IN THE MATTER OF AN ARBITRATION PURSUANT TO SECTION 55 OF *THE LABOUR RELATIONS CODE*, RSBC 1996, C. 244

BETWEEN:

UNIVERSITY OF NORTHERN BRITISH COLUMBIA

("UNIVERSITY")

AND:

UNIVERSITY OF NORTHERN BRITISH COLUMBIA FACULTY ASSOCIATION

("FA")

SUBMISSION OF THE UNIVERSITY OF NORTHERN BRITISH COLUMBIA

Gilligan-Hackett & Company
Suite 270, 1040 West Georgia Street
Vancouver, BC V6E 4H1
T: 604 681 3150
F: 604 681 3158

Solicitors for the University

Patrick Gilligan-Hackett

Counsel for the University

IN THE MATTER OF AN ARBITRATION PURSUANT TO SECTION 55 OF *THE LABOUR RELATIONS CODE*, RSBC 1996, C. 244

BETWEEN:

UNIVERSITY OF NORTHERN BRITISH COLUMBIA

("UNIVERSITY")

AND:

UNIVERSITY OF NORTHERN BRITISH COLUMBIA FACULTY ASSOCIATION

("FA")

SUBMISSION OF THE UNIVERSITY OF NORTHERN BRITISH COLUMBIA

INTRODUCTION

1. These are the University's submissions in connection with this arbitration pursuant to section 55 of the *Labour Relations Code*, R.S.B.C. 1996, c. 244 ("*Code*").

2. During collective bargaining, the University and the FA (collectively, "Parties") reached agreement to convert, with amendments, much of their pre-certification agreement ("Faculty Agreement") into a first collective agreement ("First Collective Agreement"). The terms and conditions of employment for the FA's members ("Member" or "Members", as the case requires) have long been established by the Faculty Agreement. Although the Faculty Agreement was not a collective agreement, it closely resembled a collective agreement in both form and formation. It contained common terms and conditions of employment for a contractually defined unit of employees and was negotiated at regular intervals between the University and the FA as the representative of the defined unit.

3. The issues that now remain in dispute between the Parties include compensation and the appropriate term for the First Collective Agreement.

4. The Parties remain far apart on compensation.

5. In recent years, and in particular since a February 4, 2014 interest arbitration award issued by Arbitrator Vince Ready pursuant to Article 46 of the Faculty Agreement ("Ready Award"), the University has faced an identifiable deterioration in its financial situation. This deterioration has resulted largely from marked declines in its two major sources of revenue – the operating grant provided to the University by the province ("Operating Grant") and tuition – as well as from increased human resources costs.

University's Book of Authorities, Tab 4

6. For 2014/2015, the University faced an unanticipated revenue shortfall of $1,361,987 and it now projects structural deficits for the forthcoming years.

7. In essence, section 29 of the *University Act*, R.S.B.C. 1996, c. 468 ("*University Act*") requires the University to balance its budget each year. For the purposes of the University's 2015/2016 budget, the University made a number of *one-time* adjustments in its expenditures – as described below – and as a result was able to balance its budget. However, the University has recently learned that student enrolment has once again declined for Fall, 2015. The University is now projecting a $1,400,000 shortfall from its tuition revenue projection for 2015/2016.

8. The University does not expect the foregoing revenue streams to recover in the near future.

9. The outcome of this section 55 process will, of course, be an important factor in the University's future human resources costs.

10. In the University's compensation negotiations with the FA, and as is discussed below, the University, like all public sector employers in British Columbia, is restricted to bargaining within the mandate established by the Public Sector Employers' Council ("PSEC").

11. Despite the above, the University identified measures during bargaining which enabled it to offer Members significant financial gains within its mandate from PSEC ("Mandate") in the First Collective Agreement. The University offered the following gains:

a. a general wage increase ("GWI");

b. adjustments to the salary floors and ceilings for each academic rank in the second and third years of the proposed five-year term;

c. enriched Career Development Increments ("CDIs"); and

d. new Enhanced Career Development Increments ("ECDIs") in the fourth and fifth years of the proposed five-year term.

In this regard, the University is committed to fostering the conditions for a collegial relationship at a research-focused university that serves students, faculty, staff, and community. However, it must do so within its financial constraints.

12. Both Parties recognize that compensation for Members as they progress through the ranks (often known as "PTR") is not consistent with provincial and national norms. To remedy those issues, the Parties proposed different solutions:

a. As is noted above, the University proposed a GWI, adjustments to the floors and ceilings for each academic rank, and ECDIs. The ECDIs would reflect career development, accommodate different rates of career development, and improve the University's PTR structure, making it competitive with comparator institutions. The University's offer is substantial. The University has costed its final compensation proposal at $4,529,000 over five years.

b. During bargaining, the FA did not propose a GWI but instead wanted the majority of resources dedicated to remapping the University's salary scales to provide automatic progression through the ranks at identical rates for all Members regardless of career development. The University costed the FA's compensation proposal alone at $19,446,273 over five years. The FA also made additional monetary proposals, which the University costed at $7,735,588. The FA's monetary proposals would increase the University's projected structural deficit by around $4,000,000 per year over the next five years. The University says that such a cost would not be financially sustainable.

13. The University says that many of the FA's proposals (both monetary and non-monetary) would represent breakthrough provisions. Given the conservative nature and stabilizing purpose of a section 55 arbitration, the University says that its final proposals in collective bargaining were and are appropriate for a First Collective Agreement.

FACTUAL BACKGROUND

The Parties

14. The University, which was established in 1990, is a research university continued pursuant to the *University Act*. In general terms, the University's mandate is to serve the needs of northern British Columbians. The University's main campus is in Prince George. It operates regional programs in other locations, including the Peace River-Liard (Fort St. John and Prince Rupert), Northwest (Terrace), South-Central (Quesnel), and Wilp Wilxo'oskwhl Nisga'a Institute. It also holds classes in other communities throughout British Columbia.

15. Between 1994 and 2014, the FA has represented a contractually defined unit of faculty members, librarians, senior lab instructors, and part-time instructors at the University.

16. Until 2014, the FA was a non-union employee association. As such, it enjoyed contractual recognition by the University as the representative of its members in, among other things, negotiations with the University to settle common terms and conditions of employment. These terms and conditions of employment were embodied in the Faculty Agreement.

17. On April 29, 2014, the Labour Relations Board ("LRB") certified the FA as the bargaining agent for a unit ("Unit") of: "tenured, tenure-track, and limited term professors, academic librarians, senior laboratory instructors, and sessional instructors, appointed either without home campus or at one of UNBC's campuses". There are currently approximately 355 Members in the Unit.

18. A chronology of both the Parties' bargaining towards the First Collective Agreement and the section 55 proceedings before the LRB forms Appendix A to these submissions.

Pre-Certification Faculty Agreement Negotiations

19. As Trevor Sones, the mediator appointed by the LRB in the section 55 proceedings, noted:

> *Although the University of Northern British Columbia Faculty Association was certified to represent a unit appropriate for collective bargaining under the requirements of the Code on April 29, 2014, this is not the first time these parties have made efforts to reach an agreement on a negotiated employment contract. The parties involved in this process have a long standing history of negotiation and determination of an employment contract. These past agreements have represented a compromise between the parties that would reflect many of the issues, challenges, limitations, and environment specific to these parties. In the context of bargaining a first collective agreement, the parties to this process have each represented and strongly advocated for a deal that will remedy and/or satisfy the unique challenges and opposing perspectives that have developed between them over time.*
>
> *...Through direct collective bargaining and collective bargaining with the assistance of a mediator, the parties have resolved the overwhelming majority of the articles that were set out on their initial agendas. The parties have each made numerous compromises and through productive dialogue have developed a number of solutions to the challenges before them. However, despite these efforts the parties reached impasse on a number of articles, most of which relate to the total compensation package that faculty members receive. It is the unique history of the past agreement outcomes of these parties that have in many ways created the current impasse. In the context of this dispute, it is the history of the parties['] employment relationship and the surrounding labour market and geo-political variables which are causing these parties to remain at impasse despite extensive efforts to seek compromise and despite 14 days of job action....*

University's Book of Documents ("UBOD"), Volume 1, Tab 1

20. Between the late 1970s and the early 1990s, the *University Act* prohibited faculty members at universities continued under the *University Act* from unionizing. In response to this prohibition, a "virtual collective bargaining" model developed at such universities. The typical features of this model were contractual recognition of a faculty association as the representative of a unit of faculty and librarians and some degree of negotiation at regular intervals to establish common terms and conditions of employment for that unit. The approach used at the University roughly tracked the model which had developed at the other research universities: the University of Victoria ("UVic"), Simon Fraser University ("SFU"), and the University of British Columbia ("UBC").

21. Around the time of the University's establishment on August 8, 1992, the University's Interim Governing Council approved a *Faculty Handbook: Interim Part One*. It was administered by a joint committee consisting of two members of the administration and two faculty members.

22. Following the formation of the FA, the University and the FA successfully negotiated Faculty Agreements in successive rounds of bargaining as is set out below. When the University has a record of the percentage of FA's members who voted in favour of ratifying the result, it is noted:

a. Around June 14, 1995 the FA's members ratified the Faculty Agreement with a term from June 14, 1995 to June 30, 1998;

b. Around July 1998 the FA's members ratified the Faculty Agreement with a term from July 1, 1998 to June 30, 2001 and 87% voted in favour of ratification;

c. Around July, 2001 the FA's members ratified the Faculty Agreement with a term from July 1, 2001 to June 30, 2004;

d. Around June 28, 2006 the FA's members ratified the Faculty Agreement with a term from July 1, 2004 to June 30, 2006 and 89% voted in favour of ratification;

e. Around October, 2007 (for monetary articles) and February, 2008 (for non-monetary articles) the FA's members ratified the Faculty Agreement with a term from July 1, 2006 to June 30, 2010; and

f. Around December, 2010 the FA's members ratified the Faculty Agreement with a term from July 1, 2010 to June 30, 2012 and 85% voted in favour of ratification.

23. From the outset, the Faculty Agreement contained an article providing that either or both of the Parties could refer any outstanding negotiation issues to an arbitration board for resolution. Interest arbitration, conducted on a replicative model, was therefore always available to the Parties to resolve disputes about the terms and conditions of employment.

UBOD, Volume 1, Tab 2

24. In the final pre-certification round of bargaining the FA invoked the arbitration provision for the first time when the Parties were unable to negotiate a new Faculty Agreement for the July 1, 2012 to June 30, 2014 term. The result of that arbitration was the Ready Award.

<u>Other Employee Groups at the University</u>

25. In addition to the Members, the University employs the following employees in the following administrative groupings:

a. support workers, tradespeople, supervisors, and English Language Studies (ELS) Associates (instructors) who are represented by a certified bargaining agent, CUPE, Local 3799;

b. an excluded group of middle managers and support employees working in a confidential capacity;

c. academic services employees who work in areas that are not funded by the University's general operating or ancillary funds. Such employees are usually employed on a limited term contract and perform or support academic research and other work financed by restricted funding;

d. students (usually graduate students in the case of Teaching Assistants) employed throughout the University to support various activities, usually teaching and research; and

e. senior management, deans, and executive directors/directors who constitute the University's excluded management group. Members of this group who hold an academic appointment (e.g., the Provost, Deans, and some Directors) compensation is determined in part by the provisions of the Faculty Agreement and in part by administrative stipends negotiated by the University on an individual basis.

26. On May 7, 2015 the University and CUPE, Local 3799 ratified a collective agreement with a five-year term from July 1, 2014 to June 30, 2019 and GWIs at the mandate established for public sector employers by the provincial government. The current mandate, known as the Economic Stability Mandate, is described below.

The University Context in British Columbia

27. There are now eleven universities in British Columbia.

28. They are continued by statute. The University is continued by section 3(1) of the *University Act.*

University's Book of Authorities, Tab 9

29. Under the *University Act* and associated regulations, there are two classes of university in British Columbia:

a. research; and

b. special purpose teaching.

30. The University is one of four research universities designated as such under section 3(1) of the *University Act.* The other three are UVic, SFU, and UBC.

31. Section 47 of the *University Act* requires all four of these universities to provide instruction and conduct research in all branches of knowledge. Section 47 of the *University Act* states:

Functions and duties of university named in section 3

47 (1) In this section, "university" means a university named in section 3 (1).

(2) A university must, so far as and to the full extent that its resources from time to time permit, do all of the following:

> *(a) establish and maintain colleges, schools, institutes, faculties, departments, chairs and courses of instruction;*
> *(b) provide instruction in all branches of knowledge;*
> *(c) establish facilities for the pursuit of original research in all branches of knowledge;*
> *(d) establish fellowships, scholarships, exhibitions, bursaries, prizes, rewards and pecuniary and other aids to facilitate or encourage proficiency in the subjects taught in the university and original research in all branches of knowledge;*
> *(e) provide a program of continuing education in all academic and cultural fields throughout British Columbia;*
> *(f) generally, promote and carry on the work of a university in all its branches, through the cooperative effort of the board, senate and other constituent parts of the university.*

32. The research universities continued under the *University Act* compete on both the national and global stages for recognition of their excellence and achievement.

33. National and international rankings of universities—based on such indicators as academic reputation and the impact of a university's research output—are now generally accepted as part of the higher education landscape. Universities named in such rankings use their rankings in promotional materials to, among other things, attract high quality students and top-ranked faculty who, in turn, enhance a university's reputation and overall success.

34. One of the leading global rankings is the Times Higher Education World University Rankings. For 2015-2016:

    a. UBC ranked 34th in the world;

    b. UVic ranked in the 201-250 range in the world; and

    c. SFU ranked in the 251-300 range in the world.

The University does not appear in the *Times* rankings, which focus on the top 800 universities in the world.

UBOD, Volume 1, Tab 3

35. However, the University has done well in another commonly cited ranking, the Maclean's rankings, which focus on Canadian universities. In the most recent Maclean's rankings, which were released shortly before the University filed this submission, the University placed first in the Primarily Undergraduate category. UBC placed third in the Medical Doctoral category (behind McGill and the University of Toronto). SFU and UVic placed first and third, respectively, in the Comprehensive category. The Maclean's Rankings use performance indicators based on five subject areas: students (28%), faculty (24%), resources (20%), student support (13%), and reputation (15%).

UBOD, Volume 1, Tab 4

36. In addition to the research universities continued under the *University Act*, two other British Columbia universities have research as part of their mandate. Both are established by their own statutes:

   a. Royal Roads University ("Royal Roads") is continued pursuant to the *Royal Roads University Act*, R.S.B.C. 1996, c. 409. It is a unique institution in British Columbia. It offers programs primarily to professionals working in the global economy. Most of its programs are at the master's level. It is authorized, under section 2 of its enabling statute, to "maintain research activities that support the university's programs"; and

   b. Thompson Rivers University ("TRU") (formerly University College of the Cariboo) was designated as a university in 2005 by the *Thompson Rivers University Act*, S.B.C. 2005, c.17. TRU was established to provide students in the region with expanded access to post-secondary options. TRU offers a wide range of programs, including master's and bachelor's degrees, diplomas, certificates, trades, apprenticeships and developmental programs. Like the special purpose teaching universities described below, TRU is required, by legislation, to serve the educational and training needs of the region and is authorized, under section 3 of its enabling statute, to "undertake research and scholarly activities'' for the purpose of offering the above-noted programs.

