U of T faculty and librarians, trends in recent settlements in higher education, and broader economic considerations.

For clarity, UTFA’s proposal to increase ATB by 1% is intended to include per course stipend rates.

UNIVERSITY’S SUBMISSIONS

The Proposed ATB Increase of 1% effective July 1, 2022

235. The University and the Association have each proposed to increase all faculty and librarian salaries by one percent (1%) across-the-board effective July 1, 2022. The University estimates the total cost of this increase to be \$5,670,000. A copy of the University’s costing is attached at **Tab 27**.

The Impact of the 1% ATB Increase on Per Course Stipend Rates

236. The University proposes that the per course stipend rates be increased by 1% from \$18,255 to \$18,440, effective the date of the award in these proceedings.

The Possibility that Bill 124 may be “found to be unlawful” cannot extend the temporal scope of this proceeding

237. Bill 124 imposes a “moderation period” of three years beginning on July 1, 2020 and ending on June 30, 2023 during which no agreement between the University and the Association or Dispute Resolution Panel award may provide for an increase of greater than one percent (1%) to either the salary rates or existing compensation entitlements enjoyed by faculty or librarians.

238. Paragraph 5(a) of the January 25, 2022 Memorandum of Settlement states that the temporal scope of this dispute resolution proceeding is confined to the one year period of July 1, 2022 to June 30, 2023. This is the third year of the moderation period applicable to these parties, as prescribed by Bill 124. The parties have agreed that for the purpose of the one percent (1%) cap on compensation increases during this one year period, the “residual” amount available in connection with an across-the-board salary increase of one percent (1%) for any other compensation increases that may be awarded in this dispute resolution proceeding is \$612,060 in total, which was subsequently reduced by agreement of the parties to \$297,060.

239. The Association proposes that “[I]f Bill 124 is “found to be unlawful”, it will seek an ATB increase that is greater than that which is currently permitted under Bill 124. In making this proposal, the Association has sought to reserve for itself the opportunity to make additional submissions as part of these proceedings if such a declaration is made at a time before these proceedings have concluded. The Association cannot use this proposal to extend beyond the jurisdictional limits that apply to this proceeding pursuant to Article 6 of the Memorandum of Agreement or the limited temporal scope of this proceeding that was agreed to in the January 25, 2022 Memorandum of Settlement by referencing a contingent event that may occur at some indeterminate period of time, after these proceedings have concluded.

UTFA PROPOSAL 8 – PREGNANCY AND, PARENTAL LEAVE, AND ADOPTION/PRIMARY CAREGIVER LEAVE ACCESSIBILITY

UTFA PROPOSAL

UTFA proposes that the University establish a central fund to provide research and teaching supports to members taking pregnancy and parental leave or adoption/primary caregiver leave. These supports would include, but are not be limited to, RAs, TAs, post-docs, lab managers, and sessionals to facilitate members taking their full leaves.

UNIVERSITY’S RESPONSE

This Proposal is Outside the Scope of the Article 6 Process

240. Pursuant to Article 6(1) of the Memorandum of Agreement, the University and the Association have agreed that the Article 6 process can be used only to negotiate, mediate and arbitrate issues concerning:

salary and benefits (including pension, the policy on sick leave affecting faculty members and librarians related to leaves of absence, short-term compassionate and emergency leaves, the policy on maternity leave, and the policies on family care leave and parental leave), workload, and those matters set out in paragraph 29 below as subject to Facilitation/Fact-finding.

241. The reference to “matters set out in paragraph 29” of Article 6 refers to “other significant terms and conditions of employment for faculty and/or librarians contained in existing or proposed University-wide policies.” The Association’s proposal is not an “existing or proposed University-wide policy.” It does not concern “significant terms and conditions of employment”. Finally, even if the Association’s proposal could be construed as a “an existing or proposed University-wide policy”, concerning “significant terms and conditions of employment”, which is not admitted and expressly denied, the process that applies to such matters is separate from the dispute resolution process set out in Article 6. They must be addressed using the non-binding facilitation and fact-finding process set out in Article 6(30) through (39).

242. In *Governing Council of the University of Toronto and UTFA (June 18, 1993)*, Arbitrator Munroe confirmed that the agreed-upon jurisdictional limits that apply to the Article 6 process must be respected and cannot be expanded even in circumstances where a party demonstrates that a particular issue outside of these jurisdictional limits is of significant importance to its position in negotiations.³⁰

243. Negotiations concerning the University's policy on maternity leave and its policies on family care leave and parental leave expressly fit within the ambit of matters that are subject to Article 6 proceedings. However, the Association's proposal extends beyond any proposed modification to these specific policies. Rather, this proposal, if awarded, would require the University to create a segregated fund that could be used only for the performance of research and teaching work at the University. Determinations of whether or not certain courses are to be offered, and decisions about who will deliver any such courses are not matters that are subject to negotiation between the University and the Association. The adoption of a requirement that the University fund such arrangements cannot reasonably be construed as a "benefit" to faculty members and librarians to be determined through the Article 6 process.

244. Similarly, the engagement of research assistants, post-doctoral fellows and lab managers as part of a faculty member's self-directed research work are matters that are left to individual faculty members to manage as their research agendas and activities, and funding arrangements permit. Decisions of this nature cannot and should not be addressed as part of the Article 6 dispute resolution process, regardless of whether the Association structures its proposal as a direct obligation on the University to fund specific research supports, or whether its proposal is structured as an indirect obligation to supply such support through the establishment and maintenance of a segregated fund, set up for this same purpose.

³⁰ *Governing Council of the University of Toronto and UTFA*, June 18, 1993 (Monroe), *supra* at 5.

245. For these reasons, the University submits that a Dispute Resolution Panel under Article 6 of the Memorandum of Agreement has no jurisdiction to award this proposal, and it should be dismissed on this basis.

There is no Demonstrated need for this Proposal

246. Furthermore, and in the alternative, should it be determined that this proposal does fit within the ambit of matters that can be addressed through the dispute resolution process in Article 6 of the Memorandum of Agreement, which is not admitted and expressly denied, the University submits that there is no demonstrated need to award this proposal in light of the existing entitlements already provided to faculty members and librarians who take pregnancy, parental, adoption and primary caregiver leave, and because arrangements to address these faculty members' ongoing research work during their leaves, and the teaching work that may or may not continue during their leave are and should be addressed within each academic unit on a case-by-case basis.

247. The University encourages faculty and librarians who are eligible to make use of their full entitlement to pregnancy leave, parental leave, adoption leave and/or primary caregiver leave. The University's commitment to doing so is reflected by the generous leave entitlements that it provides in these circumstances. These entitlements are summarized in the table below:

Pregnancy, Parental, Adoption/Primary Caregiver Leave Entitlements

	Pregnancy/Adoption/Primary Caregiver Leave (Paid)	Parental Leave (Paid)	Parental Leave (Unpaid)	Total Maximum Leave
Birth Parent	<p>20 Weeks</p> <p>1 week waiting period for EI maternity leave benefit at 97% of normal regular earnings</p> <p>Plus 15 weeks' top up of EI maternity leave benefit to 97% of normal regular earnings</p> <p>Plus 4 weeks' top up of EI parental leave benefit topped up to 97% of normal regular earnings</p>	<p>10 weeks' top up of EI parental leave benefit to 95% of normal regular earnings</p>	48 weeks	78 weeks
Non-Birth Parent	N/A	<p>10 weeks' top up of EI parental leave to 97% of normal regular earnings – including pay at 97% of normal regular earnings for 1 week waiting period, if applicable</p>	53 weeks	63 weeks

Adoptive Parent & Primary Caregiver	20 weeks 1 week waiting period for EI parental leave benefit at 97% of normal regular earnings Plus 19 weeks' top up of EI parental leave benefit to 97% of normal regular earnings	10 weeks' top up of EI parental leave benefit to 95% of normal regular earnings	33 weeks	63 weeks
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248. In addition to these paid leave entitlements, the University provides faculty and staff with a generous Child Care Benefit Plan. The University's Child Care Benefit Plan reimburses eligible child care expenses that are incurred between January 1 and December 31 of each year for each eligible child (natural child, stepchild, common-law child, adopted child or ward) under age 7. This age limit does not apply to any child that is mentally or physically disabled and dependent on the faculty member or librarian as outlined in the *Income Tax Act*. The child care expenses that qualify for reimbursement under the Child Care Benefit Plan are payments made to:

- (a) eligible caregivers providing in home or out-of-home child care;
- (b) day nursery schools and daycare centres;
- (c) educational institutions for the part of fees that relate to child care services, such as before and after school child care
- (d) day camps and day sports schools where the primary goal of the camp is to care for children; and
- (e) boarding schools, overnight sports schools, or camps where lodging is involved.

249. Expenses that are eligible for reimbursement under the Child Care Benefit Plan are reimbursed at the rate of 50% up to \$20.00 for a full day of child care and up to \$10.00 for a half-day of child care. The annual maximum reimbursement level per child is \$2,000.00. The maximum amount that can be reimbursed for eligible expenses submitted by all faculty members and librarians is \$1 million per year. If the total value of eligible claims submitted in any year exceeds this maximum amount, then the claims will be prorated. If the total value of eligible claims submitted does not reach this \$1 million limit, then each eligible claim is proportionately increased, so that the entire \$1 million is spent each year.

250. Any research and/or teaching supports that are made available to faculty members is often determined on a case-by-case basis. For example, within the Faculty of Arts and Science, if a faculty member is responsible for a lab, arrangements are regularly made between the Faculty of Arts and Science and the faculty member's academic Unit to arrange and pay for a lab manager, post-doctoral fellow or other appropriate personnel

to administer the lab while the faculty member is on leave. If a faculty member supervises one or more graduate students, arrangements are regularly made to engage a temporary supervisor or co-supervisor who will assume the faculty member's supervisory duties during their leave. In all instances, the objective is to ensure that faculty members who take these leaves suffer no professional disadvantage for doing so. Faculty members are informed that there is no requirement or expectation that they continue to perform any work, including research and supervisory work while on leave.

