March 18 2025

In the Matter of a Dispute Resolution Proceeding before Arbitrator Eli Gedalof regarding Unresolved Salary, Benefits and Workload Matters under Article 6 of the Memorandum of Agreement

B E T W E E N :

THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO

(the "University Administration")

- and -

THE UNIVERSITY OF TORONTO FACULTY ASSOCIATION

("UTFA")

UNIVERSITY ADMINISTRATION'S REPLY BRIEF

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INTRODUCTION AND OVERVIEW

1. The University is in receipt of UTFA's Arbitration Brief dated March 7, 2025. The submissions set out below constitute the University's reply thereto. The University reserves the right to address any further submissions made by UTFA in its reply.

UTFA'S EXTENSIVE RELIANCE ON PARAGRAPH 4.0 OF THE WLPP

2. In support of its workload proposals, UTFA relies extensively on one sentence within paragraph 4.0 of the Workload Policy and Procedures for Faculty and Librarians (the "WLPP"). At pages 11, 13 and 14 of its Arbitration Brief, UTFA asserts that the WLPP already requires each academic unit to determine a unit-wide balance, between teaching, research and service. UTFA then references the following sentence within paragraph 4.0 of the WLPP in support of its assertion:

> Subject to any requirements in Article 8 of the MOA and the WLPP, individual units shall determine the balance amongst the three principal components of a faculty member's activities: teaching, research and service.

3. Paragraph 4.0 of the WLPP was included in the first iteration of the WLPP, which the parties agreed to in 2010. UTFA proposed the addition of a Distribution of Effort ("DOE")-based framework into the WLPP in the last two Article 6 arbitration proceedings. Its proposals in those proceedings did not assert that the basis for the addition of its requested DOE framework was already embedded in paragraph 4.0 of the WLPP.

4. UTFA's claim that its workload proposals are supported by the aforementioned sentence in paragraph 4.0 of the WLPP is misplaced. Its interpretation of this sentence disregards the other language in the same article. Its interpretation is also inconsistent with an objective interpretation of the WLPP as a whole.

Paragraph 4.0 of the WLPP must be Interpreted Holistically

5. Paragraph 4.0 of the WLPP is reproduced in its entirety below:

> **4.0 Establishing the Teaching Component of Normal Workload**
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> The assigned proportion of a faculty member's work will include teaching and preparation for teaching, and the necessary administrative tasks associated with the operation of a collegial environment. The remainder of a faculty member's working time is self-directed and may consist of research, scholarly, creative, or professional work consistent with the type of appointment the faculty member holds. Subject to any requirements in Article 8 of the MOA and the WLPP, individual units shall determine the balance amongst the three principal components of a faculty member's activities: teaching, research, and service.

6. The first sentence of this paragraph confirms that the teaching component of workload is part of the "assigned portion of a faculty member's work" together with "the necessary administrative tasks associated with the operation of a collegial environment" which are addressed in paragraph 5 of the WLPP.

7. Not all of a faculty member's work is assigned. The second sentence of paragraph 4.0 confirms that all working time that is not addressed through assigned teaching and assigned service is entirely self-directed. A faculty member may choose to spend all or part of their self-directed time on research, scholarly, creative or professional work consistent with the type of appointment the faculty member holds. A faculty member may choose to use part of this self-directed time on other aspects of their work. This paragraph of the WLPP makes clear that decisions on how a faculty member chooses to spend their self-directed time are left to each faculty member to make. Article 8 of the MOA makes clear that faculty members retain control and autonomy over how their self-directed work time is spent.

8. The subsequent sentence in paragraph 4.0 of the WLPP, on which UTFA has heavily relied, must be interpreted in this context. This sentence begins with an important qualifier. The statement that "individual units shall determine the balance amongst the three principal components of a faculty member's activities: teaching, research, and service" is subject to the requirements in Article 8 of the MOA and the WLPP. This

includes the requirement that the self-directed component of a faculty member's working time not be conflated with the assigned component of their work. The "balance amongst the three principal components of a faculty member's activities" that paragraph 4.0 references is not one that must be determined by quantifying any and every component of a faculty member's workload and disregarding the distinction between self-directed and assigned work.

Paragraph 4.0 must be Interpreted within the Broader Scheme of the WLPP

9. UTFA claims that the final sentence in paragraph 4.0 of the WLPP is what requires each unit to set a unit-wide "balance amongst the three principal components of a faculty member's activities: teaching research and service" and postulates that this requires a unit-wide DOE framework. However, paragraph 4 of the WLPP does not address unit-wide decision-making. Paragraph 4.0 of the WLPP is situated within the part of the WLPP that addresses how the teaching component of each faculty member's workload is assigned on a faculty member-by-faculty member basis.

10. Paragraph 2 of the WLPP prescribes the unit-wide policies and processes that are to be implemented. Each unit must create and maintain its own Unit Workload Policy. Each unit must establish a Unit Workload Policy Committee to do so. The Unit Workload Policy Committee must be established through a collegial process that gives a reasonable opportunity for all members in the Unit to have input on the committee's composition and membership. Paragraph 2.3 of the WLPP confirms that each faculty member will be covered by the Unit Workload Policy for the unit in which they hold their primary appointment.

11. Paragraph 2.1 of the WLPP states that each Unit Workload Policy must include "workload norms, standards and ranges appropriate to the Unit and consistent with the terms of this WLPP and the Memorandum of Agreement (MOA)." If there were a requirement to establish a DOE-type framework within each unit that would apply on a unit-wide basis, that requirement would be situated in this part of the WLPP. However, the parties have never agreed to any language that would require or authorize the wholesale quantification of every part of a faculty member's workload. The WLPP does

not even prescribe what the required "workload norms, standards and ranges" in each Unit Workload Policy must be. Each unit makes such determinations. However, since no part of the WLPP authorizes the quantification or regulation of the self-directed component of a faculty member's work, including their research, scholarly, creative, or professional work, a Unit Workload Policy that attempted to establish "norms, standards and ranges" that attempted to quantify or regulate the self-directed part of a faculty member's work, would not be consistent with the terms of the WLPP.