37. All of the above- named universities are members of the Research Universities Council of British Columbia ("RUCBC").

38. In addition, there are five special purpose teaching universities in British Columbia, designated pursuant to s. 3(1.1) of the *University Act*. Like TRU, each of these institutions is required to serve its local area (as shown opposite the institution's name in BC Reg. 220/2008) and is required to offer the particular program or programs specified in the regulation. These universities are teaching-focused and primarily serve undergraduates but have some scholarly research activities.

The General Economic Framework for Collective Bargaining at the University

39. Under section 29 of the *University Act*, the University must operate with a balanced budget:

> *(1.1) The board [i.e., University's Board of Governors] must not incur any liability or make any expenditure in a fiscal year beyond the amount unexpended of the grant made to the university and the estimated revenue of the university from other sources up to the end of and including that fiscal year, unless an estimate of the increased liability or over-expenditure has been first approved by the [Minister of Advanced Education] and Minister of Finance.*

40. Section 58 of the *University Act* imposes preconditions on any borrowing activity by the University:

> *(1) With the approval of the [Minister of Advanced Education] and Minister of Finance, a university may borrow money for the purpose of*
>
> > *(a) purchasing or otherwise acquiring land for the use of the university, or*
> >
> > *(b) erecting, repairing, adding to, furnishing or equipping any building or other structure for the use of the university.*
>
> *(2) The board may*

(a) enter into any agreement that it may consider necessary or advisable for carrying out the purposes mentioned in this section, and

(b) execute in the name of the university all agreements, deeds and other instruments considered necessary or advisable to carry into effect the provisions of the agreement.

41. The *Public Sector Employers Act*, R.S.B.C. 1996, c. 384 ("*PSEA*") establishes PSEC.

University's Book of Authorities, Tab 8

42. The purposes of the *PSEA* are set out in section 2. Those purposes are: to ensure the coordination of human resource and labour relations policies and practices among public sector employers and to improve communication and coordination between public sector employers and representatives of public sector employees.

43. Government establishes a mandate for all public sector employers in collective bargaining with all public sector employees, which PSEC enforces. The mandate sets, among other strategic objectives, the maximum allowable changes in employee compensation.

44. In the University's case, like that of every other public sector employer in British Columbia, PSEC must approve its bargaining plan before the University makes any offers to its employee groups. In addition, once a tentative agreement has been reached, PSEC must approve it.

45. The Economic Stability Mandate applies to the current round of collective bargaining between the University and the FA and between the University and other employee groups at the University. The Economic Stability Mandate is as follows:

   a. a 5-year term;

   b. GWIs over the five-year term totalling 5.5% as follows: 0%, 1%, 1.5%, 1.5%, and 1.5%, with the increases in the last three years to be implemented on a staggered basis; and

c. a potential for additional increases if growth in British Columbia exceeds the annual forecasts set by the Economic Forecast Council during the last four years of the agreement. This is known as the Economic Stability Dividend.

In addition, with prior PSEC approval the Economic Stability Mandate also permits public sector employers like the University to provide additional monetary increases when the employer has identified internal savings to fund the increases. The Economic Stability Mandate ("Mandate") referred to in these submissions includes such PSEC-approved additional monetary increases.

UBOD, Volume 1, Tab 5

46. The PSEC mandate does not have legislative force. In the Ready Award, Arbitrator Ready found, for this reason, that the then current PSEC mandate did not bind him. However, Arbitrator Ready also recognized that the PSEC mandate was "a relevant aspect of the [University's] economic environment" (at 8-9, 12, and 14).

47. Further, PSEC has informed the University that government will not fund any settlement or arbitral award in excess of the GWIs provided for in the Mandate (see paragraph 45). As a result, the University has and will be required to repurpose funds internally – to the extent the University has funds to repurpose – to cover any compensation in excess of the GWIs contemplated in the Mandate.

UBOD, Volume 2, Tab 28 at 2

48. Further, PSEC has further informed the University that if the First Collective Agreement has a term of less than five years, whether by agreement or order, the Mandate will continue to apply to the then remaining balance of the five years covered by the Mandate.

<u>The Characteristics of Research Universities</u>

49. An understanding of research universities and their focus on excellence and achievement is necessary to understand the general context against which these Parties are negotiating their First Collective Agreement.

50. Worldwide, one of the core missions of research universities is research production including its close association with training both undergraduate and graduate students to engage in research. Research universities teach in a scholarly environment that is

informed, stimulated, and enriched by research-inspired insights. They take pride in providing an environment for discovery and innovation. They foster an intellectual climate that encourages scholarship. They provide research infrastructure, as an interface between researchers and funding agencies, in order to support faculty members in obtaining research funding through competitive peer-reviewed processes.

51. Excellence is the goal of every research university under the *University Act*. This is confirmed and illustrated in each institution's strategic plan:

a. UVic's Strategic Plan, A Vision for the Future – Building on Excellence (2012) (http://www.uvic.ca/strategicplan/) states the institution's commitment to the highest standards of excellence;

b. SFU's Strategic Vision, The Engaged University (http://www.sfu.ca/content/dam/sfu/engage/StrategicVision.pdf), speaks of promoting research excellence and excellence in teaching; and

c. UBC says that it strives for excellence in research and teaching (http://strategicplan.ubc.ca/).

52. The UNBC University Plan 2010 (http://www.unbc.ca/sites/default/files/reports/unbc-university-plan.pdf) speaks of being a student-centered, research-intensive university, uniquely Northern in character, and of national and international acclaim. It speaks of attaining the highest standards of undergraduate and graduate teaching, learning, and research.

53. Indicia of excellence in research universities include highly qualified faculty conducting leading-edge or ground-breaking research that is published in top-tier academic journals, as well as quality teaching, strong student-faculty engagement, high levels of government and non-government funding to support research and scholarship, and the ability of the institution to recruit and retain top-ranked and intellectually gifted graduate students and postdoctoral fellows.

54. Faculty at British Columbia research universities can generally be classified into two groups: tenure-track faculty and teaching-only faculty.

55. The emphasis placed by research universities on achievement and excellence is recognized in, among other places, the faculty tenure and promotion system which is found at all such universities in Canada.

Initial Appointment, Renewal, Tenure, and PTR

56. Under a standard university tenure and promotion system, there are usually three ranks of tenure-track faculty: assistant professor, associate professor, and professor (or full professor). Tenure-track faculty are usually hired at the lowest rank and progress over their careers to the highest rank. As is noted above, this progression is often referred to as PTR. Increases in compensation are closely associated with PTR.

57. The primary duties and responsibilities of full-time, tenure-track faculty are described in similar terms at virtually all Canadian universities. These responsibilities fall under three general headings: teaching; research, scholarly, or creative activity; and service to the university and the community.

General

58. The initial appointment as a tenure-track assistant professor at a research university is usually for a period of three years. It is a probationary appointment in the sense that a research university normally expects a tenure-track appointee to meet the criteria for renewal and, subsequently, to meet the criteria for achieving tenure after six or seven years in rank. Reappointment, tenure, and promotion reviews are among the most important decisions made by an academic community. The granting of tenure reflects a high degree of trust in and a long-term commitment to the employment of a faculty member without close supervision.

59. As Arbitrator Luborsky wrote recently in *Ryerson University v. Ryerson Faculty Association*, [2015] O.L.A.A. No. 11:

> *The decision by a university to grant tenure is a milestone of accomplishment for the individual professor, usually following years of study and dedication to his or her chosen field. To the university it is at the heart of its identity and future, since once tenure is awarded it is difficult to remove and the professor has broad academic freedom to set his or her own direction that impacts the institution's reputation, funding and ability to attract quality students. Recognizing the university may only be as good as its tenured faculty, the collective agreements in this sector typically set*

out detailed requirements for conferring tenure that seek to strike an appropriate balance of the important personal and institutional interests involved.

University's Book of Authorities, Tab 3

60. The process for evaluating a candidate for tenure and promotion is normally rigorous. In general terms, the candidate is assessed by a departmental committee composed of his/her peers which considers how well the candidate has performed his/her teaching, research, and service duties. External referees are engaged to assess a candidate's performance in research and scholarship, as evidenced by his/her publication record and his/her reputation among other scholars in his/her field of major interest. External referees are asked to provide an independent and unbiased evaluation of the candidates' research and scholarly performance. The candidate's teaching ability and general contributions to the university are usually assessed internally. Usually, the departmental committee makes a recommendation to grant or deny tenure (or promotion) to a faculty committee (or to a dean, or to the provost) and the president. Pursuant to the *University Act*, appointments, reappointments, tenure decisions and promotions are made by a university's board of governors, on the recommendation of the president.

Criteria

61. Tenure-track faculty usually have a Ph.D. in their respective disciplines and are hired without tenure at the rank of assistant professor (or, temporarily, at the rank of lecturer) for a term of three or four years. Renewal of tenure-track faculty for a second and final term is based on satisfactory performance in teaching, research, and service.

62. Appointment to the rank of assistant professor presumes a strong academic record, coupled with the aptitude to become a successful teacher and the potential to grow in stature as a scholar.

63. Promotion through the academic ranks requires ever increasing levels of academic and teaching prowess. Promotion from assistant professor to associate professor generally requires the member to have engaged in sustained and productive scholarly activity that has made a substantial contribution to his or her academic discipline and recognition as an established scholar. Promotion from associate to full professor is

reserved for those who have excelled in teaching and research and generally requires scholarship that has attained wide recognition at a national or international level and which reflects an appropriate standard of excellence.

64. Further to the *University Act*, the University is a research university. It has been recognized at the national level for its achievements and aspires to a level of achievement comparable to the other BC research universities. In bargaining for the First Collective Agreement, the University's proposals were designed to foster excellence and recognize and reward achievement at the University.

OUTSTANDING MATTERS IN DISPUTE

65. As is reflected in the correspondence between the Parties and this arbitration board, there is, in large part, agreement about the matters which remain in dispute. They are:

- Proposals that are predominately monetary (although a number of them also propose language revisions that do not have monetary implications):
  - Article 48/I-1 (Compensation);
  - Article 21/E-2D (Awarding of ECDIs);
  - Article 50/I-2 (Pensions and Benefits);
  - Article 54/F-1 (Sabbatical Leave);
  - Article 55/F-2 (Academic or Professional Leave for Librarians and Senior Lab Instructors);
  - Article 56/F-3 (Assisted Study Leave); and
  - Article 61/F-7 (Sick Leave).
- Proposals that are predominantly non-monetary:
  - Article 75/J-4 (Duration of the Agreement);
  - Article 22/E-4 and E-8 (Renewal, Tenure and Promotion of Faculty); and
  - Article 23/E-7 (Letters of Reference).

66. The Parties appear to agree that Article 24 may remain in dispute within the parameters described by the FA at bargaining on January 25, 2015. If changes are made to Article 22, Article 24 remains open to allow for the specific changes that *might* then be required as a result of the changes to Article 22.

67. In addition, the University says the FA is impermissibly attempting to revive two matters that were resolved when the Parties signed-off certain agreed Articles:

- Article XX;
- 19MOU/19A.

68. More particularly, the University says that XX and 19MOU/19A contain language that was tabled by the FA as part of a proposal that resulted in a signed off article and from which the language in question was dropped by the FA. The University is concerned that the FA now appears to be reviving language which it dropped at bargaining by re-characterizing the language as a new proposal.

69. In particular, around December 3, 2014 the Parties entered into an "Agreement on Bargaining Process". It contained the following provision:

> 6. Once an article under the categories listed above is negotiated and [the] parties reach agreement that article is no longer open for future negotiation....

UBOD, Volume 1, Tab 6

70. According to the FA's response to the University's section 55 application, it tabled 19MOU on March 25, 2015 and XX on March 12, 2015, in both cases long after the Parties had signed the Agreement on Bargaining Process.

71. The University's submissions below address the duration of the First Collective Agreement as a threshold issue, then turn to the Parties' outstanding monetary and non-monetary proposals.

ARGUMENT

Appropriate Duration for the First Collective Agreement

72. In *Re Yarrow Lodge Ltd.*, BCLRB No. B444/93 ("*Yarrow*"), the LRB made the following statement about the appropriate term for a first collective agreement:

> *A further factor related to the specific terms and conditions of employment is the duration of the agreement. Most academic commentators, including Weiler, have concluded that one year collective agreements do not provide*

> *sufficient time to accomplish the goal of establishing enduring collective bargaining relationships. The reason is that a year is found to be insufficient to heal the wounds of a fresh dispute and also, inadequate to assist in building a future relationship.* <u>*It will therefore be the policy of this Board to require a minimum term of two years, commencing from the date of the award, unless the parties agree otherwise.*</u>
>
> [Emphasis added.]

73. In collective bargaining, the FA proposed a two-year agreement and the University proposed a five-year agreement.

74. Under the approach set out in *Yarrow*, the minimum duration of the First Collective Agreement would be two years from the date of this arbitration board's award.

75. The University says that in the present circumstances and given the above statement in *Yarrow*, this arbitration board ought to order a five-year term in an effort to stabilize the Parties' relationship following several years of significant disruption.

76. In effect, the Parties have been bargaining terms and conditions of employment since Spring, 2012.

77. In Spring, 2012 the Parties began negotiating to renew the Faculty Agreement for a term starting on July 1, 2012. During that process, the Parties negotiated extensively and participated in mediation. Ultimately, they ended up in an interest arbitration before Arbitrator Ready which concluded in November, 2013.

78. In February, 2014 Arbitrator Ready issued the Ready Award.

79. Soon afterwards, the FA began the organizing drive which led to a certification in April, 2014.

80. In May, 2014 the Parties started to negotiate the First Collective Agreement. They met many times for this purpose.

81. From March 5 to 19, 2015 the FA engaged in a full strike.

82. Since that time, the Parties have been engaged in the section 55 process under the *Code*.

83. By the time this arbitration board issues its Award, the Parties will have been engaged in almost four years of negotiating and dispute resolution in connection with the Members' terms and conditions of employment.

84. The inherently adversarial nature of bargaining, which culminated in the strike, has had a serious adverse impact on the relationship between the Parties. That relationship will take significant time to rebuild.

85. Further, the University says that it would be appropriate to coordinate the end of the First Collective Agreement with the collective agreement of the other unionized group of employees at the University, CUPE, Local 3977. CUPE has signed a five-year agreement ending on June 30, 2019.

86. A related approach has been applied in an arbitration pursuant to section 55 of the *Code*. In *Compass Group Canada*, [2007] B.C.C.A.A.A. No. 61 (Lanyon, Q.C.), the arbitration board coordinated the term of the First Collective Agreement with a collective agreement establishing the terms and conditions of similar employees performing similar work for which the bargaining agents were the same.

<u>Other Outstanding Articles</u>

The Arbitration Framework

87. Further to *Yarrow*, arbitrators apply two framework principles in an arbitration under section 55 of the *Code*: "replication" and what is "fair and reasonable in the circumstances".

88. In *Yarrow*, the LRB said:

> *In reviewing the past policy of the Board and the policy of other jurisdictions in Canada, we set out the following criteria to be used by arbitrators in determining the terms and conditions of a first collective agreement....*
>
> *Our objective is to provide arbitrators with both guidance and flexibility in determining the actual terms and conditions of employment. These factors are as follows:*

A first collective agreement should not contain breakthrough or innovative clauses; nor as a general rule shall such agreements be either status quo or an industry standard agreement.

