

IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE UNIVERSITY OF NORTHERN BRITISH COLUMBIA

AND:

**THE UNIVERSITY OF NORTHERN BRITISH COLUMBIA
FACULTY ASSOCIATION**

(INTEREST ARBITRATION 2013)

**SUBMISSION OF THE UNIVERSITY OF NORTHERN BRITISH COLUMBIA
FACULTY ASSOCIATION**



BLACK GROPPER
1640-401 West Georgia Street
Vancouver, BC V6B 5A1
(604) 632-3380
ALLAN E. BLACK, Q.C.

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(Employer)

AND:

THE UNIVERSITY OF NORTHERN BRITISH COLUMBIA
FACULTY ASSOCIATION

(Association)

SUBMISSION OF THE UNIVERSITY OF NORTHERN BRITISH COLUMBIA
FACULTY ASSOCIATION

1 The Arbitrator's Terms of Reference

1.1 Arbitrator's terms derived from Article 46.3

1.1.1 The Arbitration Board is constituted under and derives its jurisdiction from Article 46.3 of the Faculty Agreement (Book of Evidence [hereafter BoE], Tab A).

1.1.2 However, notwithstanding the terms of Article 46.3.2, by the terms of an agreement between the Employer and the Association, the outstanding issues are referred to a single mutually satisfactory arbitrator rather than an Arbitration Board. The Arbitrator so chosen serves in the capacity stipulated in the Faculty Agreement.

1.1.3 The terms of reference for the Arbitrator, as stipulated in the Agreement, are provided below:

- 46.3.9 As soon as possible after an arbitration board is designated it shall, after serving sufficient notice on all Parties, proceed to make full enquiry.
- 46.3.10 An arbitration board may only consider, and an arbitral award may only deal with, those matters which are negotiable and which have been referred to the arbitration board for resolution.
- 46.3.11 An arbitration board shall not entertain or introduce any items for arbitration other than those already under consideration by the Parties.

- 46.3.12 An arbitration board shall have the power to determine its own procedures, but shall give full opportunity to the Parties to present evidence and to be heard, holding such meetings and discussions as it may consider necessary.
- 46.3.13 After making full enquiry and without undue delay and in any event not more than thirty (30) days after the date the items for arbitration are communicated to an arbitration board, the arbitration board shall make an award which shall be binding on both Parties, and that award shall be communicated, in writing, to the Chairperson of the Board of Governors and to the President of the Association.
- 46.3.14 The award of a majority of the members of an arbitration board, and failing a majority, the award of the Chairperson, shall be the award of the arbitration board.
- 46.3.15 The BC Commercial Arbitration Act does not apply to an arbitration under this Agreement or any award resulting from it.
- (a) No award, proceeding or decision of an arbitration board shall be questioned or reviewed in any court, and no order shall be made or process entered or proceedings taken in any court (whether by way of injunction, declaratory judgement, prohibition, quo warranto or otherwise) to question, review, prohibit or restrain the arbitration board in any of its proceedings.
- (b) Notwithstanding subsection Article 46.3.15(a), the award, proceeding or decision of an arbitration board may be questioned, or reviewed by way of an application for certiorari or mandamus, if an application therefore is filed with the Court no later than thirty (30) days after the date of the award, proceedings or decision of the arbitration board.

1.2 Issues in dispute

1.2.1 The parties have not succeeded in reaching agreement on all matters for the term of the Agreement 1 July 2012 to 30 June 2014. The matters in dispute have been submitted to the Arbitrator under Article 46.3 for adjudication.

1.2.2 The matters in dispute, and for which an arbitrator's award is requested (Tab B), include the following:

Changes to compensation

Article 48: Compensation (BoE, Tab B-1). The University of Northern British Columbia Faculty Association (henceforth UNBC-FA) proposes to bring faculty salaries at UNBC closer to sector norms in Canada. At present, salaries at UNBC lag far behind those at Canadian universities in general and at comparator institutions in particular.

Changes to other articles

Article 19: Retirement, Resignation and Alteration of Employment (BoE, Tab B-2). The UNBC-FA proposes several changes to this article. Most of them do nothing more than bring the wording of the provisions relating to phased retirement into conformity with established practice. The UNBC-FA also seeks to increase the medical/dental post-retirement fund and to incorporate present practice, articulated in a Memorandum of Understanding, into the Agreement.

Article 28: Professional Development Allowance (BoE, Tab B-3). Our proposal would see increased professional development allowances only for those Members located outside of Prince George. The increases are intended to ensure that faculty in those locations (Terrace, Fort St. John, and Quesnel) are compensated for the greater cost of professional development in those locations.

Article 30: Teaching Workload (BoE, Tab B-4). The UNBC-FA proposes changes to this article that ensure transparency and equity in the assignment of teaching workload, and clarify how technologically mediated instruction is recognized.

Article 50: Pensions and Benefits (BoE, Tab B-5). The UNBC-FA's proposed changes to this article are minor and are intended to ensure that benefits are delivered to the membership more equitably. The UNBC-FA also seeks to increase the medical service travel fund.

Article 54: Sabbatical Leave (BoE, Tab B-6). The UNBC-FA proposes only two changes to this article. One is a provision to enable Faculty Members to take a sabbatical after five years of service, and the other is to incorporate present practice, articulated in a Memorandum of Understanding, into the agreement.

Article 61: Sick Leave (BoE, Tab B-7). We propose to bring UNBC's faculty sick leave provisions into conformity with norms within the Canadian university sector.

Article 62: Leave of Absence (BoE, Tab B-8). The UNBC-FA proposes changes to ensure clarity and equitable treatment for members who are granted leave to take up research fellowships.

2 A Replication Model of Interest Arbitration: Evaluation against Objective Criteria

2.00 In their efforts to frame an award, arbitrators normally seek to determine as closely as possible what the parties might have negotiated under the conditions of free collective bargaining.

2.01 However, arbitrators distinguish the replication process from speculation, mediation, and "adjustment." Speculation, mediation, and adjustment seek to imagine a result to which both parties would agree.

2.02 Instead, as Arbitrator Colin Taylor stated in 2003, arbitration is adjudicative and substitutes objective criteria for speculation:

If interest arbitration is an adjudicative method of decision making as opposed to an adjustment method, then it requires appropriate objective criteria to guide its reasoning.

2.03 Insofar as an arbitrator's task requires a process of adjudication rather than a speculation on outcomes, replication requires the use of the most objective information available. Arbitrator Taylor expressed the principle of replication this way:

It is not the function of an interest arbitrator to speculate as to how the issues would likely have played out in the dynamics of collective bargaining. Nor is it his or her function to fashion a settlement based on a reasonable compromise between the negotiating positions of the two parties. The interest arbitrator is required to "act adjudicatively" and base the final result on rational objective criteria: Re Beacon Hill Lodges of Canada and Hospital Employees Union (1985) 19. L.A.C. (3d) 288 (Hope) and Welland, supra.

The arbitral jurisprudence establishes that to achieve replication, the interest arbitrator must engage in an objective analysis of the terms and conditions of employment prevailing for similar work in the relevant labour market. In other words, what is the prevailing standard in relationships in which similar work is performed in similar working conditions: City of Whitehorse and International Association of Fire Fighters, Local 2217 (1993) unreported (Taylor). Government of British Columbia and the British Columbia Crown Counsel Association (2003) (Taylor, Q.C.) (BoA, Tab 1 at pp. 9—10)

2.1 Factors to be considered for the purposes of replication

2.1.1 Unlike some collective agreements, such as those at the University of British Columbia and the University of Victoria, the UNBC Faculty Agreement is silent on the factors to be considered by the Arbitrator. Furthermore, this is the first arbitration between the UNBC-FA and the Employer. There are therefore no UNBC-specific awards to establish precedents for the Arbitrator's decision.

2.1.2 In the absence of specifically enumerated criteria, the UNBC-FA proposes that the Arbitrator follow the lead of past arbitrators in the Canadian university sector and consider the following factors for the purposes of replication. These are the factors identified and cited by arbitrators in the university sector, including those whose decisions appear in the UNBC-FA's Book of Authorities.

- (a) Salaries and benefits at universities in Canada, including
 - (i) average salaries at universities in Canada
 - (ii) average salaries at comparator universities in Canada
 - (iii) salaries of faculty at various benchmark positions
 - (iv) salary floors
 - (v) salary ceilings
- (b) Recent general wage increases (GWIs) at universities in Canada
- (c) The Consumer Price Index
- (d) Recent general wage increases (GWIs) in the public sector in Canada

2.1.3 The UNBC-FA emphasizes that the factors listed above are those identified and considered by arbitrators in other similar disputes in Canada.

3 Appropriate Comparators for UNBC

3.00 The UNBC-FA acknowledges that the identification of comparator institutions is essential to arbitrators' efforts to adjudicate disputes such as this one.

3.01 The UNBC-FA believes that it is appropriate that interest arbitrators, in their efforts to achieve replication, seek to identify

“... what is the prevailing standard in relationships in which similar work is performed in similar working conditions.”

Taylor, *supra* (BoA, Tab 1 at p. 10)

3.02 That normally means seeking to identify comparator institutions. In 2010, Arbitrator Martin Teplitsky noted that:

Comparables are usually examined for two different reasons. One reason is to determine whether the equitable principle of equal pay for equal work is followed. Ordinarily, persons living and working in the same general area performing the same work should receive more or less the same compensation. ... Another use of comparables is to determine a wage increase in any particular year.

University of Toronto and University of Toronto Faculty Association, (2010) (Teplitsky) (BoA, Tab 2 at p. 10)

3.03 The UNBC Faculty Agreement, unlike some in Canada's university sector, does not formally establish comparators, though the parties have in the past agreed on appropriate comparators for bargaining purposes.

3.04 Comparators can be established in a number of ways. UNBC, like other institutions, regularly and publicly compares itself to a list of highly ranked primarily undergraduate universities, discussed below.

3.05 While rankings provide one measure of an institution's appropriate comparators, other objective criteria can serve in the process of comparison. In 2011 Arbitrator Andrew Sims provided guidance in identifying suitable comparators for universities. In a decision relating to a dispute between the University of New Brunswick and its faculty association, Sims noted that the parties had agreed that comparable universities

- Will offer a similar scope of programs over a wide range of undergraduate and graduate faculties including Professional Faculties,
- Will be institutions of relatively similar size,
- Will have a similar research profile,
- Will be ones for which reliable objective data is available, and
- As a group will be geographically representative of such Universities in Canada.

University of New Brunswick and Association of University of New Brunswick Teachers (2011) (Sims) (BoA, Tab 3 at p. 15)

3.06 The UNBC-FA has drawn upon those categories and the Employer's use of rankings to propose the following universities (in alphabetical order) as particularly useful comparators for UNBC:

- Acadia University
- Brandon University
- University of Lethbridge
- Lakehead University
- Mount Allison University
- University of Prince Edward Island
- Trent University

3.07 To this list we add those universities not on the list above, but that the UNBC Board of Governors adopted at its meeting on 23 March 2013 (BoE, Tab C):

- University of Regina
- St. Francis Xavier University

3.08 We note and emphasize that the full list of comparators employed by the Board of Governors at its meeting of 23 March 2013 would support our proposals as convincingly as the UNBC-FA's proposed comparators. Indeed, we emphasize that comparisons with any publicly funded research university in Canada would show the proposals of the UNBC-FA to be entirely reasonable.

3.09 The grounds for proposing the comparators listed above are described in the remainder of Section 3 of the brief.

3.1 UNBC can be compared with highly ranked primarily undergraduate universities

3.1.1 UNBC is frequently compared with other small primarily undergraduate universities in Canada. Universities are commonly categorized on the basis of funding, research, and programs offered. "Medical/doctoral" universities offer many PhD programs and have medical schools. "Comprehensive" universities have substantial research profiles and a wide range of degree programs, including professional and graduate schools. "Primarily undergraduate" universities offer mainly undergraduate programming, with few graduate students. As will be seen below, UNBC has attributes of all three types of university, but it is generally ranked within the list of small primarily undergraduate universities, not least in the annual *Maclean's* ranking.

3.1.2 The Employer's response to the *Maclean's* annual ranking of Canadian universities represents an acknowledgement that it is appropriate to compare UNBC with other universities in that magazine's list of small primarily undergraduate universities. <http://oncampus.macleans.ca/education/2012/11/01/2013-primarily-undergraduate/>

3.1.3 When so compared, UNBC has been ranked among the very best of these universities—a high ranking embraced by the Employer. The *Maclean's* list of small primarily undergraduate universities includes, in order of the 2013 *Maclean's* rankings:

- Mount Allison University
- **University of Northern British Columbia**
- University of Lethbridge
- Acadia University
- University of Prince Edward Island
- Trent University
- St. Francis Xavier University
- Bishop's University
- Saint Mary's University
- Moncton University

- St. Thomas University
- Lakehead University
- Laurentian University
- University of Winnipeg
- University of Ontario Institute of Technology
- Brandon University
- Mount Saint Vincent University
- University of Cape Breton
- Nipissing University

3.1.4 Being among the very best is central to UNBC's identity and "brand." The Employer refers to and relies heavily on rankings and describes UNBC as "one of Canada's best small universities" (<http://www.unbc.ca/about-unbc>). The Administration takes pride in UNBC's national standing and ranking amongst small primarily undergraduate universities in Canada.

3.1.5 The high quality of UNBC is acknowledged not only outside the university but within it. In 2011, the present president of UNBC, George Iwama stated that

I'm delighted to know that we have distinguished ourselves and our region by our strong standing in the national ranking of universities by Maclean's Magazine. We are third in the country overall, surpassed only by two much older universities in the Maritimes. We are justified in claiming we are Canada's top small university west of Atlantic Canada. (BoE, Tab D)

3.1.6 On 1 November 2012, shortly after learning that UNBC's *Maclean's* ranking had risen to number two, the UNBC President addressed an e-mail (BoE, Tab D) to an internal listserv (facstaff) directed at faculty and staff at UNBC. He wrote the following:

Good morning everyone,

UNBC has been recognized, once again, by MacLean's [*sic*] Magazine as being one of the best universities in Canada. We have improved in the overall ranking among small universities from #3 to #2. I thank each one of you for your contributions that continue to make this a very special place of learning and research.

I was sharing a taxi last week with Robert Campbell, President of Mount Allison University (slightly ahead of us at #1). We exchanged stories of our faculty members and interactions with students on our campuses. As I reflect on that, I am reminded that it is the priority we place on making the best possible environment for you to succeed, that rewards us every day. Occasionally, as today, external bodies validate what we know, it is a wonderful community we are building.

Thank you again, it remains a special privilege to serve you,

George Iwama
President and Vice-Chancellor
University of Northern British Columbia

3.1.7 UNBC's high ranking plays an important part in its recruitment and retention of faculty. The ranking is mentioned prominently in UNBC's job postings for faculty and staff, which commonly include sentences such as the following (BoE, Tab E):

- "The University of Northern British Columbia is ranked as one of Canada's best small universities with a core campus in Prince George and regional campuses throughout northern BC."
- "The University of Northern British Columbia is consistently ranked as one of Canada's best and most research-intensive small universities."
- "Established in the community of Prince George in 1994, UNBC has quickly built a reputation as a top ranked Canadian University in both undergraduate and graduate education, and research."
- "it is Canada's premier, small, research-intensive university, with internationally recognized academic and research programs that prepare graduates in select areas of relevance to its region, the province, and beyond. The University has garnered significant recognition for its success."

When it advertised for a new President and Vice-Chancellor in 2008, the university boasted that UNBC "is a young and dynamic university, internationally recognized for its academic and research programs" (BoE, Tab F).

3.1.8 UNBC's ranking also plays a major role in the university's student recruitment strategies. UNBC's Facebook page, for example, begins with the statement that "UNBC is ranked #2 among Canada's small universities" (<https://www.facebook.com/UNBC>).

3.1.9 Any discussion of comparability ought to take into account not only the excellence that UNBC has achieved, but the central role of faculty in achieving it. Faculty activities (research and teaching) are crucial to the stated vision and mission of UNBC, reproduced below:

Our Vision

To be a student-centered, research-intensive university, uniquely northern and personal in character, responsive to the region we serve, and of national and international acclaim.

Our Mission

To improve the quality of life in our region, province and world by attaining the highest standards of undergraduate and graduate teaching, learning, and research.

To serve our vast region by nurturing relationships and being innovative, resourceful and responsive to student and community needs.

<http://www.unbc.ca/about/>

3.1.10 While all of the university's employees are dedicated and important to its mission, the faculty are at the very heart of the academic enterprise. It is clear that it has fallen, falls, and will continue to fall to the faculty, more than to any other employee group, to achieve the university's vision and mission.

3.1.11 It is the faculty who bear primary responsibility for "attaining the highest standards of undergraduate and graduate teaching." The University acknowledges that those standards have been attained, and that "our grads are generally more satisfied and have a higher employment rate than the grads of other BC universities."

<http://www.unbc.ca/about-unbc/message-president>

3.1.12 It is also the faculty who conduct and disseminate the vast majority of the high-quality research carried out at UNBC. The faculty develop research programs and partnerships, apply for the research funding in which the university takes pride, and conduct the scholarly activity that makes the university "research-intensive."

3.1.13 In addition, the faculty are crucial participants in the governance of the university, in the creation and administration of its curricula and academic programs, and in the nurturing of constructive relationships between the university and stakeholder communities in the region.

3.1.14 Thus, to the extent that the university accomplishes its mission to "improve the quality of life in our region, province and world," and to the extent that the university has achieved a reputation for excellence in research and teaching, the faculty, more than any other group, is responsible. In short, it would be impossible for UNBC to achieve its vision or mission without its faculty.

3.1.15 The vision statement of UNBC (cited above in 3.1.8) makes clear that the university aspires to "national and international acclaim." It aspires not to mediocrity, but to the highest standards in teaching, learning, and research. It stands to reason then, that the university seeks to fill and has filled its academic positions not merely with faculty of average skills, knowledge, and accomplishments, but with faculty of exceptional abilities.

3.1.16 The excellence of UNBC's faculty has been repeatedly acknowledged by the Employer. For example, speaking of the university's repeated top placement in national rankings, former UNBC president Charles Jago acknowledged the role of the faculty in the university's accomplishments: "This ranking confirms our position among Canada's top

small universities, and it confirms the importance of building a foundation with excellent faculty” (<http://www.unbc.ca/releases/2000/11-12macleans>).

3.1.17 The UNBC-FA asserts that the Employer has explicitly acknowledged that:

- comparisons between UNBC and other small universities in Canada are apt;
- UNBC is among the very best of such universities; and
- its faculty and their activities have central importance to the university’s mission, vision, and achievements.