12. The University submits that UTFA has sought to give the final sentence in paragraph 4.0 of the WLPP an interpretation that it cannot reasonably bear. This part of the WLPP does not provide any support for the awarding of UTFA's proposals.

UTFA HAS MISCONSTRUED AND MISAPPLIED THE DEMONSTRATED NEED PRINCIPLE

13. At page 13 of UTFA's arbitration brief, and in support of its proposals to amend the Workload Policy and Procedures, UTFA claims that:

> demonstrated need does not need to be established if a proposal is consistent with sector norms and does not represent a significant departure from established practice or the *status quo*.

14. In its Arbitration Brief, the University Administration disputes the assertions that UTFA's workload proposals are "consistent with sector norms" and that they "do not represent a significant departure from established practice or the status quo." The University Administration repeats and relies on these submissions. However, UTFA's claims that the demonstrated need principle is either optional or subordinate to the comparability principle must be addressed directly.

15. In reply to these claims, the University Administration submits that UTFA has misconstrued and misapplied the demonstrated need principle. This principle is well established in the Article 6 jurisprudence. Within the Article 6 process, the demonstrated need principle has consistently been used to evaluate workload proposals as a compulsory and freestanding principle of interest arbitration, untethered to any comparability analysis. In addressing UTFA's workload proposals in the 2020 interest

arbitration between these parties, Arbitrator Kaplan highlighted the interest arbitration principles of replication and gradualism. He then wrote that:

> Also relevant is demonstrated need. That important factor requires some brief elaboration. Demonstrated need establishes that sought-after changes are required to meet real and pressing problems, particularly where one party seeks to change the long-standing status quo – representing, after all, decades of free collective bargaining.[1]

16. In his subsequent Article 6 interest arbitration award, Arbitrator Gedalof also considered and applied the demonstrated need principle to UTFA's workload proposals. He found that the demonstrated need principle was inward-looking and unimpacted by the workload arrangements that other institutions had chosen to adopt. Building on the analysis provided by Arbitrator Kaplan in 2020, Arbitrator Gedalof began by describing the demonstrated need principle and its application to the Article 6 process as follows:

> The guiding principle in assessing the outstanding workload proposals is of course replication, no less so than in determining monetary issues. The principles of gradualism and demonstrated need are also of particular significance. These parties have a mature bargaining relationship, dating back to 1977. In this context, interest arbitrators are reluctant to award "breakthrough" proposals, altering a long-established *status quo*, absent a demonstrated need to address a real and pressing problem. Interest arbitrators have long reasoned that where parties have agreed to long-standing terms that are fundamental to their bargain, it is only in the face of a very compelling demonstrated need that they ought to unilaterally alter those terms over the objection of one of the parties.[2]

17. Arbitrator Gedalof then applied the demonstrated need principle to UTFA's workload proposals. He made clear that the demonstrated need principle operates freely and independently from the comparability principle. Arbitrator Gedalof expressly noted that although other universities had adopted a DOE-based model to quantify the workload assigned to faculty members and librarians at their respective institutions, that reality was known to the parties and did not in any way override the absence of a demonstrated need

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[1] *Governing Council of the University of Toronto and UTFA*, unreported June 29, 2020 at pp. 3-4, Kaplan. University Administration's Book of Documents, **Tab 8, page 65-66**

[2] *Governing Council of the University of Toronto and UTFA*, 2023 CanLII 85410 at para. 123. University Administration's Book of Documents, **Tab 9, page 105** ["2023 Gedalof Article 6 Award"]

for these same measures to be awarded at the University. The following paragraphs or Arbitrator Gedalof's analysis are apposite.

> Having carefully reviewed and considered all the outstanding workload proposals, I find that these proposals would constitute a significant alteration to the status *quo,* and much more so than the Association would allow. With limited exceptions, which I will address below, these changes would impose standards and limitations at the University level, where these parties have freely bargained a model of more localized and flexible workload assignment.
>
> I accept, as the Association argues, that other Universities have adopted such standardized approaches to workload. I also accept, as is evident in the materials filed by the Association, that concepts such as "distribution of effort", and the consideration of the various factors identified by the Association in assessing workload, are already very much applied in various ways throughout the University. They are not foreign concepts. It is also true, as the Association argues, that in requiring units to address particular factors in workload assignment, it is not dictating or predetermining how those units might chose to weigh or apply those factors.
>
> But in seeking to implement University wide standards, or to dictate the manner in which workload must be assessed or expressed at the local level, the Association is clearly seeking major structural changes to the parties' agreement. It would be naive in the extreme to presume that these amendments would not result in significant changes in practices across the University, and significant disruption to the *status quo*. Indeed, effecting substantial change in the assignment of workload is precisely the reason that the Association is pursuing these amendments. But that is also the reason that it is required to establish a compelling demonstrated need for its amendments before an interest arbitrator would be justified in unilaterally imposing them on the University.[3]

18. Consequently, UTFA's claim that "demonstrated need does not need to be established if a proposal is consistent with sector norms and does not represent a significant departure from established practice or the status quo" has no merit or application to the Article 6 process. In prior Article 6 decisions, the demonstrated need principle is recognized as a stand-alone principle of interest arbitration, which proposed changes to the WLPP are to be measured against.