Arbitrators should employ objective criteria, such as the comparable terms and conditions paid to similar employees performing similar work.

There must be internal consistency and equity amongst employees.

The financial state of the employer, if sufficient evidence is placed before the arbitrator, is a critical factor;

The economic and market conditions of the sector or industry in which the employer competes must be considered.

The first factor is based on the fact that new or innovative clauses ought to be left to subsequent collective agreements when they can be bargained by the parties themselves. Similarly, first collective agreements should neither be status quo or industry standard agreements except in rare circumstances.

The second factor, the use of comparables, is something which has been part of the history of interest arbitration since its inception, and is perceived by both parties to be an objective criteria and in line with their expectation as to what the result at the bargaining table ought to be.

The third factor, internal equity refers to several things: first, ensuring that appropriate relationships are maintained between different employees in regard to the qualifications and the nature of their work and the responsibilities which they assume. However, it also refers to issues of employment equity and pay equity and to whatever legislative schemes may be in existence now or in the future.

With respect to the fourth factor, it goes without saying that the financial state of the employer is crucial to any imposed settlement. However, it is clear that no judgement concerning the financial viability of the employer can be made or considered unless such evidence is placed before the arbitrator.

As noted by the Sub-committee of Special Advisors, and as stated earlier in this decision, no imposed first agreement should in any way place an employer in jeopardy of its business surviving. That, as a matter of public policy, is incorporated within first contract arbitration; it is also a matter of common sense to every employee, union and employer. An employer who relies on this criteria, and can demonstrate to an arbitrator's satisfaction, that the position it is taking in bargaining is consistent with its available financial resources, is entitled to have its position given significant weight. Conversely, an employer who attempts to rely on this factor, but refuses to reveal evidence that would support its position, or gives insufficient evidence or perhaps misrepresents its position, will have little or no weight assigned to this factor or its position.

The final factor is the economic and market conditions of the sector in which the employer competes. It goes without saying that free collective bargaining must be responsive to our market system. If a particular sector is mired in a recessionary slump, if our natural resources prices are suffering a decline, or conversely if there is projected growth in a particular industry, or certain markets will suddenly be expanded, these factors must be considered in setting the terms and conditions of employment.

University's Book of Authorities, Tab 7

89. In the University's submission, the factors in *Yarrow* are not exhaustive and other relevant objective factors ought to be considered by this arbitration board when applying both of the above principles. This is particularly the case here. As is noted above, this is not a typical section 55 arbitration. The Parties have engaged in a form of virtual collective bargaining for over 20 years.

90. For this reason, the University says that factors identified by interest arbitrators outside the section 55 context are of more relevance here than might otherwise be the case.

91. In *Western Canadian Coal Corp. –and- Construction and Allied Workers' Union, Local 68 (Collective Agreement Grievance)*, [2010] B.C.C.A.A.A. No. 127 (Ready) at paras. 8-12, the arbitration board stated:

Prior to addressing the issues in dispute and the positions of the parties, I will briefly set out the role of an interest arbitrator in a dispute of this nature. Stated succinctly, the role of an interest arbitrator is to craft a Collective Agreement, which replicates an agreement the parties would have ultimately reached on their own within the confines of the reopener set out above.

The replication principle of interest arbitration necessarily requires careful assessment of the factors that would drive a freely negotiated resolution, bearing in mind it is the parties' own refusal to make the necessary compromises to achieve a negotiated settlement, that has led to third party intervention.

An arbitrator must act without concern to the parties' respective self-imposed subjective limitations and criteria, but rather must resort to the objective economic realities and market forces that would ultimately have forced the parties themselves to a settlement.

In Board of Police Commissioners of the Corporation of the City of Regina and the Regina Police Association, unreported, April 21, 1994 (Ready), I set out, in the context of a city police force, the types of objective considerations that drive a bargain, as follows:

> *In my view, the appropriate replication approach imposes an obligation on the arbitrator to essentially stand in the shoes of the negotiators and pose the question: what settlement is possible in the current circumstances? Answering this question requires that the arbitrator view and examine the evidence, as well as examine factors such as current economic conditions, the cost of living index, a comparison of other police force settlements, internal comparisons (i.e., settlements between other unions and the same employer) and collective agreements negotiated generally in both the public and private sectors. This, of course, is not a complete list of factors. It is, however, typical of the factors assessed by negotiators representing each side of the bargaining table when the crunch comes and it is time to settle a collective agreement.*

In the current situation, the relevant objective factors that would drive a freely negotiated resolution include the economic climate in which the collective bargaining currently takes place; comparable collective agreements in the same *industry; comparable collective agreements in the same geographical area; and the financial circumstances and viability of the employer. While this is not intended to be an exhaustive list, most of these items are typical factors which these parties would consider in settling their Collective Agreement.*

[Emphasis added.]

University's Book of Authorities, Tab 6

92. The University also relies on the following additional objective criteria:

a. the cost of living;

b. settlements with other employee groups at the University, in particular the settlement with the other certified bargaining agent at the University; and

c. collective agreements negotiated generally in both the related public and private sectors.

93. At the outset, the University says that in applying the replication principle, and in connection with the Parties' compensation proposals, the best indicator about the First Collective Agreement that the Parties would have reached had they been able to reach an agreement freely is the agreement reached between UVic and its Faculty Association.

94. Like the University and the FA, UVic and its Faculty Association were negotiating a first collective agreement after a long history of negotiating agreements about common terms and conditions of employment in a non-unionized bargaining relationship. They were doing so under the Economic Stability Mandate and ultimately agreed on a five-year term reflecting the terms of the Economic Stability Mandate.

95. At the same time, the University's final compensation proposal is significantly richer than the UVic settlement. This is because the University recognizes that the current CDI structure at the University has led to an identifiable gap between the compensation paid to Members and the compensation paid to faculty at the other research universities in British Columbia. The University's final compensation proposal is, therefore, tailored to respond to this recognition. It provides monetary

gains for Members in excess of the GWIs provided for under the Mandate by repurposing existing funds.

Monetary Proposals

Costings

96. For purposes of this arbitration, the University has costed both its and the FA's monetary proposals on a five-year basis. A summary of the costings is at **UBOD, Volume 2, Tab 17**.

97. The University's costing of its monetary proposals is at **UBOD, Volume 2, Tab 18**. The University's costing of the FA's monetary proposals is at **UBOD, Volume 2, Tab 19.**

98. The University's proposal offers a compensation package with a cumulative cost over a five-year term of $4,529,000. This cost includes both the GWIs provided for by the Mandate; salary scale adjustments in the second and third years of a five-year term; and ECDIs in the fourth and fifth years of a five-year term. The costing does not include the Economic Stability Dividend that might be available under the Mandate because the availability of the dividend depends on external economic factors.

99. The details of the FA's proposals are set out in the FA's submission. The FA has proposed compensation and benefit increases with a cumulative cost over a five-year term of $19,466,272 for Article 48 (Compensation) alone and a total of $27,181,861 for all of the FA's monetary proposals.

100. At the University, as is normally the case at Canadian universities, individuals appointed to academic administrator positions are faculty members. In the normal course, once the individual's appointment as an academic administrator ends he/she returns to his/her previous faculty position unless he/she resigns. For that reason, in connection with both the University's and FA's compensation proposals, there are costs for individuals who are currently academic administrators who hold faculty appointments. The University recognizes that these costs are not attributable *per se* to the Unit during the term of the First Collective Agreement. To allow for easy exclusion of thee costs, an addendum showing the amount included in the costings for the faculty appointments held by academic administrators is at the final page of **UBOD, Volume 2, Tab 19.**

101. A costing of the effect of the FA's grid remapping proposal on individual Members' compensation is at **UBOD, Volume 2, Tab 20**.

102. For purposes of the above costings, the University has used a salary base consisting of $26,486,505. This number reflects the base salaries for Members, including budgeted allocations for sessional instructors, and related benefits.

The University's Economic Circumstances

Background

103. The University says that an understanding of its economic circumstances requires an analysis of actual and reasonably expected changes in the University's revenue stream because its costs are relatively fixed.

104. The University necessarily has ongoing and relatively inflexible expenses relating to both its significant complement of human resources and the physical facilities which are required to fulfill its statutory purposes.

105. In this regard, a contemporary research university in British Columbia operates far more in the way of physical infrastructure than classrooms, laboratories, and a library. This reality has received judicial recognition. In *Assessors of Areas #1 and #10 v. University of Victoria*, 2010 BCSC 133 at para. 154, in determining what constituted "university purposes" within the meaning of section 54 of the *University Act*, the court observed that modern universities provide a:

> *....broad array of ancillary services... beyond the provision of academic courses, research and granting degrees that may legitimately qualify as "university purposes" under s. 54(1)..... The services carried out at those properties, and hence the uses of such properties, are important and convenient to the student body and demonstrably beneficial to the quality of their university life. While it is true that they are not indispensable or critically necessary to the attainment of the university's educational objectives, they have a substantial and reasonable connection to the furtherance and advancement of the multiple bona fide broad objectives of a modern Canadian university, including attracting and retaining the ever vital student body. In that way, they qualify as "university purposes" as contemplated by s. 54(1)....*

106. Contemporary research universities like the University require and maintain substantial infrastructure – both human and physical – to discharge their mandate: the search for and dissemination of truth through research, teaching, and service. Indeed, that infrastructure is an essential foundation if Members are to perform their work.

107. As with any service organization, the vast majority of the University's committed expenditure relates to the salaries and benefits which are paid to the University's employees. Given the magnitude and relatively inflexible nature of the University's employee-related expenditures, marginal negative changes in the University's revenue stream have an immediate and negative impact on the resources which are available to the University to pay increases in employee-related costs.

The University's Financial Structure

108. A general appreciation of the University's financial structure and its related budgetary processes will assist this arbitration board to understand the constraints which affect the University's finances.

109. The University maintains five separate categories of funds to track its revenues and expenditures: Consolidated General Operating; Ancillary Services; Specific Purpose (which includes the University's endowment monies); Sponsored Research; and Capital.

110. Each such fund has discrete sources of funding and, in some cases (i.e., Specific Purpose and Sponsored Research), the money in the Fund, whether it represents current or accrued revenue, is held wholly for designated purposes related to the University's core operations, typically under specific or trust-like restrictions. In other funds (most notably Ancillary Services and Capital), the money in the Fund, whether it represents accrued or current revenue, is held for specific purposes related to the University's core operations, typically under specific conditions. Revenue in these funds is not generally available to pay Members' salaries and benefits.

111. The existence of multiple funds, each with its own characteristics, the budget process, and the differences between internal and external management accounting have sometimes created confusion among users of the University's financial

statements. In recognition of this issue, the University provided a high level reconciliation between its financial statements and budget documents for the 2013/14 fiscal year in the 2015/16 Financial Overview & Budget Framework approved by the Board of Governors ("Board"): **UBOD, Volume 2, Tab 23**.

112. The Consolidated General Operating Fund, referred to above, has five main components: General Operating Fund ("GOF"), Carryforward, Northern Medical Program, Routine Capital, and Professional Development/Start-up Funds. With the exception of the General Operating Fund, amounts in the other funds are restricted in use by internal policies and agreements or by external requirements imposed by third parties or both. Most significantly, the Northern Medical Program Fund, which amounts to around $7,000,000, is wholly restricted to use for the Northern Medical Program.

113. In contrast to the restricted funds noted above, money in the GOF represents the University's current, and with limited exceptions related to revenue designated for specific purposes, discretionary revenue for purposes of funding the compensation for all employees including, with limited exceptions (e.g., endowed chairs and Canada Research Chairs), the compensation of Members.

114. An understanding of the University's budget and budgeting process provides a helpful and necessary foundation for undertsanding the specific negative pressures which are now affecting the University's revenue stream in the GOF. These pressures have increased since the Ready Award.

115. The University's budgeting process for the GOF is as follows:

a. The University does not have a prescribed budget planning process. Budget details are determined annually based on the unique needs associated with a given year. What follows is, therefore, a description of the general budgeting process which is used by the University on an annual basis. It is important to note that the University is currently involved in a planning process which will have an impact on how budgets are developed in the coming years.

b. The University's fiscal year starts on April 1 and ends on March 31. (For ease of reference and to avoid confusion: the University's academic year starts September 1 and ends August 31; and the contract year of the Faculty Agreement started on July 1 and ended on June 30.)

c. In connection with each fiscal year, the University prepares a document known as the General Operating Fund Budget Planning Framework ("BPF"). Each BPF contains a projection for the then upcoming three fiscal years and includes the budget for the current fiscal year: **UBOD, Volume 2, Tabs 21-23**.

d. The University starts reviewing the parameters that make up the budget portion of the BPF in the summer of each year. The BPF projection does not contain a line item breakdown of the University's expenditure, nor is it a detailed forecast of the University's expenditure. It is an estimate of projected revenues and expenses based on a set of assumptions, including assumptions about the continuation of staffing, services, and operations based on maintaining the status quo.

e. Usually in November but occasionally in September of each year, the University presents the complete BPF to its Board of Governors. This presentation includes the planning projections, planning assumptions, and recommended courses of action for the University's detailed budget planning.

f. Assuming the Board approves the BPF, the Provost and the Vice President, Administration and Finance give operating units direction about and the parameters for planning, including any budget reduction targets. The budget office then provides each operating unit with an Excel spreadsheet reflecting current budget information. Each operating unit updates the applicable Excel spreadsheet to reflect its detailed revenue and expenditure plan for the then upcoming fiscal year. The total amount of the revenue and expenditure plan must reflect the operating unit's budget target for the year.

g. Usually, this process takes place during December and January. Operating units then provide their detailed revenue and expenditure plans to the Budget Office and the Provost or Vice President, Administration and Finance, as applicable; summarized information, including proposed changes to the plan for each area, is presented to the President's Executive Council ("PEC") for discussion and review, from about mid-February to early March. The PEC makes final decisions regarding overall budget plans for recommendation to the Board of Governors. The Budget Office then takes the information provided by the operating units, together with the PEC's decisions, and compiles a detailed budget.

h. A summary of the detailed budget is presented to the Board for approval at the end of March in each year. Assuming the Board approves the budget summary, each operating unit is provided with access to detailed information regarding its portion of the budget through the University's online FAST Finance system by the end of April in each year.

Revenue

116. In general, university revenues in BC are from three sources: the Operating Grant; student tuition and fees; and other revenue.

117. In the case of the University, by a large margin, the University's GOF revenue is from two of these three sources:

a. tuition, which currently constitutes around 25% of the University's GOF revenue; and

b. the Operating Grant, which currently constitutes around 70% of the University's GOF revenue.

118. In the Ready Award, Arbitrator Ready held, with respect to the University's revenues, that "costs and revenues are relatively fixed and predictable with minimal fluctuations" and "international student tuitions considerably offset domestic under enrollment" (at 13).

119. Arbitrator Ready concluded that the facts before him did not "by any measure, create the impression of dire financial circumstances, or of a situation preventing the institution from re-ordering its spending priorities" (at 14).