3.1.18 The centrality of faculty to the university’s mission and excellence is not merely an interesting fact; it is an important factor to consider in assessing the rationale for comparability and in determining the appropriate level of compensation, as is discussed below in 3.9.

3.1.19 As stated above, the UNBC-FA’s proposals would be supported by comparison with any publicly funded university in Canada; however, **in terms of national rankings of primarily undergraduate universities, UNBC is most like Mount Allison, the University of Lethbridge, Acadia University, and Trent University.**

3.2 UNBC can be compared to other universities of similar scope

3.2.1 The criteria identified by Arbitrator Sims discussed in 3.05 suggest that comparison should also consider whether universities offer “a similar scope of programs over a wide range of undergraduate and graduate faculties including Professional Faculties” (Sims, *supra*, BoA, Tab 3 at p. 15).

3.2.2 UNBC **places emphasis on graduate teaching and professional training**, an emphasis clearly reflected in the structure of the university. Twenty out of UNBC’s twenty-four departments have graduate programs; there are also professional schools in Nursing, Social Work, Education, Planning, Business, Medicine, and Engineering.

3.2.3 Furthermore, graduate teaching and supervision are requirements for tenure and promotion. The Faculty Agreement at UNBC stipulates that, in order to be promoted to Associate Professor, Faculty Members need to have “a record of effective teaching at all levels available ... including, where appropriate, the direction of graduate students” (Article 22.13.5.1a). The direction of graduate students is available to the vast majority of Faculty Members, even most of those who are in programs that do not have graduate programs. Thus, graduate teaching is assumed to be part of the job of UNBC faculty.

3.2.4 According to Sims’ criterion, then, UNBC may be best compared with universities with significant graduate and professional programs: among the primarily undergraduate universities, such universities are the **University of Prince Edward Island, Lethbridge University, Brandon University, and Lakehead University.**

3.3 UNBC can be compared to institutions of relatively similar size

3.3.1 As discussed above, Arbitrator Sims enumerated “relatively similar size” as an appropriate criterion for comparison (Sims, *supra*, BoA, Tab 3 at p. 15).

3.3.2 In terms of its size, we suggest that UNBC (with 2830 FTE) may be best compared with universities of similar size, including **Mount Allison (2496)**, **Acadia University (3306)**, **Brandon University (2647)**, and **the University of Prince Edward Island (3876)** (*CAUT Almanac of Post-Secondary Education in Canada 2013—2014* [Ottawa: CAUT, 2013], p. 52).

3.4 UNBC can be compared to institutions with similar research profiles

3.4.1 Arbitrator Sims included research profile as a criterion for establishing comparators (Sims, *supra*, BoA, Tab 3 at p. 15), and within the university sector research intensity is considered an important characteristic. “Research universities” are commonly understood to be different from those without research mandates.

3.4.2 Despite its small size, UNBC is considered one of BC’s four research universities, along with UBC, SFU, and UVic. It is important to understand that few other small universities in Canada have as high a research profile as UNBC. To quote the Employer’s own promotional website:

For its size, UNBC is among the most research-intensive universities in Canada and many faculty are international leaders in their fields. Much of UNBC’s research focuses on the social, economic, environmental, and cultural issues of the North. This has led to the establishment of world-class research in such areas as Natural Resources and the Environment; Rural, Remote, and Northern Health; and the Sustainability of Communities.

<http://www.unbc.ca/about-unbc/facts/teaching-and-research>

Based on the Employer’s own descriptions of UNBC, the university should be compared with other research-intensive universities.

3.4.3 The Higher Education Strategy Associates (<http://higheredstrategy.com/>) have developed a normalized score for the scholarly impact of publications from each institution in Canada. UNBC ranks well by this measure, near the top (2nd) of our comparator group (small primarily undergraduate universities) for the Science and Engineering category, and near the median (9th out of 17) for Social Sciences.

3.4.4 The *Maclean's* rankings also recognize UNBC's research intensity, noting this year that "the University of Northern British Columbia's second-place finish is an even bigger story. UNBC, an 18-year-old school, debuted at ninth place 14 years ago. This year it has the highest total research dollars, and the second best student-faculty ratio—impressive for such a young school" (<http://www2.macleans.ca/2012/11/01/the-2013-macleans-university-rankings/>).

3.4.5 UNBC's research intensity is also evident in the requirement for all Faculty Members to engage in significant scholarly activity. Faculty Members must meet stringent criteria to be promoted at UNBC. For example, the FA Agreement specifies that in order to be promoted to the rank of Full Professor, a Faculty Member must have "a sustained and productive program of scholarly activity and, where appropriate, professional activities, with achievements that are of sufficient significance to be recognized nationally or internationally" (Article 22.13.6.1). It stands to reason, therefore, that Members' rewards for achieving this standard should be at least as high as at other small universities, and that, in fact, salaries at larger research-intensive universities would make apt comparisons.

3.4.6 Thus, UNBC should also be compared with other universities with similar research mandates and profiles. UNBC's research profile for 2011 (the most recent year for which statistics are available) resembles that of much larger research universities. Figure 1 shows the average research awards (per full-time faculty) acquired by UNBC in 2011.

Figure 1. Research profile of UNBC

University	Number of Full-Time Faculty (2010-11)	Research Awards per full-time faculty x \$1000
Memorial University	930	75.5
University of Prince Edward Island	243	75.0
UNBC	183	74.2
Lakehead University	306	72.8
University of Lethbridge	345	69.9
University of Ontario Inst. of Technology	159	63.1
University of Windsor	513	62.6
Trent University	237	60.2
Laurentian University	408	59.9
University of Regina	381	57.8
York University	1,371	47.7
University of Moncton	342	24.8
St. Mary's University	240	32.1
St. Francis Xavier University	243	29.9
University of Winnipeg	267	25.4
Moncton University	342	24.8

Source: ReSearch Infosource: <http://www.researchinfosource.com/media/Top%2050%20LR-2012.pdf>

3.4.7 Figure 1 reveals that the research awards secured by UNBC faculty compare favourably with several much larger research universities (Memorial, Windsor, York), and very favourably with the other small universities in the country. According to Research InfoSource, an organization that tracks research and innovation in Canada, UNBC is one of

Canada's top 50 research universities. Only 11 of the 19 universities categorized by *Maclean's* as small, primarily undergraduate universities (Section 2.1 of this report) appear on the top-50. Of those that do make the list, most have research profiles well below that of UNBC. (<http://www.researchinfosource.com/pdf/Top%2050%20LR-2012.pdf>)

3.4.8 Figure 1 also reveals that UNBC's research profile is considerably higher than that of the University of Regina, the comprehensive university included in the UNBC Board of Governors' list of comparators in March 2013 (discussed below).

3.4.9 Thus, in terms of research profile, primarily undergraduate universities such as the **University of Prince Edward Island, Lakehead University, and the University of Lethbridge** make particularly apt comparators.

3.5 UNBC can be compared with other relatively isolated Canadian universities

3.5.1 As noted by Arbitrator Sims (2011), one of the categories for comparator universities is that "as a group [they] will be geographically representative of such Universities in Canada" (Sims, *supra*, BoA, Tab 3 at p. 15).

3.5.2 Faculty at UNBC are situated in small and medium-sized cities (Quesnel, Fort St. John, Terrace, and Prince George) that are relatively isolated geographically from major cities with larger international airports. The communities in which UNBC's campuses are situated are relatively northern (compared to primarily undergraduate universities in general) and remote.

3.5.3 The UNBC-FA agrees that other relatively geographically isolated universities in Canada are suitable comparators with UNBC. In this regard, UNBC is most like **Lakehead University and the University of Lethbridge**.

3.6 Comparators used in previous negotiations

3.6.1 During the 2012 bargaining round, the Employer's bargaining team refused to engage in any discussion about comparators for UNBC. However, the parties referenced and utilized a list of comparators during the negotiation of previous agreements (BoE, Tab C). The list of comparators from those agreements is as follows:

- Acadia University
- Brandon University
- Brock University
- Lakehead University
- Wilfrid Laurier University
- University of Lethbridge
- University of Regina

- University of Saskatchewan
- Trent University
- University of Winnipeg

3.6.2 What is particularly noteworthy about the list is that it includes small primarily undergraduate universities, and several mid-sized and larger universities with graduate programs (Brock University, Wilfrid Laurier University, University of Regina, and University of Saskatchewan)—in recognition of the fact that UNBC has characteristics of both types of universities.

3.7 Comparators used by the Employer for institutional analysis in 2013

3.7.1 Although the University's bargaining team refused to discuss comparators in 2012, the Board of Governors (the Employer) approved (on 23 March 2013) a list of comparators for purposes of institutional analysis (BoE, Tab C). The list comprises:

- St. Francis Xavier University
- Mount Allison University
- Trent University
- Lakehead University
- University of Regina
- University of Lethbridge

3.7.2 Again, the Board of Governors approved a varied list of universities. It included two small universities with no graduate programs (St. Francis Xavier and Mount Allison, the only university that ranked higher than UNBC in the most recent *Maclean's Magazine* University rankings). The list also included three relatively small universities with some graduate programs, including Ph.D. programs (Trent, Lakehead, and Lethbridge). Finally, the list included the University of Regina, a mid-sized "comprehensive" university—a university in which research and graduate education are integral to the university mission.

3.7.3 Thus, the Board of Governors continues to recognize that UNBC is both an excellent small university and a research-intensive university with many graduate programs.

3.7.4 The list of comparators utilized by the Employer in the past (BoE, Tab C) is summarized in Figure 2 (below).

Figure 2. List of comparator universities utilized by the Employer

	FA negotiations 2004-2006	FA negotiations 2006-2010	UNBC BoG (23 March 2013)
Trent University	X	X	X
University of Lethbridge	X	X	X
Lakehead University	X	X	X
University of Regina	X	X	X
St. Francis Xavier University			X
Mount Allison University			X
Acadia University	X	X	
University of Winnipeg	X	X	
Brandon University	X	X	
Brock University	X	X	
Wilfrid Laurier University	X	X	
University of Saskatchewan	X	X	

3.7.5 Four universities (**Lethbridge, Trent, Lakehead, and Regina**) appear on *all* of the lists in the table, suggesting that the Employer has considered those four universities to be suitable comparators for UNBC from 2004 to the present. Those universities have been incorporated into the list used by the UNBC-FA for purposes of comparison.

3.8 The comparator list proposed by the UNBC-FA for the purposes of replication

3.8.1 The preceding (Section 3) details the process by which the UNBC-FA arrived at its list of nine comparators for the purposes of the 2013 arbitration.

3.8.2 The list was developed on the basis of (in no order of priority): the Employer's use of rankings, the application of the criteria from the Sims award (as cited in 3.05), and comparator universities used by the Employer in previous rounds of bargaining and for analytical purposes.

3.8.3 The final list is as described in 3.04 and 3.05 above, and is as follows:

- Acadia University
- Brandon University
- University of Lethbridge
- Lakehead University
- Mount Allison University
- University of Prince Edward Island
- University of Regina
- St Francis Xavier University
- Trent University

3.8.4 The remainder of this brief relies on the above list of comparators. **However, we reiterate and uphold the claim that comparison with any publicly funded university in Canada would support the proposals of the UNBC-FA.**

3.9 Implications of comparator analysis

3.9.1 The foregoing discussion establishes the following principles relevant to an arbitrator's attempt to replicate any agreement that might have been reached between the parties under the conditions of free collective bargaining:

- that UNBC explicitly aspires to and achieves goals of excellence in teaching and research;
- that the faculty at UNBC have achieved excellence in both categories; and
- that the Employer has staked out UNBC's position near the pinnacle of undergraduate universities in Canada.

3.9.2 Arbitrator Winkler, called upon to arbitrate a very similar dispute, wrote words directly transferable to the present situation:

Any attempt to replicate an agreement that might have been reached between the parties has to take into account the fact that the parties would be bargaining on common ground with respect to their mutual, commendable devotion to the excellence and reputation of the University.

...

[...] the University has staked out a position at the top of the relevant market or "industry segment." It implicitly admits that maintaining that position depends to a large degree on maintaining the quality of its faculty and librarians. That in turn requires, leaving aside the intangibles, ensuring that the total compensation package available to those faculty members and librarians is sufficient to place them at the top of the market as well. That will be the starting point for our analysis of the specific proposals.

The Governing Council of the University of Toronto and the University of Toronto Faculty Association (2006) (Winkler) (BoA, Tab 4 at pp. 3, 8—9)

4 The UNBC-FA's Proposed Changes to Compensation (Article 48)

The UNBC-FA's proposed Article 48 is attached (BoE, Tab B-1), but its contents are described here. The UNBC-FA's proposals are designed to close the gap between faculty at UNBC and its comparators.

4.1 General Wage Increase for full-time Members

4.1.1 The UNBC-FA proposes a 3% general wage increase (GWI) effective 1 July 2012 and a 3% GWI effective 1 July 2013. This GWI is in keeping with recent GWIs at other Canadian universities.

4.1.2 The UNBC-FA's proposed 3% general wage increase is also justified by the low salaries members receive—a situation exacerbated by the GWIs of 0% in 2010 and 0% in 2011.

4.2 Increase in remuneration for part-time Instructors

4.2.1 The UNBC-FA proposes a one-time increase (on 1 July 2012) in the semester contact hour (SCH) remuneration rate for Members on part-time appointments. Our proposal would increase the SCH rate from \$2117 to \$2200.

4.3 Career Development Increments for full-time Members

4.3.1 A crucial element of the UNBC-FA proposal relates to the value of the "Career Development Increment" (CDI). CDIs are part of a Progress-through-the-Ranks (PTR) system employed at universities to reward faculty for the greater skill and expertise that they achieve as they gain experience in teaching, research, and service. CDIs, in effect, create the salary structure through which faculty members ascend in rank and experience.

4.3.2 **CDIs are *not* GWIs**, nor a substitute for them, as was recognized by Arbitrator Taylor in 2013:

PTR rewards individuals' career advancement; it is not a substitute for a general wage increase to keep pace with inflation and the general state of salaries elsewhere.

University of British Columbia and Faculty Association of the University of British Columbia (2013) (Taylor) (BoA, Tab 5 at p. 51).

4.3.3 Our proposal would increase the value of a CDI award to \$2500 on 1 July 2012 and to \$2700 on 1 July 2013.

4.3.4 Our proposal also simplifies the administration of CDI awards by eliminating the awarding of 2 CDIs during the first years in rank. This proposal was made contingent upon our receiving the proposed increase; should our CDI remain below \$2500, we would and could never agree to such a simplification of procedure. **The proposed changes to Articles 48.1.8 (b) and 48 Appendix B, C, and D (Tab B-1) are entirely dependent upon the acceptance of our proposal for CDI increase.**

4.4 Salary remapping for full-time Members

4.4.1 The UNBC-FA calls for one-time adjustments to the base nominal salary of each eligible full-time Member, based on years of service at UNBC, up to a maximum of the value of 6 CDI awards. This proposal seeks to address the greater salary gap facing senior Members at UNBC.

4.5 Increase in salary floors

4.5.1 The UNBC-FA proposes a 3% increase in the value of salary floors for tenure-track, tenured, probationary, and continuing Members. Most appointments of new faculty place them above current salary floors, so this aspect of our proposal imposes few, if any, additional costs upon the University.

4.6 Increase in salary ceilings

4.6.1 The UNBC-FA proposes an increase in salary ceilings to align them with our proposed salary remapping and 3% GWI.

4.6.2 Under our proposal, Members currently near the salary ceiling for their rank will obtain the proposed increase in CDI increments during the life of the new agreement, enabling their salaries to rise to values closer to industry standards. Without an increase in salary ceilings, about one-third of otherwise eligible Members (27% of Associate Professors, for instance) would otherwise be ineligible for the proposed increases and adjustments in our proposal. The last change in ceilings and floors at UNBC was 1 July 2009.

4.7 Graduated Semester Contact Hour (SCH) Remuneration

4.7.1 The UNBC-FA proposes a graduated Semester Contact Hour (SCH) remuneration rate for Members on part-time appointments, based on the cumulative number of hours taught at UNBC. This system would see per-SCH remuneration increase by \$100 (from \$2200 to \$2300) after an individual has taught a total of 18 SCHs, and a further \$100 (from \$2300 to \$2400) after an individual has taught a total of 32 SCHs.

4.7.2 It is normal for university teachers to be paid more as they accumulate more experience and expertise in teaching. Thus, our proposed changes serve the interests of fairness and equity.

4.7.3 This proposal conforms to industry standards. As discussed below, most of our comparator universities have a system whereby the remuneration rate for instructors increases as those instructors gain more expertise.

5 The UNBC-FA's Defence of Its Proposed Changes to Compensation

5.1 Salaries and benefits at comparator Canadian universities

5.1.1 Examining faculty salaries at UNBC in the context of faculty salaries at other universities offers a compelling justification of all of the UNBC-FA's salary proposals. It does not matter how such salaries are compared: **every method of comparison reveals salaries at UNBC to be much below the industry standard.**

5.1.2 By "the industry standard," we refer to a range of salaries constituting a relatively narrow band, with most of our comparator institutions closely grouped.

5.1.3 Guided by the assessment tools used by arbitrators in previous university-sector arbitrations in Canada, the UNBC-FA presents in this section of our brief all of the methods of comparisons deemed reasonable by arbitrators. Each of these demonstrates the inadequacy of faculty salaries at UNBC.

5.1.4 We call particular attention to Arbitrator Shime's assertion that:

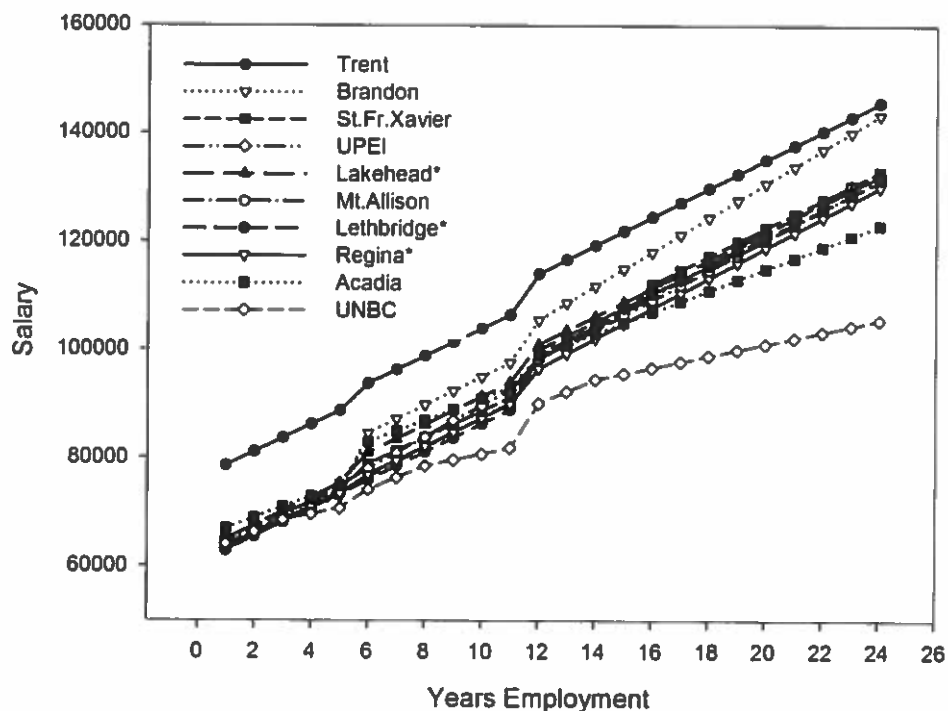
In my view it is preferable to determine salaries and benefits by comparing salary schedules. ... the most significant indicator of salaries is what free collective bargaining has produced for the same or similar positions at other Universities.
McMaster University and McMaster University Faculty Association (1990)
(Shime) (BoA, Tab 6, paragraph 14 at p. 4)

5.1.5 In all respects (whether in terms of salary or of total compensation), despite the high rankings that UNBC has achieved, UNBC faculty are paid *far less than faculty at all other publicly funded universities in Canada*.