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[3] 2023 Gedalof Article 6 Award, *supra* at paras. 131-133. University Administration's Book of Documents, **Tab 9, pp. 107-108**

19. UTFA relies only on cases from the healthcare and firefighting sectors to support its claim that "demonstrated need does not need to be established if a proposal is consistent with sector norms and does not represent a significant departure from established practice or the *status quo"*. Unlike the university sector, where resort to interest arbitration to address unresolved bargaining disputes is the exception and not the rule, all employers and trade unions in the healthcare and firefighting sectors are subject to compulsory interest arbitration if their collective bargaining disputes remain unresolved. A routinized resort to interest arbitration in these other sectors has resulted in a different approach to the way in which interest arbitration principles are considered and applied. For example, in *Ajax Professional Fire Fighters Association v. Ajax (Town)*[4]*,* the Divisional Court concluded that:

> … the principle of demonstrated need is more forcefully applied in cases of compensation or other monetary issues. Where a proposal does not entail monetary consequences to an employer and the employer has not demonstrated other operational consequences, the absence of evidence supporting a demonstrated need is not determinative, even if an issue is characterized as a "breakthrough" issue.[5]

20. Leaving aside any debate as to the accuracy of these observations to interest arbitration proceedings generally, they have no application whatsoever to the Article 6 process. Caution should be exercised before relying extensively on the analysis of the demonstrated need principle offered by some arbitrators in awards in the healthcare and firefighting sectors. There is much more emphasis on providing relatively uniform terms and conditions of employment across these sectors to employees who perform the same functions (such as nurses, or a dietary aides or first class fire fighters) for different employers. A useful contrast between the functioning of interest arbitration in these sectors, and the operation of the Article 6 process at issue was offered by Arbitrator Goodfellow in *Strathroy Middlesex General Hospital*[6], where he recognized that:

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[4] 2013 ONSC 7361 (Div. Ct), cited in footnote 18 of UTFA's Arbitration Brief ["*Ajax Fire*"]

[5] *Ibid*., at para. 58

[6] [2012] O.L.A.A. No. 47 (Goodfellow). University Administration's Reply Book of Documents, **Tab 1**.

> Here, as I have recently observed elsewhere, in this most normative of sectors (Hospitals) in this most normative of industries (Health Care) the most important marker has become "comparability": what is the "norm" amongst comparable groupings of employees in comparable workplaces. Where such a norm exists, depending upon its strength, it will be taken either as a starting point or, in some instances, as something very close to a finishing point, barring something extraordinary. In this way, the wheel is not reinvented and certainty and predictability are afforded.
>
> The goal of replication and the search for the "norm" is aided by the process of central bargaining. With the increasing prevalence of joint bargaining between particular trade unions and employers or employer groupings in various sectors, norms become easier to identify and comparability takes on greater significance, in the process making the replication question easier to answer. The presumption is that individual parties would not themselves have likely deviated too far from their peer group. This does not mean that other tools, such as "demonstrated need" (or, in some contexts, the fact of a "first collective agreement"), become moot or disappear, only that their influence is attenuated by the strength of the norm. Indeed, it is fair to say that the contribution made by such other factors is inversely proportionate to the strength of the norm.[7]

21. *Strathroy Middlesex General Hospital* was relied on by the Divisional Court in *Ajax Fire* to describe how the principles of demonstrated need and comparability intersect in the firefighting sector. The application of these principles to interest arbitrations in the healthcare and firefighting sectors bears no resemblance to how these principles have been interpreted and applied in the Article 6 arbitration decisions between these parties.

22. UTFA's attempt to mischaracterize and misapply the demonstrated need principle in the context of an Article 6 proceeding is not only inconsistent with the Article 6 jurisprudence, the only support for UTFA's argument comes from arbitration decisions that have interpreted and applied interest arbitration principles in sectors that are fundamentally different from the unique context of an Article 6 proceeding. For these reasons, UTFA's suggestion that the demonstrated need principle should either be ignored entirely or subordinated to its inconsistent and self-serving application of the comparability principle, which is addressed below, should be dismissed.

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[7] *Strathroy Middlesex General Hospital*, *supra* at paras. 16-17.

UTFA IGNORES THE TRANSPARENT NATURE OF WORKLOAD ASSIGNMENT UNDER THE WLPP

23. Finally, a core component of UTFA's submissions regarding its workload proposals is that they are necessary to ensure that workload is assigned in a transparent manner. In reply to this assertion, the University Administration submits that the current language in the WLPP provides a complete answer to UTFA's repeated demands for transparency. Extensive workload transparency is provided by the Annual Workload Documents t required under paragraph 3.3. of the WLPP. As example of the workload information that is made available to all members of a unit and to UTFA, a copy of the Department of Chemistry Unit Annual Workload Document is attached at **Tab 2**. Any member of the Department of Chemistry can access the Annual Workload Document. Doing so gives them full transparency on all teaching and service assignments within the department. The "common language tool" that UTFA insists can only be provided through the full adoption of its DOE model is already present in this document, as the teaching component of workload is measured through Full Course Equivalents. Faculty members understand this unit of measurement. It does not need to be overtaken by UTFA's DOE model. To suggest, as UTFA does, that these documents offer only "vague descriptions of workload expectations without any central metric to weigh their work" is inaccurate.

24. The Annual Workload Document also provides detailed information on the teaching releases granted to faculty members within the department and the reason for each such release. Additional information about the size of each class that is taught and the level of teaching assistant support provided is easily accessible and comparable.

25. Further transparency is provided because each of the individual workload letters provided to faculty members in a unit are accessible to all other faculty members in that unit. This information can be used to cross-reference the information about a faculty member's teaching and service workload in the Annual Workload Document, and can also be used for individual comparative purposes if a faculty member feels that their workload is unreasonably excessive relative to one or more of their colleagues in their unit. An example of an individual workload letter that shows the detailed information contained therein is attached at **Tab 3**.

26. These documents demonstrate the degree to which the WLPP already provides faculty members and librarians with full transparency as to how the teaching and service components of workload are assigned in each unit. These existing measures also help show that UTFA's insistence that full transparency can occur only if its proposed DOE framework is superimposed over the WLPP is without merit.

UTFA'S "10 WORKLOAD GRIEVANCES" PROVIDE NO EVIDENCE OF DEMONSTRATED NEED

27. At page 12 of its Arbitration Brief, UTFA claims that it has filed "10 grievances alleging multiple violations of the MOA and the WLPP, since Arbitrator Gedalof issued his Article 6 award on September 6, 2023." Copies of the grievances on which UTFA relies in support of its workload proposals were provided by UTFA on March 11, 2025. The Association Grievance and Group Grievance that UTFA filed on August 14, 2024 are practically identical. As are the Association Grievance and Group Grievance filed on October 2, 2024. None of the allegations in these grievances have been proven. Several of these grievances have been resolved. They do not show a demonstrated need to award UTFA's expansive DOE proposals, which would impact each academic unit.