120. At the time of the Ready Award, the University's student enrolment had remained stable in the preceding years. Further, although the province had informed the University that reductions to the Operating Grant would be forthcoming, the University had recently learned that for 2013/2014, the reduction would be $130,000 rather than the previously anticipated $520,000: **UBOD, Volume 2, Tab 24 at 1-2.**

121. After making the above finding, Arbitrator Ready ordered moderate GWIs of 2.5% in each year of a two-year agreement. At around the same time, Arbitrator Colin Taylor, QC made a very similar award at UBC and a similar but slightly different award at UVic (a 2% GWI and a flat lift of $1,000 in each year of a two-year agreement).

Arbitrator Ready made his award in response to FA proposals for compensation and benefit increases with a cumulative cost (as costed by the University) over a two-year term of $8,557,283. This cost represented increases of 14.20% in the first year and 4.45% in the second year.

122. Since the Ready Award, the University has, in fact, experienced significant negative pressure on its revenue from both tuition and the Operating Grant. Revenue from both sources has declined.

Tuition

123. Tuition revenue is directly linked to levels of enrolment. The University has experienced a marked decline in overall student enrolments in the most recent academic years:

	2010/2011	2011/2012	2012/2013	2013/2014	2014/2015
Domestic Undergraduates	2,401	2,322	2,349	2,265	2,110
Domestic Graduate Students	533	562	539	568	543
International Undergraduates	154	183	203	194	170
TOTAL	**3,088**	**3,067**	**3,091**	**3,027**	**2,823**

UBOD, Volume 1, Tabs 7A and B

124. On November 1, 2015, the University finalized its audited enrolment numbers for Fall 2015. Enrolment has again fallen.

125. The University tends to experience higher enrolment in the Winter than the Fall semester. However, final numbers for the Winter 2016 semester are unknown at this time. For comparison purposes, the best available indicator is the trend in Fall enrolment. Like total annual enrolment, it has shown a declining trend:

	Fall 2012	Fall 2013	Fall 2014	Fall 2015
Domestic Undergraduates	2,226	2,137	2,032	1,935
Domestic Graduate Students	560	611	583	535
International Undergraduates	166	160	147	130
TOTAL	**2,952**	**2,908**	**2,762**	**2,600**

126. As a result of the sustained decline in Fall enrolment and the related decline in total enrolment, the University is now projecting a shortfall of approximately $1,400,000 in the budgeted amount for 2015/2016 tuition revenue.

127. Contrary to Arbitrator Ready's finding, the decrease in undergraduate enrolment has not been offset in recent years by international undergraduate enrolments. International undergraduate enrolments have also fallen.

128. International students pay 3.5 times the domestic tuition rate. As a result, relatively small changes in international enrolment levels are leveraged and have a correspondingly higher impact, whether positive or negative, on the University's revenue from tuition.

129. Within overall enrolments, until relatively recently, there had been growth in international student numbers. As a result of the higher international tuition rate, this growth had offset the loss in tuition and fee revenue from declines in domestic undergraduate enrolments. However, in 2014/15 and Fall, 2015 revenue from international student enrolments has also declined.

130. As was the case at the time of the Ready Award, and since 2005, the province has limited annual increases in domestic tuition and mandatory fees to 2%: **UBOD, Volume 1, Tab 8.**

131. As a result of the foregoing:

a. For 2013/2014, and after Arbitrator Ready issued the Ready Award, the University learned that its final tuition revenues were $385,059 less than the amount projected in the University's approved GOF budget;

b. For the 2014/2015 academic year, the University's tuition revenues were $1,769,602 less than the amount projected in the approved GOF budget. This was the primary driver of the unexpected $1,361,987 revenue shortfall for the University's 2014/2015 fiscal year;

c. The combination of the drop in enrolment and the limits on tuition and fee increases (after taking into account increased revenue from the new Masters of Engineering Program) resulted in the University reducing its budget for tuition revenue by $930,000 for the 2015/16 fiscal year.

d. The University is now projecting a revenue shortfall of $1,400,000 in the amount budgeted for tuition revenue for 2015/2016. As is set out above, the projected revenue from this source had already been reduced. The new projection results from the Fall, 2015 declines in enrolment in all student categories.

The Operating Grant

132. The Operating Grant is the annual amount provided by the provincial government to enable the University to:

a. deliver academic programming and the related services which are required to meet student needs;

b. maintain its facilities;

c. meet regulatory requirements; and

d. provide necessary support services for a targeted number of undergraduate and graduate spaces in targeted and unspecified programs. The amount of the Operating Grant is determined by the provincial government and that amount is generally known for between one and three years in advance.

133. In developing a financial plan for the GOF, the amount of the Operating Grant is generally considered to be fixed and is incorporated into the budget based on

information provided by the provincial government. While the risk that the budgeted level of the Operating Grant will not be received is small, the amount is always subject to change based on overall provincial needs and priorities: see **UBOD, Volume 1, Tab 9 at 3**.

134. With regard to current and near current trends affecting the Operating Grant:

a. For 2013/2014, it was <u>reduced</u> by $128,000;

b. For 2014/2015, it was <u>reduced</u> by a further $512,000; and

c. For 2015/2016, it was <u>reduced</u> by a further $665,000.

d. For 2015/2016, the University will receive a $1,200,000 grant to support a new Masters of Engineering Program and to support the wage increases provided for by the Mandate, but with small exceptions this grant is restricted to those specific purposes: **UBOD, Volume 2, Tab 23 at 4**.

135. The University has, therefore, now experienced an effective annual reduction in its Operating Grant of $1,305,000.

136. The University does not expect that revenues from either tuition or the Operating Grant will recover in the near future. At the same time, the University's expenses have increased moderately.

137. The University is, therefore, dealing with significant negative pressures on its two primary revenue sources. Due to the restrictions and conditions noted above, this pressure is necessarily focussed on expenses incurred in the GOF.

138. In this regard, it is also important to remember that increases to salaries and corresponding benefits which fall outside either the GWIs provided for in the Mandate or additional government funding that is available to pay for salaries and benefits, represent an increased cost to the University. This cost puts further, significant pressure on the University's bottom line because such increases represent annual and compounding additions to the University's salary base. As members progress through the ranks, such costs require steadily increasing levels of funding to reflect the increasing compensation which is associated with progress though the ranks.

Other Revenues

139. The focus of planning at a publicly funded university like the University is on meeting the needs of the community which the University serves. The University meets such needs by delivering high quality programs and services within the University's available resources. This focus is consistent with section 47 of the *University Act*. Since resources are limited, planning requires balancing the requirements associated with program delivery against the risks associated with realizing projected revenue from key revenue sources.

140. The University receives various financial resources from various sources: for example, the provincial government, granting agencies, donors, students, and other users of the University's services. However, as is noted above, in many instances the funds that flow to the University are restricted in use by the source. Examples of such restricted funds include: research grants that can only be used for certain types of expenditure on specific research projects; donations to fund student awards or library acquisitions; or government grants for capital projects. Such restricted funds cannot be used for a purpose other than the one for which they were originally intended. They simply cannot be used to fund the University's day-to-day operations.

141. Around 6% of planned revenue flows form the Research Support Fund Grant and "other revenues". The Research Support Fund Grant is an overhead contribution from the federal government to universities using a formula based on the amount of grant funding which an institution has received over a rolling three-year period from the Tri-Agency. The Tri-Agency is a highly prestigious national body which adjudicates and funds applications for academic research grants. The Tri-Agency application process is rigorous and competitive. The value of such grants received by the University's researchers has declined over the past several years. Therefore, the amount of the Research Support Fund Grant has also declined. The University has a limited ability to influence the amount of this Grant. Based on the value of Tri-Agency grants received during the last two years, the University anticipates that the amount of Research Support Fund Grant may decline further.

142. The remaining "other revenues" are made up of nearly 50 different individual types of income such as rent, interest, cost recoveries, ancillary overhead, and tax recoveries. Many of these items are difficult to predict, are subject to significant fluctuation, and arise on a one-time basis. Consequently, the University does not rely on this area of revenue when planning due to the inherent risks associated with the revenue sources. However, given the general upward trend in the amount of funding

received from this area, the University has slightly increased the estimated income in this area for 2015/16 onwards.

143. *Table 1* to this submission shows actual and budgeted income for the GOF only, for 2013/14 and 2014/15 as well as planned and projected income for the GOF for 2015/16 to 2017/18.

The University's Projected Structural Deficit

144. Over the next three years, the University's base budget projections identify the need for an annual reduction in the University's expenditures of approximately $4,000,000 or 4-6%. The single biggest contributing factor to the need for this reduction is declining tuition revenue.

145. The University's projections indicate that unless significant ongoing budget adjustments are made the combination of decreased funding from tuition revenue and the Operating Grant and increased costs produce the following deficits:

- 2015/16: a net deficit after taking $833,000 in anticipated salary savings into account of $2,240,000 (a gross deficit of $3,070,000);
- 2016/17: if no adjustments are made to the University's base budget to reduce the 2015/16 deficit, the two deficit numbers shown above would grow to $2,920,000 and $3,750,000; and
- 2017/18: if no adjustments are made to the University's base budget to reduce the 2016/17 deficit, the two deficit numbers shown above would grow to $3,470,000 and $4,300,000.

UBOD, Volume 2, Tab 23 at 17

146. In 2017/18, expressed as a percentage, the deficit would amount to $4,300,000 over $80,860,000 or 5.3%.

147. For 2015/2016, the University addressed its projected deficit by:

- eliminating allocations to reserves in the following amounts when the reserve had a sufficient balance to maintain services for 2015/16:

        - Scholarships & Awards: $707,000;
        - Faculty Recruitment and Retention Awards: $93,000;
        - Faculty Travel and Publication Awards: $83,000;
        - Miscellaneous Transfers: $84,000; and
        - One-time elimination of the allocation to the Capital Equipment Replacement Reserve ("CERR"). The timing of CERR purchases can be postponed temporarily to allow for the availability of funds.

    - temporarily increasing estimates for investment income based on experience;
    - temporarily increasing estimates for salary savings as a result of an expected short-term increase in the number of employee vacancies; and
    - temporarily decreasing the utilities budget based on the previous year's results.

UBOD, Volume 2, Tab 23 at 23

148. However, as is noted above, due to the decline in enrolment in Fall, 2015 the University is now projecting that tuition revenue for 2015/16 will be $1,400,000 below budget.

Costs Associated with the University's Human Resources

149. The total labour budget shown is shown in *Table 2* to this submission and represents the allocation of around 76% of the University's <u>total</u> GOF revenue. Expenditures for human resources account for 70% of <u>all</u> University expenditures.

150. Before the FA was certified, Arbitrator Ready ordered compensation in excess of the then current PSEC mandate. The then current PSEC mandate allowed for University funded (no provincial government funding was available) GWIs of 2% and 2% over a two-year term. Arbitrator Ready ordered GWIs of 2.5% and 2.5% in each year of a two-year term.

151. The .5% awarded by Arbitrator Ready in each year of the two-year term has also contributed moderately to the projected deficits. The cost of each .5% is around $130,000 per year on a compounding basis.

152. For planning purposes and to ensure sufficient resources are in place to honour all of the University's commitments to its employees, the University allocates funds to cover all GOF funded positions for each fiscal year. The University recognizes that there will always be positions which are vacant for a portion of a fiscal year and that some vacancies will either remain unfilled or be filled with temporary employees at a lower rate of pay and benefits. The University accounts for this recognition by reducing its estimated annual employee costs by an amount referred to as "salary savings".

153. In 2014/2015, the University included approximately $833,000 of salary savings in its budgeted employee costs (i.e., if this amount had not been included total employee costs would have been $833,000 higher). In 2015/2016, as a temporary measure, the allocation for salary savings has been increased to around $1,033,000. The University's approach to salary savings is under review as part of the planning process which is currently underway at the University. The approach described above may, therefore, change in the future. However, under the current approach, if all budgeted positions were filled at the authorized level, the above-noted salary savings would not be realized and the University's spending on human resources would exceed budget.

154. As can be seen in *Table 2* to this submission, the University's actual salary costs have been lower than planned. This is because there have been a higher number of vacancies and they have taken longer to fill than was anticipated. In some cases, the vacancies have been filled with temporary employees at a lower rate of pay. In addition, some positions were temporarily left vacant in 2014/15 in anticipation of restructuring or reprioritization plans that might arise from a strategic planning process that is currently being undertaken at the University.

155. The difference between actual salaries and budgeted salaries might be taken to suggest that the University could either pay employees higher salaries or create additional positions. However, this difference reflects what is essentially a form of one-time funding. It would not be available if all budgeted positions were filled at their authorized levels. The University recruits for and fills budgeted, vacant positions on an ongoing basis. Actual salary savings in each fiscal year are, therefore, variable and unpredictable. On the other hand, increasing salary and benefit costs

represent an ongoing and compounding cost to the University. A commitment to pay ongoing and compounding costs from salary savings would be, at best, financially imprudent.

156. In other words, if the University were to pay its employees at a higher level out of salary savings and all budgeted positions were actually filled at any given time, the University would be in a position where actual costs exceeded budgeted costs by a substantial amount. This event would create a fiscal deficit, a position which would be unsustainable and would lead to layoffs and other budget reductions. The University would also be in breach of its statutory obligation to balance expenditures and revenues during each fiscal year.

157. Employee benefit costs are calculated using an estimated "burden rate" or percentage of salary costs. In the past few years, actual benefit costs have been significantly lower than planned for several reasons. The University has managed to keep benefit rate increases near 0% although the University's salary base has increased due to GWIs and progression by employees through established salary ranges. This means that while benefit levels have remained constant, their cost has decreased as a percentage of salary costs. In addition, when positions are filled with temporary employees, the overall cost is significantly lower than it would be for a permanent incumbent. When positions are not filled at all for a period of time, an even higher level of "savings" is attained. The University has recognized these savings in its budgeting.

Other Expenses

158. The balance of the University's expenditure from the GOF is for operating expenses, minor capital expenses, and transfers, including transfers for capital equipment replacement. These expenditures are shown in *Table 3* to this submission.

159. These expenditures cover a large variety of transactions from the purchase of paper clips and classroom and lab supplies to paying the heating costs at the University's several campuses.

160. Due to the variation in the nature of these expenses, it is very difficult to predict their annual value. For planning purposes, the University assumes that expenditures in this area will grow at an average rate of 2%.

161. However, actual results vary significantly from the planning assumption. For example, in 2014/15 a positive variance of $1,810,000 arose primarily from areas under the authority of various departments. Much of the variance was, therefore, subject to the University's carry forward policy: **UBOD, Volume 1, Tab 15**.

162. Although there is an argument that departmental budgets could be reduced and reallocated given that they show positive variances on a relatively consistent basis, the University has been reluctant to take that approach. There are very good reasons why a department might not use all of its allocated funding in a given year. For example, a training conference may occur every two to three years. Related budget allocations may well not be spent during the intervening years so that in the third year, the maximum number of employees can take the training. If a department has staffing vacancies during a year, planned projects may not occur but they will typically go ahead at a later date. Allowing departments to retain positive variances permits good unit-level planning and prevents the "March madness" spending that occurs in many organizations. Additionally, during previous budget processes programs and departments have advised numerous times that any further cuts to their operating budgets will significantly impair their ability to operate. However, this approach will be reviewed during the planning process which is currently underway at the University.

