

**IN THE MATTER OF AN ARBITRATION BEFORE ARBITRATOR PARMAR**

BETWEEN:

**THE UNIVERSITY OF TORONTO FACULTY ASSOCIATION (UTFA)**

Association

and

**GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO**

Employer

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**RESPONSE TO PRELIMINARY OBJECTION AND SUR-REPLY RE  
DISCLOSURE  
SUBMITTED ON MAY 27, 2026**

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**THE ADMINISTRATION'S PRELIMINARY OBJECTION IS BASELESS**

The Administration argues that the Arbitrator somehow does not have jurisdiction to consider a proposal for any across-the-board increase other than 4.5%.

This objection should be dismissed for two reasons.

First, the objection is based exclusively on without prejudice communications between counsel.

As Arbitrator Surdykowski reasoned in *OPG*:

surely everyone would agree that evidence that is subject to the solicitor-client privilege, litigation privilege, or to the without prejudice settlement discussions privilege, is not admissible unless the privilege is waived.<sup>1</sup>

The Administration ignores this foundational legal principle and submits a series of communications that were made in the context of settlement discussions and that are clearly marked as “without prejudice”.

These communications are privileged. As Arbitrator Parmar reasoned in *Conestoga*, “[s]ettlement privilege applies to protect communications between parties as they try to settle a dispute. The importance of this privilege to the justice system is due to its critical value in encouraging parties to resolve their disputes without litigation.”<sup>2</sup> The communications are inadmissible at arbitration, unless they meet one of the exceptions to settlement privilege. The burden to show that an exception applies falls to the party seeking an exception.<sup>3</sup> Even if the Administration believed that one of the exceptions did apply, such as the exception related to proving the

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<sup>1</sup> *Ontario Power Generation v Society of Energy Professionals*, [2015 CanLII 26177](#)

<sup>2</sup> *Conestoga College v Ontario Public Service Employees Union, Local 237*, 2021 CanLII 51695 at para [21](#)

<sup>3</sup> *Sable Offshore Energy Inc v Ameron International Corp*, 2013 SCC 37 at para [19](#); *NCS Multistage Inc v Kobold Corporation*, 2025 FC 1930 at para [57](#)

existence of an agreement, it did not take any of the necessary steps to demonstrate any exception applied. As Arbitrator Parmar reasoned in *Conestoga*:

However, it is important to keep in mind the caution in *Bombardier*, that the existence of a dispute does not mean the settlement discussions are admissible holus bolus. In fact, the Court in that case indicated there should be a separate motion to determine which specific evidence from the settlement discussions was admissible on the basis of necessity (see para. 66). Only the discussions that directly relate and assist in determining the dispute are admissible; the privilege continues to apply in respect of the remainder of the settlement discussions.<sup>4</sup>

No exceptions have been pleaded here, no motion has been brought, and no attempt has been made to limit the disclosure to the facts necessary to make any relevant determination. The inclusion of without prejudice settlement communications between counsel, without consent or even notice, is inappropriate.

These communications between counsel must be disregarded and their submission at arbitration should not be condoned.

Second, even if the communications can be considered, the objection is baseless. The MoA provides jurisdiction over “unresolved” “issues” or “matters”. Jurisdiction is over issues and matters, not specific proposals.

The decision of Arbitrator Sheehan in *Riverview Gardens* provides a full answer to this objection, interpreting analogous language in the *Hospital Labour Disputes Arbitration Act* (“HLDAA”) regarding “matters in dispute” at arbitration.<sup>5</sup> Dealing with a similar objection, he reasoned:

While the size of the wage increases being sought subsequently changed, the issue of the quantum of annual GWI being sought by the Union was a “matter in dispute” pursuant to Section 9(1) of HLDAA prior to and after

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<sup>4</sup> *Conestoga College v Ontario Public Service Employees Union, Local 237*, 2021 CanLII 51695 at para 28, citing *Union Carbide Canada Inc v Bombardier Inc*, 2014 SCC 35 at para 66

<sup>5</sup> *The Corporation of the Municipality of Chatham-Kent (Riverview Gardens) v Unifor Local 127*, [2024 CanLII 137699](#)

conciliation. The quantum of the GWI being sought by the Union was always front and centre in terms of the parties' collective bargaining, as could be expected, and was always an integral and inherent part of the framework of the parties' bargaining. Accordingly, there is a cogent argument that the revised GWI proposal of the Union did not represent the introduction of a new matter in dispute subsequent to conciliation but constituted a revised proposal regarding a central matter in dispute.<sup>6</sup>