28. The table below demonstrates that most of the grievances cited in UTFA's Arbitration Brief raise allegations to which UTFA's workload proposals are neither relevant nor responsive.

Examining the Allegations in UTFA's 10 Grievances				
Date	**Grievance Type**	**Summary of Allegations**	**Status**	**Tab**
Jan. 9/24	Individual	Alleged failure to address a department's proposed revisions to its Unit Workload Policy in an appropriate or timely way; alleged failure to communicate the Dean's reasons for the rejection of a proposed Unit Workload Policy; alleged discrimination against a faculty member for their activities in UTFA;	Resolved	4
Jul. 26/24	Association	Alleged failure to provide Annual Workload Documents as required by the September 6, 2023 arbitration award	Active	5
Aug.14/24	Group	Alleged improper disbanding and replacement of a Unit Workload Policy Committee; rejection of a proposed Unit Workload Policy without appropriate particulars and in bad faith	Resolved	6

Examining the Allegations in UTFA's 10 Grievances				
Date	**Grievance Type**	**Summary of Allegations**	**Status**	**Tab**
Aug.14/24	Association	Alleged improper disbanding and replacement of a Unit Workload Policy Committee; rejection of a proposed Unit Workload Policy without appropriate particulars and in bad faith	Resolved	7
Nov. 7/24	Association	Alleged failure to provide UTFA with copies of rejected Unit Workload Policies and the reasons for their rejection	Active	8
Nov. 7/24	Individual	Alleged failure to provide sufficient administrative course support; assignment of course administrative work that is not part of a faculty member's responsibilities	Active	9
Jan. 9/25	Association	Alleged failure to provide a copy of a rejected Unit Workload Policy and the reasons for its rejection	Active	10

29. On December 8, 2023, UTFA filed notice of an Association Grievance which alleged, *inter alia*, that an unspecified list of Unit Workload Polices contravened paragraph 4.0 of the WLPP by not articulating the balance between the three principal components of a faculty member's activities. A copy of this Association Grievance is attached at **Tab 11**. This Association Grievance claimed that there was an "implicit industry norm" which quantified the workload of Tenure Stream faculty members as being comprised of "40% teaching, 40% research and 20% service", and that there was a "lack of an implicit industry norm" that quantified the work of Teaching Stream faculty members. This is the only grievance included in UTFA's materials that makes reference to the concept of a DOE and which seeks to connect that concept to paragraph 4.0 of the WLPP.

30. On October 2, 2024, UTFA filed an Association Grievance which is attached at **Tab 12**. This grievance alleged that the Institute for Communication, Culture, Information and Technology ("ICCIT") had violated the MOA and the WLPP by "failing to provide a fair, reasonable and equitable distribution of workload to teaching stream professors at ICCIT", "failing to allocate workload to teaching stream faculty in ICCIT based on the principle that comparable work will be weighed in the same manner", and failing to provide reasons for the rejection of the proposed Unit Workload Policy.[8] Unlike the other grievances summarized above, the allegations in this grievance have some connection

[8] October 2 2024 Association Grievance re: ICCIT.

to UTFA's proposed amendments to the WLPP. This Association Grievance overlaps significantly with a Group Grievance attached at **Tab 13** which UTFA filed on September 6, 2024. This Group Grievance acknowledges the "factual overlap" with the October 2, 2024 Association Grievance and requested that they be heard together. These two grievances were resolved on February 4, 2025.

31. There continue to be thousands of workload assignments provided to faculty members and librarians each year. The fact that only three grievances filed since September 6, 2023 have any connection to the issues that UTFA claims its workload proposals would resolve further confirms that there is no demonstrated need to award these proposals. The observations made by Arbitrators Kaplan and Gedalof that there is no demonstrated need for the workload proposals that UTFA continues to advance remain applicable to this current proceeding.

UTFA'S INCONSISTENT USE OF COMPARATORS

32. Throughout its Arbitration Brief, UTFA regularly cites the terms and conditions of employment of purported "comparators" that are not large, research-based universities. UTFA also relies on a rotating slate of "comparators" on a proposal-by-proposal basis. This is an inconsistent and self-serving application of the comparability principle which should be given no weight in this proceeding.

UTFA'S RELIANCE ON POLICE AND FIRE SERVICE AWARDS FOR ITS PROPOSED ATB INCREASES

33. At page 22 of its Arbitration Brief, UTFA claims that: "Given its place at the very top of the academic sector, the University of Toronto has no true within-sector comparators" and that "University of Toronto faculty members and librarians are comparable to none" and that "UTFA must stand alone in its efforts to maintain its sector superiority in all respects."

34. The only comparators that UTFA references in support of its salary proposals are Toronto's police officers and firefighters. No interest arbitrator appointed under Article 6 of the MOA has ever accepted that faculty members and librarians at the University of Toronto should be compared with Toronto's police officers or firefighters.

35. Not only are police officers and firefighters unsuitable comparators in this proceeding, UTFA's focus on the collective bargaining outcomes for these external employee groups is especially narrow. UTFA has focused exclusively on the salary increases awarded to Toronto's police officers and firefighters for 2024 by claiming that the salary increases awarded in this one year were sector-leading increases. UTFA did not situate these outcomes (a 5% salary increase for Toronto Police in 2024 and a 4.75% increase for Toronto Fire in 2024) in a broader context. That context is provided in paragraph 8 of Arbitrator Wright's decision in *Toronto Police Services Board*, which is cited at footnote 91 of UTFA's Brief:

> Historically, members of the TPA have been amongst the most highly paid, if not the most highly paid, members of a police service in Ontario, a fact that has been recognized by arbitrators. By the end of 2023, that was no longer the case. In 2019, the TPA and the TPSB entered into five-year collective agreements that ended December 31, 2023, with a compounded wage increase of 10.57% over their terms. Neither party could have anticipated in 2019 the COVID-19 global health pandemic that was just around the corner, nor could they have predicted the record levels of inflation that would follow in its wake. The TPA notes in its Brief that between 2021 and 2023, the Consumer Price Index indicated that inflation increased by a compounded total of 14.67%, while in the same period employees of the Toronto Police Service received a total compounded wage increase of merely 5.67%. During the term of Toronto's five-year collective agreements, many other police associations and their employers had an opportunity to renew their collective agreements. As a result, as the Board notes in its Brief, by 2023 the First Class Police Constable end rate for members of the TPA was only the 14th highest in the province. Notably, that rate was behind the First Class Constable end rate for almost all of the "Big Twelve" comparators, as well as being behind the First Class Constable end rate for the OPP.