UTFA PROPOSAL 9 – PSYCHOLOGY AND MENTAL HEALTH BENEFITS

UTFA PROPOSAL

A. Increasing maximum benefit

To increase the maximum annual reimbursement for psychology and mental health benefits to \$7000 per person and increase the reasonable and customary amounts to no less than the Ontario Psychological Association's recommended hourly rate.

UNIVERSITY RESPONSE

251. Prior to the Article 6 negotiation, mediation and dispute resolution process that resulted in an agreement on salary and benefit increases for the period July 1, 2020 to June 30, 2022, the maximum annual reimbursement limit for psychology and mental health benefits accessible to faculty members and librarians was \$3,000.00.

252. As set out in paragraph 3(b)(iii) of the January 25, 2022 Memorandum of Settlement, the University agreed to increase the annual maximum reimbursement limit for psychology and mental health benefits from \$3,000.00 to \$5,000.00. They also agreed to include "Marriage & Family Therapist" and "Addiction Counsellor" coverage to the "Psychologist, Psychotherapist or Master of Social Work" paramedical services benefit. These benefit improvements took effect on March 1, 2022.

253. As set out in the table below, the recently agreed-to improvements concerning these benefits far exceed maximum annual reimbursement limits that apply to comparable benefits that are available to faculty and librarians employed at other large research universities in Canada.

254.

University	Annual Maximum – Psychology and Mental Health Benefits
University of Toronto – Before March 1, 2022	\$3,000
University of Toronto – Effective March 1, 2022	\$5,000
McMaster University, Ottawa University, University of British Columbia	\$3,000
University of Saskatchewan, McGill University, Universite de Montreal (“Option 3” Plan)	\$2,000
Dalhousie University, Universite de Montreal (“Option 2” Plan), Universite de Laval (“Enhanced Plan”)	\$1,500
Queen’s University, Universite de Montreal (“Option 1 Plan”)	\$1,000
University of Waterloo	\$975
University of Calgary	\$800
University of Manitoba	\$500 – combined with other paramedical services
Western University	<p>No maximum – However, coverage is limited to an amount per ½ hour with the following coverage:</p> <ol style="list-style-type: none"> 1. Psychology - \$15.00 2. Family Therapy - \$18.00 3. Group Therapy - \$3.00
University of Alberta	Only available through the Employee and Family Assistance Plan

255. Among the employee groups within the University, faculty members and librarians have superior psychology and mental health benefit entitlements. The University's non-union employees and employees represented by Local 1998 of the United Steelworkers have a maximum annual reimbursement limit of \$2,700.00 for their psychology and mental health benefits. The psychology and mental health benefits available to University employees represented by other trade unions are subject to an annual maximum reimbursement amount of \$2,000.00. This information demonstrates that the psychology and mental health benefit entitlements that are currently provided to University's faculty and librarians are already superior to the entitlements provided to other employees of the University and by other large research universities across Canada. There is no internal or external comparative assessment that supports the Association's request for another increase to these benefit entitlements.

256. The extent to which eligible plan members have made use of the current psychology and mental health benefits available to them further militates against the Association's request for an additional enhancement of these benefits. In the most recent benefit year (July 1, 2021 to June 30, 2022), there were 8,319 plan members and dependents who were eligible to utilize the psychology and mental health benefits at issue. During this plan year, only 95 participants (1.14% of the eligible plan members and dependents) utilized this benefit to the point that the increased annual maximum of \$5,000.00 was reached.

257. A comparison of the data regarding the utilization of these benefits from the 2021-2022 benefit year and the utilization of these same benefits during the 2020-2021 benefit year is relevant. During the 2020-2021 benefit year, the maximum annual reimbursement level for these benefits was set at \$3,000.00. That year, 233, or 3% of the 8,112 eligible participants reached the maximum annual reimbursement level of \$3,000.00. Accordingly, since the maximum annual reimbursement level for these benefits was increased from \$3,000.00 to \$5,000.00, the number of eligible participants who have reached this elevated annual reimbursement level has declined by approximately 60%.

258. The information set out above demonstrates that the increase to the psychology and mental health benefits that the parties agreed to as part of the January 25, 2022 Memorandum of Settlement does not require further augmentation as the Association has requested. The University requests that the Association's proposal for a further annual increase of \$2,000.00 to these benefits not be awarded.

259. In the alternative, should the Association's proposal be awarded, the University has costed the value of this proposed benefit improvement. A copy of the University's costing of all of UTFA's benefit proposals, which is based on the information available to the University as of July 21, 2022 is attached at **Tab 27**. If this benefit improvement were applied only to active faculty members and librarians, it would generate an increased cost of \$145,000 for the period July 1, 2022 to June 30, 2023. If this benefit improvement were extended to retired faculty and librarians – an extension that the University opposes for reasons set out in greater detail in these submissions, this extension would generate a further cost of \$5,200 over this same one year time period. These cost increases would need to fit within the agreed-upon "residual" of \$297,060, when combined with any other benefit increases awarded in this proceeding.

UTFA PROPOSAL 10 – ELDERCARE AND COMPASSIONATE CARE LEAVES

UTFA PROPOSAL

A. Reporting of leaves

That the Administration develop and implement a mechanism for reporting on leaves taken by, or accommodations given to, faculty members and librarians to care for family members. This anonymized report will include those UTFA members whose family members require intensive physical, psychological, and/or emotional care, including the lengths of any relevant Compassionate Care and Emergency Leaves, Unpaid Leaves of Absences, or Family Care Leave. These reports shall be shared promptly and without unreasonable delay with UTFA at the end of every budget year or following a formal information request by UTFA.

UNIVERSITY'S RESPONSE

This Proposal is Outside the Scope of the Article 6 Process

260. This proposal does not in any way concern salaries, benefits or workload of faculty or librarians as those terms are applied to Article 6 of the Memorandum of Agreement. Rather, the Association is attempting to use the Article 6 dispute resolution process to compel the University to develop reporting mechanisms to track certain employee information that the University does not currently track, and to then provide this information to the Association.

This Proposal disregards the Limits on the Provision of Information set by Article 11 of the Memorandum of Agreement

261. Article 11 of the Memorandum of Agreement obligates the University to “provide the Association “such documents as may be necessary for the negotiation of matters pursuant to this Agreement.” This obligation is subject to an express limit, which is reproduced below:

It is understood that this Article shall not be construed to require the University of Toronto (a) to compile information and statistics in particular form if such data are not already compiled in the form requested or (b) to provide any information relating to any individual.

262. Article 11, therefore, precludes the University from having to embark upon new information tracking and data generation initiatives at the Association's behest. Moreover, it appears that the Association is seeking to require the University to engage in this additional work in order to assist the Association in its preparation for subsequent negotiations. A review of the past Article 6 jurisprudence between these parties confirms that the University should not be subject to any such obligation.

263. The fact that the University is not obligated to compile information for the purpose of assisting the Association with subsequent rounds of negotiations was recognized by Arbitrator Teplitsky in his award regarding the period July 1, 2002 to June 30, 2003³¹. The Association asked Arbitrator Teplitsky to compel the University to provide the Association with certain information. In addressing this proposal, Arbitrator Teplitsky did not specify the information that the Association had requested from the University. He did note, however, that the purpose of the Association's request "would be to assist UTFA's preparation for the next round of bargaining", and that this information was not necessary to address the issues concerning the period July 1, 2002 to June 30, 2003 which he had been appointed to address. Arbitrator Teplitsky dismissed the Association's request for additional information and observed that it would not be appropriate for him to make an order that addressed the subsequent Article 6 process, since his appointment was limited to a specific one-year period.³²

264. By advancing this proposal, the Association seeks to change the current procedural requirement in Article 6 into a free-standing substantive obligation. It also seeks to force the University to expend its own resources to gather information that it does not already gather, to prepare data that it does not currently have, in order to generate reports for the Association on an as-requested basis. The parties did not intend for such matters to be negotiated, mediated or adjudicated as part of the Article 6 process and this proposal should, therefore, be denied.

³¹ *Governing Council of the University of Toronto and UTFA*, December 30, 2002 (Teplitsky). **Tab 28**

³² *Ibid.*, at 8-9.

The University’s Human Resources Information System is not Structured in Line with this Reporting Request

265. The University’s Human Resources Information System includes a series of codes that are used to track the various leaves of absence available to faculty and librarians for payroll, tax reporting and Employment Insurance reporting purposes. Several of the codes used to record these leaves of absence overlap with the information that would be included in the additional reports that the Association is requesting. These existing codes and the requirements for their use are set out in the table below:

University’s HRIS Codes re: Faculty Leaves of Absence re: Family Care	
Absence Code	Requirements for Use
2200 – Compassionate Leave – Paid	To record when an employee has been granted a paid leave on compassionate grounds. Must be approved by the Chair or Dean.
2414 – Family Medical Leave/ Compassionate Care Leave – 2 wks paid	To record when an employee is on approved paid leave for Family Medical/Compassionate Care.
2415 – Family Medical Leave / Compassionate Care Leave – 6 weeks unpaid	To record when an employee is on approved unpaid leave for Family Medical/Compassionate Care.
2425 – Critically Ill Childcare Leave – Unpaid	To record when an employee is on approved unpaid leave for Critically Ill Child Care. A "critical ill child" means a child whose baseline state of health has significantly changed and whose life is at risk as a result of an illness or injury. It does not include chronic conditions.
2375 – Family Caregiver Leave – Unpaid	To record when an employee is on approved leave for Family Care, but is unpaid.
2240 – Other Leave of Absence – Paid	For any other type of paid leave at full regular salary that is not specified in HRIS.
2243 – Other Leave of Absence – Paid at Reduced Percentage	For any other type of paid leave at a reduced percentage of the regular salary that is not specified in HRIS.