Arbitrator Sheehan concluded that the Employer's view "represents an overly formalistic approach and is not necessarily reflective of the reality of collective bargaining under HLDAA" and that it further would "represent an artificial and unrealistic view of the bargaining and arbitration process under HLDAA".<sup>7</sup>

The same conclusion applies here. The across-the-board increase was always a central issue in bargaining and in these proceedings. Correlating the quantum of that increase and the Consumer Price Index ("CPI") was also always a live issue, as it has been in every round between these parties: "Having regard to the bargaining history between these parties in particular, inflation is clearly a very relevant and highly influential factor in replicating a freely bargained outcome"<sup>8</sup>. The Association changed its proposal when the CPI changed. There is no basis to freeze the Association's proposal at 4.5%. To the contrary, doing so would represent an artificial and unrealistic view of bargaining and dispute resolution under the MoA.

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<sup>6</sup> *Ibid*

<sup>7</sup> *Ibid*

<sup>8</sup> *University of Toronto v University of Toronto Faculty Association*, 2023 CanLII 85410 at para [106](#)

## THE ADMINISTRATION'S PROBLEMATIC DATA

The Administration's brief contained a series of graphs and tables. The Administration stated that the data were extracted from the University and College Academic Staff System ("UCASS") database.

The Association sought production of the underlying data used to populate the graphs and tables. Notably, the Association had previously requested production of the source documents on May 13, 2026, when the Administration had used these graphs and tables in its mediation brief. The Association reiterated its request at least twice. The Association ultimately sought a production order.

On Friday, May 22, 2026, the Association filed its Reply brief, prior to receiving any of the requested disclosure. In that Reply, the Association outlined its substantial concerns with the cherry-picked data provided by the Administration, which could not be verified without disclosure. In particular, UTFA noted that the sole reliance on UCASS data excludes librarians and part-time faculty members. The Administration also placed arbitrary filters on the data to exclude medical and dental faculty as well as Chairs and Directors.

Later, on May 22, 2026, in partial compliance with its disclosure obligations, the Administration provided the following two datasets, the day and the evening before the hearing:

- **Dataset A:** At 3:45PM, the Administration provided a dataset that included the salary information for 2039 UTFA members, out of a total membership of 3,547. This was purportedly the data used to generate University of Toronto statistics for the graphs and tables in its Brief.
- **Dataset B:** At 9:40PM, the Administration provided a further document purporting to contain its submission to UCASS. This is apparently the raw data the Administration used to create Dataset A, after applying various

filters. This document included data for 2964 UTFA members, out of a total (non-retired) membership of 3,547.

Neither dataset document allows the Association to meaningfully nor fully verify the information included in the Administration's brief, including because neither includes any information about other institutions. The salary data also does not align with other datasets provided to UTFA that show salaries for the same period.

However, the datasets confirm the Association's serious concerns that the Administration has presented a skewed picture of salaries at the University of Toronto.

In particular, the datasets reveal the following two significant issues.

**First**, the Administration has systematically excluded all teaching stream faculty from its analyses. This exclusion is not simply in its submissions at arbitration, but in its submission to UCASS itself. UCASS codes faculty as follows:

1. Full professor
2. Associate professor
3. Assistant professor
4. Ranks/level below assistant professor: includes lecturers, instructors, and other teaching staff
5. Other: includes staff that do not fit in the categories described above (not elsewhere classified).

Teaching stream faculty have held professorial ranks since January 1, 2016, Yet the Administration has inexplicably chosen to give all teaching stream faculty Code 4, classifying them as below the rank of assistant professor and lumping them together with sessional teaching staff who are not members of UTFA.

The exclusion of teaching stream faculty was not transparent in the Administration's brief, which included data for teaching stream faculty at paragraph 113. UTFA had assumed that the data cited in paragraph 114, and the subsequent tables and graphs,

also included the teaching stream professoriate because paragraph 114 did not say otherwise. In short, before analyzing the two datasets, UTFA had reasonably assumed that teaching stream faculty were included as Full Professors, Associate Professors, and Assistant Professors, in accordance with their rank at the University of Toronto.