36. The 2019-2023 collective agreement between the City of Toronto and the Toronto Professional Fire Fighters' Association, Local 3888 mirrored the salary increases that were provided in the collective agreement between the Toronto Police Services Board and the Toronto Police Association.[9] When viewed in this context, the salary increases

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[9] 2019-2023 Collective Agreement between the Toronto Police Services Board and the Toronto Police Association, Schedule "A" 2019-2023 Uniform Salary Rates, University Administration's Reply Book of Documents, **Tab 14**. 2019-2023 Collective Agreement between the City of Toronto and Toronto Professional Fire Fighters' Association, Local 3888, Article 8 Wages and Salaries. University Administration's Book of Documents, **Tab 15**.

that were awarded to these employee groups in 2024 did not provide full "catch-up" to the inflationary increases that occurred during the prior collective agreements. These outcomes were not, despite UTFA's insistence to the contrary, "precedent setting outcomes", nor do they support UTFA's proposals, either in terms of the quantum of ATB increases sought, or the rationale for these proposed increases.

UTFA'S RELIANCE ON TWO COMPARATORS FOR ITS PTR PROPOSAL

37. In support of its request to change the funding structure of the University's PTR process, UTFA relied on only two comparators within the U-15 Group of Universities: The University of British Columbia and McMaster University. UTFA's limited reference to these two comparators is consistent with its overall position that faculty members and librarians at the University of Toronto must be at the "top of the market" in respect of each and every facet of compensation on an item-by-item basis. The University Administration opposed this unsupported expansion of the "top of the market" principle at paragraph 51 of its Arbitration Brief. In reply, it submits that UTFA's selective and underinclusive reference to comparators in many of its monetary proposals, including its PTR proposal, further demonstrates that there is little if any objective support for UTFA's proposal.

38. Borrowing from the terminology that UTFA used to try and support its workload proposals, the annual expenditure of 2.5% of the salary base for faculty members and librarians is not "consistent with sector norms", nor can this proposal be described as a gradual or incremental departure from the status quo. These facts further militate against the awarding of UTFA's PTR proposal.

UTFA'S RELIANCE ON SMALLER UNDERGRADUATE-FOCUSED UNIVERSITIES FOR ITS WORKLOAD PROPOSALS

39. In contrast to its claims that no sector comparators can be considered in respect of its salary proposals, UTFA suggests that a small group of smaller universities that focus primarily on undergraduate education and not research are appropriate comparators for workload purposes.

40. At page 15 of its brief, UTFA claims that:

> Specification of DOE for workload transparency is a normative practice within the university sector and the proposed baseline percentage breakdowns for tenure stream faculty members are broadly consistent with specified DOEs in the sector. A comparative baseline of 40% teaching, 40% research, and 20% service for tenure stream faculty members, and 60% teaching, 20% research, and 20% service for teaching stream faculty members is also consistent with other faculty agreements where a distinction is drawn between the two streams.

41. The comparators on which UTFA relies for these assertions are Brock University, Huron University College, Laurentian University, Renison University College, and the University of Guelph. These universities are not appropriate comparators. There are fundamental differences between the size, structure, focus, operations, and objectives of large research-focused universities, of which the University of Toronto is the largest in Canada, and smaller undergraduate-focused universities that have chosen workload processes that have "baseline DOEs", including the universities listed in this paragraph.

UTFA'S REFERENCES TO THE UNIVERSITY OF WATERLOO AND WESTERN UNIVERSITY DO NOT SUPPORT ITS WORKLOAD PROPOSALS

42. At page 19 of its submissions, UTFA references two research-intensive universities as institutions that have purportedly "taken similar steps to improve workload transparency through DOE." UTFA first clams that Article 13.5.5 of the Memorandum of Agreement between the University of Waterloo and the FAUW "stipulates a default balance of 40% teaching, 40% research, 20% service (for professional positions)" if some other workload balance is not specified.

43. A closer review of the Memorandum of Agreement between the University of Waterloo and the FAUW reveals that it addresses the subject of Selective Salary Increases, which is the PTR equivalent at the University of Waterloo. This is made clear by the introductory language in section 13.1 of the University of Waterloo/FAUW Memorandum of Agreement which provides that:

> This Article states the principles governing the determination of salaries for faculty members holding regular appointments. These principles include the establishment of a salary structure for these purposes, **the procedures used to establish the extent of annual selective increases, and the rules that have been developed to direct the annual evaluation process in each Faculty used to determine individual selective increases**.
>
> [Emphasis added]

44. There is no reference to workload anywhere in Article 13 of the University of Waterloo/FAUW Memorandum of Agreement. Article 13.3.1 thereof describes the Selective Salary Increases that are available to eligible faculty members as follows:

> Selective salary increases are intended to move a Member through the salary structure at a rate determined by her/his achievements in the profession and contributions to the University, measured by annual performance ratings undertaken as specified in 13.5. In order to ensure orderly career progress consistent with long-range academic goals, the commitment of funds required for this purpose shall have the highest priority in the preparation of the annual budget.

45. The "annual performance ratings" used to ascertain a faculty member's eligibility for and amount of Selective Salary Increase this year are addressed in detail in Article 13.5 of the University of Waterloo/FAUW Memorandum of Agreement. This is the specific part of the Memorandum of Agreement on which UTFA has relied. Articles 13.5.1(a) and (b) explain how the evaluation criteria used in these annual performance ratings are to be determined. Each faculty is required to have Faculty Performance Evaluation Guidelines that set out the evaluation criteria that apply to annual performance ratings. These guidelines must be approved through a collegial process and updated every five years.