163. Significant savings in the charges for utilities also occur for various reasons. There are many uncontrollable conditions that create significant fluctuations in utility costs. These conditions include the weather and the pricing of natural gas and electricity. In mild winters, the University can benefit significantly through savings on natural gas and electricity costs, resulting in larger year-end surpluses. Rather than reallocating the funds earmarked for utility costs, the University allows these positive variances to be maintained in the relevant operational budget. In the event of a more severe winter or higher than expected cost increases, the University would not have to scramble during the year or rely on volatile or unpredictable surpluses in other areas to ensure such costs are covered. This approach will also be reviewed during the planning process which is currently underway at the University.

164. Any significant decrease in revenue and any significant increase in expense requires offsetting adjustments to department, program, and/or central budget allocations in order to maintain a balanced budget. In other words, reordering of spending priorities is a potential solution to any budgetary constraint scenario. For the most part, however, this approach can only be achieved through elimination or reduction of programs, services, and/or positions. The University's ability to eliminate faculty

positions, which represent approximately 42% of the University's overall expenditure in the 2015/16 budget, is contractually restricted.

The University's Bottom Line

165. The combined result of the above matters is shown in *Table 4* to this submission.

166. For the past two fiscal years, the University has had a GOF surplus of about \$4,200,000. The amounts in *Table 4* are calculated using internal management accounting principles. For this reason, they may differ from the related amounts in the University's audited financial statements which are prepared using external generally accepted accounting principles and deferral accounting.

167. The GOF surplus shown in *Table 4* includes departmental carry forwards (discussed above), one-time salary savings from unplanned vacancies, and revenues that carry a certain level of associated risk and constraint.

168. For 2014/2015, the bulk (92.8%) of the surplus as at April 1, 2015 arose from salary and benefit savings from vacant and turnover positions. In other words, if the positions had been filled consistently through the year, these savings would not have existed.

169. For the reasons given above, year-end surpluses represent non-recurring sources of funding. When the money is spent, it may never be replaced. Since employee salaries and benefits represent ongoing contractual obligations, the University cannot commit to paying for them from non-recurring sources of funds.

170. The University's accumulated surplus (see *Table 5* to this submission for a relevant excerpt from the University's audited financial statements) totals approximately \$135,000,000.

171. Of this amount, about \$47,000,000 represents the principal portion of endowments. Endowment funds are completely restricted and wholly unavailable for purposes other than those directed by the donors.

172. The balance of approximately \$84,000,000 is referred to as the accumulated operating surplus (*Table 5,* note 1). It has accrued from almost every available source of University funding over approximately 25 years.

173. Over half of the $84,000,000 relates to the University's investment or equity in its capital assets (*Table 5* to this submission, note 2). Of the remaining balance, nearly $29,000,000 (*Table 5* to this submission, note 3) represents balances held for: the departmental carry forwards; professional development and internal research funding; and the specific purpose, capital, and ancillary services funds. The definitions for these funds are provided in *Table 5*.

174. After 25 years of accumulation, the University holds about $3,500,000 (*Table 5*, note 5) as an unrestricted reserve. This amount has not been allocated for particular projects or uses but represents the equivalent of about one month's revenue from the Operating Grant. The University holds this reserve as a contingency fund against extreme, unexpected events.

175. The balance of about $8,600,000 (*Table 5*, note 4) is allocated to projects and capital purchases which may occur over a period of one to several years. As is noted above, the University is effectively precluded from borrowing. Other external funding sources such as government grants are either not available, in the case of student residences, or have very limited availability, in the case of other buildings.

176. Recent facility condition audits have indicated that the University's residences will require expenditures of nearly of $3,000,000 in the short term for items such as roof, air handler, and boiler replacements, and additional work estimated at $2,000,000 in the next 5 years. A further $57,000,000 expenditure is the estimated maintenance requirement for other buildings, only a portion of which is likely to be funded by government grants. In this regard, the University is required to track and account for deferred maintenance on its capital infrastructure. Deferred maintenance accrues at an annual value of around $12,000,000.

Other Financial Opportunities and the University's Future Outlook

177. The University is currently trying to generate growth in ancillary areas with the expectation that these areas will eventually become a recurring source of funding for the University's general operations. Most ancillary areas are in growth and investment phases with a very limited expectation that they will make a significant contribution to the cost of the University's general operations.

178. The University has set an overall targeted revenue contribution of $150,000 from these areas for 2014/15 and 2015/16 which has been included in the budget and forecast for those years. Given the current stage of business development for these

areas, it is not expected that the contribution will grow above the $150,000 target for at least several years.

179. To summarize the foregoing, in light of the University's financial experience since the Ready Award, the current and projected reductions in its revenue, and the projected structural deficits, the University cannot responsibly commit to salary increases beyond the levels reflected in its final proposal.

The Terms and Conditions of Employees Performing Similar Work

180. In the Ready Award, Arbitrator Ready accepted (at 11) the external comparators proposed by the University: faculty members at BC research universities, which included those at which compensation issues had been recently been resolved, SFU (by final offer selection) and UBC (in an interest arbitration award of Colin Taylor, QC).

181. Arbitrator Ready also accepted (at 10-11) the following extra-provincial comparators proposed by the FA and not disputed by the University: Acadia, Brandon, Lakehead, Lethbridge, Mt. Allison, Regina, St. Francis Xavier, Trent, and UPEI.

182. During bargaining for the First Collective Agreement, the University used the following as comparators:

   a. the University used as its primary comparators the following members of RUCBC: UVic, SFU, TRU, and Royal Roads. While UBC is also a member of RUCBC, it has a compensation system based solely on merit, so the University placed less reliance on UBC. The University placed particular emphasis on UVic and SFU; and

   b. to a lesser degree, the University considered the following extra-provincial universities: Acadia, Brandon, Lakehead, Laurentian, Lethbridge, Mount Allison, Saint Mary's, and Trent.

183. The majority of the comparators are unionized. Links to their collective/faculty agreements will be found at Appendix B to this submission.

The Current Round of Bargaining at Other RUCBC Universities

184. At around the same time as the FA obtained its certification, the faculty associations at UVic and SFU also obtained certifications. The status of the negotiations towards a first collective agreement at UVic and SFU is as follows:

a. on June 8, 2015, UVic and its Faculty Association reached a first collective agreement within the Economic Stability Mandate with a five-year term and GWIs; and

b. SFU and its Faculty Association are in negotiations and have not yet reached a first collective agreement.

185. UBC voluntarily recognized its Faculty Association around 2000. The faculty collective agreement at UBC includes an interest arbitration provision. At the time of this submission, a three-person arbitration board, chaired by Colin Taylor, QC, has been appointed to resolve outstanding matters. The University understands that the UBC Faculty Association is proposing a two-year agreement with GWIs of 3% and 3%.

186. Regarding the other members of RUCBC, Royal Roads and TRU:

a. around March 9, 2015, Royal Roads and its Faculty Association reached an agreement within the Economic Stability Mandate with a five-year term and GWIs;

b. TRU and its Faculty Association have not yet reached an agreement.

Recent GWIs at the Comparators

187. Recent GWIs at the comparator institutions used by the University are set out in the following table:

	Most recent Faculty Agreement	**2012/ 2013**	**2013/ 2014**	**2014/ 2015**	**2015/ 2016**	**2016/ 2017**	**2017/ 2018**	**2018/ 2019**
	BC Universities With a Research Mandate							

SFU[1]	2012-2014	2.0%	1.95%	TBD	TBD	TBD	TBD	TBD
UVic[2]	2015-2019	2.0%	2.0%	0%	1%	1.5%	1.5%	1.5%
UBC[3]	2012-2014	2.5%	2.5%	TBD	TBD	TBD	TBD	TBD
UNBC[4]	2012-2014	2.5%	2.5%	TBD	TBD	TBD	TBD	TBD
TRU	2012-2014	2.0%	2.0%	TBD	TBD	TBD	TBD	TBD
Royal Roads[5]	2015-2019	2.0%	2.0%	0%	1%	1.5%	1.5%	1.5%
	Extra-Provincial Universities							
Acadia University[6]	2014-2017	0.5%	1.6%	TBD	TBD	TBD	TBD	TBD
Brandon University[7]	2015-2019	Unknown	3.0%	3.0%	2.0%	2.0%	2.0%	2.5%
Lakehead University	2011-2015	Flat lift of $2,000	Flat lift $2,300	Flat lift $2,300	TBD	TBD	TBD	TBD
Laurentian University	2011-2014	Flat lift of $2,000	TBD	TBD	TBD	TBD	TBD	TBD
Lethbridge	2014-2016	Unknown	Unknown	1.75%	Unknown (COLA formula)	TBD	TBD	TBD

[1] Pursuant to final offer selection award by Arbitrator C. Taylor for the period 2012-2014.
[2] See UVic and UVFA Interest Arbitration, November 20, 2013 (C. Taylor, QC) which awarded 2% plus a lump sum of $1,000 in each of the two years.
[3] See UBC and UBCFA Arbitration, July 24, 2013 (C. Taylor, QC).
[4] See the Ready Award.
[5] See 2012-2014 Memorandum of Agreement and see information posted on Royal Roads website at: http://www.royalroads.ca/news-events?page=5.
[6] See *Mount Allison (University) v. Mount Allison Faculty Association*, 2014 CanLii 73098 (ONLA) (K. Burkett) ("Mount Allison Award") regarding 2012-2014. The 2014-2017 collective agreement for Acadia faculty does not include an across-the-board percentage increase but does state that all members move up one full grid step annually, until the ceiling is reached.
[7] The information for 2013/14 and 2014/15 is from page 7 of the Mount Allison Award. The 2015-2019 information is from the Brandon University current collective agreement, Appendix F.

Mount Allison[8]	2014-2016	2.5%	1.75%	2.0%	2.25%	TBD	TBD	TBD
St. Mary's University[9]	2012-2015	1.75%	1.75%	2.0%	TBD	TBD	TBD	TBD
Trent[10]	2013-2016	Unknown	2.0%	2.5%	TBD	TBD	TBD	TBD

Faculty Salaries at the Comparators

188. As is the case at the University, faculty salaries at the comparators are generally established by a combination of a floor at each academic rank. Additionally, compensation at each rank depends on a career development increment. The exception is UBC, which has no salary scales. UBC's compensation is based entirely on merit.

189. As is set out in the following table, the salary floors at the University are roughly average in British Columbia and below average when compared to extra-provincial institutions:

[8] See Mount Allison Award, at p. 6 (for 2012-13 actual) and at p.27 for 2013/14 to 2015/16.
[9] See Mount Allison Award, p.7
[10] Trent Collective Agreement, Schedules A and AA provide for an across-the-board scale adjustment as a disparity correction vis-à-vis comparator universities. The percentages shown here reflect that adjustment.

	Year	Assist.	Increment	Assoc.	Increment	Prof.	Increment	Notes
RUCBC Members								
SFU	2013-14	65,003	2,746	78,731	2,550	97,951	2,269	Career progress increments are performance based and vary in value according to rank. Merit increments are available. (Policy A 20.01 and 20.02)
UVic	2014-15	73,000	945	85,000	945	103,000	945	Each member receives a career progress increment of $945 for satisfactory performance (can be withheld). Each member is also eligible for merit increments of $730, awarded in whole or half increments, to a maximum of 4.0 merit increments ($2,920). (Article 63)
UBC	2013-14	No Scale	Up to 2,000	No Scale	Up to 2,000	No Scale	Up to 2,000	Career progress increments are awarded for satisfactory performance ($1,000 per unit; maximum of 2.0). Merit units are also available. (Agreement, Part 2)
UNBC	2013-14	64,069	1,111	77,916	1,111	94,645	1,111	Each member receives one career development increment annually for satisfactory performance (can be withheld) until ceiling reached. Those in second or third year in rank receive two increments. (Article 48 and Appendix 48B)
TRU	2013-14	56,613	2,789	67,767	2,789	79,445	2,270	The value of the annual step increment varies as a member moves through the steps and

								between ranks. (Article 11 and Schedule A)
Royal Roads	2013-14	55,101	992	80,355	1,446	94,590	1,702	Annual career progression is performance based. The Dean may approve progression from 0% to 3% of a member's base salary. The increments in this Table are based on 1.8% of the salary floor for each rank. (Article 27)
Extra-Provincial Universities								
Acadia University	2014-15	70,210	2,035	86,490	2,035	102,770	2,035	Each member moves up one full grid step annually, until the ceiling is reached. The value of one step ($2,035) is the same across all ranks. (Article 21 and Appendix C)
Brandon University	2015-16	70,020	2,200	91,578	2,811	114,170	3,414	Each member receives an annual service increment. The value of the increment varies, based on rank. (Article 35 and Appendix F)
Lakehead University	2014-15	71,000	2,700	87,000	2,700	107,000	2,700	Each member receives a scale increment of $2,300 annually, plus a career development increment of $2,700 for satisfactory performance (can be withheld). Members whose performance is exceptional are also eligible for merit. (Article 35)
Laurentian University	2013-14	69,764	2,800	83,655	2,800	102,714	2,800	Each member receives an annual progress increment of $2,800 for satisfactory performance (can be withheld). Full professors are eligible for merit. (Article 8)

University of Lethbridge	2014-15	60,000	2,400	75,000	2,400	100,000	2,400	Each member is eligible for a career progress increment of $2,400, as shown on this Table, based on performance. Merit units are also available for performance above the mean in his or her faculty. (Articles 21 and 32; Schedules A and P)
Mt. Allison University	2014-15	68,889	2,958	83,686	2,958	107,344	2,958	Each member moves up one step through the scale annually. The value of one step ($2,958) is the same across all ranks. (Article 30 and Schedules 14F and 15F)
Saint Mary's University	2014-15	69,028	2,732	84,989	2,893	108,069	3,070	Each member advances one step annually. The value of a step (shown here under "Increment") varies, based on rank. (Article 160 and Schedule A1)
Trent University	2014-15	81,408	2,613	97,093	2,615	118,008	2,728	The value of scale increments differs slightly between the ranks. Merit awards are made for exceptional performance. (Article III.12, Article XXII.1, and Schedule A)
Average BC		**62,757**	**1,763**	**77,953**	**1,806**	**93,926**	**1,716**	
Average All		**67,238**	**2,215**	**83,020**	**2,289**	**102,285**	**2,314**	

190. Although the University's salary floors are roughly average in British Columbia, the University recognizes, as is discussed below in the University's submissions about its final compensation proposal, that it lags in the amount it awards for a Member's PTR. This is because the University only awards CDIs. The University's final compensation proposal was carefully designed to address that limitation.

191. In the University's submission, there are objective factors which must also be considered when assessing compensation proposals because theses factors give some indication about relative work levels and relative achievement in the research area.

192. In this regard, among all the comparators for which information is publicly available, UNBC, recognized in the Maclean's rankings as a primarily undergraduate university, has the lowest ratio of undergraduate students to faculty. UNBC has the highest ratio of graduate students to faculty members among the extra-provincial comparators but the lowest ratio among the British Columbia comparators.

University	Full-time UG	Full-time Grad	Part-time UG	Part-time Grad	Full-Time Fac	UG Std / Fac*	Grad Std / Fac*
UBC	33,770	8,960	14,840	1,490	2,395	17.2	4.1
UNBC	1,830	500	810	120	173	12.9	3.2
Royal Roads	1,290	3,350					
SFU	13,320	3,580	11,900	780	831	23.2	4.8
TRU	6,770	220	530	35			
Victoria	13,480	3,060	4,490	310	700	22.5	4.6
Mount Allison University	2,330	20	70				
Acadia University	3,670	190	400	350	202	19.2	1.8
Saint Mary's University	6,020	360	720	270	247	25.8	2.0
Lakehead University	6,300	800	1,500	10	325	21.7	2.5
Laurentian University	6,400	480	2,000	390	400	18.5	1.7
Trent University	6,500	380	1,100	80	257	27.4	1.6
Brandon University	1,980	110	670	200			
Lethbridge	6,940	440	730	110	335	21.8	1.5

Note: to calculate student/faculty ratios, part-time students were counted as 0.5 of an FTE student.

See Universities Canada 2014 full-time and part-time fall enrolment at

Canadian universities:
http://www.univcan.ca/canadian-universities/facts-and-stats/enrolment-by-university/

See Re$earch Infosource Inc.:
http://www.researchinfosource.com/pdf/2015Top50List.pdf

193. Further, in terms of total research dollars received, the University ranks 43 out of 50 among the top universities in Canada. In contrast, when expressed as a ratio, dollars/faculty member, the University ranks fourth among all the comparators for which information is available but lowest among the ranked British Columbia comparators.

	Top 50 (All)**			Undergrad Universities*
	Total $	$/person		
University	Rank in Top 50	Amount	Rank Among Comparators	Rank in Research
UBC	3	$228,400	1	NA
UVic	19	$136,300	2	NA
SFU	18	$124,100	3	NA
UNBC	43	$71,200	4	NR
Lakehead University	32	$69,600	5	1
Trent University	39	$56,700	6	3
Lethbridge	35	$54,400	7	4
Laurentian University	36	$42,800	8	NR
Saint Mary's University	46	$33,900	9	NR
Acadia University	50	$35,400	10	NR
Mount Allison University	NR		NR	NR
Brandon University	NR		NR	NR
Royal Roads	NR		NR	NR
TRU	NR		NR	NR

See Re$earch Infosource Inc.:
http://www.researchinfosource.com/pdf/2015RUYUndergraduate.pdf

Canadian universities:
http://www.univcan.ca/canadian-universities/facts-and-stats/enrolment-by-university/

See Re$earch Infosource Inc.:
http://www.researchinfosource.com/pdf/2015Top50List.pdf

193. Further, in terms of total research dollars received, the University ranks 43 out of 50 among the top universities in Canada. In contrast, when expressed as a ratio, dollars/faculty member, the University ranks fourth among all the comparators for which information is available but lowest among the ranked British Columbia comparators.

	Top 50 (All)**			Undergrad Universities*
	Total $	$/person		
University	Rank in Top 50	Amount	Rank Among Comparators	Rank in Research
UBC	3	$228,400	1	NA
UVic	19	$136,300	2	NA
SFU	18	$124,100	3	NA
UNBC	43	$71,200	4	NR
Lakehead University	32	$69,600	5	1
Trent University	39	$56,700	6	3
Lethbridge	35	$54,400	7	4
Laurentian University	36	$42,800	8	NR
Saint Mary's University	46	$33,900	9	NR
Acadia University	50	$35,400	10	NR
Mount Allison University	NR		NR	NR
Brandon University	NR		NR	NR
Royal Roads	NR		NR	NR
TRU	NR		NR	NR

See Re$earch Infosource Inc.:
http://www.researchinfosource.com/pdf/2015RUYUndergraduate.pdf

Economic and Market Conditions in the Sector

194. In *Yarrow*, the LRB described this factor in the following terms (at 35):

> *The final factor is the economic and market conditions of the sector in which the employer competes. It goes without saying that free collective bargaining must be responsive to our market system. If a particular sector is mired in a recessionary slump, if our natural resources prices are suffering a decline, or conversely if there is projected growth in a particular industry, or certain markets will suddenly be expanded, these factors must be considered in setting the terms and conditions of employment.*

195. This factor is not an easy fit in the University sector.

196. However, the University does observe that all of British Columbia's universities have been subject to reductions in their Operating Grants. The University has not been able to offset that revenue loss with additional revenue from its other major revenue source, tuition.

The Cost of Living

197. Compensation increases are not assessed in a vacuum from which cost of living has been eliminated as a consideration. Inflation levels for Prince George are not published by either Statistics Canada or Statistics BC. But inflation levels are published for British Columbia.

198. Inflation levels in British Columbia have been very modest. Between August, 2014 and August, 2015 inclusive, the cost of living in British Columbia increased by 1.2%: **UBOD, Volume 1, Tab 10.**

199. Inflation levels in Canada have also been modest. Between August, 2014 and August, 2015 inclusive, the cost of living in Canada increased by 1.3%: **UBOD, Volume 1, Tab 11**.

200. In recent years, housing costs have been moderate in Prince George. In Q4 2014, the MLS average listing price for all dwellings in Prince George was $264,842, an increase of 3.8% from Q4 2013 **UBOD, Volume 1, Tab 12 at 3**.

201. The University recognizes that there is wide cost variability within any given housing market and that individual choices play a significant role in a given person's housing costs with the result that direct comparisons are somewhat difficult to make. However, when considering salary levels at the University, it is important to note that Prince George remains a housing market where housing is relatively affordable, particularly when compared to Vancouver, Burnaby, and Victoria.

202. The University's current compensation offer exceeds the increase in the cost of living in British Columbia and, therefore, represents a real monetary gain for Members.

<u>The Settlement with the Other Bargaining Unit at the University</u>

203. The University recognizes that this arbitration board may not assign this factor the same weight as other factors identified in *Yarrow*, such as the University's financial circumstances, because the members of the other unionized group of employees at the University, CUPE, Local 3799, do not perform similar work to the Members (see the Ready Award at 11-12).

204. Arbitrator Ready did not assign much weight to this factor. However, other interest arbitrators in the University sector have seen this factor as significant. For example, in *University of Victoria (Re)*, [1996] B.C.C.A.A.A. No. 162 (Kelleher, QC) ("*UVic 1996*"), an interest arbitration between UVic and its faculty members, Arbitrator Kelleher described settlements for other employee groups at the University (a contractually agreed factor in that arbitration) as a "*compelling factor*" (at para. 51).

University's Book of Authorities,
Tab 5

205. Particularly in the current circumstances, when the University's financial situation has been deteriorating, consideration of this factor reflects the importance of maintaining a reasonable degree of internal equity among the University's employees. In this regard, the other unionized group at the University reached a collective agreement with the Economic Stability Mandate through free collective bargaining and without a strike.

206. Internal equity is in and of itself important to reduce the disruption associated with one group of employees perceiving the salary settlement achieved by another group of employees as unreasonable or unjust.

207. Further, during the previous round of bargaining, following a strike, CUPE, Local 3799 members ratified an agreement at the then current PSEC mandate: a two-year agreement with GWIs at 2% and 2%. The FA's members, by contrast, benefited from the higher GWIs ordered by Arbitrator Ready.

Collective Agreements Negotiated Generally in Both the Public and Private Sectors

208. In addition to the settlements at post-secondary institutions referred to above, Labour Canada data published for the year 2014 indicates that in the education, health, and social services sector there were 107 agreements reached in the public sector in Canada covering 385,610 employees with a duration of 47.7 months and an average annual compensation increase of 1.4%. During the same period, there was one agreement reached in the private sector covering 600 employees with a duration of 60.0 months and an average annual compensation increase of 1.7%: **UBOD, Volume 1, Tab 13.**

209. Labour Canada data published for the year 2015 indicates that in this sector there were 49 agreements reached in the public sector in Canada covering 90,570 employees with a duration of 44.6 months and an average annual compensation increase of 1.4%. During the same period, there were 2 agreements reached in the private sector covering 1,400 employees with a duration of 24.0 months and an average compensation annual increase of 1.4%: **UBOD, Volume 1, Tab 14.**

THE PARTIES' OUTSTANDING PROPOSALS

210. The University's proposals, and in particular its compensation proposal, represent significant improvements to the terms and conditions of the employment for the Members. The University's compensation proposal responds to the University's recognition that the existing CDI system at the University has resulted in a compensation gap between the Members as they progress through the ranks and their counterparts at other universities. The University's proposal also responds to the sectoral norm at British Columbia's research universities: to tie one component of compensation in each rank to meritorious performance in the rank.

211. In contrast, the University says that the FA's proposals represent breakthrough provisions with a significant cost to which the University would not have agreed in collective bargaining. Such proposals ought not to be awarded in a replicative interest arbitration, whether it is taking place under section 55 or otherwise.

212. The University also notes that some of the FA's proposals were also made by the FA in the final pre-certification round of negotiations between the University and the FA. For example:

a. an increase in paid sick leave from 60-180 calendar days (Article 61 of the Faculty Agreement); and

b. increases to sabbatical leave (Article 54 of the Faculty Agreement).

213. Arbitrator Ready decided not to award any of the FA's proposals in the replicative interest arbitration in which he was engaged. As is noted above, he ordered only GWIs at 2.5% and 2.5%.

214. The University now turns to its detailed submissions about the Parties' final proposals.

<u>Article 48/I-1 (Compensation) and Article 21/E-2D (Awarding of ECDIs)</u>

The University's Proposal

215. Putting aside stipends for market differentials, which are addressed separately below, the University's final compensation proposal had three elements:

a. a rank-differentiated remapping of salaries plus the GWIs provided for by the Mandate on July 1, 2015 and July 1, 2016 for all categories of Member;

b. additional funding of Career Development Increments ("CDIs"), to be worth $1,111 from 2014-2016 and increasing in value to $1,200 effective July 1, 2017. Such CDIs would be awarded to Members at all ranks whose performance had been rated as satisfactory and who were not at the ceiling of their rank;

c. with effect from July 1, 2017 the creation and funding of performance-based Enhanced Career Development Increments ("ECDIs"), with a total number of ECDIs equal to two times the number of eligible Members and having a value of $400 each. The University proposed that up to four ECDIs could be awarded to an eligible Member but with no more than 50% of eligible Members receiving two ECDIs.

216. The University's final proposal was rooted in the goal of maintaining the competitive value of the University's salary floors while responding to the recognized need to improve Members' progress through the ranks, particularly by building on the existing CDI system.

217. The average Member could expect a salary increase of between $10,000 and $12,000 during the course of the University's proposed five-year term. Approximately half of that increase would be in the form of a GWI and the other half would result from remapping and awards of CDIs and ECDIs. Assuming the responsible Dean or the University Librarian had recommended a satisfactory rating of the Member's performance – which is the lowest performance rating – he/she would receive an increase of approximately $5,000 over the proposed five-year term simply as a result of the GWIs. A Member whose progress had been found to be exceptional would receive as much as $13,000.

GWI Increase (Article 48/I-1)

218. The University proposed the maximum GWI permitted under the Mandate.

ECDIs (Article E-2D)

219. The University's final compensation proposal funded the ECDIs from various sources and included, in particular, the redistribution of a portion of the fund which existed when Members' terms and conditions of employment were governed by the Faculty Agreement and which allowed the University to pay market differential stipends (see below for a discussion of the market differential fund and stipends).

220. The University recognizes that compensation for progress through the ranks at the University falls below the provincial norm. The University also recognizes that Members' terms and conditions of employment should include access to an improved and financially sustainable system for compensating their progress through the ranks provided the system reflects the University's status as a research university in British Columbia.

221. In this regard, the University's proposal to add ECDIs to the compensation system for Members tracks the approach taken at other research universities in British Columbia. In particular, the University used UVic's system as a model and took account of the philosophy which underlies SFU's system.

222. It is common for faculty agreements at British Columbia's research universities to provide for salary floors (or a minimum salary) for each rank. Some also provide for salary ceilings. The effect of such floors and ceilings is to reward achievement by ensuring that a promotion results in an increase in compensation.

See, for example, the SFU Faculty Salaries Policy, A20.01 at Appendix B to this submission

223. In 2013-2014, the floors and ceilings for Members were as follows:

Rank		Floor/Ceiling at July 1, 2013	CDIs from Floor to Ceiling
Lecturer	Floor	$54,574.72	
	Ceiling	$67,414.40	11.6
Assistant	Floor	$64,069.21	
	Ceiling	$82,162.03	16.3
Associate	Floor	$77,916.45	
	Ceiling	$102,428.58	22.1
Professor	Floor	$94,644.50	
	Ceiling	Open	
Librarian I	Floor	$57,391.44	
	Ceiling	$63,227.66	5.3
Librarian II	Floor	$60,996.14	
	Ceiling	$69,750.99	7.9
Librarian III	Floor	$70,072.49	
	Ceiling	$78,827.34	7.9
Librarian IV	Floor	$77,594.96	
	Ceiling	$95,103.63	15.8
SLI I	Floor	$54,058.86	
	Ceiling	$59,311.98	4.7
SLI II	Floor	$58,982.09	
	Ceiling	$70,071.43	10
SLI III	Floor	$68,106.77	
	Ceiling	$79,196.11	10

224. The existing CDI at the University is $1,111 for all ranks. Awards of CDIs are granted on an annual basis for tenured faculty and every two years for non-tenured

faculty. Progression from the floor to the ceiling of each rank requires between 4.7 CDIs for the rank of SLI I and 22.1 CDIs for the rank of Associate Professor. Only the rank of Professor has no ceiling.

225. As is shown above, the University's starting salaries at each rank are within the range which exists at other research universities in British Columbia but the CDI component of the compensation system is below the range.

226. The compensation system contained in the University's final proposal incorporates merit as a key consideration in the value and rapidity of a member's progress through the ranks. This approach to the allocation of CDIs and ECDIs is consistent with the norm at other research universities in British Columbia.

227. Most faculty/collective agreements at research universities provide for annual salary adjustments. These generally include two types of salary increase: an across-the-board GWI which is not tied to performance and which is usually expressed as a percentage of annual salary. In addition, faculty members receive an individualized annual increase (CDIs under the Faculty Agreement and the University's final proposal), at least some portion of which (ECDIs in the University's final proposal) is usually merit-driven.

228. Such an approach is found, for example, in the recently concluded first collective agreement between UVic and the UVic Faculty Association. Article 63.1 of that agreement states that the salary structure provides a "fair and competitive system of compensation to Members as a means of maintaining excellence with the University". Pursuant to Articles 63.7 and 63.8, the first component of the annual salary adjustment is made across-the-board and is unrelated to the evaluation of a member's performance. However, the second component, called a career progress increment ("CPI"), recognizes the career progress of a member whose performance is judged to have satisfied the expected standard. And the third component is a merit increment ("MI"), which recognize a member's meritorious performance. MIs are only available to members who have received a CPI. MIs are awarded in half-increments to a maximum of 4.0 MIs per faculty member per year.

See Part 7 of the UVic First Collective Agreement, Appendix B to these submissions

229. The 2012-2014 UBC Faculty Agreement reflects a similar approach to faculty compensation.

See Part 2 of the UBC/UBCFA Collective Agreement 2012-2014, Appendix B to these submissions

230. As SFU has not yet reached a first collective agreement with its faculty association, the terms and conditions which will ultimately be found in that agreement are unknown. However, under SFU's pre-certification Framework Agreement and related policies, career progress increments were performance based and varied in value according to rank. Merit increments were also available: see at Appendix B of this submission, Policies A20.01 and 20.02.

231. Quality is the hall-mark of the Canadian university system. Performance-related increases in compensation are an essential means of recognizing and encouraging productivity among faculty members who have achieved tenure. A close link between performance and compensation is inherent in the tenure and promotion system itself. Progress through the ranks, and in particular promotion to a new rank, results in increased compensation. Put simply, consistent high performance in teaching and productivity in research is and should be rewarded more generously than average or under performance.

232. At the University, the average annual salary of an Assistant Professor is about $11,000 higher than that of a Lecturer; the average annual salary of an Associate Professor is about $12,000 higher than that of an Assistant Professor; and the average annual salary of a Full Professor is about $20,000 higher than that of an Associate Professor:

	Average		
Rank	Salary	Years in Rank	Number of Members
Lecturer	65,570	8.7	6
Assistant Prof	76,146	5.7	34
Associate Prof	88,120	5.0	79
Full	108,547	6.0	73
SLI I	59,880	3.3	3
SLI II	69,512	6.3	6
SLI III	76,985	4.9	14

Librarian I	N/A	N/A	None
Librarian II & III	70,121	3.3	3
Librarian IV	86,621	2.8	6

233. The University says its final compensation proposal:

a. is consistent with the focus on excellence and achievement which is inherent in the compensation of faculty members;

b. is consistent with the approach taken to compensation of faculty at the other research universities continued under the *University Act*; and

c. would provide meaningful gains in compensation for the Members.

<u>The FA's Proposal to Remap the Salary Grid (Article 48/I-1)</u>

234. The FA has indicated that it wants to proceed with the proposal on compensation which it tabled on February 26, 2015. The University notes that this was not the final proposal tabled by the FA on this matter. However, at the FA's request, the University has costed the February 26, 2015 proposal and that is the proposal which the University addresses in these submissions.

235. Remapping the salary grid based solely on years of service – as is proposed by the FA – would be an impermissible breakthrough. It would effectively link Members' compensation to seniority not achievement. Such an approach to compensation is fundamentally inconsistent with the ethos of a research university in British Columbia.

236. Just as a research university would not grant tenure or promotion on the basis of seniority rather than a rigorous evaluation of performance, it should not be expected to compensate its faculty members in "lock-step".

237. In addition, such a breakthrough would create serious structural problems in the University's compensation system:

a. remapping would seriously distort the compensation structure at the University. For example, it would reward Members who had not met the requirements to be promoted to a higher rank, particularly when this situation had been sustained over a long period of time, with a sometimes substantial compensation increase. In the meantime, other Members, particularly when the member had been recently promoted to a higher rank, would see much less of an increase. In some cases, a Member would see no increase at all from the remapping;

b. it would effectively undo the bargain about compensation which the Parties reached in previous rounds of negotiation; and

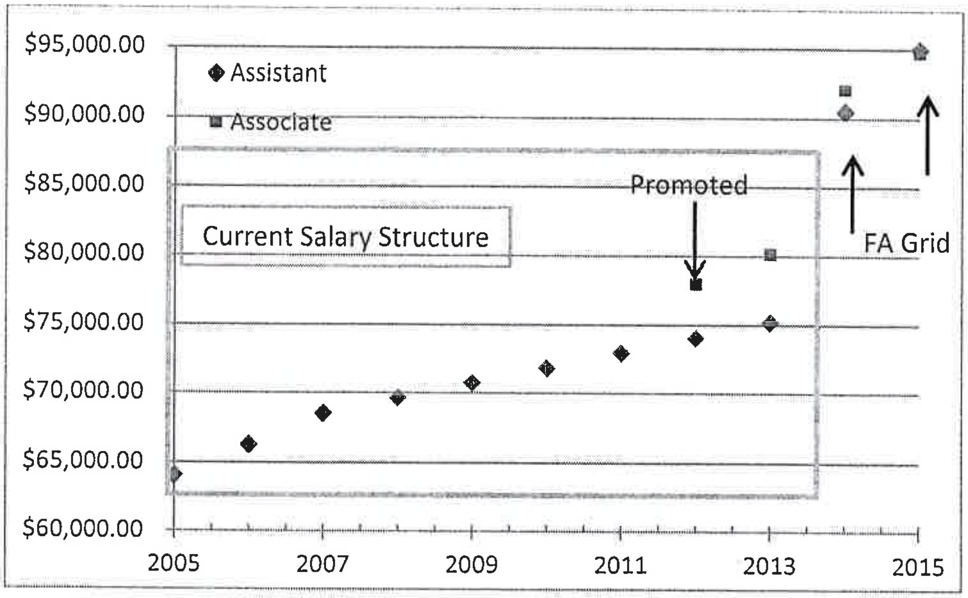
c. it would ignore individual merit and emphasize seniority in rank when compensating progress through the ranks.

238. Eight of the 34 Associate Professors at the University have been in that rank for more than ten years. Under the FA's proposal, anyone in that group whose compensation has reached the current ceiling for the rank would receive a salary increase, in some cases an increase of close to $30,000, without being promoted.

239. In contrast those who have met the requirements to be promoted to a higher rank, especially recently, would be much less well rewarded because of fewer years in the new rank.

240. In this regard, the University's costing of the effect of the FA's proposal on specific Members is at **UBOD, Volume 2, Tab 20.**

241. Some of the salary increases under the FA's proposal would be extreme. As one example, in the cases of the Assistant Professor and Associate Professor plotted below, the salary increases in the first year would be 20% and 15%, respectively. Over the two years plotted below, the cumulative salary increase would be 25% for the Assistant Professor and 18% for the Associate Professor:



Market Differentials (Article 48/I-1)

Background

242. During the operation of the Faculty Agreement, the University had the ability to pay market differential stipends as a means of responding to external, market-driven pressures on faculty recruitment and retention or, in exceptional circumstances, where the University wished to attract a highly meritorious individual.

243. A University policy, the Faculty Association Market Differential Policy ("Policy"), governed the payment of market differential stipends. Under the Policy, there was no limit on the amount of the market differential stipend which could be paid to a faculty member, although the Policy required the University to satisfy certain procedural requirements.

UBOD, Volume 1, Tab 16

244. As a practical matter, the University used most market differential stipends to attract faculty members in three Schools: Nursing, Business, and Social Work. Due to the availability of well-paid, non-academic careers for prospective faculty in each of these Schools, the University faced significant challenges when recruiting to these Schools.

245. Each of these Schools makes an important contribution to the University. However, the School of Business is a particularly important academic unit. It offers a popular

academic program: around 17% of the University's students are enrolled in that School. In the School of Business, market differential stipends paid under the Policy significantly exceed the $20,000 limit reflected in the FA's final proposal.

246. An inability to offer adequate market differentials would hinder the University in seeking to attract qualified and skilled candidates for faculty positions in the above Schools and to the School of Business in particular.

The University's Proposal

247. The University's final proposal regarding market differentials (Article I-1.1.2) effectively permitted the Policy to continue operating under the First Collective Agreement.

The FA's Proposal

248. While the FA's final proposal on market differential accepted the continued payment of market differential stipends in principle, it placed new and unrealistic limits on their value. Most notably, the FA's proposal:

a. limited Market Differentials to 2.5% of the total salary expenditures paid to Members (Appendix 48A, paragraph 48A.2.3); and

b. limited a given Market Differential Stipend to $20,000 (Appendix 48A, Article 48A.5).

249. Such limits would severely and unnecessarily restrict the University's ability to recruit and retain faculty in some of its most successful programs. Such an outcome is very likely to adversely affect the University's ability to attract and retain students in those programs.

<u>Article 22/E-4 and E-8 (Renewal, Tenure and Promotion of Faculty)</u>

250. Both Parties tabled a final proposal regarding these articles.

251. The key difference between the Parties regarding Article E-8 is that the Faculty Association proposed one additional ground of appeal in connection with appeals from a decision of the University Promotion and Tenure Committee, (see Article E-8.3.2).

252. The key differences between the Parties regarding Article E-4 relate to the proposed composition of the Departmental Promotion and Tenure Committee ("DPTC"). The FA's proposal would provide a candidate for promotion or tenure with input into the composition of the DPTC. The University is opposed to this development because of its potentially adverse impact on the neutrality of one of the most important committees in the University.

<u>Article 23/E-7 (Letters of Reference)</u>

253. Both Parties tabled a final proposal regarding this article.

254. The key difference between the parties arises from the University's concern, given the critical role played by referees in the tenure and promotion process, that the neutrality of referees is unquestionable. To this end, the University wishes to:

a. increase the involvement of the Deans in the selection of referees; and

b. remove what had been Article 23.4 of the Faculty Agreement from the First Collective Agreement.

<u>Article 50/I-2 (Pensions and Benefits)</u>

The University's Proposal

255. The University's final proposal sought to incorporate the existing language on this subject from the Faculty Agreement into the First Collective Agreement.

The FA's Proposal

256. The FA's final proposal sought to make the following changes to the language of the Faculty Agreement:

a. opening up eligibility for <u>all</u> benefits to <u>all</u> Members (as opposed to only full-time Members);

b. with regard to the tuition waiver:

i. adding entitlement for common-law spouses, same sex spouses and "partners", and non-dependent and step-children of Members;

ii. removing any reference to eligible courses (i.e., adding eligibility for cost-recovery courses including the Masters in Business Administration program, courses offered by Continuing Studies, and courses offered by the University's Human Resources Department);

iii. eligibility for a Member's spouse and children for a period of eight years after a Member's retirement and death; and

iv. making part-time instructors eligible.

c. With regard to the Medical Service Travel Fund:

v. increasing the Fund from $10,000 to $15,000;

vi. replacing "attending physician" and/or "considered not medically necessary by the Medical Service Plan of BC" with "health professional" in specific provisions (Articles 50.10.3.1, 50.10.3.2.).

257. The University has costed the FA's proposals in connection with this Article at $4,907,964 over five years.

<u>Article 54/F-1 (Sabbatical Leave)</u>

The University's Proposal

258. The University essentially proposed incorporating the language of the Faculty Agreement into the First Collective Agreement, with one exception which is identified below.

The FA's Proposal

259. The FA's final proposal sought to make the following changes to the language of the Faculty Agreement:

a. remove the following language from what had been Article 54.1 of the Faculty Agreement: "While sabbatical leaves are available to Faculty Members, they are not granted automatically";

b. increase salary coverage in what had been article 54.2(a) of the Faculty Agreement from 80% to 85%;

c. increase salary coverage in what had been article 54.2(b) of the Faculty Agreement from 80% to 85%;

d. increase salary coverage in what had been article 54.2(c) of the Faculty Agreement from 90% to 100%; and

e. reduce the length of the period the Provost may defer granting an approved sabbatical leave from "up to three academic years" to "one academic year" in what had been Article 54.8 of the Faculty Agreement;

f. remove the requirement in what had been Article 54.17 of the Faculty Agreement which made a Member's ability on returning from a sabbatical leave to receive a nominal salary including all applicable salary adjustments had the person not taken sabbatical leave "subject to providing a satisfactory Performance Evaluation Report". The University agreed to forego the requirement of a "satisfactory" report, but its final proposal continue the requirement to <u>submit</u> a Professional Activity Report under the First Collective Agreement.

260. The University has costed the FA's proposal in connection with this Article at $555,241 over a five-year term.

<u>Article 55/F-2 (Academic or Professional Leave for Librarians and Senior Lab Instructors)</u>

The University's Proposal

261. The University proposed incorporating the language of the Faculty Agreement into the First Collective Agreement.

The FA's Proposal

262. The FA's final proposal sought to make the following changes to the language of the Faculty Agreement:

a. increase allocation in what had been Article 55.4(c)(ii) of the Faculty Agreement per full-time faculty member from $2,500 to $3,000;

b. remove the fund maximum of two years' allocation in what had been Article 55.4(c)(ii) of the Faculty Agreement;

c. change the compensation salary level and duration in what had been Article 55.9 of the Faculty Agreement; and

d. require the University to update the priority lists for the leaves in what had been Article 55.10.1 of the Faculty Agreement; and

e. add language to what had been Article 55.10.2 of the Faculty Agreement relating to placement on the priority list.

263. The University has costed the FA's proposal in connection with this Article at $299,245 over a five-year term.

<u>Article 56/F-3 (Assisted Study Leave)</u>

The University's Proposal

264. The University proposed incorporating the language of the Faculty Agreement into the First Collective Agreement.

The FA's Proposal

265. The FA's final proposal sought the following changes to the language of the Faculty Agreement:

a. Removing reference to duration of normal term in what had been Article 56.6 of the Faculty Agreement; and

b. Increasing financial assistance minimum to 85% from 50% in what had been Article 56.7 of the Faculty Agreement.

266. The University has costed the FA's proposal in connection with this Article at $259,831 over a five-year term.

Article 61/F-7 (Sick Leave)

The University's Proposal

267. With one exception noted below, the University proposed incorporating the language of the Faculty Agreement into the First Collective Agreement.

The FA's Proposal

268. As was the case before Arbitrator Ready, the FA sought to have paid sick leave entitlement increased from 60 to 180 days per illness or accident (Article 61.5).

269. In connection with the FA's proposal to increase the number of paid sick leave days available to Members by 300%, the University observes that the number of available paid sick leave days available is coordinated with the long-term disability plan available to Members. The LTD Plan has a 60-day qualifying period. For this reason, the University says that 60 days is an appropriate number of paid sick days for Members who have a long-term illness or disability.

270. The FA proposal also:

a. adds a top-up to the compensation received by a Member under the *Workers' Compensation Act*. The proposed top-up is to 100% of the Member's salary (Article 61.2). WorkSafe benefits are not taxable. The University therefore proposed a top-up to 100% of average <u>net</u> pay to avoid the situation that would arise under the FA's proposal. Under the FA's proposal, a Member receiving WorkSafe benefits would receive more income that he/she would receive if he/she were in receipt of his/her regular pay;

b. added a provision providing for sick leave during the term of a sabbatical, academic, professional, or assisted study leave which also provided a member with the option of extending the relevant leave for the same period as the sick leave or requesting an equivalent carry-forward credit for future leaves (Article 61.6); and

c. provided for a two-year leave of absence for "health reasons" for Members who do not qualify for long-term disability benefits, with provision for reinstatement at the Member's previous rank plus any applicable changes (Article 61.7).

271. The University has costed the FA's proposal in connection with this Article at $1,491,351 over a five-year term.

CONCLUSION

272. In the University's submission, an appropriate award under section 55 of the *Code* would be a five-year First Collective Agreement reflecting the University's final proposals on the outstanding issues.

All of which is respectfully submitted on behalf of the University of Northern British Columbia

Patrick Gilligan-Hackett
Counsel for the University of Northern British Columbia

APPENDIX A
CHRONOLOGY
BARGAINING A FIRST COLLECTIVE AGREEMENT

On May 20, 2014, the Parties first met in collective bargaining for a first collective agreement.

Between May 20, 2014 and October 9, 2014, the Parties met on numerous dates to bargain. They signed off on a number of articles in connection with the first collective agreement. They faced a substantial task in negotiating the replacement of the extensive provisions of the Faculty Agreement with a new first collective agreement.

In September, 2014, the FA applied to the Board for the assistance of the Board's mediation division.

On October 22, 2014, the Board appointed Trevor Sones as a mediator pursuant to section 74 of the *Code*.

On October 28, 2014, the Parties met and with the assistance of Mr. Sones signed off on additional articles. From November 2014 to February 2015, the Parties met on numerous mediation dates and signed off on additional articles. They also met on a few occasions without Mr. Sones in attendance.

On January 15, 2015, the FA conducted a strike vote. 230 of 343 eligible Members voted. 84.8% of the Members who did vote voted in favour of strike action.

On February 10, 2015, the FA asked Mr. Sones to report out. He did so.

On a number of occasions in March, 2015, the Parties met in bargaining without the assistance of Mr. Sones.

On March 2, 2015, the FA served strike notice on the University.

From March 5, 2015 to March 19, 2015, the FA withdrew all services and engaged in a full strike.

The afternoon of March 18, 2015, the University filed an application pursuant to section 55 of the *Code*.

Mr. Sones was again appointed as a mediator and the Parties met in mediation on March 25, 2015.

On March 31, 2015, Mr. Sones issued a report pursuant to section 55(6) of the *Code*. Mr. Sones found that "there [was] no ability to fashion recommendations [under section 55(6)(a) of the *Code*] that have a reasonable likelihood of acceptance by both parties" (at 3). He recommended arbitration pursuant to section 55(6)(b)(ii) of the *Code*.

On April 1, 2015, the Board directed the Parties to proceed to arbitration pursuant to section 55 of the *Code* by a single arbitrator or the Board to conclude the terms of a first collective agreement.

On May 4, 2015, Arbitrator Stan Lanyon, Q.C. accepted the appointment as a single interest arbitrator.

APPENDIX B

COLLECTIVE/FACULTY AGREEMENTS AT COMPARATORS

BC UNIVERSITIES WITH RESEARCH AS PART OF THEIR MANDATE

Simon Fraser University

Although SFU and its Faculty Association have not yet reached a first collective agreement, the pre-certification Framework Agreement does not appear to be available online.

Relevant SFU Policies are located at:
http://www.sfu.ca/policies/gazette/academic/a20-01.html
http://www.sfu.ca/policies/gazette/academic/a20-02.html

University of Victoria - June 5, 2012 to June 30, 2019
https://www.uvic.ca/vpacademic/assets/docs/Collective%20Agreement.pdf

University of British Columbia - July 1, 2012 to June 30, 2014
http://www.hr.ubc.ca/faculty-relations/files/CA-2012-2014_Online_November-29-2013.pdf

Thompson Rivers University - April 1, 2012 to March 31, 2014
https://www.tru.ca/__shared/assets/trufa_agr24792.pdf

Royal Roads University - April 1, 2014 to March 31
https://humanresources.royalroads.ca/sites/default/files/RRUFA-Collective-Agreement-Apr-2014-Mar-2019.pdf

EXTRA-PROVINCIAL UNIVERSITIES

Acadia University - July 1, 2014 to June 30, 2017,
http://hr.acadiau.ca/tl_files/sites/hr/Collective Agreements/13th Collective Agreement.pdf

Brandon University - April 1, 2015 to March 31, 2019
https://www.brandonu.ca/hr/files/BUFA.pdf

Lakehead University - September 1, 2011 to August 31, 2015
http://lufa.org/wp-content/uploads/2012/08/LUFA-Collective-Agreement.pdf

Laurentian University - July 1, 2011 to June 30, 2014
http://www.lufapul.ca/pdf/ColAgree1114.pdf

University of Lethbridge - Faculty Handbook - July 1, 2014 to June 30, 2016
http://www.uleth.ca/hr/sites/hr/files/ULFA%20Sessional%20Handbook_0.pdf
http://www.uleth.ca/hr/sites/hr/files/ULFA_Faculty_Handbook_0.pdf

Mount Allison University - November 17, 2014 to June 30, 2016
http://www.mta.ca/uploadedFiles/Community/Administrative_departments/Human_Resources/Labour_relations/MAFA_full-time/MAFAFT_CA.pdf

Saint Mary's University - September 1, 2012 to August 31, 2015
http://www.smu.ca/webfiles/SMUFUCAAgreementSeptember2012toAugust2015.pdf

Trent University - July 1, 2013 to June 30, 2016
http://www.trentfaculty.ca/sites/default/files/TUFA%20CA%202013%20-%20pdf.pdf

TABLE 1: GENERAL OPERATING FUND RESOURCES

	13/14				14/15				15/16	16/17	17/18
	Approved Budget	Actual	Variance $	Variance %	Approved Budget	Actual	Variance $	Variance %	Approved Budget	Forecast	Forecast
Provincial Operating Grant	46,262,439	46,264,446	2,007	0.00%	45,799,813	46,848,407	1,048,594	2.29%	46,720,399	47,062,093	47,845,291
Provincial Grant - one time/other	264,385	260,630	(3,755)	-1.42%	258,160	259,173	1,013	0.39%	259,173	259,173	259,173
Federal Grant	1,365,666	1,365,666	-	0.00%	1,240,666	1,239,661	(1,005)	-0.08%	1,145,436	1,145,436	1,145,436
Tuition fees	17,029,454	16,644,395	(385,059)	-2.26%	17,478,171	14,622,553	(2,855,618)	-16.34%	16,580,686	16,925,300	17,316,806
Student fees	1,517,384	1,567,675	50,291	3.31%	1,525,084	1,449,980	(75,104)	-4.92%	1,497,533	1,497,533	1,497,533
Other revenues	1,812,981	1,944,115	131,134	7.23%	1,594,344	2,114,477	520,133	32.62%	2,085,350	1,885,350	1,885,350
Total Revenues	**68,252,309**	**68,046,927**	**(205,382)**	**-0.30%**	**67,896,238**	**66,534,251**	**(1,361,987)**	**-2.01%**	**68,288,577**	**68,774,884**	**69,949,589**

<u>Assumptions & Comments for 2015/16 - 2017/18</u>

Provincial Grant - general operating	As per Ministry instructions, including 1.42% decrease in 2015/16. (Grant amount for Northern Medical program included in budget letter but removed here for the purpose of analyzing the general operating budget only.) Also includes grant amounts for M.Eng and projected mandate funding.
Provincial Grant - one time / other	Assume no change.
Federal Grant	Assumed 2015/16 funding level will remain constant in subsequent fiscal years. However, as this amount is based on a three-year rolling average of tri-council research funding, and tri-council research funding has been declining, this revenue may actually decline in future years.
Tuition & student fee revenues	Tuition fee increases remain at 2% as per Provincial policy. Includes MBA Program. FTE growth: assume small growth in 2016/17 and 2017/18 re new M.Eng program
Other revenues	Includes interest, sales & service, and internal cost recoveries. Assumes no changes other than removing the one-time 2015/16 adjustment to interest revenue. However, it is anticipated that due to changes in cash balances resulting from work on student residences and other projects, the actual interest income will likely decline in future years. Note: additional recovery from ancillaries is noted separately in TABLE 3. Increasing contribution from Ancillaries is difficult to predict due to profitability of various ancillary operations and transition to new models (e.g. ELS enrolments).

TABLE 2: GENERAL OPERATING FUND SALARIES & BENEFITS

	13/14				14/15				15/16	16/17	17/18
	Approved Budget	Actual	Variance $	Variance %	Approved Budget	Actual	Variance $	Variance %	Approved Budget	Forecast	Forecast
Positions covered under the Faculty Association Agreement:											
Salaries	23,678,059	22,689,871	988,188	4.17%	23,947,487	21,867,420	2,080,067	8.69%	24,372,001	24,931,219	25,802,486
Benefits	4,181,518	3,890,507	291,011	6.96%	4,207,161	3,783,383	423,778	10.07%	4,247,306	4,347,965	4,504,794
Subtotal	27,859,577	26,580,378	1,279,199	4.59%	28,154,648	25,650,803	2,503,845	8.89%	28,619,308	29,279,184	30,307,279
All other general operating fund positions:											
Salaries	18,484,273	17,610,489	873,784	4.73%	18,377,961	17,488,280	889,681	4.84%	18,953,182	19,371,357	19,653,026
Benefits	3,961,551	3,790,511	171,040	4.32%	3,928,878	3,581,839	347,039	8.83%	4,071,234	4,161,141	4,221,700
Subtotal	22,445,824	21,401,000	1,044,824	4.65%	22,306,839	21,070,119	1,236,720	5.54%	23,024,416	23,532,498	23,874,726
Total Labour	**50,305,401**	**47,981,378**	**2,324,023**	**4.62%**	**50,461,487**	**46,720,922**	**3,740,565**	**7.41%**	**51,643,724**	**52,811,682**	**54,182,005**

Assumptions & Comments for 2015/16 - 2017/18

Salaries — Includes known and anticipated wage adjustments and career progression increases at current levels. (i.e. does not include incremental costs associated with FA proposal.) Includes MBA salaries and allocation of salary portion of Master of Engineering budget.

Benefits — Assume no significant increase in benefits over 2014/15 levels.

TABLE 3: GENERAL OPERATING FUND EXPENDITURES & TRANSFERS

	13/14				14/15				15/16	16/17	17/18
	Approved Budget	Actual	Variance $	Variance %	Approved Budget	Actual	Variance $	Variance %	Approved Budget	Forecast	Forecast
Other Operating Expenditures	14,344,404	12,891,891	1,452,513	10.13%	13,805,958	13,218,343	587,615	4.26%	14,467,093	15,009,295	15,337,341
Minor Capital Expenditures	259,283	215,557	43,726	16.86%	258,976	63,696	195,280	75.40%	258,976	264,156	269,439
Capital Equipment Replacement	800,000	800,000	-	0.00%	800,000	800,000	-	0.00%	-	800,000	800,000
Transfers to other funds	5,383,411	5,422,792	(39,381)	-0.73%	5,406,525	5,196,962	209,563	3.88%	4,284,191	5,250,901	5,250,901
Transfers from other funds	(2,690,191)	(3,240,171)	549,980	-20.44%	(2,686,708)	(3,502,612)	815,904	-30.37%	(2,215,408)	(2,215,408)	(2,215,408)
Total transfers to / from other funds	2,693,220	2,182,621	510,599	18.96%	2,719,817	1,694,350	1,025,467	37.70%	2,068,783	3,035,493	3,035,493
Total Expenditures & Transfers	18,096,907	16,090,069	2,006,838	11.09%	17,584,751	15,776,389	1,808,362	10.28%	16,794,852	19,108,943	19,442,272
Contribution from Ancillary Operations	150,000	150,000	-	0.00%	150,000	150,000	-	0.00%	150,000	150,000	150,000
Total Expenditures & Transfers net of Contribution from Ancillary Operations	**17,946,907**	**15,940,069**	**2,006,838**	**11.18%**	**17,434,751**	**15,626,389**	**1,808,362**	**10.37%**	**16,644,852**	**18,958,943**	**19,292,272**

Assumptions & Comments for 2015/16 - 2017/18

Other Expenditures	One-time adjustment for 2015/16; reduction reinstated in future years. Includes MBA and M.Eng expenses. Small growth re M.Eng plus constant growth at 2.0% in all other areas to accommodate inflationary pressures.
Capital Equipment Replacement	One-time adjustment for 2015/16; reduction reinstated in future years and assumed constant at 2014/15 level.
Minor capital	Assumed constant at 2015/16 level.
Transfer to Other funds	One-time adjustments for 2015/16; reductions reinstated in future years and assumed constant at 2014/15 level.
Transfer from Other funds	Assumed constant at 2015/16 level. However, expiry of external funding may result in decreases to this line, which would increase the projected deficits accordingly unless offsetting budget reductions are made.

TABLE 4: SUMMARY OF GENERAL OPERATING FUND RESULTS

	13/14				14/15				15/16	16/17	17/18
	Approved Budget	Actual	Variance $	Variance %	Approved Budget	Actual	Variance $	Variance %	Approved Budget	Forecast	Forecast
Total Revenues	68,252,309	68,046,927	(205,382)	-0.30%	67,896,238	66,534,251	(1,361,987)	-2.01%	68,288,577	68,774,884	69,949,589
Total Labour	50,305,401	47,981,378	2,324,023	4.62%	50,461,487	46,720,922	3,740,565	7.41%	51,643,725	52,811,682	54,182,005
Other operating expenditures	14,344,404	12,891,891	1,452,513	10.13%	13,805,958	13,218,343	587,615	4.26%	14,467,093	15,009,295	15,337,341
Minor Capital	259,283	215,557	43,726	16.86%	258,976	63,696	195,280	75.40%	258,976	264,156	269,439
Capital Equipment Replacement	800,000	800,000	-	0.00%	800,000	800,000	-	0.00%	-	800,000	800,000
Transfers to / from other funds	2,693,220	2,182,621	510,599	18.96%	2,719,817	1,694,350	1,025,467	37.70%	2,068,783	3,035,493	3,035,493
Surplus / (Deficit)	(150,000)	3,975,480	4,125,479		(150,000)	4,036,940	4,186,940		(150,000)	(3,145,740)	(3,674,688)
Contribution from Ancillary Operations	150,000	150,000	-		150,000	150,000	-		150,000	150,000	150,000
Net Surplus / (Deficit)	**(0)**	**4,125,480**	**4,125,479**		**0**	**4,186,940**	**4,186,940**		**(0)**	**(2,995,740)**	**(3,524,688)**

TABLE 5: ACCUMULATED SURPLUS INFORMATION

Accumulated surplus is comprised of the following:

		(in thousands of dollars) 2015		2014
Accumulated operating surplus	$	87,733[1]	$	87,396
Endowment		47,382		43,719
	$	135,115	$	131,115

Accumulated operating surplus consists of the following individual fund surpluses:

		2015		2014
Invested in tangible capital assets				
Capital assets	$	216,474	$	231,167
Amounts financed by deferred capital contributions		(169,941)		(172,716)
Amount financed by long term debt (net of sinking fund)		(5)		(1,374)
		46,528[2]		44,059
Appropriated for specific purposes				
General Operating				
Departmental carryforwards		5,891[3]		5,054
Minor capital projects, equipment purchases and special projects		8,573[4]		9,312
Professional development and internal research funds		4,926[3]		4,395
		19,390		18,761
Ancillary Services		1,176[3]		713
Capital		5,410[3]		7,184
Specific Purpose		11,712[3]		13,162
		37,688		39,820
Unrestricted surplus		3,517[5]		3,517
Total accumulated operating surplus	$	87,733	$	87,396

- General Operating appropriations are comprised of departmental amounts calculated under a policy which allows them to carry forward unspent amounts to future periods. It also includes allocations for one time projects, minor capital projects and new equipment purchases and funds set aside for individuals covered under various employment handbooks for professional development and research.
- Ancillary Services represents accumulated funds held for the ongoing operations of ancillaries such as the Bookstore, Conference Services, Continuing Education and Vending.
- Capital represents funds held for specific capital projects and the Capital Equipment Replacement Reserve.
- Specific Purpose are funds that are restricted internally for specific activities and use, such as conference fees, library fines and reserves and externally by contract or other arrangement with external agencies.

NOTES:

[1] *Total accumulated operating surplus*

[2] *Investment in capital assets*

[3] *Reserves totaling $29,115*

[4] *Projects and capital purchases*

[5] *University contingency*