On discovering this issue, UTFA emailed the Administration. The Administration confirmed the exclusion, with the shocking statement that:

pages 45 through 52 of the University's Arbitration Brief does not include teaching stream faculty members, as they do not hold appointments at the rank of Professor, Associate Professor or Assistant Professor.<sup>9</sup>

This statement is incorrect. Teaching stream faculty hold professorial appointments. This is not new. In December 2014, the parties agreed to introduce professorial ranks to the teaching stream that recognize accomplishments across the scholarly career.<sup>10</sup>

Coding teaching stream faculty as ranks below assistant professor is plainly wrong and, frankly, insulting. It is profoundly disrespectful to teaching stream faculty, who are not lesser faculty and are in no way ranked below Assistant Professor. It is also a violation of the parties' 2014 agreement. Teaching stream or tenure stream, at the University of Toronto, a professor is a professor. There is no basis for this misclassification in the UCASS survey.

Coding teaching stream faculty as 4 also has implications for the publicly available data on which UTFA relies, because it calls into question the comparability of the data available from Statistics Canada. The data cannot easily be parsed because the Administration has conflated teaching stream faculty with non-professorial teaching staff. To that end, UTFA notes that the tables it provided in its brief do not include teaching stream faculty.<sup>11</sup>

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<sup>9</sup> Email from J. Maier to W. Garzouzi, [May 26, 2026](#) [emphasis added]

<sup>10</sup> Faculty Appointment Category: Teaching Stream Agreement in principle, [December 2, 2014](#)

<sup>11</sup> Corrected versions of these tables are in **Appendix "A"**

As the Administration also noted in its email, it does not know how other institutions code their equivalents to teaching stream faculty. However, by the Administration's logic, if all tenure-stream faculty are to be included, the equivalents to teaching stream faculty at other institutions ought to be included at their academic ranks, where they are in the tenure stream. At UBC, Education Leadership faculty (who have analogous workloads to those of teaching stream faculty at the University of Toronto) are tenured or tenure track and may, therefore, be included in Codes 1, 2, 3, according to their rank, although information from the Administration at UBC would be needed to confirm their coding practices.<sup>12</sup>

Excluding teaching stream professors is significant, not just because it means that a large proportion of UTFA's membership is ignored. Teaching stream faculty are also paid less, on average. Removing teaching stream faculty from the analysis substantially inflates the averages.

The Administration states that the average salary for 2039 faculty, all ranks combined, is **\$218,825**. It reached this number by excluding 563 full-time teaching stream faculty, with an average nominal salary of **\$166,265.91**.

Adding these faculty members back into the dataset from which they were wrongly excluded brings the total to 2602 members and an average of **\$206,611.34**. The difference is **\$12,213.66**. Looking at the graph on page 52 of the Administration's brief, assuming that Educational Leadership is included at UBC, including Teaching Stream faculty, places UTFA **well below UBC at \$213,750**. The difference is **\$7,138.66**. That, plainly, means that UTFA is not top of market.

**Second**, the Administration's treatment of "senior administrative duties" is highly unclear and potentially misleading. The Administration excluded those with "senior administrative duties" from their analysis. According to the Administration's notes in

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<sup>12</sup> [The Educational Leadership Stream: Criteria for Tenure and Promotion](#)

Dataset A, it included only those Code 0 (Teacher with no senior administrative duties) and 9 (Other - Assistant and associate director, assistant or associate department head, assistant or associate coordinator, assistant or associate chairperson and any other person). It did not include 4 (Director, department head, coordinator) or 5 (Chairperson), even though these are UTFA members.

However, it is unclear whether the Administration included Code 9 for all institutions or just for UTFA, as Statistics Canada does consider Code 9 to be a “senior” administrative responsibility.<sup>13</sup>

If Code 9 was only included for UTFA, it inflates UTFA’s salaries. There are 216 faculty with stipends in Dataset A, with an average stipend of almost \$10,000 each.

The Association estimates the decision to include Code 9 increases the average salaries in Dataset A, used by the Administration in all their charts and tables, by the following amounts:

- Full Professor: \$1,371
- Associate Professor: \$1,351
- Assistant Professor: \$288

The documents provided by the Administration do not explain whether the filter placed on the larger UCASS dataset included Code 9 for all other institutions or whether the Administration has only used Code 9 for UTFA salaries, which are not yet part of the publicly available UCASS data.

All this calls for a clear explanation.

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<sup>13</sup> [Full-Time: University and College Academic Staff System \(FT-UCASS\): Data Element Manual for Survey Respondents – 2025](#)

**ALL ROADS LEAD TO ROME: 4.9%**

The parties have presented divergent pictures of the data.

If one accepts the Administration's version of the data, average UTFA tenure-stream salaries range from several hundreds ahead to several thousand behind their counterparts at UBC and Queen's.

Accepting the Association's more inclusive version of the data, the discrepancies are much more significant—UTFA salaries fall thousands behind their counterparts.