46. Article 13.5.1(b) requires each department to publish an Addendum to the Faculty Performance Evaluation Guidelines that sets out the performance expectations in that department for "scholarship, teaching and service." Changes to a department's Addendum must be approved by a majority of faculty members in the department. The Dean of the faculty is tasked with ensuing that each department's Addendum is consistent with the Faculty Performance Evaluation Guidelines as well as all relevant university policies.

47. Article 13.5.3 sets out a performance rating scale, which states that a faculty member will receive a separate rating on a 9-point scale between 2.0 (outstanding) and 0.0 (Unsatisfactory) for their teaching, scholarship and service. Article 13.5.5(a) states that a faculty member's overall rating is computed as "the weighted average of the individual ratings in teaching, scholarship and service for the year(s) being reviewed." This same Article then provides that:

> (a) The weight for each area shall be as specified in the member's letter of appointment. In the absence of specified weights for tenured stream positions, the normal weights shall be 40 percent for teaching, 40 percent for scholarship, and 20 percent for service; for teaching stream, the normal weights shall be 80 percent for teaching and 20 percent for service. These default weights do not apply to lecturer appointments made prior to May 1, 2008. Member weights remain in effect for the duration of the appointment unless otherwise changed under sub articles (b) and (c). There is no intended linear relationship between the percent for teaching and the number of courses taught.
>
> (b) Weightings and duties may be adjusted in a formal agreement between the Member and the Chair with the approval of the Dean. The weights shall be at least 20 percent in every category, except in the case of lecturer appointments. Weight redistribution does not modify the performance quality expected in any of the three areas, though expectations for quantity will change.
>
> (c) Any such formal agreement under 13.5.5 (b) shall be by mutual consent and, except in the case of definite-term appointments, shall be for a period of up to 5 years but no less than 2 years. Such an agreement may be renewed by mutual consent.
>
> (d) The performance evaluation of a Member shall be done with all evaluators being informed of the weights in each area, and any adjustments made to the weights in each area, over the entire period for which evaluation data is being considered. Each Member shall be informed of the weight information used in their evaluation. The Chair shall collect and provide this weight information, which must be consistent with sub article (a) and any adjustments made under sub articles (b) and (c).

48. A full and detailed review of Article 13 of the University of Waterloo/FAUW Memorandum of Agreement, including Article 13.5 on which UTFA relies, demonstrates that the Selective Salary Increase evaluation process does not address workload matters in any way. Rather, it establishes a process whereby each faculty member's performance

in teaching, scholarship and service is assessed in a prescribed way, using a standard scoring metrics, but with weightings that can be adjusted on an individual basis, following an agreement between the impacted faculty member, their departmental chair and the dean's approval.

49. The University Administration has objected to the conflating of the workload assignment process with the PTR process.[10] UTFA's reference to the equivalent to the PTR process at the University of Waterloo in support of its workload proposals is a further attempt by UTFA to misapply PTR concepts and processes to the entirely separate and distinct process of workload assignment.

50. UTFA's reference to the Western University/UWOFA collective agreement provisions governing workload at page 20 of its arbitration brief does not support its proposal. The workload provisions in this collective agreement do not prescribe the same comprehensive DOE framework that UTFA now seeks.

51. UTFA's claim that its workload proposals are "normative in the sector" is not supported by the evidence. UTFA has referred to universities that are not in any way comparable to the University of Toronto. Its reference to the University of Waterloo/FAUW Memorandum of Agreement is unhelpful since it relates to a process that is used to evaluate merit, not determine workload. The language in the Western University/UWOFA collective agreement regarding workload is not as broad or as prescriptive as UTFA's workload proposals.

[10] University Administration's Arbitration Brief, pages 195-196.

NO UNIFORMITY TO THE COMPARATORS REFERENCED IN UTFA'S BENEFIT PROPOSALS

52. As it did in support of its workload proposal, UTFA has referenced smaller undergraduate-focused universities that are in no way comparable to the University of Toronto in an effort to advance its benefit proposals. Carleton University, Toronto Metropolitan University, Trent University, and York University are not considered to be comparators with the University of Toronto. Yet UTFA claims that in any instance where any of these institutions has one or more benefit entitlements that it is more provident than the benefit level offered by the University of Toronto, they must be treated as a comparator for that isolated purpose. The principles of comparability and total compensation do not support the selective use of comparators on an issue-by-issue basis.

53. Not only is UTFA's use of comparators to support its various benefit proposals inconsistent and self-serving, at page 48 of its arbitration brief, UTFA also proposes that a small number of interest arbitration decisions from the manufacturing and long-term care sectors further support its request for language to "protect benefit levels." Just as police officers and firefighters are not appropriate comparators for the isolated purpose of advancing UTFA's proposed ATB increases, these other external comparators should not be considered in assessing the appropriateness of this specific benefit proposal.

54. Overall, as the table below demonstrates, UTFA's selection of comparators to support its benefit proposals changes on a proposal-by-proposal basis. The sole criterion that UTFA appears to have used to determine its comparators is whether or not they support the particular proposal(s) for which they are used. As noted above, this approach is inconsistent with an objective and consistent application of the comparability principle, but it also undermines the total compensation principle.