5.1.6 The UNBC-FA is committed to establishing a process by which salaries and total compensation reach industry standard. The UNBC-FA proposal put forward here represents a reasonable path towards achieving salaries that conform to industry standards.

5.1.7 The UNBC-FA salary proposal is intended to deal with two major problems with UNBC's salary schedule: that all salaries at UNBC are low, and that salaries of senior Members are particularly out of step. Figure 3 illustrates the problems graphically, and each problem is further explained below.

Figure 3. Comparison of faculty salaries at UNBC and comparator universities



This graph depicts faculty salaries (2012) as stipulated by faculty agreements, assuming a starting salary of \$62,949 or the salary floor, whichever is higher. The asterisks denote universities that also have merit awards as a part of their compensation structure (not included in the current plot). Thus actual salaries for most faculty at those institutions will be higher than shown.

5.1.8 The salaries of all faculty at UNBC are low

5.1.8.1 The first problem is that the salaries of all faculty at UNBC are low compared with the industry standard.

5.1.8.2 By any definition, UNBC is not merely at the bottom of the chart, but unacceptably distant from the norm. This is shown by the UNBC line at the bottom of the graph in Figure 3.

5.1.9 Salaries for more senior faculty at UNBC are particularly out of step

5.1.9.1 The second problem is that salaries for UNBC Faculty Members who are more senior in rank are markedly out of step with the industry standard. In effect, the normal pattern of upward progression does not exist at UNBC.

5.1.9.2 This anomaly is shown by the comparative flatness of the slope of the UNBC salary line in Figure 3. The graph shows that once a UNBC Faculty Member has been at any given rank for more than three years, his or her salary increases very slowly compared with salaries of his or her colleagues at other universities. Our proposals are designed to address these problems.

5.1.10 Average salaries at universities in Canada

5.1.10.1 University faculty work in a national/international labour market, and **universities compete nationally and internationally for their faculty**. It has already been noted that UNBC's vision and mission statements explicitly acknowledge that the university operates in a national and international context.

5.1.10.2 Universities, including UNBC:

- normally post all faculty job openings nationally and internationally (in such forums as *University Affairs*, and *The CAUT Bulletin*);
- routinely receive applications from across Canada, the United States, and abroad; and
- customarily short-list and hire candidates from across Canada and beyond.

5.1.10.3 Furthermore, Faculty Members at UNBC accept and have accepted job offers from other universities across Canada, in the United States, and abroad.

5.1.10.4 This supports an argument that faculty compensation should be comparable with a national industry standard. In short, it is reasonable that average salaries at UNBC should be on par with average salaries in Canada.

5.1.10.5 We note that Arbitrator Shime stated that:

In very simple terms, I see no reason to pay people performing the same functions at McMaster University less than those at other Universities... There might be some room for slight differences depending on local conditions but those local situations, do not derogate from the basic premise that **persons of the same rank doing the same work at different Universities should, by and large, receive the same or an equivalent salary** and by salary I mean all benefits..

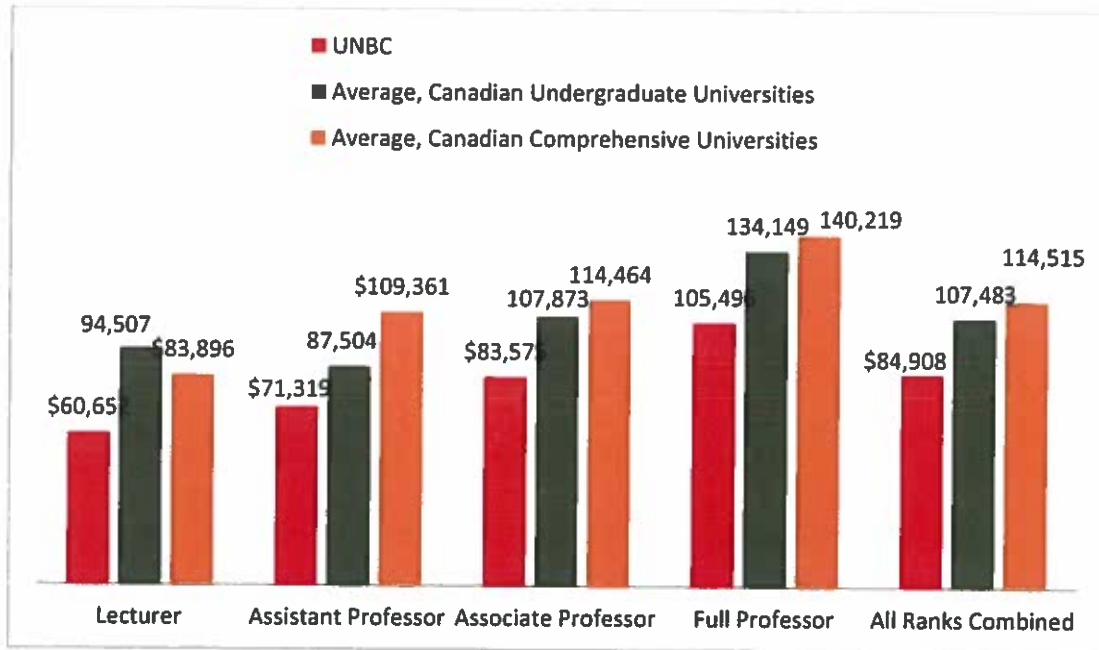
Shime, *supra* (BoA, Tab 6, paragraph 14 at p. 4, emphasis added)

5.1.10.6 Translated to the present circumstances, we assert that there is no reason to pay faculty at UNBC less than faculty are being paid to perform the same functions at comparator universities.

5.1.10.7 Figure 4 (below) shows that, at most ranks, average faculty salaries at UNBC are *more than 20% lower* than average salaries at Canadian primarily undergraduate universities in Canada. Salaries of Assistant Professors are 18.5% below the average; of

Associate Professors, 22.5% below the average; and of Full Professors, 21% below the average.

Figure 4. Average salaries at Canadian universities



This graph shows that UNBC salaries lag well behind average salaries at Canadian undergraduate and comprehensive universities, 2010-2011 (Source: CAUT Almanac of Post-Secondary Education in Canada 2012—2013, p.7, data from Statistics Canada).

5.1.10.8 Figure 4 clearly establishes that UNBC's average faculty salaries are well below those found at Canadian primarily undergraduate universities. Yet, as discussed above, UNBC differs from most of the primarily undergraduate universities: many departments at UNBC have graduate programs, and UNBC has a research profile comparable to that of some comprehensive universities. Thus, in important respects, UNBC is similar to comprehensive universities. For example, faculty at UNBC, like faculty at comprehensive universities, are expected to supervise graduate students if they are in a position to do so. Furthermore, the requirements for tenure and promotion at UNBC are similar to requirements at comprehensive research universities. One would therefore expect that faculty salaries at UNBC should be *higher* than the average salaries typical of primarily undergraduate universities.

5.1.10.9 Another reason to expect that UNBC's average salary should in fact be *higher* than average is the age profile of Faculty Members at UNBC. As Figure 5 shows, the average Faculty Member at UNBC is more than 2.5 years older (51.7) than the average faculty member in Canada (49.1). Given the step structure of university salaries, a gap of this size might be expected to produce a relatively significant advantage for average salaries at UNBC. Such is not the case.

Figure 5. Percentage of Faculty Members in selected age groups, UNBC compared to national average (Source: CAUT Almanac of Post-Secondary Education in Canada, 2012–2013)

	30—34	35—39	40—44	45—49	50—54	55—59	60—64	65—70
UNBC M	1.6	5.6	12.0	20.0	16.8	22.4	12.8	8.8
UNBC F	1.5	10.8	15.4	20.0	13.8	24.6	10.8	3.1
Average M	5.6	12.3	14.8	15.4	15.2	14.6	13.7	7.1
Average F	7.8	13.9	15.8	16.5	16.8	15.2	10.2	3.4

5.1.10.10 While 47.4% of male faculty members and 54% of female faculty members at an “average” university might be under 50, only 39.2% of UNBC’s men and 37.7% of UNBC’s women are below that age. This too supports an expectation that UNBC Faculty Members’ salaries should be higher than average: but instead, they are much lower.

5.1.10.11 In fact, *no matter how old UNBC’s faculty get, they cannot expect industry-standard salaries*. An example will illustrate. Under the present Agreement, in order for a Full Professor at UNBC to reach the *current average* salary for Full Professors at primarily undergraduate universities in Canada (as per Figure 4), he or she would have to have been a Full Professor at UNBC for more than 35 years! For that same Full Professor at UNBC to reach the average salary for that rank at *comprehensive* universities in Canada, he or she would have to have been a Full Professor for more than 40 years. **This example clearly indicates the vast gulf between UNBC’s salaries and industry standards.**

5.1.11 Average salaries at comparator universities

5.1.11.1 The grim picture of salaries at UNBC does not improve if we narrow our analysis to the comparator universities discussed above. Salaries of faculty at UNBC are well below those of faculty at every comparable university in Canada.

5.1.11.2 Figure 6 shows UNBC average salaries compared with average salaries at the universities that we identify above as comparable to UNBC. The disparities in average salaries are evident at every rank, but get worse at the level of Full Professor and Associate Professor.

Figure 6. Comparison of average salaries at comparator universities, 2010-11 (Source: CAUT Almanac of Post-Secondary Education in Canada 2013—2014, p. 7—8)

	Assistant Professor	Associate Professor	Full Professor	All ranks combined
Regina	n/a*	n/a*	n/a*	n/a*
Trent University	95,670	116,716	153,646	123,917
CANADIAN AVERAGE UNDERGRADUATE UNIVERSITIES	87,504	107,873	134,149	107,483
Lakehead University	85,710	112,238	138,043	111,944
University of Lethbridge	83,609	110,084	143,502	110,318
University of PEI	83,228	102,975	124,396	102,354
Acadia University	81,065	93,327	116,086	97,643
Mount Allison University	77,985	101,341	127,669	99,069
Brandon University	76,298	96,563	123,177	94,276
St. Francis Xavier University	74,711	92,821	119,118	91,885
Average at comparator universities only	82,285	103,258	130,705	103,926
UNBC	71,319	83,575	105,496	84,908
UNBC as % of comparator average	86.5%	80.5%	80.5%	81.5%

5.1.11.3 Recalling that UNBC is in a relatively isolated location, and in this regard is comparable to Lakehead University and University of Lethbridge, Figure 6 also reveals that salaries at UNBC are well below salaries at other universities in relatively isolated locations. Salaries at universities in geographically remote locations tend to be *above* the average for our comparator group, and often above the national average; this is patently not the case for UNBC.

5.1.11.4 In sum, while research profile, age of faculty complement, and geographic location might predict salaries *higher* than average in our comparator group, the opposite is true. UNBC's average salaries are *persistently and severely* below the industry standard.

5.1.12 Benchmark positions

5.1.12.1 Another very effective way to compare salaries is to examine benchmark positions. In 2008 Arbitrator Bruce Outhouse argued that:

In my opinion, the best way to compare salaries is on the basis of benchmark positions. This method is fairly standard and widely used.

Faculty Association of the University of St. Thomas and St. Thomas University (2008) (Outhouse) (BoA, Tab 7 at p. 43)

5.1.12.2 Benchmarks are useful because they enable us to compare what would happen to salaries of two hypothetically identical faculty members at two different universities.

5.1.12.3 In his 2008 decision, Arbitrator Outhouse referred to four benchmarks or “exemplars”: mid-range of the Assistant, Associate, and Full Professor ranks, and the Full Professor ceiling. For that reason, we present below the salary of mid-range (4 years in rank) of Assistant; mid-range (8 years in rank) of Associate; and mid-range (8 years in rank) of Full (Outhouse, *supra*, BoA, Tab 7 at p. 44). Because there is no ceiling on Full Professor salaries at UNBC, we have selected a similar benchmark: senior Full Professor (13 years in rank).

Figure 7. Faculty salaries at various benchmarks at UNBC and comparator universities

	mid-range of Assistant (4 years in rank, or fourth step)	mid-range of Associate (8 years in rank)	mid-range of Full (8 years in rank)	senior Full Professor (13 years in rank)
Regina (1 July 2010)*	83,199* (123% of UNBC)	109,977* (129% of UNBC)	133,119* (132% of UNBC)	136,186* (128% of UNBC)
Lethbridge (1 July 2012)*	61,551*	80,286*	115,286*	126,205*
Lakehead (2012)*	74,800*	101,200*	121,200*	134,200*
Trent (1 July 2010)	86,254 (127% of UNBC)	111,519 (131% of UNBC)	132,505 (131% of UNBC)	145,692 (136% of UNBC)
Mount Allison (2011-12)	72,999 (108% of UNBC)	98,061 (115% of UNBC)	120,339 (119% of UNBC)	134,262 (126% of UNBC)
UPEI (January 2012)	71,994 (106% of UNBC)	98,458 (115% of UNBC)	118,633 (117% of UNBC)	132,484 (124% of UNBC)
Acadia (1 July 2012)	73,500 (106% of UNBC)	97,500 (114% of UNBC)	113,500 (112% of UNBC)	123,500 (116% of UNBC)
St. Francis Xavier (2011-12)	70,839 (109% of UNBC)	94,625 (111% of UNBC)	115,623 (114% of UNBC)	128,436 (120% of UNBC)
UNBC	67,648	85,272	101,194	106,749

Source: Individual faculty agreements

* indicates salaries that are understated because data do not capture merit increments available to faculty at these institutions

5.1.12.4 Figure 7 calculates salary only on the basis of career progress increments, excluding merit. Data for Lethbridge, Lakehead, and Regina are included for purposes of

transparency, but these data are italicized because they actually *understate* actual salaries at those institutions. Faculty at Lethbridge, Lakehead, and Regina are eligible for additional merit increments that range from an average of \$500 per member per year at Lethbridge to an additional \$2000 per member per year at Lakehead. Merit increments available to faculty at Regina are even larger.

5.1.12.5 It should also be noted that these benchmarks, based on published salary scales, underestimate the actual salaries of faculty at comparator universities. This can be confirmed by reference to average salary data.¹

5.1.12.6 Despite the fact that our data understate actual salaries at our comparator institutions, examination of benchmark positions shows how far UNBC's salaries depart from the industry standard. Figure 7 reveals that Faculty Members at UNBC are paid far less than what their colleagues are being paid at comparator universities *for doing the same job at exactly the same academic rank*.

5.1.12.7 The mid-range Assistant Professor at UNBC is paid only 78% of her colleague's salary for doing exactly the same job at Trent, 94% of her colleague's salary at UPEI (or, what her UPEI counterpart earned before the recent raise there), 97% of her colleague's salary at Brandon University until the recent salary increase there, and 92% of her colleague's salary at Acadia University as of 1 July 2012.

5.1.12.8 An Associate Professor eight years in rank at UNBC makes only 74% of her colleague's salary for doing exactly the same job at Trent University, 87% of her colleague's salary at Acadia and UPEI, and 84% of her colleague's salary at Brandon.

5.1.12.9 The situation is much the same for the mid-range Full Professor (76%, 89%, and 85% respectively).

5.1.12.10 Senior Full Professors (13 years in rank) are paid only 73% of what their colleagues at Trent University are paid, 86% of what their colleagues at Acadia University are paid, and 80% of what their colleagues at UPEI are paid.

5.1.12.11 In sum, benchmark positions are an excellent way to compare the salaries of Faculty Members doing exactly the same job at exactly the same rank at different universities. A comparison of benchmark positions reveals that faculty salaries at UNBC are badly out of step with salaries at comparator universities.

¹ A reference to the average salaries reveals that these benchmarks underestimate the actual salaries of faculty at comparator institutions. This is because these benchmarks assume that faculty at all of these universities start at the salary floor at the time of promotion. In fact, in most universities many faculty salaries are above the floor when they are promoted (because faculty are guaranteed not to have their salary reduced when they are promoted). At UNBC, by contrast, the salary scales are more representative of where faculty actually end up. This is because earnings increase so slowly. At UNBC, it is quite rare and would take many years for an Assistant Professor's salary to rise above the floor of Associate Professor, or for an Associate Professor's salary to rise above the floor of Full Professor.

5.1.12.12 Figure 7 shows our most suitable comparators, but the UNBC-FA asserts that comparison with any publicly funded research university in Canada will reveal that faculty salaries at UNBC are now badly out of step with homologous salaries at all other universities in the country.

5.1.12.13 Librarian salary benchmarks (Figure 8) tell a similar story to the salaries of Faculty Members, except that Librarians at the rank of Librarian I and Librarian II are paid similar salaries to librarians in *some* other universities. A major discrepancy arises, however, when Librarians at UNBC reach the level of Librarian III and IV, when career progress for UNBC's Librarians stalls in dramatic fashion.

Figure 8. Librarian salaries at various benchmarks at UNBC and comparator universities (sorted in descending order based on Librarian IV rank salaries)

	Librarian I, 3 years in rank	Librarian II, 4 years in rank	Librarian III, 4 years in rank	Librarian IV, 10 years in rank
Brandon (2012)	56,746	70,707	92,418	133,901
Mount Allison (2011-12)	55,602	71,113	87,441	122,819
St. Francis Xavier (2011-12)	59,661	70,839	84,993	120,748
Trent (1 July 2010)	73,621	81,200	91,307	119,320
Lethbridge* (1 July 2012)	50,368*	61,551*	71,551*	119,654*
UPEI (January 2012)	53,653	64,899	79,176	112,661
Regina* (1 July 2010)	58,547*	71,868*	85,303*	106,734*
Acadia (1 July 2012)	59,500	69,500	81,500	101,500
Lakehead* (2012)	55,200*	61,800*	70,800*	88,400*
UNBC (2010)	59,070	65,834	74,473	88,299
Sources: Individual faculty agreements				
* indicates understated salaries. Librarians at these institutions are eligible for merit increments (as per 5.1.5.4 above)				

5.1.13 Salary floors

5.1.13.1 Salary floors are less indicative of typical salaries than some of the factors already discussed, but since arbitrators have consulted salary floors in the past we present comparative data on salary floors here.