Even on the Administration's version of the data, with all the issues that UTFA maintains plague this data, **the trend line is clear**. The graphs at pages 11-12 of UTFA's Reply show that, as against UBC, UTFA salaries have sharply fallen.

In this round, the Association's submission is not that the Arbitrator must order an adjustment to maintain a specific differential between UBC salaries and salaries at the University of Toronto. Rather, UTFA makes two distinct points:

1. If average salaries at UTFA are several hundred dollars ahead/behind their counterparts, UTFA is not top of market. The salary data shows wide variability within UTFA salaries. Even with the Administration's limited full-time, tenure-stream dataset, salaries range from \$103,350 to \$510,169. If salaries, on average, are on par, it means many or even most UofT faculty are earning below their counterparts at UBC.
2. The trend lines are crossing. If UBC salaries are always rising at a higher rate than UofT rates, UTFA cannot maintain top of market status. To avoid whipsawing, correction is needed before UBC leapfrogs UTFA, which would only lead to a need for substantial catch-up in future rounds.

Obviously, when faced with two different pictures of the data, the Association submits that the Arbitrator should prefer its data. But, in this round, it does not matter. The Arbitrator need not sort out all the minutiae of datasets, exclusions,

administrative stipends, filters, and coding in UCASS. The Association's proposal does not call for that. What matters in this round is much simpler.

In the last round, Arbitrator Gedalof made two crucial points:

- Wage increases, following the COVID-era inflationary surge, lagged behind inflation by 0.6%.<sup>14</sup>
- Based on the 2023 data presented by the Administration, salaries at UBC and salaries at UTFA were roughly on par, but UBC had not yet concluded its agreement for 2025.<sup>15</sup>

Arbitrator Gedalof referred both these issues to the next round.<sup>16</sup>

After Arbitrator Gedalof released his decision, the UBCFA concluded a tentative agreement, including an ATB of 3% and targeted adjustments of up to an additional 2% in each year of the agreement for certain appointment categories.<sup>17</sup> This means that, in 2025, UBCFA salaries increased by a minimum of 3%, with members in some appointment categories receiving increases of up to 5%. On July 1, 2026, UBCFA salaries will increase again by a minimum of 3%, with members in some appointment categories receiving increases of up to 5%.

This round, applying the principles established by Arbitrator Gedalof, the math is simple: the ATB must be 4.9%, to include:

- 0.6% to catch up to past inflation
- 2.8% to keep pace with current inflation
- 1.5% as a market adjustment to address the need to be top of market, accounting for the increases negotiated by the UBCFA.

The total is **4.9%**. No further analysis is required.

## **ALL OF WHICH IS RESPECTFULLY SUBMITTED**

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<sup>14</sup> *Governing Council of the University of Toronto v University of Toronto Faculty Association*, 2026 CanLII 1385 at para [101](#)

<sup>15</sup> *Ibid* at paras [95-96](#)

<sup>16</sup> *Ibid* at para [97-99](#)

<sup>17</sup> UBCFA Ratification Kit, posted [May 14, 2026](#)

**Schedule "A" – Updated Tables**

Below, the Association provides corrected and expanded tables. All data is derived from Statistics Canada's Table: [37-10-0108-01](#).

As we did in our brief, we have added the ATB of 3.5% in 2023 and 2.5% in 2024 for the University of Toronto to bring the numbers roughly up to date. We accept that this data is somewhat incomplete because it does not include PTR, but, for the Association to use complete data, the Administration would need to provide it.

**Including Medical and Dental**

<b>Rank</b>	<b>UBC</b>	<b>UofT</b>	<b>Difference</b>
Full professor	264,300	259,410	-4,890
Full professor - With senior administrative duties	309,150	262,779	-46,371
Full professor - Without senior administrative duties	259,425	258,960	-465
Associate professor	198,625	201,381	2,756
Associate professor - With senior administrative duties	230,150	225,356	-4,794
Associate professor - Without senior administrative duties	197,325	199,789	2,464
Assistant professor	159,950	160,961	1,011

**Excluding Medical and Dental**

<b>Rank</b>	<b>UBC</b>	<b>UofT</b>	<b>Difference</b>
Full professor	262,925	259,596	-3,329
Full professor - With senior administrative duties	285,050	261,081	-23,969
Full professor - Without senior administrative duties	260,425	259,410	-1,015
Associate professor	198,300	201,195	2,895
Associate professor - With senior administrative duties	219,675	224,773	5,098
Associate professor - Without senior administrative duties	197,325	199,630	2,305
Assistant professor	158,825	160,908	2,083