UTFA's Uneven Use of Comparators																		
Comparator	**1. Workload**	**2(a)(i) Librarian Salary Floors**	**2(a)(ii) Faculty Salary Floors**	**2(b) Salaries ATB**	**2(c) PTR**	**3 - PERA**	**4(a)(i) LTD Maximum**	**4(a)(ii) LTD CPI**	**4(b) Protecting Benefit Levels**	**4(c)(i) Vision Max. Coverage**	**4(c)(ii) Opthal.**	**4(d) Coverage for Delisted Benefits**	**4(e) Mental Health Benefits**	**4(f) Prescription Drug Co-Pay Elimination**	**4(g) Hearing Aids**	**5 Housing**	**6 Child Care**	**7 Archive**
Toronto Police Service				X														
Toronto Fire Services				X														
Caressant Care Nursing & Retirement Homes									X									
Heritage River Retirement Residence									X									
Trafalgar Lodge (Revera)									X									
Honeywell Limited									X									
Brock University	X					X			X	X				X				
Carleton University						X												
Dalhousie University								X	X									
Huron University College	X																	
Laurentian University	X																	
McMaster University			X		X	X		X							X			
Queen's University			X					X	X								X	
Renison University College	X																	
Toronto Metropolitan University						X	X	X		X				X	X			

UTFA's Uneven Use of Comparators																	
Comparator	**1. Workload**	**2(a)(i) Librarian Salary Floors**	**2(a)(ii) Faculty Salary Floors**	**2(b) Salaries ATB**	**2(c) PTR**	**3 - PERA**	**4(a)(i) LTD Maximum**	**4(a)(ii) LTD CPI**	**4(b) Protecting Benefit Levels**	**4(c)(i) Vision Max. Coverage**	**4(c)(ii) Opthal.**	**4(d) Coverage for Delisted Benefits**	**4(e) Mental Health Benefits**	**4(f) Prescription Drug Co-Pay Elimination**	**4(g) Hearing Aids**	**5 Housing**	**6 Child Care**	**7 Archive**
Trent University		X				X	X	X	X									
University of Alberta		X												X	X			
University of British Columbia					X									X				
University of Calgary		X																
University of Guelph	X	X				X			X									
University of Manitoba							X	X						X				
University of Ottawa			X			X			X									
University of Saskatchewan		X					X		X									
University of Waterloo	X		X				X											
University of Windsor														X				
Western University	X		X			X												
York University						X			X	X			X	X	X			

UTFA'S REFERENCES TO INTERNAL UNIVERSITY DOCUMENTS DO NOT SUPPORT ITS WORKLOAD PROPOSALS

55. At page 16 of its Arbitration Brief, UTFA claims that some units at the University "have already taken the initiative to state their expected balance by using the language of DOE." The accompanying footnote references the Rotman School of Management's Unit Workload Policy. This Unit Workload Policy includes only one reference to a part of workload that is expressed as a percentage. Section 3 of this Unit Workload Policy states that:

> 3. All faculty are expected to provide service. Service loads normally should not exceed 20% of any appointment unless special arrangements have been agreed to, such as when undertaking a significant administrative appointment (e.g., Vice Dean, Associate Dean, Area Coordinator, Program Director, Research Center Director).

56. No other facet of workload is expressed as a percentage of a faculty member's appointment. No attempt is made to quantify or limit the amount of research or pedagogical/professional development that a faculty member must complete. There remains significant space for self-directed work under this Unit Workload Policy.

57. Similarly, the University Administration's rejection of the proposed Unit Workload Policy submitted by the Department of Curriculum Teaching and Learning at OISE was not based on a "practice of discouraging units from developing and including DOE language in their Unit Workload Policies." The comments that accompanied the section of this Unit Workload Policy entitled "Distribution of Effort" demonstrate that there were several fundamental inconsistencies between this part of the Unit Workload Policy and the WLPP, which required this section's deletion:

(a) This section of the proposed Unit Workload Policy failed to properly reflect an understanding of the distinction between Tenure Stream and Teaching Stream appointments. For example, the proposed Unit Workload Policy stated that all appointed faculty were entitled to "reasonable time for research", when there is no requirement for Teaching Stream faculty to engage in research in order to meet the requirement of engaging in pedagogical/professional development.

(b) This section of the proposed Unit Workload Policy sought to address research and pedagogical/professional development. The WLPP does not do so. It makes clear that research and pedagogical/professional development are self-directed by each faculty member and cannot be defined in a Unit Workload Policy.

58. This same rationale supported an earlier presentation by the Office of Faculty and Academic Life which encouraged units to "avoid quantitative breakdowns of teaching, research, service". This advice was not based on an absolute opposition to the DOE concept. It was rooted in the fact that attempts to rigidly quantify all facets of workload were and are at odds with the principles and provisions of the WLPP.

59. The proposed Unit Workload Policy submitted by the Department of Curriculum Teaching and Learning had many other deficiencies, including attempts to conflate the workload assignment process with the PTR process, and attempts to restrict the performance of service work to faculty members with appointments at or greater than 50% FTE. This unit sought to use its Unit Workload Policy to address extraneous concepts, such as the work performed by CLTAs, "course buy-outs" and research and study leave. No University policy, including the WLPP, provides any support for such language and they were properly identified as deficiencies that required correction.

THE DISCONNECT BETWEEN UTFA'S ALLEGATION OF "GENDER-BASED DEVALUATION OF LIBRARIAN WORK" AND ITS SALARY FLOOR PROPOSAL

60. After acknowledging that the position of librarian is a "historically 'female' occupation" and that most librarians at the University of Toronto are women, UTFA claims that: "Other factors also contribute to lower salaries and the perpetuation of gender inequities in this field, including the downplaying of increased responsibilities such as instructional responsibilities. The overall result is a systemic, gender-based, devaluation of librarian work."[11]. These allegations are made in support of UTFA's proposal to restructure the salary floors that apply to librarians. However, the connection between these allegations and UTFA's salary floor proposal is unclear.

[11] UTFA Arbitration Brief, page 24

61. As UTFA is aware, a Report on Librarians and Gender-Based Salary Equity was released on November 28, 2019. This report found that there was a gender-based salary gap amongst Librarians employed by the University. In response to this finding, and as set out in a joint statement by the University Administration and UTFA dated November 28, 2019, all women librarians received a 3.9% increase to their July 2, 2019 base salary to address the gender-based salary gap that had been identified. The parties also agreed to establish a joint working group to explore issues that may affect the compensation of librarians who are members of equity seeking groups.[12] That joint working group was established. It did not identify any related compensation issues.

62. UTFA has failed to explain how its proposal to alter the minimum salary structure for librarians has any connection to the allegations of "systemic, gender-based, devaluation of librarian work" included in its Arbitration Brief. These allegations provide no support for UTFA's related proposal.