5.1.13.2 Figure 9 reveals that salary floors at UNBC offer the same picture already presented: they are low compared with those at other universities.

Figure 9. Comparison of salary floors at comparator universities, 2010-11 (arranged in descending order based on floor of Full Professor rank)

	Assistant Professor	Associate Professor	Full Professor
Trent University	78,674	93,833	114,045
University of Regina	72,567	87,105	108,583
University of Lethbridge	55,000	65,000	100,000
Mount Allison University	64,645	78,568	100,846
Lakehead University	63,210	79,265	99,620
Brandon University	61,136	80,014	99,840
Acadia University	66,500	82,500	98,500
St. Francis Xavier University	61,308	74,504	93,788
University of PEI	58,062	72,287	91,738
UNBC	60,982	74,162	90,084
Source: Individual faculty agreements			

5.1.14 Salary ceilings

5.1.14.1 Salary ceilings, like salary floors, are less indicative of typical salaries than some of the other indicators (average salaries and benchmark positions in particular) already presented.

5.1.14.2 However, data on salary ceilings only reinforce the point already made: that salaries at UNBC are very low. Indeed, a comparison of the **average** salaries at Canadian undergraduate universities (Figure 4) with the salary ceiling at UNBC (Figure 10) shows that the salary **ceilings** at UNBC prevent Faculty Members from attaining salaries that are even **average** for that rank at comparator institutions.

Figure 10. Faculty Member salary ceilings at UNBC and comparator universities (2010-11)
(Source: Faculty agreements)

	Assistant	Associate	Professor
University of Lethbridge (2011)	No ceiling	No ceiling	No ceiling
Mount Allison (1 July 2012)	103,429	126,225	140,473
University of Regina (2011)*	93,831/101,805*	112,836/121,413*	136,986/-*
Lakehead University (2011-12)	99,540	142,780	159,010
Trent University (2011)	91,307	111,519	169,427
Brandon University (2011)	89,791	116,645	132,484
University of Prince Edward Island (2012)	86,574	113,767	133,500
St Francis Xavier University (2012)	85,550	111,930	138,166
Acadia University (2012)	85,500	105,500	133,500
Ceilings at UNBC (2010)	78,203	97,493	No ceiling
Average Salaries at Comparator institutions	82,285	103,258	130,705
Average Salaries at Canadian Undergraduate Universities	87,504	107,873	134,149

* indicates differential ceiling for those receiving merit

5.1.14.3 There is no ceiling at the rank of Full Professor at UNBC, but it is virtually impossible for a Faculty Member, under the present salary schedule at UNBC, to reach the salary ceiling at any other university before reaching the age of 65.

5.1.14.4 The data clearly show that the present salary ceilings for Faculty Members are abysmally low.

5.1.14.5 Salary floors and ceilings are useful indicators for librarians because the staff at many smaller libraries (including UNBC) is too small to avoid the probability that average salaries will be skewed.

5.1.14.6 A comparison of the floors and ceilings of the ranks of librarians reveals that Librarian salaries at UNBC are below industry standard. The gap increases in severity with ascending rank. It is critical to note that the *ceiling* of the Librarian IV rank at UNBC is below the *floor* of that rank at Brandon, Lethbridge, Mount Allison, St Francis Xavier, and Trent Universities.

Figure 11. Librarian salary floors and ceilings at UNBC and comparator universities, 2011-12

	Librarian I		Librarian II		Librarian III		Librarian IV	
	Floor	Ceiling	Floor	Ceiling	Floor	Ceiling	Floor	Ceiling
Brandon	53,776	67,144	64,707	91,138	84,624	118,395	103,947	141,241
Trent	69,035	76,667	74,122	91,928	84,297	112,277	97,015	138,715
St. Francis Xavier	55,285	59,661	64,114	84,286	77,769	110,276	97,684	136,124
Lethbridge	46,000	n/a	55,000	n/a	65,000	n/a	100,000	n/a
Mount Allison	52,114	67,429	64,645	84,138	81,353	109,200	100,846	125,908
Acadia	55,000	69,000	63,000	77,000	75,000	93,000	83,000	117,000
UPEI	47,680	58,564	56,094	77,862	70,230	94,719	87,058	111,547
Regina	54,887	65,867	62,892	76,356	75,099	92,956	86,721	106,734
Lakehead	48,290	88,440	53,125	103,260	62,055	103,260	70,975	114,770
UNBC	54,626	60,181	58,645	66,390	66,696	75,029	73,856	90,521

Source: CAUT, Librarian Salary and Academic Status Survey

5.1.14.7 Similarly, the salaries of Senior Lab Instructors (SLIs) can be compared using floors and ceilings. However, the list of comparable universities is smaller than the comparator group used for other UNBC faculty, because the SLI position at UNBC is not comparable to the position labeled "Lab Instructor" at many other institutions. At UNBC, SLIs have a broader scope of duties and responsibilities.

5.1.14.8. Tab G offers detailed comparison of UNBC SLI duties to those of similar positions at other institutions. On the basis of this comparison of duties and responsibilities, a smaller list of appropriate comparators was generated.

5.1.14.9 Figure 12 lists other universities that have faculty positions with varying degrees of similarity to SLIs. The institutions with positions most similar (in duties and responsibility) to UNBC's SLI position are placed closest to the bottom of the table.

Figure 12. Senior Lab Instructor salary floors and ceilings at UNBC and other universities

	Level I		Level II		Level III	
	Floor	Ceiling	Floor	Ceiling	Floor	Ceiling
Brandon	46,090	57,449	51,564	64,334	n/a	n/a
Acadia	48,500	66,500	58,500	76,500	n/a	n/a
Mount Saint Vincent	47,392	57,813	56,009	66,430	n/a	n/a
Manitoba	50,982	71,872	60,054	85,336	65,395	96,037
Regina	51,737	70,007	58,429	79,300	64,221	82,484
Lethbridge	44,000	99,617	48,950	105,953	52,250	112,289
UNBC	51,454	56,454	56,140	66,695	64,825	75,380
Source: Faculty agreements						

5.1.15 Career Development Increments

5.1.15.1 The poor salaries at UNBC cannot be addressed adequately without an increase in the Career Development Increments (CDI) offered to faculty.

5.1.15.2 CDIs are annual salary increments earned by eligible Members in recognition of “Progress through the Ranks”: that is, the increasing expertise in teaching, research, and service developed by members as their careers progress. The concept of Progress through the Ranks (PTR) is fundamental to the salary structure of university faculty, and indeed to the structure of university careers.

5.1.15.3 As Arbitrator Sims wrote,

The academic salary model, at least for tenured or tenure track academics in Canada, almost universally contemplates a fairly low salary at the outset of the person’s career building over 30 years or so to a significantly higher level. Academics, usually requiring PhD’s before they start, have usually spent many years without pay or with low pay, preparing for their academic careers. There is a deferred income aspect to the Canadian model. It provides opportunities at times to withhold or accelerate advancement, based on performance. However, an academic’s “wage prospects” are inevitably assessed on a career-long basis. Sims, *supra* (BoA, Tab 3 at p. 30)

5.1.15.4 As Sims indicates, the “salary slope” (an implicit salary grid) is critical for Faculty Members, who spend from ten to fifteen years in post-secondary education and often get their first tenure-track position in their late thirties. (They may well be buying their first homes when their age cohort is paying off mortgages.) Their career earnings are unlikely to reach those of other professionals unless they work well beyond age 65.

5.1.15.5 And yet, as Sims indicates, CDI is not an automatic entitlement or “payback” for years of relative deprivation; at UNBC, as at many universities, Members present

biennial or annual reports and receive CDI only if their performance and career progress are deemed satisfactory.

5.1.15.6 The CDIs at UNBC are now at \$1,111 annually (except \$2,222 for the first three years in any rank). As a result, and given that CDIs produce the normative salary structure described by Sims above, the PTR salary structure at UNBC departs significantly from industry standards.

5.1.15.7 Figure 13 shows the value of annual career-development increments at comparator universities as of 2010-11, the last year for which statistics are available. An examination of Figure 13 reveals that CDIs at UNBC are less than half the national average (except for the first three years in any rank).

5.1.15.8 Because some of the universities on the table (as indicated by asterisks) also have merit increment systems, the situation at UNBC is even worse than these data suggest.

5.1.15.9 Furthermore, the CDIs at UNBC are far below even the second lowest CDI values among these comparators.

5.1.15.10 More than any other factor, these very low CDI values influence UNBC's departure from industry standards. The net effect of the current CDI is that the longer Members remain in rank at UNBC, the lower their salaries and career earnings will be in comparison to faculty at comparator institutions and, indeed, *at any other Canadian university*.

Figure 13. Annual Career Development Increments for full-time faculty at UNBC and comparator universities, 2010-11

	Assistant Professor	Associate Professor	Full Professor
Acadia University	\$2000	\$2000	\$2000
Lakehead University*	\$3100	\$3100	\$3100
Mount Allison University	\$2785	\$2785	\$2785
Lethbridge University*	\$2100	\$2100	\$2100
University of Regina*	\$2,658	\$2,859	\$3,067
Trent University	\$2526	\$2638	\$2638
University of Prince Edward Island	\$2758	\$1379-2758	\$2069-2758
Brandon University	\$1983	\$2534	\$3077
St. Francis Xavier	\$2179	\$2340	\$2491
AVERAGE at comparator institutions	2254	2637—2789	2814—2891
UNBC	\$1,111†	\$1,111†	\$1,111†

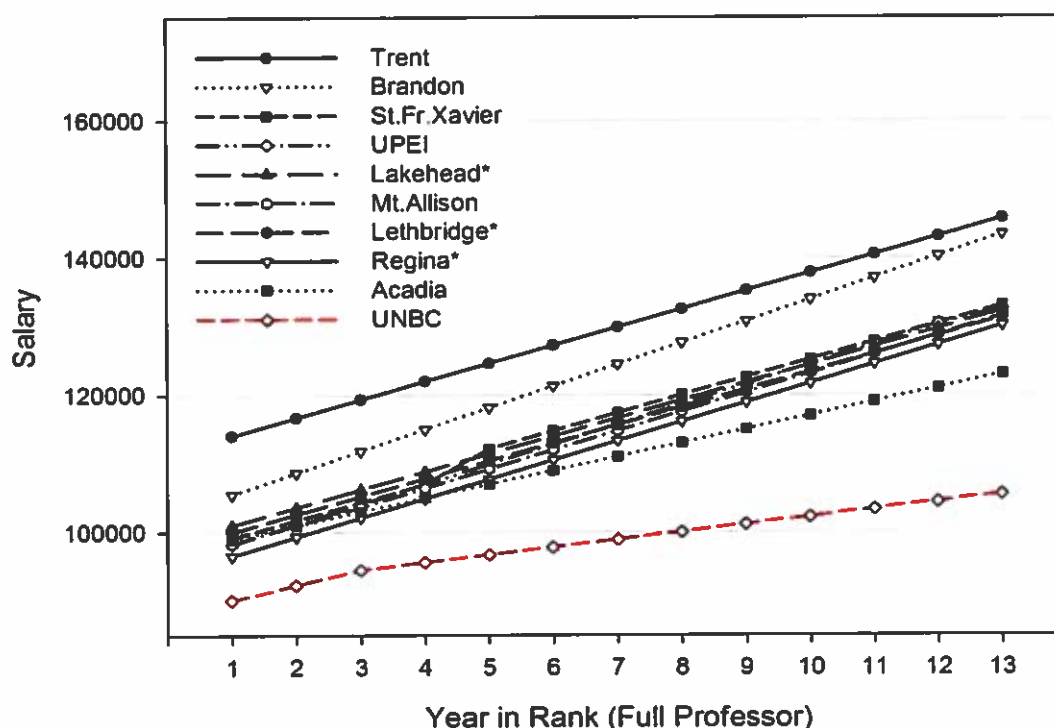
(†except for first three years in rank [\$2,222])

5.1.15.11 Once again, the data actually *underestimate* salary increments, because three of the comparator institutions (indicated by asterisks) have merit in addition to the regular career progress increments.

5.1.15.12 Despite this underestimation, the data are clear and dramatic. An examination of Figure 13 reveals that several different models for career development increments can be found among small, primarily undergraduate Canadian universities.² No matter which model is in place, however, *UNBC's career progress increments are revealed to be drastically below the average at our comparator institutions.*

5.1.15.13 Figure 14 (below) illustrates the effects of UNBC's CDIs on career earnings and salary progression.

Figure 14. Comparison of salary progression at UNBC and its comparators



This graph shows hypothetical salary progression for a Full Professor, based upon an initial promotion to the salary floor for that rank. Data are from the most recently negotiated faculty agreements (as of April 2013). The profiles shown here would be very similar for Assistant and Associate Professors. The asterisks denote institutions that also have merit awards as a part of their compensation structure (not included in the current plot); thus actual salaries for most faculty at those institutions will be higher than shown.

² The universities with annual CDIs most easily compared with those at UNBC (because they are the same for all ranks) are listed first on the table. CDI awards at those universities range from a low of \$2000 per year, to a high of \$3100 per year. At some universities, such as the University of Prince Edward Island, adjustments are built into the scale values for each step on their salary grid. Regardless of the character of the salary system in place, career development increments at UNBC are revealed to be out of step with industry standards.

5.1.15.14 Figure 14 shows how Faculty Members are affected by salary floors and CDIs. The graph compares the salary progression of Full Professors, although the salary progression of Assistant and Associate Professors would show similar discrepancies.

5.1.15.15 The graph shows that the salary floor of the Full Professor rank at UNBC is out of step with comparator universities, but the purpose of the graph is to show that all professors' salaries worsen relative to those of their colleagues at other universities the longer they are in rank.

5.1.15.16 Our proposed new CDI value, of \$2500 at 1 July 2012 and \$2700 at 1 July 2013, would correct the slope of faculty salaries at UNBC, bringing them parallel with the crowded lines representing salaries at St. Francis Xavier, UPEI, Lakehead, Mount Allison, Lethbridge, Regina, and Acadia.

5.1.15.17 This CDI increase is a necessary but not sufficient remedy for our low salaries, however. While the new CDI value will correct the slope of UNBC's faculty salary structure, a one-time adjustment (discussed below) is necessary to raise current Members' salaries closer to those of our comparators.

5.1.15.18 It should be noted, once again, that the lines representing Lakehead, Lethbridge, and Regina do not consider merit increments available to faculty at those universities; our data therefore *understate* the salaries available to faculty at the three of our comparator institutions where merit increments exist.

5.1.15.19 In sum, the CDI increase proposed by the UNBC-FA is not intended to leapfrog other universities, nor is it a breakthrough item; it is intended only to close the gap between UNBC and its comparators and to return our career progress to the pattern characteristic of our comparators.

5.1.15.20 *Increases to Career Development Increments are not GWIs*

5.1.15.20.1 The UNBC-FA emphasizes that this proposed CDI increase is not a general wage increase.

5.1.15.20.2 Progress through the Ranks (PTR) systems, such as Career Development Increments (CDIs) cannot be regarded as components of GWIs, or as systems of automatic salary increases.

5.1.15.20.3 Only the full-time faculty (about half of the Members of the UNBC-FA) at UNBC are eligible for CDIs; for these full-time Members, CDIs are awarded based on the results of performance evaluations. CDIs are also awarded to recognize that Members' knowledge, skills, and abilities increase over time. Thus, **increases in CDIs are not components of GWIs.**

5.1.15.20.4 Increases in CDIs have not been costed as a component of GWIs in any previous agreement at UNBC.

5.1.15.20.5 Arbitrators have previously explicitly indicated that PTR increases were not part of a general wage increase. Arbitrator Burkett wrote that PTR should not be considered or costed as a part of GWI:

The purpose of the P.T.R. increase, therefore, is not to advance the salary ranges but to recognize merit by moving individual faculty members through the salary ranges. Upward movement of the salary ranges is achieved by means of, and in the amount of, the annual economic increase. It follows that only the amount of economic increase should be included for purposes of determining how faculty salary ranges have fared over time.

University of Toronto v University of Toronto Faculty Association [1982]
(Burkett) (BoA, Tab 8 at p. 21)

5.1.15.20.6 As stated above, Arbitrator Taylor recently concurred that

PTR rewards individuals' career advancement; it is not a substitute for a general wage increase.

Taylor, *supra* (BoA, Tab 5 at p. 51)

5.1.15.21 Salary remapping through one-time adjustments is crucial to the achievement of industry-standard salaries

5.1.15.21.1 Our proposed increases in the value of a CDI (to near the mean of that at comparator institutions) will, over time, allow junior faculty to achieve lifetime earnings closer to those of faculty at comparator institutions. However, for full-time faculty who have been at UNBC for many years, salary remapping is required to achieve equity, both within ranks at UNBC, and in comparison with faculty holding the same rank at other institutions. Thus, **salary remapping is essential to the achievement of industry-standard salaries at UNBC.**

5.1.15.21.2 Because UNBC's salaries and CDI values are so low, length of service at UNBC is the single most significant predictor of the distance between a Faculty Member's salary and the industry norm. That being the case, our salary remapping specifically addresses the situation of long-serving members.

5.1.15.21.3 The necessity of such a remapping can be seen through any number of examples, including those from the benchmark positions discussed above in Figure 7. For example, if our GWI and CDI proposals were achieved, but no one-time adjustment was awarded, a mid-rank Associate Professor would see her salary rise to 90,405.16 at 1 July 2013 and 93,117.31 at 1 July 2014. Leaving aside the fact that the salaries in our benchmark comparator list are from 2010–2012, there would *still* be significant disparity between the salary of our benchmark Associate Professor and those of her comparators at other institutions.

5.1.15.21.4 Even at this new salary level, and even when using comparator data from 2010—2012, the professor would find herself still in last place relative to her colleagues at comparator institutions. She would be close only to the salary of a mid-rank Associate Professor at St Francis Xavier, and still roughly ten thousand dollars below the average (2010—2011) for an Associate Professor at our comparator universities. Thus our proposed GWI and increased CDI will not raise the salaries of long-serving Faculty Members to industry standards.

5.1.15.21.5 By contrast, Members newer to UNBC have often been appointed at salaries well above salary floors. This constitutes recognition on the part of the Employer that our salary system is inadequate; more importantly, it means that Members with dissimilar years in rank may have quite approximate salaries: that is, that salaries of senior Members are compressed (discussed further below). While increase to our CDI and a GWI of 3% may raise newer Members to industry standard for their rank, this is patently not the case with more senior Members.

5.1.15.21.6 As can be seen, without salary remapping, the salaries of faculty who have worked at UNBC for many years will continue to lag behind the salaries of their colleagues at comparator universities. Moreover, without salary remapping, it is quite possible that some Members will be paid less than their colleagues at UNBC who have been promoted to the same rank more recently than themselves: a situation that would be totally at odds with the principles of PTR and career development.

5.1.15.21.7 The UNBC-FA therefore calls for one-time adjustments to the base nominal salary of each eligible Member, based on years of service at UNBC, up to a maximum of the value of 6 CDI awards for Members with 18 or more years of service. This salary remapping will start to address the greater salary gap facing senior Members at UNBC.

5.1.15.21.8 The parties have previously agreed that UNBC's salaries were unacceptably out of step with industry standards, particularly for long-serving Members. This phenomenon has been described as salary compression. The parties have also agreed that one-time adjustments were an appropriate remedy. The 2004—2006 Faculty Agreement recognized "the significant salary compression for those appointed in rank prior to 2001" (Article 48.7.1, p. 170). A fund was allocated to address compression.

5.1.15.21.9 The salary gap facing senior Members was also recognized by the report of the 2008 UNBC Joint Working Group on Salary Compression (*Report of the UNBC Salary Compression Working Group*, November 2008, Tab H). The working group included members representing the Employer and UNBC-FA respectively. A major issue identified by the joint panel was related to the PTR structure. The panel noted that Faculty Members were increasingly falling behind their counterparts at other Canadian institutions when comparing salary by years in rank. The Employer responded to the report by implementing one-time adjustments to salaries for selected Full Professors in February 2009 (Tab H). Therefore, the one-time adjustment we are proposing is by no means a novelty.

5.1.15.21.10 The fact that the Employer has repeatedly recognized the problem of salary compression at UNBC is important in relation to the principle of replication.

5.1.15.21.11 The Employer recognized, both in past negotiating rounds and in its review of salary compression, that comparison with salaries at other Canadian universities was an appropriate way to evaluate faculty salaries at UNBC. Its refusal to consider comparators in this round of negotiation is, simply put, neither reasonable nor legitimate.

5.1.15.21.12 The University has historical and current awareness of:

- (a) the gap between UNBC Faculty Members' salaries and those at other institutions;
and
- (b) the existence of an extremely compressed salary structure.

Moreover, the University has in the past used one-time adjustments to correct individual Members' salaries to correct the most egregious anomalies.

5.1.15.21.13 Given these facts, any argument by the University rejecting the principle of one-time adjustment must be reckoned unreasonable, as must any attempt to redefine or ignore UNBC's comparators for the sake of rejecting the necessity of one-time adjustment. Considering a case in which the Attorney General of British Columbia sought to redefine the comparators for Crown Counsel to avoid implementing market adjustment, Arbitrator D.C. Jones (2005, BoA, Tab 9) wrote:

The Attorney General's statement that he does "not agree that any market adjustment is necessary" (page 2) is a conclusion and not a reason.

It is not rational, legitimate, or in good faith for the Attorney General to state that "he does not agree that... the proper way to determine any adjustment is by comparing salaries for Crown Counsel in British Columbia with those in Ontario, Alberta and the federal Crown" (page 2); that he does "not accept the majority's conclusion that... a comparative analysis is the proper basis... for establishing the terms of a Renewal Agreement" (page 3); or that he does not agree with "... the applicability of the comparison" (page 3) even though the Government participated in the collection of that data. [ellipses in original]

The parties have in all previous rounds of negotiations referred to comparative compensation for Crown Council in other jurisdictions... The Attorney General cannot *ex post facto* completely redefine the market or the relevant factors, regardless of what has transpired previously between the parties. [ellipsis added]
Government of the Province of British Columbia and British Columbia Crown Counsel Association (2005) (Jones) (BoA, Tab 9 at pp. 93—94)

5.1.15.21.14 It is the position of the UNBC-FA that the Arbitrator can and must rule on a one-time adjustment. Referring to arbitrators' reluctance to award such measures in the face

of employees' possible "acquiescence" in past wage settlements and structures, Shime (1990) wrote something directly applicable to this case:

Where both parties are in agreement that salaries have eroded and where both have made some effort to adjust salaries with a catch up factor there is very little room for an arbitrator/selector to rely on the doctrine of acquiescence.
Shime, *supra* (BoA, Tab 6 at p. 4)

In the present case, both parties agree that salaries at UNBC have eroded and that salary compression exists. Some effort has been made to adjust individual salaries. The UNBC-FA, then, has never acquiesced.

5.1.15.21.15 The logical extension of the argument made by Shime above can also be seen in other decisions. Arbitrator Winkler, in considering a similar association proposal for the rationalizing of compensation, disallowed it because there was not yet evidence of agreement between the parties that the salary structure was inverted or productive of anomalies. He wrote that

In our view, to give effect to the Association's demand would put the cart before the horse. *This matter has yet to be examined by the parties in a working group to be established for that purpose.* As a result, we do not believe that the Association's position would be successful in this round of collective bargaining.
Winkler, *supra* (BoA, Tab 4 at p. 11, emphasis added)

The clear implication of Winkler's statement is that a remapping of the salary schedule might well be appropriate in a case where the parties *had* previously struck a working group that acknowledged the distortion of the salary schedule. To extend Winkler's metaphor, in the UNBC case the horse and cart are in the correct order.

5.1.15.21.16 The UNBC-FA submits that the principle of industry-standard salaries and the gap facing senior Members at UNBC have been explicitly recognized by the Employer. The Employer has previously used one-time adjustment as a means of adjusting misaligned salaries. **Therefore, this one-time salary adjustment is not a breakthrough item and is an appropriate measure for the Arbitrator to award.**

5.1.15.21.17 Issues caused by salary compression are now more apparent and severe at UNBC. If we look at the pattern of salary increase for Faculty Members at UNBC, compared to that of their counterparts at a range of Canadian institutions, we see that the UNBC Faculty Members have far lower career earnings within each rank, and thus overall in their careers at UNBC. This is reflected in the growing disparity between mean salaries by rank when compared to other Canadian universities.

5.1.15.21.18 Failure to address this issue has the potential to create a situation in which a considerable number of Faculty Members at UNBC recently promoted to their rank will make larger salaries than their colleagues at UNBC, doing exactly the same job, who were promoted to their ranks earlier. **This situation is antithetical to industry standards for**

faculty salary structure; it is therefore a situation that the UNBC-FA would not be prepared to tolerate.

5.1.15.21.19 Salary remapping of the kind that we propose is not unusual either in arbitration or in the university sector in Canada.

5.1.15.21.20 The need to revise and remap salary schedules through one-time adjustment has been recognized by mediators/arbitrators, in faculty agreements, and in bargaining.

5.1.15.21.21 In 1992, Mediator Ready recommended a major remapping of Crown Counsel salaries to produce a “10-year lock-step classification system with a total of 4 levels” (*The Province of British Columbia and the British Columbia Crown Counsel Association* [1992] [Ready] [BoA, Tab 10 at p. 22]). This produced significant individual salary adjustment.

5.1.15.21.22 Some faculty agreements contain mechanisms for market adjustment based on a fixed group of comparators. For example, the faculty agreement at Trent University (one of our comparators) provides for automatic salary adjustments on the basis of ongoing comparator analysis (<http://trentfaculty.ca/sites/default/files/TUFACA2012-2013.pdf> , pp. 164—165).

5.1.15.21.23 Finally, one-time adjustments to address salary disparities across comparator institutions remain a feature of current negotiated settlements. Indeed, as recently as the summer of 2013, the University of Ottawa and the University of Ottawa Faculty Association negotiated a one-time salary remapping “to align faculty salaries with other research-intensive universities in the province.” (<http://www.ottawacitizen.com/news/UOttawa+profs+librarians+agree+labour+deal/8852851/story.html>)

5.1.15.21.24 The foregoing demonstrates the reasons why, on the basis of sound replicative principle, the Arbitrator should award a one-time adjustment to the salaries of eligible Members.

5.1.16 Graduated compensation for part-time instructors

5.1.16.1 The UNBC-FA proposes graduated compensation for part-time instructors based on the number of credit hours taught at UNBC.

5.1.16.2 This provision is common in the post-secondary sector and among our comparators. The character of seniority-linked compensation varies. In many cases, for example, rates of pay vary according to number of credits taught. In other cases, being placed on a seniority or precedence list entitles one to a higher rate than that given to “non-seniority” sessionals. Despite some variation among our comparators in the *nature* of seniority recognition, UNBC stands out in having *no* seniority provisions, no right of first refusal, and no graduated or seniority-linked compensation.

5.1.16.3 Almost all institutions have seniority provisions, and most have some provision for seniority-linked compensation. Such provisions recognize the increasing expertise instructors develop as they teach and reward long service.

Figure 15. Seniority provisions and seniority-linked compensation for part-time instructors at UNBC and comparator universities (Source: Faculty agreements)

	Seniority provisions	Seniority-linked compensation
Acadia University	X	X
Brandon University	X	
Lakehead University	X	X
Lethbridge University		
Mount Allison University	X	X
University of Prince Edward Island	X	X
University of Regina	X	X
St Francis Xavier University	X	X
Trent University	X	
University of Northern BC		
Comparators w/provisions	8/9 (89%)	6/9 (67%)

5.1.17 Issues related to total compensation

5.1.17.1 It is important to note that faculty at UNBC participate in a Defined Contributions Pension Plan (DCPP) in which employer and employee contributions to individuals' pensions are based on percentages of their salaries. While UNBC is not an outlier in this regard, it is among the minority.

5.1.17.2 DCPPs are less common in the Canadian university sector than are Defined Benefit (DB) plans. According to the 2013 CAUT Survey of University and College Pension Plans, 64% of sixty respondents reported either DB or DB/DC hybrid plans, with only 22 institutions or 35% reporting DCPPs (Tab J).

5.1.17.3 Among our comparator institutions, DCPPs are even less common. The majority of our comparators (2/3) have Defined Benefit plans, as detailed in Figure 16 below:

Figure 16. Pension plans at UNBC and comparator universities (Source: Faculty agreements)

	Defined Benefit (DB)	Defined Contribution (DC)	Hybrid
Acadia University	X		
Brandon University	X		
Lakehead University	X		
University of Lethbridge	X		
Mount Allison University		X	
University of PEI	X		
University of Regina			X
St Francis Xavier University		X	
Trent University	X		
University of Northern BC		X	

5.1.17.4 There are two significant implications of UNBC's pension plan for the purposes of assessing total compensation:

- because faculty at UNBC are paid well below the industry standard, their contributions to their pension plans and the employers' contributions are also correspondingly low; and
- the DCPD means that the risk, uncertainty, and additional costs of ensuring a comfortable retirement have been placed on the faculty, rather than on the University.

5.1.17.5 This should be a significant consideration when assessing compensation for UNBC faculty and when assessing their salaries in relation to those at comparator institutions.

5.2 UNBC-FA proposed GWI compared with recent GWIs at other Canadian universities

5.2.1 Arbitrators have consistently indicated that recent salary increases at other Canadian universities are good indicators of what salary increases faculty at any given university might expect. Teplitsky (2010) wrote that:

I have always considered that what the community generally is receiving from its employment in wage increases is the best measure of the impact of economic conditions. Applying a deduction for economic conditions which is not tied to an objective standard strikes me as either arbitrary or mere guesswork.
Teplitsky, *supra* (BoA, Tab 2 at p. 9)

Based on recent salary settlements at other universities in Canada, UNBC's salary demand is reasonable and realistic.

5.2.2 According to the Canadian Association of University Teachers, average salaries for full-time university faculty in Canada increased by 2.8% between 2010 and 2011. (*CAUT Almanac of Post-Secondary Education in Canada*, 2012-13, p. 6). The salaries at UNBC (and other BC universities) did not rise in that period.

5.2.3 Figure 17 (below) shows the recent GWIs at many Canadian universities. The fullest possible group, rather than merely the comparator group, is shown. As Arbitrator Sims stated,

In order to assess trends in year-over-year economic increases it is useful to look at a broader group of comparators. The all University group provides an indication of where settlements are trending generally across the country.
Sims, *supra* (BoA Tab 3 at p. 23)

Several trends are noteworthy.

5.2.4 First, it is clear that faculty at universities throughout Canada were enjoying substantial GWIs (beyond the CPI) between 2010 and 2012, when faculty at British Columbia universities, including UNBC, did not experience any GWIs (and are therefore excluded from the table).

5.2.5 Second, GWIs of 3% or greater (underlined in Figure 1) have not been unusual in the sector. Thus, the UNBC-FA's proposed GWI of 3%, following two years of zeros, is entirely reasonable.

5.2.6 Third, it is not unprecedented for salaries at some universities to rise at rates well above 3% for several years in a row. Increases at Memorial did not drop below 4% for four consecutive years. Salaries at Brandon rose 3%, four out of six years.

Figure 17. General Wage Increases at Canadian universities

General Wage Increases at Canadian Universities (Sources listed below)						
University	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
Acadia U		1%	1%	1%		
Cape Breton U	2.9%	2.9%	2.9%	2.9%		
Dalhousie U	3.2%	3.2%	1.25%	1.25	1.75	
Memorial U	8%	4%	4%	4%		
Mount Saint Vincent U	4.5%	2%	2%			
Mount Allison U	3%	2.5%	2.5%	3.5%		
St. Mary's U	3.15%	2.9%	2.9%			
St. Thomas U	3%	2.5%	2.5%	2.5%		
U of New Brunswick	0%	2.5%	3.5%	3.5%		
Bishop's U		1% + 2%	2	2%		
Brandon U	3%	3%	1.0%	1.5%	3.0%	3.0%
Brock U	3.5%	3.5%	1.5%	1.8%	1.8%	
Carleton U	2.24% + \$400	1.5% + \$750	1.5% + \$750			
U of Guelph	3.25% + 1.5%	3.25% + 1.59%	1.5% + \$750	1.75% + \$625	2% + \$500	
Lakehead U	3.3%	3.3%	\$2000	\$2000	\$2300	\$2300
Laurentian U	3.25%	3.25%	1% + \$1000			
U of Lethbridge	4.13%	0%	CPI	CPI	CPI	CPI
McMaster U	3% + \$750	3% + \$750	1% + \$2000	1% + \$2000		
U of Alberta	4.75%	4.75%	1.8%	2%	1.7%	1.7%
Nipissing U	3%	3%	3%	2% + \$250	2% + \$304	
U of Ottawa	3% + 0.5%	2.75% + 0.25%		2.16% + 3.05%	2.21%	2.8%
Queen's U	3.2% ¹	3.2% ¹	1.25%	1.5%	1.5%	2.5%
Western U	3.25%	1.5%	1.5%	1.5% + \$800	1.5% + \$800	
U of Waterloo	3% + \$425	0%	0%	3%	3%	3%
York U	3%	3%	2.5%			
U of Calgary	4.5%	-	2%	2%		
U of Manitoba	2.9% + \$500	1%	2.9%			
U of Saskatchewan	5.25%	4.5% + \$300	4% + \$300			
U of Windsor	3.0% ¹	3.0% ¹	1.5%	1.5%	1.5%	
U of Winnipeg	2.9% + \$650	\$560	0.5% + \$500	2.8% + \$525		
U of King's College			3.25%	2.25%	3.25%	2.25%
UNBC		0%	0%			
Sources: CAUT Facts and Figures 13 (4)(December 2011), pp 3-4; CAUT Almanac of Post-Secondary Education in Canada, 2012-13, 6; Sims (2011); http://people.stat.sfu.ca/~cschwarz/SFUFA/EBinfo/Salaries/RecentSalarySettlements.pdf						

5.2.7 In sum, recent salary increases at universities across Canada would justify increases of 3% and 3% at UNBC even if salaries at UNBC were not out of step with other universities. Given the fact that there have been no GWIs at UNBC since 2009, and that salaries at UNBC are well behind those at other institutions, the principle of replication supports the UNBC-FA's salary proposal.

5.3 Consumer Price Index (CPI)

5.3.1 Arbitrators have often consulted the Consumer Price Index (CPI) as one of a number of useful tools in determining suitable salary adjustments. However, they normally stipulate that while the CPI should inform such discussions, the CPI should not be the *only* factor considered in determining wage increases. In 1990, Shime ruled that the CPI should be considered “but only as a litmus test for comparison purposes” (Shime, *supra*, BoA, Tab 6 at pp. 9–10).

5.3.2 Winkler in 2010 declared, in the context in which he made his award, that “...the comparable institution wage settlements justify an increase in salaries that exceeds the quantification of the CPI increase advanced by either party...” (Winkler, *supra*, BoA, Tab 4 at p. 10).

5.3.3 The UNBC-FA argues that the same can be said here: that factors apart from the quantification of CPI justify increases that exceed the cost of living increases.

5.3.4 An examination of the Consumer Price Index (CPI) for the past five years reveals that the UNBC-FA’s salary proposal is reasonable. While GWIs in faculty salary in Canada have generally outpaced the CPI since 2007, faculty salaries at UNBC have not kept up with the CPI over that time. Furthermore, the UNBC Employer’s salary proposal does not address the decline in purchasing power in 2008, and is unlikely to allow salaries at UNBC to keep pace with increases in the cost of living in northern British Columbia.

5.3.5 Because changes to the cost of living going forward are impossible to project, negotiators and arbitrators normally examine changes to cost of living retrospectively. The Consumer Price Index for British Columbia since 2007 is shown in Figure 18.

Figure 18. Consumer Price Index for British Columbia, 2007–2012 (calendar years)

2007	2008	2009	2010	2011	2012
1.8%	2.1%	0.0%	1.3%	2.4%	1.1%
Source: Statistics Canada					

5.3.6 As these figures show, increases in the cost of living from the beginning of 2010 to the end of 2012 have averaged 1.6% per year, and from 2008 to 2012 have averaged 1.38%. In light of the 0% salary increases of the previous agreement (2010–12), it is entirely reasonable for the UNBC-FA now to propose a general salary increase of 3% in each of the two years of the agreement, particularly when it is remembered that the CPI forms only one part of the rationale for GWI.

5.4 General wage increases in Canada

5.4.1 There is reason for those in the public sector to believe that their salaries should keep pace with wages in the private sector. There is also reason for faculty at universities in British Columbia to believe that their salaries should keep pace with faculty at universities elsewhere in Canada. However, an analysis of major wage settlements by Human Resources and Skills Development Canada (HRSDC) reveals that wage settlements in British Columbia have not kept pace with wage settlements elsewhere.

5.4.2 Figure 19 shows the major wage settlements in Canada in 2010 and 2011. It reveals that wage settlements in the public sector, and in education in particular, have not kept pace with the private sector.

5.4.3 However, the HRSDC research reveals that the figures for the education, health, and social services sector are skewed because of “wage freezes” in British Columbia. The HRSDC reported that :

among all the industry sectors, the 316,280 employees in the education, health, and social services sector, representing nearly half of all the employees involved in the 2011 settlements, received the lowest average annual adjustment (1.5%). This moderate increase was largely due to the impact of the wage freezes that affected 39,380 employees in this sector in British Columbia..

http://www.hrsdc.gc.ca/eng/labour/labour_relations/info_analysis/overview/2011/section_2.shtml

5.4.4 This statement by a federal government agency makes a clear connection between government interference in free collective bargaining and sector-wide suppression of wage increases.

Figure 19. Major wage settlements in Canada (%)

Sector	2010	2011
Private	2.1	2.1
Public	1.6	1.7
Education, Health, Social Services	1.6	1.5
Source: Human Resources and Skills Development Canada		

5.4.5 On 20 August 2012, Hay Group (a global management consulting firm) issued a press release indicating that a national survey of public and private sector employers revealed that “Canadian employees can expect an average salary increase of 2.9% in 2013.”
<http://www.haygroup.com/ca/press/details.aspx?id=34497>

5.4.6 Employees in British Columbia, the report showed, could expect increases slightly below the national average (at 2.7%), but well above what the faculty at UNBC has been offered.

5.4.7 Recalling the principle articulated by Shime (1990) the UNBC-FA asserts that “public sector employees should not be required to subsidize the community by accepting substandard wages and working conditions” (Shime, *supra*, BoA, Tab 6 at p. 8).

5.4.8 In 2006, this principle was reinforced by Arbitrator Kuttner when he rejected the arguments put forward by the Burnt Church First Nation concerning its ability to pay:

Even within the context of the severe economic constraints under which BCFN must operate, such decisions [to limit pay increases] in effect impose upon members of the bargaining unit the burden of subsidizing the community by accepting substandard wages in place of those found in the collective agreement.

Public Service Alliance of Canada and Burnt Church (Esgenoôpetitj) First Nation [2006] (Kuttner) (BoA, Tab 10, paragraph 45)

Specifically, in this case the faculty at UNBC should not be called upon to subsidize the community by accepting substandard salaries.

6 Non-Salary Items

6.1 Introduction

6.1.1 The UNBC-FA acknowledges that arbitrators in the past have been reluctant to adjudicate on issues apart from salaries and the duration of an agreement. In 2009, Arbitrator McPhillips noted under what conditions arbitrators adjudicate on those other issues. Referring to non-salary issues he wrote that

Generally, interest arbitration awards will deal with such issues only if there is a clear and compelling reason to do so.

City of Richmond and Richmond Fire Fighters' Association [2009]

B.C.C.A.A.A. No. 106 (McPhillips) (BoA, Tab 12, paragraph 74 at p. 28)

6.1.2 The UNBC-FA asserts that the very fact that the Employer refused even to comment on a wide range of non-salary proposals put forward by the Association, is itself “a clear and compelling reason” for the Arbitrator to adjudicate on those matters.

6.1.3 In his recent (2013) award, Arbitrator Colin Taylor asserted that “interest arbitration seeks to encourage collective bargaining, and therefore endeavors not to provide an incentive to go to interest arbitration.” (Taylor, *supra*, BoA, Tab 5 at p. 61). In this case, it is the opinion of the UNBC-FA that the Arbitrator’s declining to adjudicate all non-salary items would provide an incentive for the Employer to refuse to comment on many of the UNBC-FA’s non-salary proposals during the next round of negotiations.

6.1.4 Therefore, the UNBC-FA asserts that there is a “clear and compelling reason” for the Arbitrator to adjudicate on non-salary matters that meet one or more of the criteria listed below. The first criterion is as follows:

1. The parties are in a position to supply the Arbitrator with sufficient information to understand that the parties did agree, or would have agreed on an issue had negotiations continued under the conditions of free collective bargaining. Included among these matters are those items upon which the parties came to verbal agreement at the table on all substantive issues, as well as those matters that have been the subject of Memoranda of Understanding, and on those matters in which the UNBC-FA is proposing to bring the language of the agreement into conformity with established practice. We sincerely believe that each of these matters serve the mutual interests of the Employer and the employees. We believe that the Arbitrator is in a position to rule on all matters that fit this criterion.

Matters that do not necessarily fit this first criterion have been brought forward if they fit all or most of the following criteria:

2. The issue is not too complicated or specialized to be addressed in the limited circumstances of an arbitration proceeding.
3. The parties are able to address whether their proposals are usual within the university sector. (We acknowledge that an arbitrator will not, and should not, award "breakthrough" proposals.)
4. The proposals do not represent a significant change in the rights of management or of the rights of the UNBC-FA and its members.
5. The issue is of such pressing concern that the UNBC-FA believes that the matter should not be put off any longer.

6.1.5 The UNBC-FA elected not to bring forward outstanding articles on which a cautious arbitrator would be unable to rule. We submit that an appropriately cautious arbitrator, employing widely accepted principles of replication, conservative adjudication, and an aversion to awarding breakthrough proposals, is able to adjudicate the non-salary items put forward for arbitration by the UNBC-FA.

6.1.6 It would fall within the parameters of an arbitrator, seeking to replicate what the parties might have agreed to in the context of free collective bargaining, to adjudicate on all of the non-salary proposals put forward by the UNBC-FA. An arbitrator could do so and still make an award that falls within the parameters of a fair and reasonable decision, and a conservative adjudication process. The UNBC-FA is not proposing anything that would depart from what might have been agreed to under the conditions of free collective bargaining.

6.1.7 According to the terms of Article 46.3 of the UNBC Faculty Agreement, arbitrators can be called upon to adjudicate non-salary and non-monetary items. In this case, the UNBC-FA calls upon the Arbitrator to adjudicate on all of the issues that it has brought forward for arbitration.

6.2 Non-Salary Issues

6.2.1 Article 19 Retirement, Resignation, and Alteration of Employment

6.2.1.1 *Phased Retirement*

6.2.1.1.1 The UNBC-FA requests revisions to Article 19 (Tab B-2) to:

- align the administration of the phased retirement program with other Articles in the Agreement (i.e., 19.5.4, 56.3, 62.2.1);
- incorporate a recent Memorandum of Understanding that permits twice-yearly start dates for phased retirement;
- formalize administrative exceptions to the phased retirement provisions to ensure equity amongst the Association's members;
- add a modest increase to the medical/dental post-retirement fund to support an increasing number of retired members; and
- reduce the waiting times for processing of claims for reimbursement from that fund from +12 months to 6 months.

6.2.1.1.2 UNBC was the first university in British Columbia to eliminate mandatory retirement at age 65 in anticipation of changes in legislation. A program of phased retirement was subsequently negotiated by the parties and introduced into the 2006—2010 Agreement.

6.2.1.1.3 Members first took up the phased retirement program in 2008, and a total of seven Members have applied and been approved for this program since its inauguration.

6.2.1.1.4 Of these seven, all have either negotiated alterations to the phased retirement program on a “without prejudice” basis and/or sought clarification of the process given the absence of clarity or information in the Agreement. The UNBC-FA's position is that the Agreement should provide clarity on and reflect options for phased retirement that the Employer has granted to other Members.

6.2.1.1.5 Changes proposed by the UNBC-FA would seek to amend and clarify the following:

1. To whom is the application for phased retirement submitted?
2. What happens in the case where the workload cannot be agreed upon between the Member and the Member's chair?
3. Workload reduction increments of 25% do not allow for clear reduction of formal teaching workload, which is based on a model of 15 semester contact hours assigned annually (and thus divisible by 5 and not 4). A 20% workload reduction increment would allow for a clearer determination of teaching reduction.
4. Workload reduction increments of 25% do not coincide with the Member's remaining eligible for benefits should the workload be reduced below 75%. In other words, Members are not eligible for benefits if the workload is adjusted to 50%. In the 2010-2012 Agreement, the Employer and UNBC-FA created a temporary ‘fix’

to the issue of benefits eligibility by allowing the workload percentage to be 51%; however, this remains in conflict within the Article if workload reduction is approved at 25% increments. Allowing 20% workload reduction increments would better align with benefits eligibility for workload reductions to 80% or 60%.

6.2.1.1.6 A primary concern of the UNBC-FA is the age restriction on Members who seek to apply for and take up the phased retirement program. Indeed, restricting an employee benefit simply based on age seems to discriminate unfairly—a fact tacitly acknowledged by the University when it agreed to alter phased retirement for individual Members outside the age limit.

6.2.1.1.7 The UNBC-FA has also introduced changes to the requirement that Members are to provide one-year notice of application for phased retirement. Reducing the application period from 1 year to 6 months aligns with the notice required in Article 19.6.1.

6.2.1.1.8 In addition, the UNBC-FA seeks the incorporation of a recent Memorandum of Understanding (Tab K) that permits a phased-retirement start date of either 1 January or 1 July.

6.2.1.1.9 Ensuring all Members are afforded equal rights and privileges under the Agreement is a fundamental principle of the UNBC-FA. Given the number of Members currently retiring or soon to be of retirement age, this is a pressing issue suitable for the Arbitrator's adjudication.

6.2.1.2 *Post-Retirement Medical/Dental Fund*

6.2.1.2.1 The UNBC-FA seeks changes to the amount and processing periods of the Post-Retirement Medical/Dental Fund.

6.2.1.2.2 Article 19.6.6.1 defines the Post-Retirement Medical/Dental Fund for retired Members who no longer qualify for continuing benefits coverage from the University's plan. The Employer and UNBC-FA created the fund out of savings reallocated from other sources within the 2006—2010 Agreement. Recognizing that Members who are retired are on reduced income, the fund offsets the costs of benefits; Members submit receipts and receive a taxable reimbursement up to a maximum claim of \$1,000 per calendar year.

6.2.1.2.3 As more Members retire and apply for reimbursement from the fund, the fund must be sufficient to assist Member benefit costs during retirement. The UNBC-FA proposes that this fund be increased by \$2,000 annually (\$1,000 semi-annually), given that the UNBC-FA has identified 14 retired Members who are eligible to access the fund with an additional 3 Members retiring in 2015.

6.2.1.2.4 Processing timelines for claims have been problematic for retired Members. They currently can wait up to 14 months, at Employer's discretion, to receive reimbursement from the date when the expense was incurred. For example, under the Agreement, claims are processed in January—February for expenses incurred in the

previous calendar year. If an expense is incurred early in the calendar year, claims must be held until the following year to be processed.

6.2.1.2.5 Changing the claim submission period to semi-annually allows the retired Member to receive reimbursement in a reasonable time and does not impose additional workload on the Employer, as all claims must be reviewed regardless.

6.2.2 Article 28 Professional Development Allowance (Tab B-3)

6.2.2.1 The UNBC-FA proposes an increase to the Professional Development Allowances (PDA) for regional Members (a small minority of the UNBC-FA's membership) only. More specifically, the UNBC-FA proposes that the annual rates of PDA be changed as shown in Figure 20 (below).

Figure 20. Proposed increases in Professional Development Allowance for regionally appointed Members

Member category	Current PDA	Increase	Revised PDA	Number (vacant)
Regional Chairs	\$2400	\$1200	\$3600	1 (2)
Continuing Members	\$2000	\$800	\$2800	6 (1)
Full-time term Members	\$1600	\$400	\$2000	4 (0)
Term SLIs I	\$450	\$400	\$850	1 (1)
<i>All other Members</i>	<i>Variable</i>	<i>0</i>	<i>unchanged</i>	<i>449</i>

6.2.2.2 These increases in PDA will cost \$11,600 per annum (or \$8,000 per annum assuming that currently vacant positions remain vacant). The proposal relates strictly to expenditures, and does not entail changes in management rights or current practices. Further, this change applies to only 12 Members (16 positions) out of a total of approximately 465 Members.

6.2.2.3 Regional UNBC-FA Members have more difficult access to library resources, IT, and administrative services, and greater travel costs. Professional Development Allowance (PDA) allows a Member to be reimbursed for expenditures related to professional and/or teaching duties based on the Member's needs (including the purchase of books, subscriptions, memberships in professional associations, and—in particular—travel-related expenses [see Agreement 28.2], which are higher for regional Members); increased PDA partially compensates regional Members for the higher professional development costs they incur.

6.2.3 Article 30 Teaching Workload

The UNBC-FA has three proposals relating to Article 30 (Tab B-4).

6.2.3.1 Greater clarity in the assignment of teaching workload

The first set of proposed changes (Articles 30.1.2 and 30.1.3) would ensure that Members better understand decisions regarding the assignment of their teaching workload. These changes would not interfere with the right of Chairs to recommend workload assignment.

6.2.3.2 Adding "Graduate Coordinator" to factors that must be considered

The second change in the UNBC-FA proposal is the addition of one more factor, duties as Graduate Coordinator, to those that must be considered when assigning teaching workload (30.3.2.q). The addition of the language does more to reflect existing practice than to impose any new requirements.

6.2.3.3 Formalization of the role of technologically mediated instruction

6.2.3.3.1 The third set of changes is the proposed addition of language in 30.6 that would formalize recognition of the role of technologically mediated instruction at UNBC. As we note in the Article preamble (30.6.1), technologically mediated instruction has become significant at the university.

6.2.3.3.2 Language on technology-mediated learning is becoming increasingly common in faculty-association agreements. A number of provisions are summarized in Tab L.

6.2.3.3.3 The UNBC-FA submits that provisions related to technologically mediated instruction are pressing. Virtually complete agreement on the issue was reached in 2012. There is good reason to believe that the parties would have reached agreement on this provision.

6.2.3.3.4 Technologically mediated instruction is important to the university's effort to meet its mandate to deliver programs throughout northern British Columbia. Courses delivered that way are now crucial to programs such as Disability Management and Health Sciences, and are important in many other programs.

6.2.3.3.5 Technologically mediated instruction is also important to new initiatives, such as one in which students at UNBC share a virtual classroom (by video conference) with students at Gakushuin Women's College in Tokyo, Japan.

6.2.3.3.6 In a context in which the University has publicly committed itself to expanding such innovative forms of technologically mediated instruction, it is crucial that these provisions be incorporated into the Agreement as soon as possible.

6.2.3.4 A housekeeping change

6.2.3.4.1 In addition to the substantive changes discussed above, there is one minor "housekeeping" change that the UNBC-FA proposes: the small change in 30.3.3, indicating that the Chair's adjustments are merely "recommendations" to the Dean.

6.2.3.4.2 This change makes the language consistent with management rights in the rest of 30.1, where the Chair recommends, and the Dean decides. This change in wording better represents the reality at UNBC, and may help avoid future confusion among Members.

6.2.3.5 *The Arbitrator should rule on Article 30*

6.2.3.5.1 The UNBC-FA argues that this article is one on which the Arbitrator certainly should rule because it is an article on which the parties had found considerable common ground on all substantive issues (after considerable give-and-take at the table, which can be appreciated by examining the proposals in Tab L).

6.2.3.5.2 Furthermore, the UNBC-FA's proposal is not complicated, is in line with similar provisions in other university faculty agreements, and does not unduly interfere with management rights.

6.2.3.5.3 In sum, the UNBC-FA submits that the UNBC-FA's final version of Article 30 as tabled with the arbitration documents should be accepted by the Arbitrator on the following grounds:

1. The parties have found common ground on all the substantive points in this proposal at the table, but the Employer's bargaining team withdrew assent to the article without explanation.
2. The proposed changes are straightforward and easily explained in the limited circumstances of an arbitration proceeding.
3. The UNBC-FA's proposed changes to the agreement are normal within the university sector.
4. The proposals do not represent a significant change in the rights of management or of the rights of the UNBC-FA and its Members. They ensure clarity, fairness, equity, and transparency.

6.2.4 Article 50 Pensions and Benefits

6.2.4.1 The UNBC-FA requests revisions to Article 50 (B-5) to give Members the full entitlement to retroactive Medical Services Plan (MSP) premiums, which are paid by the employer, where the Member had previously waived MSP benefits and circumstances change requiring the benefit.

6.2.4.2 The UNBC-FA also requests an increase (of \$5,000 annually) to the Medical Service Travel Fund. Currently the fund is capped at \$10,000 per annum. An increase in the fund would support Members who are required to travel outside of Prince George to seek medical services. All full-time Members of the UNBC-FA are eligible to access the fund, and there is no annual limit to an eligible claim for reimbursement, so the fund can in any given year become quickly depleted.

6.2.4.3 The UNBC-FA also proposes that the period for processing travel claims be reduced to six months. Members currently wait +12 months for reimbursement.

6.2.4.4 Medical Services Plan (MSP) retroactive enrolment

6.2.4.4.1 The UNBC-FA seeks retroactive enrolment in MSP where a Member has previously waived this benefit because of sufficient coverage through a spousal MSP.

6.2.4.4.2 At UNBC, MSP is an employer-paid benefit. Members are eligible to waive enrolment in MSP at the time of hire or after hire if they are enrolled as dependents under a spousal MSP. This results in cost savings for the University.

6.2.4.4.3 Circumstances occur in which a Member is no longer eligible for MSP coverage under the spousal plan and must enrol under the University's plan; in some cases this can occur retroactively. If MSP guidelines allow for a retroactive application for enrolment, the University should be required to provide the same retroactive payment of MSP premiums.

6.2.4.4.4 Members are entitled to employer-paid MSP. It is unacceptable for the University to reduce the period of retroactive MSP coverage allowable under MSP guidelines, resulting in a cost to the Member. The UNBC-FA notes that Members *could* choose not to waive the benefit at the time of hire—regardless of their current need for coverage—to ensure that they will not be financially penalized by being denied retroactive coverage. This would result in unnecessary costs for the University.

6.2.4.4.5 The proposed change is therefore in the interest of both Members and the University, and is a change that would likely have been agreed upon in the course of negotiations.

6.2.4.5 Medical Service Travel Fund

6.2.4.5.1 The UNBC-FA seeks the following changes to the Medical Service Travel Fund:

- expansion of practitioner eligibility;
- an increase (\$5000) in the annual amount available; and
- semi-annual rather than annual processing.

6.2.4.5.2 The UNBC-FA proposed the creation of a medical service travel fund for Members during the 2006 faculty negotiations. The annual fund was established based on savings achieved by Members' choosing not to subscribe to the provincial drug card program.

6.2.4.5.3 The purpose of the fund was to offset the costs of travel incurred by Members required to seek professional medical services (for themselves or for dependents) that are not available in the Prince George area. The fund has an annual cap regardless of the number of claims submitted.

6.2.4.5.4 In recent years, Members have been denied access to the fund because their expenses did not fall under the current language in the Agreement outlining eligibility. The purpose of the fund was not to restrict access, and therefore additional language on eligibility for the fund has been incorporated throughout Article 50.11.

6.2.4.5.5 In addition, the UNBC-FA believes an annual increase of \$5,000 to the fund offsets the rising costs of travel and medical services since the fund was first established in 2006.

6.2.4.5.6 As with the Post-Retirement Medical/Dental Fund (Article 19), processing timelines for claims have been problematic for Members. Without improvements to the language for processing claims, Members currently can wait up to 14 months at Employer's discretion to receive reimbursement from the date when the expense was incurred. For example, claims are currently processed in January-February for expenses incurred in the previous calendar year. If an expense is incurred early in the calendar year, claims must be held until the following year to be processed. Changing the claim submission period to semi-annually allows the Member to receive reimbursement in a reasonable timeframe and does not impose additional workload on the Employer, as all claims must be reviewed regardless.

6.2.4.5.7 The changes to the Medical Service Travel Fund are reasonable and would likely have been agreed upon in the course of negotiations.

6.2.5 Article 54 Sabbatical Leaves

The UNBC-FA puts forward two discrete requests relating to Article 54 (Tab B-6):

6.2.5.1 Incorporating a Memorandum of Understanding into the Agreement

6.2.5.1.1 The UNBC-FA requests that a recent Memorandum of Understanding (Tab M) be incorporated as Article 54.10.1 of the Agreement on the following grounds:

1. The provisions of Article 54.10.1 are already acknowledged in an MOU, and reflect present practice. Thus, the proposals do not represent any change to management rights or on the rights of the UNBC-FA or its members.
2. The proposed changes are straightforward and easily understood.

6.2.5.2 Sabbatical eligibility after five years of service

6.2.5.2.1 Second, the UNBC-FA proposes to make Faculty Members eligible for a full-year sabbatical at 60% of salary after five years of service (Article 54.2(d)). Our proposal is based on an identical provision in the 2010-12 University of British Columbia Collective Agreement. (Agreement on Leaves of Absence, Article 2 [Study Leave], c. i).

6.2.5.2.2 This proposal represents no incursion on management rights. The Provost retains the right to award or not award sabbaticals.

6.2.5.2.3 In sum, the UNBC-FA submits that the UNBC-FA's proposal relating to Article 54.2(d), allowing for sabbatical eligibility after five years, should be accepted by the Arbitrator on the following grounds:

1. The Employer's bargaining team expressed oral agreement-in-principle to the fifth-year sabbatical eligibility during negotiations, but withdrew its acceptance without giving any reasons.
2. The proposed changes are straightforward and easily understood.
3. The fifth-year sabbatical eligibility is identical to that which exists at UBC and thus not a "breakthrough" or novel proposal.
4. The proposals do not represent an incursion on management rights (the Provost retains the decision-making power), or on the rights of the UNBC-FA or its Members.
5. The proposal is either cost-neutral, or a cost advantage to the university.
6. The proposal is consistent with the stated vision and mission of UNBC.

6.2.5.2.4 The UNBC-FA's proposals regarding sabbatical leaves were put forward in a sincere effort to offer creative ways to enhance the ability of the Employer and the Faculty Members to achieve the UNBC's stated vision and mission.

6.2.5.2.5 The preamble to Article 54.1 explicitly states that sabbatical leaves serve the goals of the university as a whole, not merely the purposes of Faculty Members as individuals: "Sabbatical leave are to serve the objectives and goals of the University by providing Tenured Faculty Members with a regular opportunity to maintain and enhance their academic and professional competence free from normal on-campus teaching/professional and service obligations."

6.2.5.2.6 The UNBC-FA's proposed changes will enhance the university's research profile, reduce Faculty Members' teaching workload, increase flexibility in the ability of Faculty Members to organize their research agendas, and enhance the ability of the university to contribute new knowledge to communities—all without any threat to management rights, and without any financial cost to the university.

6.2.6 Article 61 Sick Leave

6.2.6.1 The UNBC-FA proposes to change Members' sick-leave eligibility from 60 calendar days to 180 calendar days per year to better conform to industry standards.

6.2.6.2 We believe that this is a matter on which the Arbitrator can and should adjudicate because the UNBC-FA proposal conforms to industry standards (is not a breakthrough item), is uncomplicated and easy for the arbitrator to understand, is a matter on which the parties could have agreed, and does not threaten management rights.

6.2.6.3 This proposal is also a pressing item. Though few Members use sick leave in any given year, catastrophic health crises requiring a long sick leave can occur at any moment for an individual Member. Given the older-than-average faculty cohort at UNBC (see Figure 5), such health crises are becoming ever more likely for our Members.

6.2.6.4 Figure 21 (below) provides a comparison of sick-leave provisions for faculty at our comparators. The information is drawn from 2011 Faculty Agreements. The table clearly shows that the UNBC Faculty Agreement is out of step with the industry standard.

6.2.6.5 Faculty at most universities have a sick-leave entitlement at least twice as long as UNBC Faculty.

Figure 21. Sick-leave eligibility at comparator universities

Institution	Leave entitlement - days
Acadia University	180
Brandon University	180
Lakehead University	120
Lethbridge University	75
Mount Allison University	180
University of PEI	132
University of Regina	180
St Francis Xavier University	105
Trent University	180
Comparator average	148
UNBC	60

6.2.6.6 The UNBC-FA asserts that this is an item on which the parties may have agreed because it is a matter that will serve the mutual interests of the Employer and Members.

6.2.6.7 The benefits to Members are obvious. Faculty Members at UNBC (as at most universities) rarely take advantage of sick leave, but when they face a catastrophic illness, sixty days does not permit sufficient recovery time. In the case of a cancer diagnosis or a cardiac event, for example, sixty days is woefully inadequate.

6.2.6.8 Faculty Members' use of sick leave is rare, as discussed above. When faculty do use sick leave for non-catastrophic illnesses such as seasonal flu, their sick leave generally poses no cost to the University. For example, it is unheard of for the university to hire replacement workers to complete the research time lost by UNBC Faculty Members, or to find replacement workers to fill a Member's service obligations.

6.2.6.9 Furthermore, when illness forces Faculty Members to miss a lecture or two in a course, it is impractical to hire replacement workers to teach those lectures simply because the knowledge to be presented in such lectures is too specialized to replace on short notice.

So, when faculty members are ill for only a few days, their classes are normally cancelled. There is no cost for replacement, nor are students reimbursed for a missed class.

6.2.6.10 Only in the very rare cases when Faculty Members are unable to teach their classes for an extended time does the university consider hiring replacement instructors. Because these instructors are hired to cover only the teaching part of an ill Faculty Member's workload, they are normally compensated at a much lower rate of pay.

6.2.6.11 Even then, because instructors with the relevant specialized expertise are usually difficult to find, the university often does not hire extra personnel to replace an ill Faculty Member. Thus, in many cases, the illness of Faculty Members is of no financial cost to the university.

6.2.6.12 The foregoing explains the benefit to Members and the limited cost to the Employer of the UNBC-FA's proposal. There are also benefits to the Employer. By extending Members' sick-leave eligibility to 180 days per year, the Employer will be eligible for rebates from Human Resources Development Canada (HRDC). Thus, by extending sick-leave eligibility the Employer may actually incur few if any additional costs in a typical year.

6.2.7 Article 62 Leave of Absence

6.2.7.1 The UNBC-FA seeks to create a category of leave with partial pay for Members who have been offered fellowships at prestigious research institutions (Tab B-8). The provision would provide Members with partial salary, calculated by subtracting any fellowship stipend received from Members' nominal salaries.

6.2.7.2 Currently, Members may take unpaid leaves only. Members who take up visiting appointments *at other universities* are compensated by host institutions at rates comparable to or, usually, higher than³ their salaries at UNBC; they therefore suffer no financial losses. The University recognizes the value of such appointments to Members and UNBC, granting CDI and sabbatical-leave credit as though the Member had been at UNBC during the period of leave.

6.2.7.3 The Agreement is silent, however, on Members who take up fellowships at *research institutes*. The fate of Members while on leave is entirely a matter of management discretion.

6.2.7.4 This has led to a situation of inequity, exemplified by the case of two recent fellowship awardees. Both Members received prestigious external awards (from the Fulbright Commission and Max Planck Institute respectively). One retained full salary,

³ Because UNBC's salaries are so far below industry standard, a visiting appointment at another institution might well represent an *increase* in salary rather than a decrease.

while the other was put on leave without pay and lost not only his salary but his benefits entitlement, retaining only the small stipend that his fellowship carried. Ironically, the latter Member received a University Research Award in the same year in which he was, strictly speaking, not even a deemed employee.

6.2.7.5 The UNBC-FA's proposal would eliminate such inequities by providing clear guidelines for the withholding of salary during fellowships.

6.2.7.6 The proposal carries no prejudice to the university because:

- the granting of leave would remain at the discretion of the University, and the proposal would thus not limit management rights;
- such fellowships are rare enough that there would be no significant effect on the University's year-to-year faculty complement; and
- in most cases, there would be no additional cost, since the withheld portion of salary would replace teaching at sessional instructor rates.

6.2.7.7 The UNBC-FA believes its proposal is a fair one that would have been agreed to by both parties, since (a) there is no prejudice to the University and (b) prestigious research fellowships advance both the careers of Members and the research standing of the university.

6.3 Issues Settled in Negotiations

During negotiations, the following articles were settled: 4, 12, 15, 20, 21, 27, 29, 35, 43, 44, 45, 51, 67, 68. Copies of the signed agreements are presented in Tab N. The UNBC-FA requests that the Arbitrator incorporate these settled articles into his award.

7 The Employer Is Able to Pay

7.00 In this section of the brief, we assert and provide evidence of the Employer's ability to pay the cost of our compensation proposals.

7.01 We provide this information because the Employer has raised absolutely no other objections to our salary proposals. Indeed representatives of the Employer have repeatedly acknowledged that they are reasonable and deserved. At no time did the Employer suggest that the UNBC-FA's proposals are unreasonable or unjust. Indeed, spokespersons for the University have stated quite the opposite. As recently as 25 March 2013, George Iwama, President of UNBC stated of the UNBC faculty that "I'd like them to be the best-paid professors in the world because they deserve it" (BoE, Tab R). The Employer has raised no objection to the principles behind the UNBC-FA's salary proposal.

7.02 Similarly, according to the *Prince George Citizen*, Rob Van Adrichem, UNBC's Vice President, External Relations indicated "We want to reward our faculty for great work as much as we can, but one of the restraints is we are a public entity" (*Prince George Citizen*, 8 December 2012, 3). The UNBC-FA is not able to account for these contradictory signals, but they are consistent with the Employer bargaining team's conducting itself as if the Employer does not believe it has the ability to bargain with the UNBC-FA free of interference by government.

7.03 In discussing the Employer's ability to pay, we do not concede that ability to pay is a relevant consideration for the Arbitrator in this dispute. **In fact, we *dispute* the relevance of ability to pay.**

7.04 **Ability to pay is *not* a criterion mentioned in our Agreement.** As a result, there is no agreed-upon definition of what constitutes ability to pay.

7.05 Moreover, it would be contrary to all relevant precedents for an arbitrator to consider ability to pay in the absence of an agreement provision requiring him or her to do so, as we discuss below.

7.1 Ability to pay is not a criterion in the Agreement

7.1.1 It would be contrary to all relevant precedents for an arbitrator to make a judgment based on the ability of a university to pay in the absence of specific direction to do so.

7.1.2 At some universities, collective agreements call on arbitrators to consider "ability to pay." For example, in his recent award (2013) in relation to faculty salaries at the University of British Columbia, Colin Taylor considered ability to pay, but only because

the faculty agreement at UBC explicitly calls on the arbitrator to do so. Even so, Taylor stated that “It is fair to say that the general ‘ability to pay’ analysis in the public sector is a notorious quagmire” (Taylor, 2013, *supra*, BoA, Tab 5 at p. 12).

7.1.3 In the case of UNBC, the Faculty Agreement makes no mention of the ability to pay.

7.1.4 In 2010 Arbitrator Teplitsky wrote that in the public sector “ability to pay has been rejected by interest arbitrators for at least 4 decades” (Teplitsky, *supra*, BoA, Tab 2 at p. 5).

7.1.5 In 2006, Arbitrator Warren Winkler quoted, and explicitly adopted the argument of Arbitrator Shime that

there is little economic rationale for using ability to pay as a criterion in arbitration. In that regard I need only briefly repeat what I have said in another context, that is, public sector employees should not be required to subsidize the community by accepting substandard wages and working conditions. ... Thus, for example, if I were faced with data showing that the salary scale for assistant professors at McMaster was less than that of other universities in Ontario, I would have no hesitation in increasing the amount to achieve the same standard for McMaster regardless of the university’s fiscal position. ... The universities are funded by the provincial government. In recent years the funding has not been as generous as it might be, which no doubt had eroded the salaries of university professors. ... If arbitrator/selectors were to consider the funding level of universities for the purpose of salary determination, they would in effect, become handmaidens of government. Arbitrator/selectors have always maintained an independence from government policies in public sector wage determinations and have never adopted positions which would in effect make them agents of the government for the purpose of imposing government policy. Their role is to determine the appropriate salary range for public sector employees regardless of government policy, whether it be funding levels or wage controls.

Winkler, *supra* (BoA, Tab 4 at p. 7)

7.1.6 Thus, as earlier arbitrators have already established, if arbitrators were to attach weight to public-sector Employers’ “ability to pay” arguments or their “government bargaining mandate” arguments they would have to surrender the very essence of their task—independent adjudication.

7.1.7 The role of arbitrators, as Shime wrote, “is to determine the appropriate salary range for public sector employees regardless of government policy, whether it be funding levels or wage controls” (Shime, *supra*, Tab 6, paragraph 18 at p. 5).

7.2 Notwithstanding, UNBC has the ability to pay

7.2.1 As stated above, the UNBC-FA rejects and denies the relevance of the Employer's ability to pay to this dispute.

7.2.2 By discussing the University's ability to pay, the UNBC-FA does not concede the relevance of the question. The relevant question, in the UNBC-FA's view, is what level of salary or compensation would be fair and reasonable.

7.2.3 In addition, it is clear that the onus would be on the University to prove its inability to pay rather than on the UNBC-FA to prove the obverse. Arbitrators have ruled that, even in cases where the collective agreement determines that arbitrators should consider ability-to-pay arguments (which is not the case here), the onus is on the employer to prove inability to pay. See for example, the comments of Arbitrator Larson:

In order for an employer to establish the level of its ability to pay, it will be required to present a board of arbitration with full and complete financial data. It will be necessary to show not only the amount of funding available, but also evidence on the application of those funds and the net amounts available for wages and salaries. It will be necessary to permit an arbitration board to examine budgets, financial statements, accounts and any other relevant data through witnesses qualified and authorized to speak to the allocation of those funds. It will be necessary to show the total financial resources available to the employer.

This cannot be done by the presentation of incoherent financial data. Nor will it be sufficient to present a budget. **Without more, a budget represents estimates of spending but not ability to spend.** One would expect that the ability of an employer to spend would be shown rather by demonstrating that the funding available is limited, that there is no possibility of allocating funds between accounts, that there are no surplus or secret funds available to the employer; that there are no supplementary funds available to the employer and that there is no ability to raise and/or carry a deficit.

That list is not necessarily exhaustive. But we trust that the point has been made. In order to determine the employer's financial ability to pay any given level of compensation increase, it will be necessary to present the financial data necessary to establish it.

Crossroads Treatment Centre Society and Hospital Employees Union, Local 180 (Employee Status Grievance), [1983] BCCAAA No. 652 (Larson) (BoA, Tab 13, paragraphs 138, 139, 140 at p. 20, emphasis added)

7.2.4 In discussing the ability to pay, then, the UNBC-FA cedes neither that ability to pay is a criterion in this dispute nor that, if it were, it would be the UNBC-FA's job to prove it. Nevertheless, **the UNBC-FA asserts that the University does have the ability to pay the cost of our proposals.** It is abundantly clear to the UNBC-FA, that the University has the ability to pay its faculty as well as faculty at comparator universities are paid; it is simply unwilling to do so.

7.2.5 The UNBC-FA will call Ms. Eleanor Joy as an expert witness in these arbitration proceedings. Ms. Joy is a Chartered Accountant and a Chartered Business Valuator with over 25 years experience in dispute analysis and valuations. She has testified as an expert witness in the Supreme Court of British Columbia and has given evidence in previous arbitrations.

7.2.6 Ms. Joy's report (Exhibit A) and her evidence in this arbitration are rendered as an independent expert, not as an advocate. She was not involved in any aspect of the UNBC-FA's negotiations. Indeed, she was unknown to the UNBC-FA until she was engaged by Black Gropper on behalf of the UNBC-FA to conduct an independent examination of the financial records of the University to determine its ability to pay a salary increase for its faculty. She is at arm's length to the University's budgeting process.

7.2.7 Ms. Joy's report is thorough and lengthy, based on the University's own reporting and financial documents. Key findings relevant to the current dispute follow.

7.2.8 Over the six-year period from Fiscal 2008 to Fiscal 2013, "UNBC budgeted an aggregate GOF [General operating fund] Excess of \$18.5 million, but actually generated an aggregate GOF Excess of approximately \$47.4 million. For each of the past four fiscal years, the annual GOF excess was greater than \$7.0 million" (Exhibit A, p. 3).

7.2.9 Ms. Joy was asked to determine the University's ability to pay the costs of the UNBC-FA proposal. She has reached the following conclusion:

Based on the scope of our work, assumptions, and the restrictions and qualifications set out in the balance of the Report, **in our opinion, UNBC has the ability to pay the monetary items proposed by the Association** in each of Fiscal 2013 and Fiscal 2014.

(Exhibit A, p. 6)

7.2.10 **The UNBC-FA therefore asserts that, although we do not concede that ability to pay is a relevant criterion for adjudication in this dispute, UNBC has the ability to pay its faculty industry-standard salaries.**

7.2.11 In sum, the Employer has demonstrated nothing more than the unwillingness to pay industry-standard salaries. In an analogous case (2004), Arbitrator Kaplan noted that:

...while the employer sought to rely on its inability to pay, the evidence compelling [sic] demonstrates an unwillingness not an inability to pay with the justification and the criteria of 'ability to pay' advanced in order to avoid the normative application of the results of replication and comparability, the most important of all the commonly accepted and applied criteria.

The Ottawa Police Services Board and The Ottawa Police Association (2004) (Kaplan) (BoA, Tab 14 at pp. 2—3, emphasis added)

7.3 The province has the ability to compensate UNBC's faculty at industry-standard rates

7.3.1 While arbitrators have consistently denied that ability to pay is a relevant criterion, the overall fiscal circumstances of provincial and national governments have been considered in such decisions. We therefore state categorically that the fiscal circumstances of the government of British Columbia enable it to pay faculty at UNBC salaries that meet the industry standard in Canada.

7.3.2 In fact, the government of British Columbia is in a better fiscal position than most provinces in Canada. As the government itself has boasted, British Columbia's economy has been among the strongest in the country over the past five years and has better future prospects for growth than most Canadian provinces.

7.3.3 Indeed, on 8 August 2013, British Columbia's Auditor General, Russ Jones, issued a news release that stated that the British Columbia government's enjoyed a \$1 billion surplus in the previous fiscal year (*The Province*, 9 August 2013, <http://www.theprovince.com/news/finances+better+than+thought+says+auditor/8767949/story.html>). The government is in better fiscal circumstances than most provincial governments, and most British Columbian taxpayers now pay lower income taxes than citizens of any other province in Canada.

7.3.4 Per capita, the government of British Columbia has the third lowest level of government indebtedness in the country, well below the indebtedness of the governments of the provinces in which most of our comparator institutions are located. The per capita debt of British Columbia (\$8,408) is far below the debt of all of the other provinces except Alberta and Saskatchewan. (<http://bcpoliticalreports.com/2013/02/15/rbc-economics-report-shows-b-c-debt-per-capita-among-nations-lowest/>)

7.3.5 Thus, the fiscal reality of the British Columbia government does not stand in the way of its paying faculty at UNBC salaries equivalent to those of faculty at universities elsewhere in Canada.

7.3.6 To be clear, in this case, even if the Employer were to be able to demonstrate an inability to pay (which it cannot, as discussed below), the arbitrator should not admit the relevance of that case, because the University is funded by a government that clearly does have the ability to pay.

7.3.7 As Arbitrator Jackson has asserted in 1997 in regards to a dispute between the Niagara Police Services Board and the Niagara Region Police Association (Tab 15), “We define ‘ability to pay’, not as an employer’s short-term *fiscal* capacity but as its presumptive ability to justify to the public the necessity of any tax increase that might be required to pay for the award.” Arbitrator Jackson went on to write

Logically, what is fair and reasonable in the circumstances should not be influenced by the fact that one level of government has made a policy decision with respect to public finances. **That government has said nothing, and has offered no evidence, of police salaries being too high or of police compensation being too generous; it has simply said that aggregate public spending is too high, and that it is reordering provincial finances. ... Without some convincing evidence that police salaries and benefits are too high, relative to those of other occupations and professions, it would be completely unjust and inappropriate for this arbitration board to conclude that, of the three variables -- provincial grants, local taxes and police compensation -- it is police compensation that has to give.** We anchor this logic, again, in the proposition that, if the public wants a service, then it should be prepared to pay a fair price for it.

Niagara (Regional Municipality) Police Services Board and Niagara Region Police Assn. (Re), [1997] OLA No. 1116 (Jackson) (BoA, Tab 15, paragraph 56 at p. 14, emphasis added)

7.3.8 The same reasoning can easily be applied to the present case. No one—neither the university nor the government—has said that salaries of faculty at UNBC are too high, or that the UNBC FA’s proposal would make the salaries of faculty too high. Without any evidence that that they are too high, it would be unjust and inappropriate for an arbitrator to conclude that of the variables—provincial grants, university budgets, and faculty compensation, it is faculty compensation that has to give. If the public, and the government, want a university in northern British Columbia, they should be prepared to pay a fair market price for it.

7.4 The Employer’s purported “bargaining mandate” is irrelevant to this dispute

7.4.1 The UNBC-FA categorically rejects the Employer’s argument that it cannot make a reasonable salary proposal to the UNBC-FA on the grounds that it is bound by a government bargaining mandate. The UNBC-FA’s GWI proposal of 3% in each year of the contract is the only component of its proposal that could conceivably be included in the PSEC mandate. **It would be unprecedented for CDIs and other performance-related Progress-through-the-Ranks systems to be costed as a part of salary increases.** Therefore, we assert that the Employer was and is capable of making a reasonable salary proposal.

7.4.2 More importantly for present purposes, the terms of reference for the Arbitrator, as articulated in the Faculty Agreement (BoE, Tab A) do not give the Arbitrator leeway to consider arguments about government mandates. For that reason, the Arbitrator in this case is bound by long-established precedent.

7.4.3 Recent precedent has re-affirmed the longstanding principle that the very independence of interest arbitrators demands that they reject and ignore all efforts on the part of governments to interfere with the collective bargaining process at universities in Canada. A recent example from Ontario is particularly important here.

7.4.4 On 25 March 2010, the Ontario government passed its Budget Bill (Bill 16), which froze wages in the public sector for a two-year period. Unable to negotiate any increase in salary, the University of Toronto Faculty Association filed for arbitration. In October 2010 Arbitrator Teplitsky, in awarding a GWI of 2.25% to University of Toronto faculty, went so far as to state explicitly why he would not be bound, not only by policy or statements, but *even by legislation* that prohibited universities from offering wage increases. He wrote that:

In my respectful opinion, because the parties in their bargaining should have known that an interest arbitrator would not take legislation into account, the replication principle supports the opposite conclusion than the University is contending for.

...

I agree with the UTFA that recognizing the “Act” as relevant would be a recognition of ability to pay as a relevant criterion and recognizing the policy statement would compromise my independence. I would appear as a minion of government. Thus, in fashioning this award, I have not taken into account either the legislation or the policy.

Teplitsky, *supra* (BoA, Tab 2 at pp. 5—6, emphasis added)

7.4.5 Similarly, Arbitrator Sims (2011) wrote that:

if interest arbitration is to be used as, and to retain credibility as, a fair and reasonable alternative to strikes and lockouts, then it cannot be, or be seen as being, an indirect way of imposing Government’s fiscal ambitions on unwilling employees. This is increasingly so as governments become more and more sophisticated in influencing the options open to, and the choices made by, nominally autonomous but fiscally dependent institutions like Universities that lack their own taxing powers or other methods for controlling their revenues. The reality and the perception is that government itself is, to a considerable extent, if not the employer, then at least the proverbial “ghost at the table.”

(Sims, *supra*, BoA, Tab 3 at p. 12)

7.4.6 On similar grounds then, the UNBC-FA is certain that interest arbitrators in British Columbia must defend the very integrity of the interest arbitration process by explicitly rejecting all suggestions that they must place any weight at all on public or private statements on the part of the British Columbia government that it will not fund

salary increases, or on the Employer's statements that it is bound by a government "bargaining mandate."

7.4.7 Arbitrator Teplitsky went so far as to reject the relevance of legislation; the Employer in this case has made an argument on the grounds of a purported "bargaining mandate"—something far less weighty than legislation.

7.4.8 The precedent in British Columbia conforms with the rulings by Teplitsky and Sims. In his very recent award relating to the University of British Columbia (2013), Arbitrator Colin Taylor clearly and explicitly stated that he would not be bound by the PSEC mandate. He wrote that **"the PSEC mandate does not have legislative force, and therefore does not override the parties' Agreement legislatively"** (Taylor, *supra*, BoA, Tab 5 at p. 31).

7.4.9 Of the PSEC mandate, he further wrote, "That mandate is not based on UBC's unique circumstances, while UBC's Agreement with the Association expressly is" (Taylor, *supra*, BoA, Tab 5, paragraph 59 at p. 33).

7.4.10 The UNBC-FA calls upon the Arbitrator in this case to follow the precedents set by Teplitsky, Sims, and Taylor, and state explicitly, when he explains the reasons for his award, that he was not bound by any supposed PSEC mandate. Only by doing so can he defend the credibility of interest arbitration in British Columbia.

7.5 Variation in settlements is anticipated by the PSEC mandate and upheld by arbitrators

7.5.1 By discussing the Employer's purported "bargaining mandate," the UNBC-FA does not concede the mandate's relevance to this case—indeed, the UNBC-FA categorically rejects such an assertion.

7.5.2 Nevertheless, it is worthwhile noting that the PSEC bargaining mandate (BoE, Tab P) repeatedly states that it does not set a hard limit on salary increases. Specifically, it stipulates in two places that "Employer bargaining agents are not required to negotiate a target wage increase" (BoE, Tab P, pp. 3, 11).

7.5.3 Elsewhere the mandate states that "there is no set wage increase determined for the mandate, but we will limit maximum average increases in the deals to reduce the variability of potential outcomes" (BoE, Tab P, p. 26).

7.5.4 The mandate stipulates that salary increases should be "modest," but states that "we want all groups to be treated fairly" (26). This later statement reiterates the government's statement in its Speech from the Throne of 3 October 2011 "that public servants need to be treated fairly" (BoE, Tab P, p. 5).

7.5.5 Thus, the PSEC bargaining mandate as published would appear to give the Employer the complete freedom to offer the modest and fair GWI of 3% and 3% and all other components of the FA's salary proposals.

7.5.6 Neither does the PSEC mandate stipulate that wage increases should be uniform throughout the public sector, or even the university sector. The mandate states that collective bargaining is expected "to produce highly differentiated and unique settlements between sectors and between employers in some sectors" (BoE, Tab P, p. 5).

7.5.7 The university sector is one sector in which the PSEC mandate explicitly notes that results can differ from one institution to another: "Crowns and Universities in the UPSEA sector are to prepare organization-specific Savings and Bargaining Plans, rather than sectoral Plans" (BoE, Tab P, p. 7).

7.5.8 Clearly then, as Arbitrator Taylor noted in his 2013 award, the PSEC mandate does not address the unique circumstances at a university (in this case UNBC), while a university's Agreement with its Faculty Association expressly does (Taylor, *supra*, BoA, Tab 5 at p. 33).

7.5.9 In relation to this Arbitration, the application of one blanket sector-wide provision for GWI, regardless of the realities of each bargaining situation, would not meet the standard of replication. This was made clear by Arbitrator Taylor (2003), responding to the Government's submission that wage increases granted to other public service employees in British Columbia were the logical predictor of what should be granted to Crown Counsel:

That suggests that because Crown Counsel and other general public service employees have a common employer, they must be treated alike in matters of compensation. This proposition does not meet the principles of replication. [...]

The proper focus of the inquiry must be to discover the standard existing in like relationships with respect to similar work. To put it in the vernacular, “what is the going rate?” **If the attempt is to replicate the result which would have occurred if the negotiation process had not been interrupted by arbitration, the evidence is clearly against the proposition that the parties would have settled on the basis of the wage increases in the general public service.**

Taylor, *supra* (BoA, Tab 1 at pp. 20—21, emphasis added)

7.5.10 In sum, as noted above, the Arbitrator is clearly not bound by the PSEC mandate.

7.5.11 Furthermore, the Arbitrator is bound to resist any attempt to reduce “the going rate” to a number equivalent to the wage increases granted to other public-sector employee groups. This is particularly true in the face of irrefutable evidence of the vast disparity between faculty salaries at UNBC and those at its comparator institutions.

8 The Arbitrator should reject the Employer’s proposals on Articles 22 and 72

8.1 The Arbitrator should not rule on Article 22

8.1.1 The UNBC-FA submits that the Arbitrator should not rule on Article 22 for the reasons that follow.

8.1.2 The exchange of proposals (BoE, Tab Q) shows that the parties remained far apart on crucial issues in this article. Furthermore, the UNBC-FA asserts that it would never have agreed to the language proposed by the Employer. No reciprocal concession, on monetary or non-monetary items, would have convinced the UNBC-FA to agree to the University’s language.

8.1.3 The limited evidence that is before the Arbitrator and the complexity of the matter mean that insufficient information is available to ensure that the matter is given due consideration.

8.1.4 The Employer’s proposal includes breakthrough language that is unprecedented in the sector.

8.1.5 Article 22 is not a pressing issue. The tenure and promotion process at UNBC is working well now. While there is room for some improvement, those changes should be negotiated by the parties, both of which have a deep understanding of the gravity of even small changes in wording.

8.1.6 The assessment of a Faculty Member's suitability for tenure and promotion is a highly specialized function that is best left to the community of scholars of the university itself. Even Canadian courts have declined to intervene in that aspect of a university's affairs. For example, see *Paine v. University of Toronto et al (1982)*, 34 O.R. (2d) 770 (Ont. C.A.) (BoA, Tab 16)

8.1.7 Changes to Article 22 cannot possibly be applied retroactively to *any part* of the period (2012-14) covered by this Agreement.

8.1.8 Thus, in this case, abundance of caution should lead the Arbitrator to decline to rule on Article 22.

8.1.9 Should the Arbitrator decide to rule on Article 22, the UNBC-FA submits that the Arbitrator should accept the last proposal put forward by the UNBC-FA, which, although not agreed to by the parties, was the product of considerable back-and-forth negotiations, and which incorporated a number of reciprocal concessions, but which excluded the breakthrough language proposed by the Employer.

8.2 The Arbitrator should not rule on Article 72

8.2.1 The University's proposal of 7 June 2013 proposes two major changes to Article 72 (Program Chairs):

- (a) the University proposed that the Dean, rather than another appointed Chair, should chair the Academic Selection Committee (ASC) charged with oversight of the renewal of Program Chairs (proposed change to 72.5.2); and
- (b) the University proposed that the Dean should be able to recommend directly to the Provost that a Program Chair appointment be revoked without any recourse to internal appeal mechanisms (proposed changes to 72.6.1 and 72.6.3).

8.2.2 The UNBC-FA urges the Arbitrator to reject these proposed changes for the following reasons:

- The parties did not agree, and would not have agreed, on changes to Article 72 proposed by the Employer had negotiations continued under the conditions of free collective bargaining;
- The matter is of not of pressing concern;

- The proposals significantly change the balance of rights between Management and the UNBC-FA and its Members; and
- The proposals reverse longstanding principles of collegial governance.

8.2.3 The parties would not have agreed to these proposed changes. The Chief Negotiator of the UNBC-FA's bargaining team explained, in a detailed oral presentation on 8 June 2012, that the proposed changes were wholly unacceptable because they contradicted longstanding principles for the administration of the Faculty Agreement with respect to the review of Members' performance by peers.

8.2.4 The first longstanding principle in the Agreement that is breached by the University's proposals is that a Member "shall not directly participate in deliberations or vote at more than one stage in any multi-stage process concerning a Member's career" (Article 5.13.1(d)). This stipulation ensures that Members participating in deliberations are not biased by having to render a judgement on their own recommendations from a previous stage of the proceedings. It also helps to ensure that Members are judged fairly and independently at each step of a multi-stage process.

8.2.5 The second longstanding principle ensures that decisions on the career progress and/or performance of Members are made by a committee of their peers and/or have an internal appeal mechanism to which Members have access. Throughout previous negotiations both parties have always been careful to write language that is consistent with this principle and consistent with the long-established rights of Members to due process. Furthermore, such mechanisms are enshrined in faculty agreements throughout Canada and are a major reason that courts and arbitrators have been reluctant to interfere in decisions on faculty career advancement and/or performance at universities.

8.2.6 The current language in Article 72.5.2 ensures that a third party, namely the Chair of another program in the College, chairs the committee charged with the renewal of a Program Chair's appointment. If the Dean were to take over this responsibility directly, he or she would then be reviewing a Program Chair's performance in a case where the major evidence in front of the committee was that very Dean's own performance evaluation recommendations. This would be a direct contravention of the principles described. This is a wholly unacceptable proposal to which the UNBC-FA would never have agreed. The UNBC-FA therefore urges the Arbitrator to reject the proposed changes to Article 72.5.2.

8.2.7 The proposed changes in Articles 72.6.1 and 72.6.3 would allow the Employer to terminate a Member's appointment as Program Chair without allowing any internal appeal mechanism or peer-review committee oversight. This would be an unprecedented change in the administration of the Faculty Agreement, breaching a fundamental right of Members to due process. This is another entirely unacceptable proposal to which the UNBC-FA would never have agreed. The UNBC-FA therefore urges the Arbitrator to reject the proposed changes to Article 72.6.

8.2.8 The objections outlined above were communicated to the University in detail during the bargaining session of 8 June 2012. At that time, the UNBC-FA bargaining

team invited the Employer to submit a modified proposal that would respect these longstanding principles, but the University tabled no further proposals relating to Article 72.

8.2.9 The issues relating to Article 72 are not of pressing concern. During negotiations the University was unable to provide examples of how the present Article 72 presented any plausible mischief. Thus, it is reasonable for the Arbitrator to have the parties negotiate changes to this article during the forthcoming bargaining round.

8.2.10 On 20 November 2012, the UNBC-FA proposed that the article remain unchanged from the 2010 Agreement.

8.3 It is the UNBC-FA's firm position that the Employer's proposed changes to Article 22 and 72 should be rejected by the Arbitrator as unsuitable for adjudication in this forum.

9 Summary

9.1 The UNBC-FA submits that its proposals are entirely reasonable and defensible on the basis of the evidence presented herein.

9.2 The UNBC-FA's compensation proposal has herein been shown to be entirely reasonable, rooted in an evidence-based analysis of comparator institutions and the rates of compensation offered to faculty at those institutions. This analysis applies in particular to the UNBC-FA's proposed general wage increase and increase to the career development increment.

9.3 The UNBC-FA's proposed one-time adjustment to salaries has been shown to be reasonable and essential to the creation of an industry-standard salary structure. The one-time adjustment has been shown to be the logical outgrowth of previous agreements between the parties. In addition, arbitrator/mediators have previously awarded one-time adjustments.

9.4 The UNBC-FA's non-monetary proposals are items suitable for the adjudication of the Arbitrator.

9.5 The UNBC-FA has demonstrated that ability to pay is not an adjudicative criterion in this dispute; however, it has asserted and presented evidence that both UNBC and the province of British Columbia have the ability to pay Members industry-standard wages.

9.6 The UNBC-FA argues, and has presented evidence to confirm, that the Employer's purported bargaining mandate is not relevant to this dispute.

9.7 Finally, the UNBC-FA argues that the proposals on Articles 22 and 72 are not suited for adjudication by the Arbitrator for the reasons enumerated above.

ALL OF WHICH IS RESPECTFULLY SUBMITTED ON BEHALF OF THE
UNIVERSITY OF NORTHERN BRITISH COLUMBIA FACULTY ASSOCIATION

Dated at Vancouver, 18 October 2013

Allan E. Black, Q.C.
Counsel for the University of Northern British Columbia Faculty Association