University's HRIS Codes re: Faculty Leaves of Absence re: Family Care	
Absence Code	Requirements for Use
2245 – Other Leave of Absence – Unpaid – Short Term	For any other type of unpaid leave that is not specified in HRIS. To be used if the absence from the start date is 14 consecutive calendar days or less.
2205 – Other Unpaid Leave of Absence – Long Term	For any other type of unpaid leave that is not specified in HRIS. To be used if absence from start date is more than 14 consecutive calendar days.

266. The University should not be made to reconfigure its existing Human Resources Information System to align with the Association's requests for specific reports, including those reports which it the Association has requested in this proposal. A requirement to do so would extend far beyond the University's obligation to provide the Association with data and documentation pursuant to Article 6(4)(a) of the Memorandum of Agreement.

267. The University does not maintain a central repository of information pertaining to "accommodations given to faculty members and librarians to care for family members", aside from the payroll codes used to track various related leaves of absence. The Association's request that the University implement a mechanism for reporting on other "accommodations given to faculty members and librarians to care for family members", is another example of a request that the University centralize matters that have historically been addressed within each individual academic unit on a case-by-case basis, and which have been addressed separately from existing workload reporting requirements.

268. The Association remains free to solicit this information from faculty members and librarians. Any faculty member or librarian who requests an accommodation for these reasons is free to engage the Association to support their request. Any faculty member or librarian who receives an accommodation to care for family members may update the Association on the details of the accommodation they have received.

269. The University should not be required to superimpose a central information gathering and reporting mechanism that captures any and all “accommodations given to faculty members and librarians to care for family members” when such decisions are made locally and are tracked only to the extent that the granting of such accommodations is based on a case-by-case assessment of the accommodation requested and the resources and options available to address each such request.

UTFA PROPOSAL 11(B) – PHD TUITION WAIVER

UTFA PROPOSAL

To remove any limit on the tuition waiver for the part-time Master's, part-time PhD, and flex-time PhD (including all doctorate programs such as EdD) for UTFA members enrolled in these programs and to clarify that the full tuition will be waived for these programs.

UNIVERSITY'S RESPONSE

270. The University's tuition waiver benefit was never intended to fully subsidize full-time tuition fees for faculty members and librarians who, in addition to performing their relevant employment duties and responsibilities, elected to enrol in graduate-level courses.

271. Prior to the negotiation of the Memorandum of Settlement between the University and the Association regarding salary, benefits and workload issues for the period July 1, 2014 to June 30, 2017, the relevant section of the University's tuition waiver benefit available to faculty and staff included the following language pertaining to enrolment in Master's level programs:

Tuition fees are waived if you want to take a:

Part-time University of Toronto degree course up to and including a Master's. For Master's level programs, the tuition waiver is limited to the part-time program fee per academic year, or the course fee, whichever is less.

272. As part of the Memorandum of Settlement for the period July 1, 2014 to June 30, 2017, which is attached at **Tab 29**, the University and the Association agreed to add the following paragraph to the above-referenced statement:

Tuition Waiver for PhD Students – Effective July 1, 2015 the faculty and librarian tuition waiver benefit to be modified to include pursuit of a part-time or flex-time U of T PhD.

273. The modification of the University's tuition waiver program to include part-time and flex-time PhD programs was a modification that expanded the scope of academic programs that were covered by the tuition waiver program. It did not change the restriction on the fees that the program would cover, which remained limited to the "part-time program fee per academic year, or the course fee, whichever is less." It would have been inconsistent with the tuition waiver program's existing language and illogical for the University to maintain its limit on the tuition fees covered by faculty and librarians enrolled in Master's level programs, but to apply no limit to the doctoral level programs added in 2015.

274. The purpose of the University's tuition waiver benefit is to provide faculty and librarians with opportunities for personal development by enabling them to pursue additional programs of study. These programs of study are not required for faculty or librarians to maintain or upgrade their employment-related skills. Nor was the tuition waiver benefit intended to permit faculty or librarians to pursue full-time programs of study alongside their existing employment duties and responsibilities to the University. The University's tuition waiver benefit has not been used to fully subsidize any tuition fee attributable to a full-time graduate-level program, whether that program is delivered in the ordinary course, or using more flexible scheduling arrangements, like the flex-time PhD program.

275. As set out in the table below, in recent years, only a very small number of faculty members and librarians have used the University's tuition waiver benefit to pursue Master's level or doctoral level programs. In these circumstances, an application of the replication principle to this proposal demonstrates that this proposal would not be an issue over which the Association would bargain to impasse to the point where strike activity would commence or continue, if the Association had the ability to do so.

Utilization of Tuition Waiver benefit for Master's and Doctoral Degrees by Faculty and Librarians					
Program	2017-18	2018-19	2019-20	2020-21	2021-22 (Partial Year)
Master's	9	10	11	10	7
Doctoral	4	5	3	4	2
Total	13	15	14	14	9

276. In contrast to the extremely low utilization of the University's tuition waiver benefit by faculty and librarians to pursue Master's or doctoral level degrees, the cost of removing the current limits that are applicable to Master's degrees and waiving the entire tuition for doctoral level degrees over this same period of time are significant. The University's costing of these changes are set out in the table below.

Cost of Removing Tuition Waiver Benefit Restrictions for Master's and Doctoral Programs					
Program	2017-18	2018-19	2019-20	2020-21	2021-22 (Partial Year)
Master's	\$63,112	\$73,112	\$72,548	\$65,912	\$44,352
Doctoral	\$19,488	\$24,150	\$13,041	\$17,388	\$12,420
Total	\$82,600	\$97,272	\$85,589	\$83,300	\$56,772

277. In circumstances where the "residual" available to be applied to any and all benefit increases for the period July 1, 2022 to June 30, 2023 is \$297,060, the University submits that it would not be a replicated outcome of free collective bargaining to award this proposal in circumstances where doing so would absorb a considerable amount of this "residual" in order to enhance a benefit that has historically been used by a very small fraction of faculty members and librarians.

278. For the period July 1, 2022 to June 30, 2023, the University has costed the Association's proposal and has determined that the cost of enhancing this benefit in the ways in which the Association has proposed is \$87,000. A copy of this costing is at **Tab 27**.

279. The Association's proposal is also inconsistent with the principle of gradualism. If it were accepted, the structure of the University's tuition waiver program, which currently places a limit on graduate level academic programs to the lesser of the part-time program fee or course fee per academic year would now be required to reimburse the full tuition fees for all of the programs mentioned in the Association's proposal.

280. The University submits that there is no demonstrated need to include EdD programs at OISE in the tuition waiver program. EdD programs have been offered at OISE in each year since at least 2000.³³ When the parties agreed to expand the scope of the tuition waiver program to specifically cover part-time and flex-time PhD programs, this separate doctoral-level program was well established, and no language was added to cover it. This negotiated outcome should remain undisturbed.

³³ The EdD Degree is listed among the graduate degrees offered through the Ontario Institute for Studies in Education since at least 2000, as referenced in the University's *Facts & Figures* publication, accessible online at <https://data.utoronto.ca/facts-and-figures/>

UTFA PROPOSAL 12 – LIBRARIANS’ SALARIES & RESEARCH AND STUDY DAYS

UTFA PROPOSAL

A. Increase Librarian Research and Study Days

To increase the number of Librarian Research and Study Days to 24 days, a level commensurate with other research-intensive universities in Canada and the United States.

UNIVERSITY’S RESPONSE

281. The Association’s proposal seeks to increase the number of research and study days that the University provides to its librarians from 14 days per academic year to 24 days per academic year. Information about the usage of the existing entitlement of research and study days amongst librarians shows that no increase to this entitlement is required, let alone the drastic increase sought by the Association. Further, a review of the U-15 universities shows that two thirds of these universities provide no research and study leave days whatsoever to their librarians, which further confirms that the current entitlements do not require any adjustment.

282. In the most recent round of negotiations prior to the January 25, 2022 Settlement³⁴, the parties agreed to increase the librarians’ entitlement to research and study days in the following language.

The parties are not in agreement with the title or description of these days (Librarians). Without prejudice to either parties’ position in this regard:

Effective July 1, 2018 increase the number of days (Librarians) available for each librarian from 10 to 12 days as per existing practice.

Effective July 1, 2019 increase the number of days (Librarians) available for each librarian from 12 to 14 days as per existing practice.

³⁴ Memorandum of Settlement between the University and the Association for the period July 1, 2018 to June 30, 2020, at 2. **Tab 30.**

Under exceptional circumstances, a librarian may apply to take more than the number of days available as set out above. Any additional days will require the approval of the librarian's manager as well as approval of the University Chief Librarian or their designate.

283. Following the parties' agreement to these increases, the University and UTFA agreed on additional terms concerning the use of the agreed-to number of 14 research and study days, which they agreed to describe as "Research and Professional Development Days". These terms are reproduced for ease of reference below.

Librarian Research and Professional Development Days

1. Each librarian shall be eligible for up to 14* research and professional development days, with the prior approval of their supervisor and the University Chief Librarian or designate, to pursue self-directed research, scholarly activities, creative professional activities and/or professional development through activities including but not limited to attendance at conferences, courses or workshops.

2. Under exceptional circumstances, a librarian may apply to take more than the number of research and professional development days available as set out above. Any additional research and professional development days will require approval of the librarian's manager as well as approval of the University Chief Librarian or their designate.

3. Research and professional development days must be scheduled and approved in advance in order to ensure the operational needs of the unit or department are met. Supervisors will make reasonable efforts to accommodate the scheduling of eligible requests for research and professional development days subject to the operational needs of the unit or department.

4. In the event that the request is not approved, the basis for the decision will be provided in writing.

NOTE: The language governing eligibility for these research and professional development days will be included in the Manual of Staff Policies for Academics and Librarians and posted on an appropriate University of Toronto website.

*The number of days is subject to change based upon Salary, Benefits, Pensions, and Workload negotiations.

284. These recent increases to this entitlement referenced above have effectively addressed the overall need amongst librarians for research and study days, as the information set out below confirms.

Existing Research and Study Leave entitlements are Generous

285. Over the past three years, the University’s librarians’ average usage of research and study days shows that there is no demonstrated need for any further increase to these days, let alone the drastic and immediate increase that the Association has proposed.

Research & Professional Development Days Usage –July 1, 2018 – June 30, 2019

Summary	Central	UTSC	UTM	Combined
Total days taken	899	92	244	1234
Count of librarians in data	125	18	16	159
Mean days per librarian	7	5	15	8
Median days per librarian	7	5	17	8
Mode days per librarian	0	0	13	0
Minimum days per librarian	0	0	3	0
Maximum days per librarian	28	12	32	32
Librarians taking 0-10 days	88	15	4	107
Librarians taking 11-15 days	26	3	3	32
Librarians taking 16-20 days	8	0	8	16
Librarians taking 21-25 days	2	0	0	2
Librarians taking 26-30 days	1	0	0	1
Librarians taking over 30 days	0	0	1	1

Librarians' Research & Professional Development Days Usage – July 1, 2019 – June 30, 2020

Summary	Central	UTSC	UTM	Combined
Total days taken	682	73	236	991
Count of librarians in data	120	16	16	152
Mean days per librarian	6	5	15	7
Median days per librarian	5	5	13	5
Mode days per librarian	0	0	11	0
Minimum days per librarian	0	0	2	0
Maximum days per librarian	24	12	33	33
Librarians taking 0-10 days	93	15	4	112
Librarians taking 11-15 days	24	1	6	31
Librarians taking 16-20 days	2	0	2	4
Librarians taking 21-25 days	1	0	2	3
Librarians taking 26-30 days	0	0	1	1
Librarians taking over 30 days	0	0	1	1

Librarians' Research & Professional Development Days Usage – July 1, 2020 – June 30, 2021

Summary	Central	UTSC	UTM	Combined
Total days taken	570	104	153	827
Count of librarians in data	117	19	17	153
Mean days per librarian	5	5	9	5
Median days per librarian	4	5	9	4
Mode days per librarian	0	0	0	0
Minimum days per librarian	0	0	0	0
Maximum days per librarian	24	19	20	24
Librarians taking 0-10 days	97	14	9	120
Librarians taking 11-15 days	14	4	5	23
Librarians taking 16-20 days	5	1	3	9
Librarians taking 21-25 days	1	0	0	1
Librarians taking 26-30 days	0	0	0	0
Librarians taking over 30 days	0	0	0	0

**Librarians' Research and Professional Development Days Usage –
July 1, 2021 – June 30, 2022**

Summary	Central	UTSC	UTM	Combined
Total days taken	652	153	164	968
Count of librarians in data	124	20	19	163
Mean days per librarian	5	8	9	7
Median days per librarian	4	8	8	5
Mode days per librarian	0	0	0	0
Minimum days per librarian	0	0	0	0
Maximum days per librarian	17	19	24	24
Librarians taking 0-10 days	98	13	12	123
Librarians taking 11-15 days	22	5	4	31
Librarians taking 16-20 days	4	2	2	8
Librarians taking 21-25 days	0	0	1	1
Librarians taking 26-30 days	0	0	0	0
Librarians taking over 30 days	0	0	0	0

286. The University is already well situated amongst the other U-15 Universities in terms of the research and professional development leave provided to librarians.

U-15 University	Research Days per Academic Year
Universite Laval	None
University of Calgary	None
University of Alberta	None
Western University	None
Universite de Montreal	None
University of British Columbia	None
McGill University	None
McMaster University	None
Ottawa University	None
University of Saskatchewan	None
University of Manitoba	12
University of Toronto	14
Dalhousie University	21
University of Waterloo	24
Queen's University	24

287. The awarding of the Association's proposal would be inconsistent with established interest arbitration principles. The Association would not commence or continue any type of strike activity in support of a proposal to further enhance an already generous leave benefit that applies to only a small percentage of employees who are subject to and governed by the Article 6 process. The unlikelihood of a strike in support of this proposal is further enhanced by the fact that many librarians do not make full use of their existing entitlement to research and professional development days. In sum, the near-doubling of this entitlement does not accord with the principle of gradualism, while the fact that many librarians do not use all of their existing entitlement to research and professional development days on an annual basis confirms that there is no demonstrated need to enhance it.

UTFA PROPOSAL 13 – PARAMEDICAL SERVICES BENEFITS

UTFA PROPOSAL

UTFA proposes to:

Increase the annual combined cap for the following Paramedical Services from \$2500 to \$5000: Chiropractor, Physiotherapist, Registered Massage Therapist, Osteopath, Acupuncturist, Dietitian, Occupational Therapist.

UNIVERSITY'S RESPONSE

Preliminary Issue – The Cost of this Proposal Exceeds the amount of the Agreed-Upon “Residual” of \$297,060

288. As a preliminary matter, the University submits that this proposal cannot be awarded without contravening the requirements set out in Bill 124 and without exceeding the agreed-upon “residual” of \$297,060.

289. The University has costed the value of this proposed benefit improvement. A copy of the University's costings of UTFA's benefit proposals is attached at **Tab 27**. The information in these costings is based on the information available to the University as of July 21, 2022. If this benefit improvement were applied only to active faculty members and librarians, it would generate an increased cost of \$311,000 for the period July 1, 2022 to June 30, 2023. An additional cost of \$95,000 would be incurred over this same time period if this benefit improvement would also be provided to retired faculty members and librarians – an extension that the University opposes for reasons set out in greater detail in these submissions.

290. Having regard to the parties' earlier agreement that the total costs of any benefit increases for the period July 1, 2022 to June 30, 2023 cannot exceed the agreed-upon “residual” of \$297,060, there is no jurisdiction to grant the Association's proposal.

The Current Benefit Levels enjoyed by Faculty Members and Librarians do not require a further Increase

291. In the alternative, if the cost of this proposal is found not to exceed the amount of the agreed-to “residual” of \$297,060 for the period July 1, 2022 to June 30, 2023, which is not admitted and expressly denied, there remains no basis to support the further enhancement of these benefits that the Association has proposed.

292. Before March 1, 2022, the maximum annual combined reimbursement limit that applied to paramedical services benefits was \$1,250.00. As set out in paragraph 3(b)(vi) of the January 25, 2022 Memorandum of Settlement, the University and the Association agreed to double the maximum annual combined reimbursement limit for paramedical services benefits to \$2,500.00. They also agreed to add services provided by a chiroprapist to the list of paramedical services included in this benefit entitlement. These changes took effect on March 1, 2022. Put simply, the parties have already agreed to significantly increase the value of these benefits less than one year ago and no additional increase is now required.

293. Data regarding the utilization of paramedical benefits supports the University’s position that the additional increase requested by the Association should not be awarded. In the July 1, 2020 to June 30, 2021 benefit year, when the maximum annual combined reimbursement limit for paramedical benefits was still at \$1,250.00, 298 of 8,112 (3.7%) eligible participants received reimbursements that reached the \$1,250.00 limit. When the amount of that limit was increased in the subsequent benefit year, only 145 of the 8,319 (1.7%) participants eligible for paramedical benefits received reimbursements that reached the \$2,500.00 limit. The significant increase to the maximum annual combined reimbursement limit that was implemented during this time, led to a 51.34% reduction in the number of participants who reached that limit. This information demonstrates that the current paramedical benefit entitlements provide a sufficient level of coverage for the vast majority of faculty members and librarians.

294. The paramedical benefit entitlements that the University currently provides to its faculty members and librarians are far superior to those offered by other large Canadian research universities, as confirmed by the information in the table below.

University	Paramedical Benefit Entitlements – Annual Maximum Limits
University of Toronto – Before March 1, 2022	\$1,250 combined
University of Toronto – Effective March 1, 2022	\$2,500 – combined
University of Alberta	\$1,800 combined for chiropractor, physiotherapy, registered massage therapist, naturopath, chiropodist \$1,000 for occupational therapist
University of British Columbia	\$750 combined for registered massage therapist & physiotherapist \$600 combined for all others including speech therapist (for which the University has a separate maximum annual limit)
McGill University	\$750 combined for physiotherapist, occupational therapist, speech therapist (which U of T has separate maximum) \$300 combined for chiropractor, osteopath, acupuncturist, dietician No registered massage therapist
University of Calgary	\$600 combined for chiropractor, registered massage therapist, physiotherapist \$200 per practitioner for remainder of providers
University of Manitoba	\$500 combined with psychology benefits, which the University has a separate maximum annual limit

University	Paramedical Benefit Entitlements – Annual Maximum Limits
Universite de Montreal	'Option 1' plan: \$350 for physiotherapist (including sport & kinesiologist) \$210 combined for remainder of providers No registered massage therapist
University of Waterloo	\$768 per practitioner, no acupuncturist
McMaster University	\$500 per practitioner, no acupuncturist, no dietician
University of Saskatchewan	\$500 per practitioner, no physiotherapist, no dietician, no occupational therapist
Queen's University	\$500 for physiotherapist \$300 per practitioner for chiropractor, osteopath No registered massage therapist, no acupuncturist, no dietician, no occupational therapist
Dalhousie University	\$500 per practitioner, no registered massage therapist, no acupuncturist, no dietician, no occupational therapist
Ottawa University	\$400 per practitioner, no acupuncturist, no dietician, no occupational therapist
Universite Laval	Standard plan only provides physiotherapy, no maximum
Western University	No maximum but coverage is limited to \$15 per visit, no dietician

295. There are variations within the university sector with regard to the specific paramedical services that are covered by certain universities' benefit plans. As well, some university benefit plans set combined maximum annual reimbursement limits for all paramedical services covered by their plan, while other universities set individual annual reimbursement limits. As individuals who use these benefits typically do not submit claims for many or all of the various paramedical services providers included in the University's benefit plan, the current \$2,500.00 maximum annual combined reimbursement limit exceeds the benefit levels provided by the other universities referred to in the table above because it provides a higher overall maximum annual combined reimbursement limit that can be applied to any one paramedical provider.

296. The current paramedical benefit coverage provided to the University's faculty members and librarians is already superior to the paramedical benefit coverage that other University employees are provided. University employees represented by Local 1998 of the United Steelworkers have paramedical benefit coverage that is subject to a maximum annual combined reimbursement limit of \$1,100.00. The paramedical benefits available to the University's non-union employees at or below the Professional/Managerial Level 5 is subject to this same maximum annual combined reimbursement limit. Non-union University employees at Professional/Managerial Level 6 and above have paramedical benefits that are subject to a maximum annual combined reimbursement limit of \$800.00.

297. In the final analysis, neither the current utilization of these benefits, nor a comparison of the paramedical benefits enjoyed by faculty members and librarians with the relevant internal and external comparators supports the increase that the Association now seeks. There is no basis to support any further enhancement to the benefit entitlements that are currently in place. Even if jurisdiction to grant this proposal is found, despite the fact that the attendant costs exceed the agreed-upon "residual" of \$297,060, this proposal should still not be awarded.

UTFA PROPOSAL 14 – REASONABLE AND CUSTOMARY

UTFA PROPOSAL

UTFA proposes that the University Administration conduct an annual audit of UTFA members' claims against the "reasonable and customary" limits applied by Green Shield (or other provider) and provide a report to UTFA on an annual basis.

UNIVERSITY'S RESPONSE

This Proposal is Outside the Scope of the Article 6 Process and Extends beyond the University's Information Production Obligations

298. This proposal does not fit within the jurisdictional parameters of Article 6 of the Memorandum of Agreement. It is not a proposal concerning "benefits" as that term is used in Article 6, paragraph 1. It does not propose that the benefits provided to faculty members and librarians be increased or modified in any way. It does not propose that a new benefit be granted to faculty members or librarians. Rather, this proposal seeks to impose auditing and reporting obligations on the University.

299. Not only does this proposal fall outside the jurisdictional limits of Article 6 of the Memorandum of Agreement, it also represents another attempt by the Association to expand the University's information production obligations beyond the limits that are included in Article 11 of the Memorandum of Agreement.

300. In addressing Association Proposal 10, the University reviewed the limit on the University's obligation to provide information and documents to the Association as part of the Article 6 negotiation process. For ease of reference Article 11 confirms that:

this Article shall not be construed to require the University of Toronto (a) to compile information and statistics in particular form if such data are not already compiled in the form requested or (b) to provide any information relating to any individual.

301. The fact that the Association's proposal seeks to require the University to conduct an audit, compile information and prepare a report in relation to information that it does not already audit, compile, or report upon contravenes the restrictions established by Article 11 of the Memorandum of Agreement. The University submits that this proposal's incongruity with Article 11 of the Memorandum of Agreement means that it cannot and should not be awarded.

The Association has been provided with the Appropriate Information

302. Reasonable and customary limits are set by all insurers and ASO providers, so that payments are not made in excess of certain dollar limits for medical equipment and services covered by a benefits plan. Green Shield Canada, the University's ASO provider, reviews its reasonable and customary limits annually. Multiple factors are considered by Green Shield Canada to determine its own reasonable and customary limits. These factors include:

- (a) the amount of the submitted claim;
- (b) the manufacturers' pricing;
- (c) provincial and association pricing;
- (d) statistical industry information; and
- (e) consultations with provider associations and the insurance community.

303. The reasonable and customary limits that are set by Green Shield Canada are proprietary to Green Shield Canada. It does not make such information public and could suffer a severe competitive disadvantage if this information were to be publicized.

304. On June 21, 2022, the University entered into a confidentiality agreement with the Association whereby information concerning Green Shield Canada's reasonable and customary limits was provided to counsel to the Association. A copy of this agreement is attached at **Tab 31**. The completion of this agreement, coupled with the fact that the University does not have ongoing or automatic access to Green Shield Canada's reasonable and customary limits information preclude it from being able to conduct the

annual audit that the Association has requested, nor is it in a position to provide a related report to the Association.

UTFA PROPOSAL 15 – VISION CARE

UTFA PROPOSAL

UTFA proposes that the maximum for vision care be increased from the current \$450 to \$800 every 24 months.

UNIVERSITY RESPONSE

305. Pursuant to paragraph 3(b)(iv) of the January 25, 2022 Memorandum of Settlement, the University and the Association already agreed, as part of the benefit increases attributable to the period July 1, 2021 to June 30, 2022, to increase the maximum 24-month benefit limit for vision care from \$450.00 to \$700.00. In this proceeding, the Association wants an additional increase to this same benefit. The University opposes this request for an additional increase.

306. As with the Association's requests for further improvements to psychology and mental health benefit entitlements and paramedical benefit entitlements, a review of the relevant external and internal comparators demonstrates that the University's faculty and librarians are already provided with a level of vision care coverage that exceeds the level of coverage provided by comparable groups within the University itself and within the University sector.

307. Within the University, non-union employees including Professional and Managerial employees at Levels 1 through 5 have a vision care entitlement that is subject to a limit of \$600.00 every 24 months. This same limit is included in the vision care entitlement provided to employees represented by Local 1998 of the United Steelworkers. The vision care benefit entitlements provided to University employees represented by other unions are subject to 24-month limits that do not exceed \$400.00.

308. A review of the vision care benefit entitlements provided by other large research universities in Canada demonstrates that the vision care benefits that the University provides to its faculty members and librarians already outpace those provided by these other institutions, often by a considerable margin. This information is set out in the table below.

University	Maximum Limit for Vision Care Benefits
University of Toronto – Before March 1 2022	\$450 every 24 months
University of Toronto – Effective March 1, 2022	\$700 every 24 months
McMaster University	\$400 every 24 months
University of Saskatchewan	\$400 every 2 calendar years
University of British Columbia	\$400 every 24 months (including eye exams)
University of Alberta	\$350 every 24 months
University of Calgary	\$350 every 24 months (including eye exams)
Queen’s University	\$300 every 24 months
Western University	\$300 every 2 years
Ottawa University	\$250 every 2 years

University	Maximum Limit for Vision Care Benefits
Dalhousie University	\$100 every 24 months (including eye exams)
Universite de Montreal	'Option 1' plan: No coverage 'Option 2' plan: \$160 every 24 months (including eye exams) 'Option 3' plan: \$270 every 24 months (including eye exams)
Universite Laval	Standard plan: no coverage Enhanced plan: \$150 every 24 months
University of Waterloo	No coverage
McGill University	No coverage
University of Manitoba	No coverage

309. In the alternative, should the Association's proposal be awarded, the University has costed the value of this proposed benefit improvement. A copy of the University's costings of the Association's benefit proposals is attached at **Tab 27**. As noted above, these costings are based on the information available to the University as of July 21, 2022. If this benefit improvement were applied only to active faculty members and librarians, it would generate an increased cost of \$85,000 for the period July 1, 2022 to June 30, 2023. If this benefit improvement were extended to retired faculty and librarians – an extension that the University opposes for reasons set out in greater detail in these submissions – this extension would generate a further cost of \$32,300 over this same one year time period. These cost increases would need to fit within the agreed-upon “residual” of \$297,060, when combined with any other benefit increases awarded in this proceeding.

UTFA PROPOSAL 16 (A) – DENTAL CARE – REIMBURSEMENT FOR MAJOR RESTORATIVE

UTFA PROPOSAL

UTFA proposes that the reimbursement rate for major restorative dental be increased to 100% up to a maximum of \$5000 per year.

UNIVERSITY RESPONSE

310. As part of the January 25, 2022 Memorandum of Settlement, the University and the Association agreed to a significant increase to the maximum annual limit for major restorative dental benefit coverage. Prior to March 1, 2022, this benefit provided for reimbursement of 80% of costs up to an annual limit of \$2,800.00. This annual limit has now increased to \$5,000.00. The University submits that there is no basis to award a further increase to this benefit as part of this proceeding, including the Association's proposal that the rate of reimbursement be increased from 80% to 100%.

311. When the major restorative dental benefits provided to other University employees are examined, this examination provides further support for the University's position that the Association's latest request for an increase to this benefit is not warranted. No employee at the University has a reimbursement rate for major restorative dental benefits that exceeds the 80% reimbursement rate that is already provided to faculty members and librarians. More specifically, all other employees of the University have the same 80% reimbursement rate for this specific benefit. There is no basis to support the Association's demand that all claims related to this benefit be reimbursed at a rate of 100%.

312. The University's non-union employees and its employees who are represented by Local 1998 of the United Steelworkers receive major restorative dental benefits that are subject to a maximum annual limit of \$2,250.00 and a reimbursement rate of 80%. This maximum annual limit is already below the agreed-to increase that the University agreed to as part of the January 25, 2022 Memorandum of Settlement. The University's other unionized employees also receive major restorative dental benefits. However, these

benefits are subject to a maximum annual limit of \$1,800.00, with a reimbursement rate of 80% as set out above.

313. A review of the major restorative dental benefits provided to faculty and librarians at other large Canadian research universities does not provide any support for the Association’s assertion that the current level of benefits is in any way deficient. The table below demonstrates that the University provides its faculty and librarians with major restorative dental benefits that are already far in excess of those provided by a majority of the other Universities in Canada.

University	Maximum Annual Limit – Major Restorative Dental Benefits
University of Toronto – Before March 1, 2022	80% to \$2,800 per benefit year
University of Toronto – Effective March 1, 2022	80% to \$5,000 per benefit year
University of Calgary, Western University	80% with no maximum
University of Alberta	75% with no maximum
University of Waterloo	50% to \$3,716 per year
Queen’s University	75% to \$3,000 combined dental maximum per year
McMaster University	70% to \$2,500 per benefit year
McGill University	80% to \$2,000 per calendar year
University of Saskatchewan	50% to \$2,000 combined dental maximum per year
University of British Columbia	70% to a maximum of \$1,500 per implant

University	Maximum Annual Limit – Major Restorative Dental Benefits
University of Manitoba	60% to \$1,500 per year (proposed to increase to \$2,000)
Ottawa University	50% to \$1,500 per calendar year
Dalhousie University	70% to \$1,000 per year
Universite Laval	Standard plan: no coverage Enhanced plan: 50% to \$3,000 combined dental maximum per year
Universite de Montreal	'Option 1' plan: 80% to \$1,500 combined dental maximum per year 'Option 2' plan: 80% to \$2,500 combined dental maximum per year 'Option 3' plan: No coverage

314. In the immediate aftermath of a significant agreed-to increase to the maximum annual limit that applies to major restorative dental benefit coverage that took effect less than one year ago, and where the data from the internal and external comparators do not support a further augmentation of this benefit entitlement, the University requests that the Association's proposal not be awarded.

315. In the alternative, should the Association's proposal be awarded, the University has costed the value of this proposed benefit improvement. As noted above, a copy of the University's costing of the Association's benefit proposals, based on the information available to the University as of July 21, 2022, is attached at **Tab 27**. If this benefit improvement were applied only to active faculty members and librarians, it would generate an increased cost of \$142,000 for the period July 1, 2022 to June 30, 2023. If this benefit improvement were extended to retired faculty and librarians – an extension that the University opposes for reasons set out in greater detail elsewhere in these submissions -- this extension would generate a further cost of \$149,000 over this same

one year time period. These cost increases would need to fit within the agreed-upon "residual" of \$297,060, when combined with any other benefit increases awarded in this proceeding.

UTFA PROPOSAL 16 (B) – DENTAL CARE – ORTHODONTICS

UTFA PROPOSAL

UTFA proposes that the lifetime maximum on orthodontics be increased to 100% up to a maximum of \$5000.

UNIVERSITY RESPONSE

316. Paragraph 3(b)(vii) of the January 25, 2022 Memorandum of Settlement confirms the parties' agreement to increase the lifetime maximum on orthodontics coverage from 50% up to a maximum of \$2,500.00 to 75% up to a maximum of \$5,000.00. The Association now seeks a further improvement to this benefit that would require the University to reimburse 100% of related expenses, subject to the same \$5,000.00 lifetime maximum.

317. Faculty and librarians at the University already have orthodontics benefits coverage that compares favorably with other employee groups within the University and the faculty and librarians employed at other large research Universities across Canada. This information is set out in more detail below.

318. No other employee group at the University has an entitlement to orthodontics benefit coverage that exceeds the reimbursement rate of 50%. These other University employees' orthodontic benefit entitlements are subject to a lifetime maximum of \$2,650.00. The benefit increases included in the January 25, 2022 Memorandum of Settlement already eclipse the entitlements that the University provides to other employee groups.

319. A review of the orthodontic benefit entitlements provided to faculty and librarians at other large research universities across Canada further confirms that the University's faculty and librarians already enjoy orthodontics benefits entitlements that do not need to be further increased as part of this proceeding.

University	Orthodontics Benefits Entitlements
University of Toronto – before March 1, 2022	50% to \$2,500 per lifetime
University of Toronto – effective March 1, 2022	75% to \$5,000 per lifetime
University of Alberta	75% with no maximum
University of Waterloo	50% to \$3,716 per lifetime
University of British Columbia Dalhousie University	65% to \$3,000 per lifetime
University of Manitoba	50% to \$3,000 per lifetime
McMaster University Ottawa University McGill University	50% to \$2,500 per lifetime
University of Saskatchewan	50% to \$2,000 per lifetime (if age 19 or older), \$3,000 per lifetime (if under age 19)
Queen's University	50% to \$2,000 per lifetime
University of Calgary	50% to \$1,500 per lifetime
Western University	Initial consultation only
Universite Laval	Standard plan: no coverage Enhanced plan: 50% to \$3,000 per lifetime
Universite de Montreal	'Option 1' plan: No coverage 'Option 2' plan: 50% to \$2,500 per lifetime 'Option 3' plan: No coverage

320. In the alternative, should the Association's proposal be awarded, the University has costed the value of this proposed benefit improvement. The University has provided its costing of the Association's benefits at **Tab 27**. These costings are based on the information available to the University as of July 21, 2022. If this benefit improvement were applied only to active faculty members and librarians, it would generate an increased cost of \$74,000 for the period July 1, 2022 to June 30, 2023. If this benefit improvement were extended to retired faculty and librarians – an extension that the University opposes for reasons set out in greater detail in these submissions – this extension would generate a further cost of \$1,800 over this same one year time period. These cost increases would need to fit within the agreed-upon "residual" of \$297,060, when combined with any other benefit increases awarded in this proceeding.

UTFA PROPOSAL 17 – RETIREE BENEFITS

UTFA PROPOSAL

UTFA’s reaffirms that all benefits improvements equally apply to all retirees as has historically been the case.

UNIVERSITY’S RESPONSE

321. The University occupies a relatively unique space within the University sector in terms of extending the same benefit entitlements and improvements to retirees as it provides to its active faculty and librarians. Within the University, other employee groups experience clear differentials between the benefits that active employees receive, and the different benefits that are provided to those employees post-retirement. Whereas other active employee groups within the University have received regular increases to their benefit entitlements, the benefits for retired University employees aside from retired faculty members and librarians have remained unchanged since July 1, 2014.

322. A review of how retiree benefits are administered at other large Canadian research universities relative to the benefit increases provided to active faculty members show that almost all of these institutions do differentiate between the benefits provided to active faculty members and librarians on the one hand, and their retired colleagues on the other.

University	Treatment of Retiree Benefits
University of Toronto	Same level of benefit coverage provided to both active and retired faculty members and librarians
McMaster University	Different levels of benefit coverage provided to retirees – depending on date of retirement – McMaster University has 10 different benefit plans for retirees

University	Treatment of Retiree Benefits
Ottawa University	<p>Faculty and librarians who retired after May 1, 2017 receive the same benefit coverage as active faculty members and librarians. However, they must pay the University's contributions for this coverage.</p> <p>Faculty and librarians who retired before May 1, 2017, receive a different level of benefit coverage than active faculty members and librarians.</p>
University of Waterloo	<p>Key differences between benefits for active faculty members and librarians, and retirees:</p> <ol style="list-style-type: none"> 1. Dental benefits cease at retirements. 2. Out of country benefits coverage is limited to 60 days per trip.
Western University	<p>Retired faculty members and librarians receive the same benefit entitlements as active faculty members and librarians.</p>
University of British Columbia	<p>Reduced level of benefits provided to retired faculty members and librarians.</p> <ol style="list-style-type: none"> 1. Retired faculty members and librarians receive no vision care benefits. 2. Retired faculty members received lower reimbursement levels for certain services and supplies.

University	Treatment of Retiree Benefits
University of Manitoba	<p>Coverage for retired faculty members and librarians is similar but not identical to the coverage provided to active faculty members and librarians.</p> <ol style="list-style-type: none"> 1. No out-of-country emergency travel coverage for retirees. 2. No Health Care Spending Account provided to retirees. 3. Reduced limits applicable to drug coverage for retirees.
Universite de Montreal	<p>Retired faculty members and librarians receive different levels of benefit coverage.</p> <ol style="list-style-type: none"> 1. Retirees are not eligible for vision care coverage. 2. Retirees are not eligible for dental care coverage. 3. Travel benefit coverage for retirees ends at 65 years of age. 4. At 65 years of age, the RAMQ is the first payer for drug coverage and the insurer reimburses 5% as the second payer.
Universite Laval	<p>Retirees are in a separate retirement plan. No employer contributions are made to the retiree benefit plans.</p>

University	Treatment of Retiree Benefits
McGill University, Dalhousie University	Separate plans for retirees, with different benefit entitlements
University of Alberta University of Saskatchewan University of Calgary	No benefit plans for retirees

323. The idea of retirees receiving the same benefit coverage as active faculty and librarians on the same terms was determined by Arbitrator Munroe in the Article 6 dispute resolution proceeding for the period July 1, 1986 to June 30, 1987. Beforehand, retirees were able to continue their participation in the University's health and dental benefit plans. However, retirees were responsible for paying 50% of the premium costs for that coverage, in contrast to active faculty and librarians, who were responsible for paying 25% of premiums for health benefits coverage and 20% of premiums for dental benefits coverage. The Association proposed that the University be required to make the same premium payments for retirees as it did for active faculty and librarians, with both employee groups continuing to receive the same benefit coverage.

324. The University did not agree with the Association's proposal. Arbitrator Munroe awarded the Association's proposal and the University was required to increase the premiums that it paid for retiree health and dental benefits. Arbitrator Munroe offered the following rationale in support of the Association's proposal:

In our view [the Association's belief that retirees should pay the same reduced premiums as active faculty and librarians] has merit. **Moreover, the cost of the Association's proposal is relatively modest.** All in all, we think that the proposal would have held sway at the bargaining table. Accordingly, it should be awarded effective the first of the month following the receipt by the parties of the panel's decision.³⁵

[Emphasis added]

³⁵ *Governing Council of the University of Toronto and UTFA*, December 23, 1986, *supra* at 17.

325. The issue of whether or not retirees should continue to receive the same benefit entitlements as active faculty and librarians arose in connection with a more discrete issue in the dispute resolution proceeding conducted by Arbitrator Teplitsky in respect of the period July 1, 2002 to June 30, 2003. When the parties first appeared before Arbitrator Teplitsky, he remitted all outstanding proposals regarding benefits to the parties.³⁶ In a supplementary award, which addressed the parties' respective proposals on benefits, Arbitrator Teplitsky explained that he had remained seized of the parties' benefit proposals because of a concern about the cost to the University of orthotics and orthopaedic shoes. He found that the cost to the University of these benefits averaged \$1,750,000.00 for the three-year period between 1999-2000 and 2001-2002. Arbitrator Teplitsky concluded that unless these costs were reduced, he would not award any additional benefit improvements.³⁷

326. When he received additional information indicating that the cost of providing these same benefits in the 2002 calendar year were reduced to \$608,300 and that the cost was projected to decrease to \$583,929 for the July 1, 2002 to June 30, 2003 period, Arbitrator Teplitsky determined that this cost reduction could fund the Association's request to improve major restorative dental coverage from a maximum of \$1,500.00 per year to \$2,500.00 per year.³⁸ However, a dispute later arose as to whether or not this specific benefit improvement was available to active faculty and librarians only, or whether it needed to be provided to retirees. That specific issue was referred back to Arbitrator Teplitsky for determination.

327. In an award dated November 14, 2003³⁹, Arbitrator Teplitsky directed the University to provide the improvement in major restorative dental coverage to active faculty and librarians as well as retirees. Arbitrator Teplitsky acknowledged that when the Association sought this proposal, it did not expressly state that any benefit ought to be

³⁶ *Governing Council of the University of Toronto and UTFA*, December 30, 2002 *supra* at 8.

³⁷ *Governing Council of the University of Toronto and UTFA (Supplementary Award 1)*, May 21, 2003 at 2 (Teplitsky). **Tab 32**

³⁸ *Ibid.*.

³⁹ *Governing Council of the University of Toronto and UTFA (Supplementary Award 2)*, November 14, 2003 (Teplitsky) **Tab 33**

extended to retirees, but that the parties had historically extended the benefit improvements provided to active faculty and librarians to retirees and that this practice ought to continue. Arbitrator Teplitsky then offered the following rationale for his decision:

Although the paper record does not support UTFA's claim for this benefit, I am satisfied that UTFA believed that whatever was awarded active faculty would also apply to retirees.

At this stage, the question I ask myself is this: Would I have awarded this improvement to retirees had the issue been squarely before me? My rationale for this modest improvement to the benefit package was based on a substantial reduction in the cost of orthotics and custom footwear. The evidence disclosed that some of the reduction in cost related to retirees. The total reduction in the cost of orthotics and custom footwear for "faculty" is enough to fund this improvement for both active faculty and retirees. I make the assumption that the cost for retirees is not greater than the cost for active faculty. No more specific a cost was provided.

Accordingly, I award this improvement for retirees, the same to be implemented as soon as practicable, i.e., prospectively.⁴⁰

328. The University submits that continuing to provide retirees with the same benefit improvements as active faculty and librarians, on the same terms and conditions, is no longer a "relatively modest" financial expenditure. Unlike the rather unique situation facing Arbitrator Teplitsky in 2002-2003, there is no "substantial cost reduction" against which the expense of continuing this approach to retiree benefits can be offset. The suggestion that the benefit improvements provided to retirees must remain in lockstep with the benefits provided to active faculty and librarians needs to be revisited in light of more recent data and experience.

329. The more recent data and experience that must be considered when assessing the continuation of this approach to retiree benefits can be found in the University's Condensed Financial Report for April 30, 2001, which is attached at **Tab 34**. This report set out an important accounting change that was applied to the University's treatment of future benefit obligations, including the benefits that it must continue to pay to retirees. This accounting change is described in this financial report as follows:

⁴⁰ *Ibid.*, at 2-3.

The University provides employee future benefits other than pension, such as long-term disability coverage and medical benefits to pensioners. During the year, the University was required to change its method of accounting for its employee future benefits other than pension from the cash basis to recording the cost over the periods in which employees render the service. This change will be recorded prospectively and will be amortized over the estimated average remaining service life of the employees. The University has recorded a liability of **\$41.3 million** which includes **\$20.3 million** relating to medical benefits, **\$17.1 million** relating to long-term disability obligations, and **\$3.9 [million]** relating to other benefits.⁴¹

[Emphases added]

330. A subsequent explanation of this accounting change is found at page 13 of the April 30, 2009 University's Financial Report. In addressing the University's salary and benefits obligations, the financial statements include the following description of "future benefits:

Employee future benefits represent benefits to employees in the future based on service in the current year. They include pensions, long-term disability insurance, cost of living adjustments for survivor income, and medical benefits for pensioners. These benefits are accounted for on an accrual basis of accounting and therefore reflect the cost of providing these benefits irrespective of the amount of funding provided in support of these benefits. Since 2000, the cost of providing these benefits has increased by **\$195.8 million**, mainly as a result of an increasing number of staff, as well as improved retiree pension benefits, and due to changes in accounting rules which are explained further below.

...

Beginning in 2001, accounting rules required that expenses and liabilities for employee future benefits be reported on an accrual basis instead of on a pay as you go (funding) basis. Liabilities were also required by GAAP to be valued using current long-term bond rates instead of using long-term asset return assumptions for funding purposes. This requirement gave rise to both current and past service liabilities which are being added to the liabilities recorded on the financial statements over 14 years. The addition over time of unfunded employee future benefits liabilities is increasing the liabilities section of the balance sheet without a corresponding increase in

⁴¹ *Governing Council of the University of Toronto, Condensed Financial Report – April 30, 2001 at 4.*
Tab 33

assets. It is therefore also reducing the next assets section of the balance sheet and constraining our ability to grow and our capacity to borrow.⁴²

[Emphasis added]

331. Since that time, the University has continued to track the unfunded liability for retirees, in respect of both current retirees and the “accrued” portion for active members who will become future retirees. Information on the significant growth of this unfunded liability is provided in the table below.

Employee Future Benefit Obligations		
Date	Amount	University’s Financial Report
April 30, 2009	\$300 million	Tab 35
April 30, 2014	\$514.4 million	Tab 36
April 30, 2015	\$580.8 million	Tab 37
April 30, 2016	567.3 million	Tab 38
April 30, 2017	\$594.4 million	Tab 39
April 30, 2018	\$590.9 million	Tab 40
April 30, 2019	625.1 million	Tab 41
April 30, 2020	643.5 million	Tab 42
April 30, 2021	696.4 million	Tab 43
April 30, 2022	\$688.4 million	Tab 44

332. Of the **\$688.4 million** unfunded liability referred to in the University’s April 30, 2022 financial report, approximately **\$621 million** of this amount relates to retiree health benefits, in circumstances where the bulk of these costs relate to retired faculty members and librarians. Approximately **\$66 million** of this amount relates to long term disability benefit claim payments and approximately **\$1 million** is attributed to the cost of living component for survivor income benefits.

⁴² *Governing Council of the University of Toronto, Financial Report – April 30, 2009* at 13. **Tab 35**

UTFA PROPOSAL 18 – HEALTH AND SAFETY

UTFA PROPOSAL

In January 2020, the parties agreed to establish a joint central health and safety committee. UTFA proposes that this committee be recognized as a Committee that fulfills the legislative requirements of the Occupational Health and Safety Act and has the powers of a Joint Health and Safety Committee.

UNIVERSITY’S RESPONSE

This Proposal does not fit within the Article 6 Dispute Resolution Process

333. This proposal does not fit within the scope of the subjects that can be addressed in the Article 6 dispute resolution process. It has no connection to issues regarding salaries, benefits, or workload. It is an attempt by the Association to obligate the University to take certain measures regarding its occupational health and safety policies and procedures, which a dispute resolution panel appointed in accordance with Article 6 of the Memorandum of Agreement has no jurisdiction to address. This proposal must be rejected on this preliminary basis.

This Issue is addressed by a separate Memorandum of Settlement between these Parties

334. Furthermore, and in the alternative, the University and the Association agreed to establish a Central Health and Safety Committee (the “CHSC”) in January 2020 through Minutes of Settlement arising from a group grievance filed on May 2, 2017 concerning asbestos in the University’s Medical Science Building (the “Asbestos Grievance”). A copy of the Minutes of Settlement resolving the Asbestos Grievance is attached at **Tab 45**. The CHSC was established in a manner similar to the Central Health and Safety Committee between the University and Local 1998 of the United Steelworkers. This Central Health and Safety Committee is not and never has been a Joint Health and Safety Committee as that term is defined in the *Occupational Health and Safety Act*. The relevant portions of the minutes of settlement that resolved the Asbestos Grievance are reproduced below:

9. The Administration and the Association will establish a central health and safety committee made up of six (6) members, three (3) appointed by the Association and three (3) appointed by the Administration. Each party shall select from among its three (3) representatives a co-chair for the central committee. The role of the central committee will be to monitor, assist and provide direction to the Main Joint Health and Safety Committees and, where necessary, the Local Safety Committees. The central committee will meet at least three times per year.

The central health and safety committee and the Association President shall receive copies of all committee reports, Investigations reports and minutes from all the Joint Health and Safety Committees. The Administration shall endeavour to ensure that these materials are provided in a timely fashion.

...

15. William Kaplan will be seized as mediator-arbitrator with respect to any issues concerning the interpretation, application, administration or alleged violation of this Memorandum of Settlement.

335. The terms of the Minutes of Settlement regarding the Asbestos Grievance are clear and unequivocal. Any and all issues regarding the powers assigned to the CHSC or the information which it is to be provided are to be determined by Arbitrator Kaplan. This includes any attempt by the Association to have the CHSC recognized or characterized as a Joint Health and Safety Committee under the *Occupational Health and Safety Act*. The Association cannot seek to recharacterize these requests as a negotiating proposal fit for determination by a Dispute Resolution Panel under Article 6, having already agreed to this earlier dispute resolution process for issues specific to the CHSC.

UTFA PROPOSAL 20 – MAINTENANCE OF SALARIES, BENEFITS AND WORKLOAD DURING BARGAINING

UTFA PROPOSAL

UTFA seeks agreement that, where notice has been given pursuant to Article 6 of the Memorandum of Agreement, all terms relating to salaries, benefits and workload shall remain in effect until final resolution is reached by settlement or award.

UNIVERSITY'S RESPONSE

This Proposal is Outside the Scope of the Article 6 Process

336. The process and timing of the negotiation, mediation and dispute resolution process in Article 6 of the Memorandum of Agreement cannot be amended by a Dispute Resolution Panel's award. Article 17 of the Memorandum of Agreement makes clear that the language in the Memorandum of Agreement itself can be amended only by the parties' agreement. In this specific proposal, the Association's statement that it is "seeking agreement" on this proposal, rather than its awarding by a Dispute Resolution Panel, demonstrates an awareness and acceptance of these jurisdictional constraints.

337. The University and the Association have agreed to a process that requires the exchanging of information, the completion of negotiations in good faith, and the utilization of a dispute resolution process that is similar to an interest arbitration process. The parties have not agreed to add a provision akin to the "statutory freeze" language found in certain labour relations statutes. They have agreed to a negotiation, mediation and dispute resolution process with timelines that permit its completion within a year-long period, which coincides with the ordinary length of an agreement on salaries, benefits and workload. This process, if followed, obviates the need for any "statutory freeze" language.

338. The absence of "statutory freeze" language from Article 6 of the Memorandum of Agreement recognizes that, subject to the parties' continued obligation to negotiate in good faith, certain changes can be made to salaries, benefits and workload matters in the time between a settlement's expiry and the commencement of the subsequent settlement or term of a Dispute Resolution Panel's award. These parties have proven to be adept

at addressing these changes in the course of their negotiation, mediation and dispute resolution process, and Dispute Resolution Panels can, in the appropriate circumstances, award proposals with retroactive effect, even if such proposals may override earlier unilateral changes to salary, benefits and workload matters.

339. Put simply, a Dispute Resolution Panel has no jurisdiction to add language to the Memorandum of Agreement that addresses the “statutory freeze” concept that the Association seeks in this proposal. There is no demonstrated need for the University to adjust the structure or operation of this process in a manner consistent with the Association’s request and it does not agree to do so.

This Proposal is an attempt to Side-Step an earlier Arbitration Award

340. When the University and the Association completed the negotiation and mediation process under Article 6 of the Memorandum of Agreement that culminated in an agreement regarding the salaries and PTR compensation for the period July 1, 2018 to June 30, 2020, they agreed to have William Kaplan remain seized as mediator-arbitrator of any disputes concerning the implementation, interpretation, administration, application or alleged breach of the agreement. Such a dispute arose when the Association claimed that the University was required to make a PTR payment on July 1, 2020, and the University maintained that it was not required to do so, since July 1, 2020 was outside the temporal scope of the parties’ agreement. This dispute remained unresolved. It was referred to Mr. Kaplan for final and binding determination.

341. Mr. Kaplan dismissed the Association’s claim that the University was obligated to continue to make a PTR payment on July 1, 2020 in connection with its agreement covering salaries and PTR pay for the period July 1, 2018 to June 30, 2020. A copy of his award is attached at **Tab 46**.

342. In his award, Mr. Kaplan provided a detailed review of the parties’ approach to the negotiation and the University’s administration of the PTR process. He found that there was a longstanding practice of the parties making adjustments to the PTR breakpoints and increments on June 30 of each year, and that these adjustments were based on the ATB increase of the prior July 1. While it was commonplace for these parties to stipulate

that these adjustments to PTR breakpoints and increments be made on the final day of an agreement, neither an agreement on, nor the timing of such adjustments obligated the University to make a PTR payment on the July 1 that immediately followed the agreement's expiry.

343. Arbitrator Kaplan noted that the Association had never before claimed that the University was obligated to make a PTR payment on the July 1 date that followed an Article 6 agreement's expiry, despite having regularly agreed to language concerning adjustments to PTR breakpoints and increments that would take effect on June 30 – the final day of the agreement's term. He pointed to correspondence from the University which confirmed that in instances where the University had agreed to make a PTR payment in respect of a period of time following an expired agreement, it did so either of its own volition, or because of an agreement with the Association to do so – and not out of any legal obligation.

344. Arbitrator Kaplan noted that it would be possible for the University and the Association to provide for a payment to be determined within the term of an agreement which would then be paid after the term of the agreement had expired. However, he emphasized that an agreement of this nature would need to be memorialized using clear, unambiguous language.

345. In the final analysis, Arbitrator Kaplan determined that neither the specific language in the agreement at issue, nor the factual background that animated the negotiation and administration of PTR payments supported the Association's position that the University was obligated under an expired agreement or award to make a subsequent PTR payment, even if the timing of that payment was set for the day after the agreement or award's expiry.

346. In the face of Mr. Kaplan's decision, the Association now seeks to compel the University to continue making PTR payments on occasions that fall outside the temporal scope of an Article 6 agreement or award by pursuing a request for the continuation of "all terms relating to salaries, benefits and workload", including PTR, once notice to commence negotiations has been given, until a negotiated or adjudicated settlement

under Article 6 is later reached. This proposal seeks to mask the fact that the University has never agreed to a freestanding or ongoing obligation to maintain PTR payments following the expiry of a prior negotiated or adjudicated agreement, and no arbitrator has found that any such obligation exists.

This Proposal offends the Principles of Replication, Gradualism and Demonstrated Need

347. The negotiation of PTR payments has been a fundamental part of the Article 6 negotiation, mediation and dispute resolution process for decades. A review of Mr. Kaplan's decision demonstrates that these parties have proven to be adept at addressing this issue as part of the current Article 6 process.

348. When the replication principle is applied to this issue, it is abundantly clear that the University would not agree to, and the Association would not strike over, a change to this longstanding process that would shift the making of the PTR payment that follows the expiry of a negotiated or arbitrated Article 6 agreement from an item that is addressed during negotiations, to a freestanding and ongoing legal obligation.

349. The Association's proposal also offends the principles of gradualism and demonstrated need. It would represent a radical shift in the way that the University and the Association have consistently addressed PTR payments. The proposal for this radical shift is unaccompanied by any evidence which shows that there is a demonstrated need for such a change. Indeed, as noted above, the timelines that currently apply to the Article 6 negotiation, mediation and dispute resolution process allow for this process to be completed within one year, which would thereby negate the need for the modifications that the Association is seeking through this proposal. Put simply, the established principles that govern the Article 6 process demonstrate that there is no need for this proposal to be awarded.

UNIVERSITY PROPOSALS

UNIVERSITY PROPOSAL 1 – SALARY

UNIVERSITY PROPOSAL

Increase salaries by 1% across-the-board (“ATB”) effective July 1, 2022.

351. As set out in the University’s response to Association Proposal 4(a):

- (a) the University and the Association have now proposed to increase all faculty and librarian salaries by one percent (1%) across-the-board effective July 1, 2022; and
- (b) the University also proposes that the per course stipend rates be increased by 1% from \$18,255 to \$18,440, effective the date of the award in these proceedings.

UNIVERSITY PROPOSAL 2 – BENEFITS

UNIVERSITY PROPOSAL

Any non-salary compensation increases are subject to mutual agreement on how to “spend” the “residual” compensation of \$612,060 available up to the 1% hard cap on total compensation increases under Bill 124.

Any benefit increases to be applicable only to active employees and will not be or become applicable to retiree benefits.

352. In paragraph 5(f) of the January 25, 2022 MOS, the parties agreed that:

In connection with proceedings before the DRP, for the purposes of the 1% cap on compensation increases during the 12 month period under Bill 124 from July 1, 2022 to June 30, 2023, the “residual” amount available in connection with an across-the-board salary increase of 1% for any other compensation increases that may be awarded by the DRP is \$612,060 in total – i.e. under Bill 124 the DRP would not have the jurisdiction to award other compensation increases that had a total cost of more than \$612,060 for the period July 1, 2022 to June 30, 2023.

353. The University and the Association have since agreed to make specific improvements to the Dependent Scholarship Program, at an agreed-upon cost of \$315,000, such that the remaining “residual” is \$297,060.

354. The University relies on its own costings included herein in respect of the benefit improvements sought by the Association. To the extent that there is a discrepancy between the University’s costing of these proposals and the costings put forward by the Association, the University reserves the right to make submissions on any and all such costing discrepancies in its reply submissions.

355. To the extent that the expenditure of the remaining “residual” of \$297,060 is used to fund benefit improvements, consistent with the University’s position regarding such matters, any and all such improvements should take effect as expeditiously as is practicable following the issuance of the award.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.