ADDRESSING UTFA'S VISION CARE PROPOSAL

63. At page 49 of its Arbitration Brief, UTFA references the vison care benefits provided by York University, Toronto Metropolitan University and Brock University in support of its proposals. None of these universities are proper comparators to the University of Toronto.

64. In addition, the information that UTFA has provided regarding the vision care benefits provided at each of these non-comparator universities must be examined in closer detail. UTFA claims that Brock University "provides vision coverage for faculty with no maximum cap." Footnote 139 in BUFA's Arbitration brief provides a link to the Brock University/Brock University Faculty Association ("BUFA") benefits booklet. The link that BUFA provided connects to a benefit booklet that was in force in 2015. The current benefit booklet is attached at **Tab 16**. The Schedule of Benefits included in this booklet limits vision care coverage to "$700.00 every 2 calendar years (every calendar year for covered persons 16 years of age and under)." Coverage for optometric eye examinations

[12] https://www.provost.utoronto.ca/planning-policy/gender-pay-equity/

is limited to $80.00 per claim and is included within the vision care maximum referred to above. The vision care benefits that are currently available to faculty members and librarians at the University of Toronto are already superior to the vision care benefits provided by Brock University to its faculty members and librarians.

65. The vision care benefits provided by Toronto Metropolitan University and York University that UTFA references in its arbitration brief do not provide separate coverage for eye examinations, whereas the University Administration does provide additional vision care coverage that is specific to eye examinations. A limited comparison between the maximum amount of vision care benefits provided by these universities without considering the separate eye examination benefit that the University Administration provides is, therefore, unduly narrow.

ADDRESSING UTFA'S PROPOSAL REGARDING MENTAL HEALTH PROFESSIONAL SERVICES

66. At page 50 of its Arbitration Brief, UTFA proposes that the current maximum annual entitlement for mental health professional services increase from $7,000.00 to $10,000.00. The University Administration has set out its response to this proposal in its Arbitration Brief. These reply submissions focus on the sources that UTFA has used to support its proposal.

67. At footnote 142 of its Arbitration Brief, UTFA cites a research report prepared by the Canadian Psychological Association in 2022. This report noted that Canada's spends only 7% of its overall public health budget on mental health services, which is well below the spending levels of other G7 countries such as the United Kingdom (13%) and France (15%). This research report observed that "with the unmet needs for mental health services across the public and private sectors, EHBs (Extended Health Benefits) are an essential resource for Canada's population."

68. The University agrees with this observation. It has agreed to significant increases to mental health professional services benefits for faculty members, librarians and other employees in recent years, particularly during and after the COVID-19 pandemic.

69. In this context, the Canadian Psychological Association's 2022 research report references a 2021 benefits survey data regarding the level of mental health benefit coverage available to employees. It is important to compare the information in this part of the report with the level of mental health professional services benefits currently available to faculty members and librarians:

> The 2021 median annual maximum coverage stands at $750, down 25 per cent from the 2020 maximum of $1,001. Although 72 per cent provide maximum coverage of up to $1,000, and 21 per cent cover between $1,001 and $5,000 (the remaining seven per cent offer more than $5,000), these amounts still present a challenge in terms access to care. The Canadian Psychological Association (CPA) recommends that employees receive access to coverage between $3,500 and $4,000 for full treatment using evidence-base care (i.e., treatment adequate for achieving a therapeutic outcome).

70. In 2021 the mental health professional services benefits provided to faculty members and librarians was subject to an annual maximum of $3,000.00 which increased to $7,000.00 effective November 1, 2022, which compares very favourably with the information referred to above.

71. At footnote 143 of its Arbitration Brief, UTFA's reference to the "unlimited healthcare benefits" that were awarded by Arbitrator Stout in *Ontario Hospital Association*, must be examined more closely and contextually. In making this determination, Arbitrator Stout wrote that:

> Unlimited mental health benefits have been awarded to other essential services, including fire, police, and paramedic services across the province before the advent of the COVID-19 pandemic. In our view, the provision of mental health services is an emerging benefit that is finding wide acceptance in collective bargaining for employees who work in stressful environments or may experience violence associated with their work. There is no reason why nurses, who are on the front line treating the most acute and traumatic cases should be denied such a benefit. Frankly, providing the nurses with mental health benefits not only assists the individual nurses, but it also benefits the Hospitals. Nurses face many mental health challenges and that can take a toll, resulting in increased sick leave. The provision of additional mental health benefits provides assistance in coping with such

> challenges and may result in less absenteeism. Therefore, we are awarding ONA's proposal for unlimited mental health benefits for nurses.[13]

72. The factors that led Arbitrator Stout to award this benefit to front-line healthcare workers was based on a review of the benefit level that had been made available to certain front-line emergency services workers. In reply, the University submits that no objective comparison can or should be made between front-line emergency services and healthcare workers and faculty members and librarians at the University of Toronto.

73. Finally, the information in the table below shows that only a very small percentage of plan participants have reached the current maximum annual limit that currently applies to mental health professional services benefits. This information confirms that there is no need to further increase this maximum annual limit at this time.

Faculty Members and Librarians who have reached the Annual Maximum for Mental Health Professional Benefits		
Plan Year	**Active Employees and Related Plan Participants who reached the $7,000 annual maximum**	**Retirees and Related Plan Participants who reached the $7,000 annual maximum**
2022-2023	58 of 8,099 Plan Participants (0.72%)	2 of 3,386 plan participants (0.06%)
2023-2024	80 of 8,183 Plan Participants (0.98%)	5 of 3,387 plan participants (0.15%)

74. The small percentage of active employees who have reached the maximum annual entitlement for mental health professional benefits may choose to apply their Health Care Spending Account to additional related expenses they may incur.

[13] *Ontario Hospital Association*, 2023 CanLII 29345 at para. 32. UTFA Arbitration Brief, footnote 143.

CONCLUSION AND RELIEF SOUGHT

75. In the final analysis, the University submits that the points included in UTFA's Arbitration Brief which have been addressed above offer no meaningful support for UTFA's proposals. These proposals should be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED