In the Matter of an Interest Arbitration

BETWEEN:

THE GOVERNING COUNCIL OF THE UNIVERSITY OF TORONTO

(the "University")

AND

THE UNIVERSITY OF TORONTO FACULTY ASSOCIATION

(the "Association")

BEFORE: Eli A. Gedalof, Sole Arbitrator

APPEARANCES

See Schedule "A"

AWARD

INTRODUCTION

1. This is an interest arbitration arising under Article 6 of the Memorandum of Agreement (the "MOA") between the parties. By separate Memorandum of Agreement dated February 20, 2025 (the "2025 MOA"), I was duly appointed as interest mediator and arbitrator under the Article 6 process, to settle the terms of renewal for the MOA for the three-year period July 1, 2023 to June 30, 2026. The 2025 MOA provides for a two-stage interest arbitration process, the first stage of which culminated in my award in *Governing Council of the University of Toronto v University of Toronto Faculty Association,* 2025 CanLII 65826 (ON LA)(the "*July 2025 Award*"). The *July 2025 Award* determined salary, benefit and workload issues between the parties for the three-year period, but for the third-year across-the-board (ATB)

increase. The determination of the third-year ATB increase was deferred to a second stage of the process.

2. The instant award addresses two disputes that have arisen with respect to the implementation of the years one and two ATB increases ordered in the *July 2025 Award*. It also determines the second stage of the 2025 MOA process, i.e., the determination of the appropriate ATB increase for the third year.

3. With respect to the implementation issues, the relevant portion of the *July 2025 Award* reads:

> …For all the reasons set out above, I award as follows:
>
> **1. Wages**
>
> Effective July 1, 2023-ATB increase of 3.5%
>
> Effective July 1, 2024-ATB increase of 2.5%
>
> ATB increases are retroactive and applied to base salary, salary minimums, per course stipends/overload and PTR increments and break points.

4. The first implementation dispute concerns the retroactive application of the ATB increases to faculty who worked during the term of the renewed MOA but left the University's employ for reasons other than retirement prior to the award. The University maintains that such former employees are not entitled to any retroactive payments, that this has been the parties' historical practice and that the Association was on notice that this was the University's position and did not make a proposal to counter it. The Association argues that retroactive ATB increases are presumptively owed to all employees who worked during the relevant period, and the *July 2025 Award* does not provide for exceptions. It is the University, submits the Association, that would have to have made a proposal to counter this presumption.

5. The second implementation dispute concerns the retroactive application of the ATB increases to the starting salary negotiated between the University and newly hired faculty, as set out in their hiring letters. Most faculty are hired effective July 1 of a given year. The ATB

increases in issue here were also ordered effective July 1 for the two years in issue. The hiring letters exclude such potential increases from starting salary, subject only to any new salary floor. The University maintains that it is entitled to negotiate starting salaries with individual faculty and librarians, subject only to the salary floors, and that ATB increases effective prior to or on the date of hire do not apply to those starting salaries, including when ordered retroactively. In contrast, the Association maintains that where ATB increases are awarded retroactively, they apply to all starting salaries where faculty and librarians were hired prior to the award of retroactive increases.

6. With respect to the year-three ATB increase, the Association seeks:

- An ATB increase of 4.0% (3% ATB increase + 1% fixed dollar increase to base salary to be distributed equally among members, prorated to the percentage of appointment) retroactive to July 1, 2025.

- An increase to the salary floors for Librarian I (to $90,000) and Librarian II ($100,000) ranks on "June 30, 2024 (prior to July 1, 2025, ATB)"

7. The Association seeks to have the ATB increases applied to:

- Salary Floors
- Base Salary
- Progress Through the Ranks ("PTR") Breakpoints
- Amount in PTR fund per FTE below the Breakpoint
- Amount in PTR fund per FET above Breakpoint
- Overload Stipends

8. Consistent with its position in the implementation dispute, it also submits that ATB increases should be provided to new employees and former employees who were active and received a salary at any point during the July 1, 2025 to June 30, 2026 period, and to the estates of deceased members. It further seeks to have the year-three ATB increases applied to the floors first, and to have any members whose

salaries fall below the floor adjusted up to the floor *prior* to applying the ATB increase to their salary.

9. The University proposes an ATB increase of 1.5%, to be applied to base salary, salary floors, per course/overload stipends and PTR increments and break points in accordance with its past practice. It also seeks that retroactivity be applied consistent with its position in the implementation disputes above (i.e., not to starting salaries (subject to the floor), and not to employees who left employment for reasons other than retirement). The University also submits that the Association's proposed special increases to librarian salary floors do not fall within the scope of this arbitration. It further argues that the Association's proposal to increase salaries to the new floors and then apply the ATB increase, which would result in higher salary adjustments for some colleagues than others, is also outside the scope of this arbitration.

10. In this award I will address the implementation issues first and then the year three ATB increase, including the University's jurisdictional objections.

IMPLEMENTATION ISSUES

Eligibility for Retroactive ATB Increases for Former Employees

The Parties' Arguments

11. The Association argues that retroactive ATB increases are presumptively applicable to former employees who worked during the term of the agreement. Citing the leading decision in *Re Penticton and District Retirement Service and Hospital Employees' Union, Local 180*, 1977 CanLII 2954 (BC LRB) (Weiler)("*Penticton*"), recognized as such in *Wolfville Nursing Homes and Elms Residential Facility v. International Union of Operating Engineers, Local 721*, 2012 CanLII 23667 (NS LA)(Kydd)("*Wolfville*") and *Office and Professional Employees International Union v Canadian Helicopters Limited,* 2013 CanLII 42289 (ON LA)(Gee)("*OPEIU*"), the Association submits that the jurisprudence in support of this presumption is overwhelming. Explicit

language would be required, it submits, to exclude employees from eligibility.

12. In this case, submits the Association, there is nothing in the parties' proposals or negotiating history or in the *July 2025 Award* that would rebut this presumption. The *July 2025 Award* specified that the percentage increases were to be applied "across the board". The term "across the board" has a well-defined and broadly understood meaning, which includes "affecting everyone or everything in a group", "embracing or affecting all classes or categories", or "affecting everyone or ever thing within an organization, system, or society". This widely understood meaning of the term "across the board" is reflected in awards such as *Central Park Lodges and SEIU, Loc 210 (Re),* 2001 CanLII 6202 (ON LA)(Etherington)("*Central Park Lodges*"), *British Columbia Public School Employers' Association/SD No. 39 (Vancouver) v British Columbia Teachers' Federation (VESTA Adult Educators' Sub-Loca)*, 2024 CanLII 57517 (BC LA)(Hall)("*BCFT*"), *Dare Foods Ltd. and BCTGM, Local 264 (Wages), Re,* 2017 CarswellOnt 18895 (OLA)(Levinson)("*Dare Foods*").

13. The parties here debated *what* the ATB increases should apply to, submits the Association, but at no point did they dispute *who* they should apply to. Having failed to put forward a proposal to restrict the application of the retroactive increases, the University now seeks to attain what the Association describes as a windfall that it neither bargained for nor costed at interest arbitration. To allow the University to attain this benefit now would reward delay in collective bargaining and undermine the assessment of total compensation that underlies the *July 2025 Award*.

14. The University argues that when the Association's position is viewed in context, it amounts to a late-filed demand for additional compensation that was not made in accordance with the MOA or the 2025 MOA. Under the agreed-to process, the parties were required to exchange the proposals they were taking from mediation to interest arbitration on February 4, 2025. The Association's wage proposal, forwarded at that time and pursued through interest arbitration, did not include any claim for payment of retroactive increases in either of

the specific circumstances it is now pursuing. The absence of such a proposal, submits the University, is relevant when one then considers the practice and bargaining history of these parties.

15. In particular, prior to the current round of negotiation, the parties exchanged correspondence related to the implementation of the 2023 interest award in *The Governing Council of the University of Toronto and UTFA,* 2023 CanLII 85410 (ON LA)(Gedalof)(the "*2023 Award*"). I will return to this exchange in addressing the application of ATB increases to starting salaries for new hires. With respect to the payment of retroactive increases to former employees, the Association wrote as follows to the University on September 28, 2023:

> …
>
> 5. Confirmation of the application/payment (including appropriate retro) of the 7% ATB and PTR increases to UTFA members whose employment ended between July 1, 2022, to June 30, 2023, through resignation, change of employment, etc. It is UTFA's position that retroactive compensation is to be paid to applicable members.
>
> …

16. In response on this issue, the University wrote on September 29, 2023:

> 5. It is our practice that faculty members and librarians who have left the University prior to the date of a settlement/arbitration award (other than those who have retired) are not eligible for retroactive ATB and July 1, 2023 PTR merit increases (if applicable). However, we recognize that there are some unique factors in this circumstance because of Bill 124 and the declaration that it was unconstitutional. As such, on a without prejudice or precedent basis, we will provide retroactive payments to individuals who resigned from the University between July 1, 2022 and September 6, 2023 in the November pay, using the banking information that we have on file.

17. In the University's submission, it put the Association on notice of the parties' normal practice and the exceptional circumstances in which it would depart from that practice. Having done so, it was incumbent on the Association, if it wished to otherwise depart from that practice,

to make a proposal to that effect. It did not do so and there is therefore no factual or legal foundation to support awarding additional compensation.

18. The failure to make a proposal is especially significant in this case, argues the University, where the parties agreed to a transparent process that would allow for the assessment of total compensation awarded (recognized as important considerations in the *2023 Award* at paras. 50 to 55). In the absence of a specific proposal and an identified outstanding issue referred to interest arbitration, the University submits that I am without jurisdiction to award these retroactive payments now. Section 6(19) of the parties MOA restricts my jurisdiction to unresolved matters, and those matters needed to have been referred to me in accordance with the 2025 MOA.

19. In response to the authorities relied upon by the Association, the University submits that each can be distinguished on their facts because here the parties have an established practice with respect to the payment of retroactive wage increases, in circumstances where the University explicitly stated its intention to revert to past practice. It does not dispute that the *Penticton* award is the seminal case addressing retroactive payments to former employees. However, in that award Arbitrator Weiler emphasized that the same presumption relied upon by the Association here arises from a principle of contract interpretation, and not from any binding legal rule (p.111). Parties are free to bargain the restriction of retroactive payments to current employees if they wish to do so. In providing this clarification, Arbitrator Weiler acknowledged the importance of negotiation history and past practice in interpreting the parties' agreement. Where such evidence exists, he observed, "arbitrators are entitled to place a gloss on the interpretation of the broad language of the clause, in reliance upon that extrinsic evidence…" (at p.112).

20. In reply the Association submits that there can be no doubt that I have the jurisdiction to confirm the payment of retroactive increases to those who have left employment. The present dispute does not relate to any new proposal, but rather to the implementation of the *July 2025 Award,* with which I am seized in accordance with paragraph

106 of that award. Interest arbitrators routinely remain seized with such issues, as reflected in *Participating Hospitals v OPSEU,* 2024 CanLII 8238 (ON LA)(Kaplan)("*Participating Hospitals*") and *Ontario Crown Attorneys' Association (OCAA) v Association of Law Officers of the Crown (ALOC),* 2025 CanLII 8871 (ON LA)(Gedalof)("*OCAA*").

21. The Association further disputes that there is any substantive evidence of a past practice before me that supports the University's case. The University's evidence is limited to self-serving correspondence sent by the University to the Association in respect of the prior round of bargaining, in which the University in fact agreed to pay the retroactive compensation the Association is now seeking. The correspondence does not even say that the University *will* revert to its alleged past practice. Rather, in addressing the starting salary issue it references its "right" to revert to past practice "in the future", and in addressing payments to individuals who had resigned it says payments are made "on a without prejudice and precedent basis". In this context, if the University wished to create exceptions to the plain and ordinary meaning of "across the board increase", it was the University, and not the Association, that was required to make a proposal to that effect. The University's theory of the case here, submits the Association, is backwards.

Analysis

22. Having carefully considered the parties' submissions and, critically, the terms of the *July 2025 Award,* I find that I have the jurisdiction to determine whether or not retroactive ATB increases should be paid to non-retirees who worked during the term of the agreement but who left employment prior to the award. If the Association was pursuing a new proposal, that would be another matter. But the fact is that neither party specified who would be eligible for retroactive payments in their proposals. Neither were the eligibility issues that have now arisen specifically addressed by either party in any of their submissions or materials giving rise to the *July 2025 Award.* Rather, both parties proposed that ATB increases would be retroactive to the effective dates and that is what I ordered. There is now a dispute between the parties with respect to implementing that

order, and in accordance with paragraph 106 of the *July 2025 Award* I remain seized with issues of implementation.

23. It would also be another matter if this were a dispute about enforcing a provision that was awarded to form part of the parties' bargain, as was the case in *University of Toronto and The University of Toronto Faculty Association*, 2024 CanLII 65894 (ON LA)(Gedalof). But here, much like the circumstances in *Participating Hospitals* and *OCAA,* the dispute arises from the terms of the interest award itself, and the dispute must be resolved in order to implement that award. The dispute therefore falls within my jurisdiction as interest arbitrator.

24. The wages award in issue is set out at paragraph 105 of the *July 2025 Award* as follows:

> 1. **Wages**
>
> Effective July 1, 2023-ATB increase of 3.5%
> Effective July 1, 2024-ATB increase of 2.5%
>
> ATB increases are retroactive and applied to base salary, salary minimums, per course stipends/overload and PTR increments and break points.

25. In this case, there is nothing in the award (or indeed in either party's proposals or materials at interest arbitration) that suggests any restriction on what is a common and straightforward award of retroactive wage increases. On its face, a proposal that stipulates that a wage increase is "effective" as of a given date reflects an intention that the retroactive increase be paid out as though it was in effect at that time. There can be no doubt that if the wage increase was in effect at that time, it would be payable to employees who performed work during the term of the agreement but left prior to my issuing the award. As discussed in *Penticton* and the many cases that have followed it, "one clearly intended effect of a retroactivity clause is to apply the new monetary benefits to *work performed* between the date of expiry of the last contract and the date on which the new contract settlement is reached" [*emphasis added*] (p.105). The former employees in issue may have left the University prior to the award, but they did perform

work on and following the effective date of the increases. The presumption is that they should be compensated for that work at the retroactively established rate.

26. As the University argues, and as Arbitrator Weiler acknowledges in *Penticton,* parties can agree to alternate terms for retroactive increases. Here, the University relies on what it asserts is the parties' past practice, and on the correspondence between the parties following the *2023 Award*. But as the Association argues, the evidence before me on retroactive payments to non-retirees is limited to the exchange of correspondence referenced above. This evidence amounts to a bald assertion of practice by one party, which is not accepted by the other. Further, because this assertion was accompanied by an agreement to make the retroactive payments, albeit on a without prejudice basis, I would not give weight to the fact that the Associaton does not appear to have responded to contest this assertion. There is no sense in which the Association can be taken to have conceded the position it took in writing to the University, which is that "retroactive compensation is to be paid to applicable members."

27. In this light, I cannot accept the University's argument that it was incumbent on the Association to expand on its proposal for retroactive increases in order for that proposal to be given its plain and ordinary meaning. The *2023 Award* granted a wage increase "retroactive to July 1, 2022". At best, the correspondence identifies a difference of opinion between the parties concerning who should be eligible for retroactive payments under that award, which dispute was resolved on a without prejudice basis. Neither party chose to specifically address that dispute in their proposals or submissions with respect to the 2023 and 2024 ATB increases. I am therefore left with the language of the parties' proposals as context, and the terms of my award, which must be implemented. In the absence of any indication of a contrary and mutual intent from the parties, the plain language of the *July 2025 Award* should be implemented in accordance with its presumptive meaning.

28. For all of these reasons I find that the University is required to make retroactive payments to all eligible employees covered under the

MOA, irrespective of whether they left employment prior to the issuance of the *2023 Award.*

Retroactive Application of ATB Increases to Starting Salaries

Facts and Arguments

29. The University brings the same jurisdictional objection as above to the Association's starting salary position and that objection is dismissed for the same reasons. The Association is not here pursuing a new or late filed proposal, but rather a determination that is necessary for the implementation of the *July 2025 Award*.

30. Unlike the application of ATB increases to non-retirees however, I find that the correspondence concerning the implementation of the *2023 Award* does provide some context in determining the starting salary issue.

31. The *2023 Award* was issued on July 3, 2025. On September 28, 2023, the Association wrote:

> Confirmation of the application/payment of the 7% ATB increase (including appropriate retro payment) to UTFA members hired between July 1, 2022 and June 30, 2023 due to the fact that they negotiated their salaries based on a comparison to an artificially- and unconstitutionally deflated set of salaries, and thus their salaries are now no longer competitive. [emphasis added]

I note that the Association's articulation of the issue in this correspondence, unlike the issue of payments to former employees, is linked to the unconstitutional deflation of salaries under Bill 124 and not, apparently, the general application of retroactive increases to starting salaries.

32. In response, on September 29, 2023 the University wrote:

> We can confirm that faculty members and librarians hired on and after July 1, 2022, including those hired on July 1, 2023, will receive the additional 7% ATB adjustment retroactive to their start dates. These faculty members and librarians would have received offers that provided for a fixed starting salary explicitly

> not subject to these increases. Nevertheless, in the unique circumstances of this award arising following a declaration that Bill 124 is unconstitutional, and without prejudice or precedent to University's right to revert to our normal practice in the future, we have decided to do so in this instance. We had not concluded our consultations with divisions in this respect prior to our September 26 meeting, which is why we were not in a position to confirm this for you at the time. [emphasis added]

33. This correspondence stakes out the parties' positions in the specific and unique context of the application and subsequent invalidation of the unconstitutional Bill 124 wage restraint legislation. It also resolves that issue on a without prejudice basis. It does not reflect either party conceding the other's position, and this correspondence is certainly not, on its own, determinative of the issue before me. But what it clearly does is identify the explicit exclusion of ATB increases from starting salary under the hiring letters for all affected faculty and librarians. As discussed further below, and again in contrast the former non-retiree issue, there is ample evidence before me, which stands entirely uncontradicted, to establish the University's practice of excluding ATB increases from starting salary.

34. The University's argument, and its reliance on the hiring letters and its past practice, turns on the manner in which starting salaries are set under the parties' compensation structure. It contrasts this structure with the conventional salary structure addressed in cases such as *Dare Foods Ltd. and BCTGM, Local 264 (Wages), Re,* 2017 CarswellOnt 18895 (Ont. LA)(Levinson)("*Dare Foods"*). In order to properly assess both parties' augments, it is necessary to understand this structure, and how it differs from a more typical negotiated wage grid.

35. Under a conventional collectively bargained wage model the application of awarded ATB increases to starting salaries is not controversial. There is typically an expired wage grid with a fixed start rate and some number of fixed steps above it. Placement on the grid is usually based on years or hours of service. In such cases, ATB increases are applied to each step on the grid, including the start rate. Any employee hired at the expired start rate during the term of the agreement will receive the benefit of any retroactive increase to that

start rate. Under this conventional model, start rate is no different than any other step on the wage grid, all of which are negotiated by the parties and rise with the ATB increase.

36. In the present case, however, there is no fixed start rate and there are no fixed steps above it. Instead, there is a fixed salary floor, but the University and individual faculty and librarians can agree to any start rate they like provided it is at or above the salary floor. The Association does not negotiate start rates on behalf of faculty and librarians: only the salary floor. The University's ability to engage in such individual negotiation with new hires is not in dispute. Article 1 of the MOA reflects the nature of the MOA as setting minimum rights that do not otherwise restrict direct dealing between the University and individual faculty and librarians in this manner:

> Article 1: Purposes
>
> Given that both parties desire to promote the welfare of the University of Toronto and its faculty and librarians, the purposes of this Agreement are:
>
> - to create or confirm the minimum rights, privileges and benefits which the University of Toronto shall grant to faculty members and librarians and to the Association;
>
> - to provide reasonable protection from unilateral changes to approved policies and practices relating to terms and conditions of employment of faculty members and librarians;
>
> - to maintain formally an effective and orderly procedure for the discussion and determination of salaries benefits and workload and other significant terms and conditions of employment of librarians and faculty members contained in existing or proposed University-wide policies;
>
> - to formalize the relationship between the University of Toronto and the Association and to maintain conditions of support for the Association; and
>
> - to accomplish the foregoing purposes (a) recognizing the importance of not derogating from or diminishing the existing rights of the individual faculty members and librarians, (b) recognizing the roles of the duly established bodies and groups within the University of Toronto and (c) within the framework of an agreement and relationship between the Governing Council and the

> Association that is outside The Labour Relations Act of the Province of Ontario and that does not prevent individuals or groups from seeking and obtaining terms and conditions of employment which they consider more favourable than those referred to or determined through processes prescribed in this Agreement.
>
> [emphasis added]

37. There is no dispute that the ATB increases apply to the expired salary floors. Thus, any faculty or librarians hired at the expired salary floor during the term of the new agreement will receive the retroactive ATB increase to that floor. But faculty and librarians are commonly hired above the salary floor. Further, they are typically, though not exclusively, hired effective July 1 of each year, that is, the same day that the ATB increases are made effective. At issue is whether individually negotiated start rates that are already above the new salary floor are subject to the retroactive ATB increase.

38. The University filed numerous examples of hiring letters spanning the period 2013 to 2024, in addition to copies of templates used by the University in preparing these letters. These letters are signed by the University and each new hire and contain the offer of employment that is accepted by the new hires and that gives rise to their employment. The relevant provision has changed slightly over the years, but they all confirm that the agreed-to starting salary will not be subject to an initial ATB increase. For example, a March 20, 2023 hiring letter offering a tenure stream position effective July 1, 2023, which offer was accepted and signed back, includes the following terms for salary:

> Salary
>
> Your starting salary will be $[redacted] per month, equivalent to an annual salary of $[redacted]. This is a firm salary offer and will not be affected by any salary increase effective July 1, 2023 that may occur as a result of negotiations between the University and the University of Toronto Faculty Association (UTFA), unless your salary falls below the applicable minimum amount in which case your salary will be increased to that minimum.

39. Further examples for appointments effective September 1, 2023 and January 1, 2024 contain the identical clause, i.e., confirming that any July 1, 2023 ATB will not impact the starting salary.

40. Hiring letters for appointments effective July 1, 2024 contain the same clause, with reference to the July 1, 2024 increase or, in one case, both the July 1, 2023 and July 1, 2024 increases. Historically, in the samples provided from 2013 to 2022, the hiring letters contained the identical language but without the final phrase referencing the salary minimums.

41. In light of this evidence, I reject the Association's argument that the hiring letters are not sufficient evidence of past practice. The University has provided numerous examples of these letters spanning the period 2013 to the present. It has provided multiple templates containing the same language. The University's position is not, as it was concerning retroactive payments to former employees, based on a bald assertion.

42. Further, it must be recalled that this is an interest arbitration; a context where parties routinely rely on a written record to support their positions. Most relevant facts are not in dispute. Sworn testimony and formally tendered evidence are rarely required. To be clear, parties are free to challenge factual assertions made by the party opposite to which they do not agree. This is often done through the party's own documentary record. If they do not have access to the necessary information they can seek production. In exceptional cases, where necessary, parties can call *viva voce* evidence. Here the Association, faced with strong *prima facie* evidence in support of the University's position, has done none of these things. It has not even asserted that the University's assertion of the longstanding practice is wrong; it simply disputes that the University has proven it. If the Association wished to challenge the practice reflected in the hiring letters, it would have been extremely easy to do so. Instead, it is the Association that makes the bald assertion that we do not know whether or not new hires received previous wage increases. Further, even if one accepted the highly unlikely proposition that the Association was somehow unaware of the longstanding content of its member's hiring letters, it was clearly

put on notice of that content prior to this round of negotiation, mediation and arbitration. The University referred to it explicitly in the correspondence concerning implementation of the *2023 Award*.

43. I therefore reject the Association's assertion that the correspondence concerning the implementation of the *2023 Award* is the only evidence of the parties' past practice, or that the hiring letters are not sufficient evidence of this practice. And as recognized by Arbitrator Weiler in *Penticton,* it is necessary to consider this evidence in assessing the parties' positions.

44. In setting out the context in support of its position, the University emphasizes that the MOA preserves and prioritizes individual negotiations at the time of hire. In arriving at starting salaries, academic units must address budgetary issues, factors specific to the candidates and their discipline, and prevailing market conditions at the time of hire. These factors, and not the salary minimum negotiated by the Association, are what typically impact starting salaries. The University does not dispute that ATB increases negotiated by the Association impact future salary increases, but not the starting salary on the date their appointment begins. That, along with other important terms and conditions, are individually negotiated.

45. Put differently, the University submits that July 1 ATB increases are applied to the expired June 30 rates for existing faculty. Faculty newly hired on July 1 have no such rate. Neither do faculty hired later in the year. I note that while there are references in the University's written submissions to new hires being ineligible for ATB increases during their "first year of employment", the University clarified that faculty hired prior to the date of the ATB increase would be eligible for the July 1 ATB increases. For example, a professor whose appointment was effective January 1, 2024 would not receive the July 1, 2023 ATB increase, but would receive the July 1, 2024 increases, notwithstanding that it would fall within their first year of appointment. In that instance, the appointment would have already commenced prior to July 1, 2024, and the letter of appointment would only have excluded the July 1, 2023 ATB increase. In most cases, however, faculty are hired effective

July 1, and so the University's position is that they are not eligible for an ATB increase during their first year.

46. In the University's submission, it does not rest with an interest arbitrator to override the individually negotiated terms and conditions of employment reached through a process expressly contemplated and endorsed by Article 1 of the MOA. To do so would constitute an unsupported expansion of the interest arbitrator's jurisdiction under Article 6(19) of the MOA. But even if such jurisdiction exists, the University submits that it would be improper to exercise it to grant the increases sought by UTFA, given the clear and unambiguous language of the hiring letters.

47. Much of the Association's argument that ATB increases ought to be applied to the starting salaries of new faculty and librarians mirrors its arguments with respect to former employees. I will not repeat those arguments in detail here. In sum, new hires who are employees on or after the day a retroactive increase is ordered are presumptively entitled to that increase. They are employees on or after July 1. The increases are awarded effective July 1. It is the University that seeks to create an exception to their presumptive eligibility, and it is therefore the University that was required to make a proposal to exclude them. The University did not do so, and such employees ought therefore to benefit from the same increase as everybody else.

48. The Association argues that the University's position, especially its reliance on the hiring letters, runs contrary to the unequivocal language of the MOA, which is to "create or confirm the minimum rights, privileges and benefits which the University of Toronto shall grant to faculty members and librarians and to the Association" (Article 1)[emphasis added]. The minimum across the board increases, it submits, effective July 1 2023 and July 1 2024 as ordered in the *July 2025 Award,* are an essential element of the University's binding commitment to provide minimum entitlements to the Association's members. There is nothing to suggest that these increases, which were unknown at the time new faculty negotiated starting salaries with the University, are already "baked in" to the negotiated starting salaries. Further, one factor that faculty and librarians will look to in negotiating

a starting salary is the compensation being paid to their colleagues, which had also not yet received ATB increases at the time. In purporting to enter into individual contracts with faculty and librarians that would deprive them of the same minimum entitlement as those colleagues, the Association submits that the University violates the MOA.

49. The Association recognizes that there is no legislative prohibition on individual bargaining, and that the MOA specifically permits the negotiation of "more favourable" terms. The MOA is also not, it acknowledges, a collective agreement under the *Labour Relations Act.* But it maintains that the MOA is nonetheless a binding agreement between the parties that restricts the University's ability to engage in individual negotiations. In this case, citing *University of Ottawa v Association of Professors of the University of Ottawa,* 2018 CanLII 37186 (ON LA)(Baxter)("*University of Ottawa*") and *York University Faculty Association and York University (2013),* 2013 CanLII 13363 (ON LA)(Steinberg)("*York University*"), the Associaton argues that where the MOA gives rise to awarded minimum salary increases, it is not open to the University to bargain away that minimum entitlement in pre-hire negotiations; it can only individually bargain superior conditions. The collective agreement in *York University* allowed for such individual negotiations, while the MOA here does not.

50. Neither, in the Association's submission, is there any basis for the University's submission that the MOA "preserves and prioritizes" individual negotiations at the time of hire. In providing for guaranteed minimum terms and conditions of employment, the MOA draws no distinction between new hires and any other ongoing negotiations that members are entitled to engage in throughout their contracts. In either case, those negotiations, to which the Association is not a party, cannot supersede the bargain between the Association (on its own behalf and on behalf of its members) and the University.

51. In the Association's submission, were the University to succeed in its position here, it would mean that the MOA is effectively meaningless. The University could simply exclude faculty and librarians from any of the negotiated benefits through pre-hire individual

negotiations, at a time when new hires, especially those early in their careers, will have the least bargaining power. This could include requiring new hires to opt out of salary floors, benefits, grievance rights, workload protections, academic freedom, or any other negotiated entitlement or protection. Citing *Canadian Union of Public Employees, Air Canada Component v Air Canada*, (2020) CanLII 25181 (CA LA)(Gedalof), the Association argues that rendering the "minimum" guarantees of the MOA meaningless would undermine the parties' clear intent based on the words of the agreement.

Analysis

52. I accept that the MOA establishes minimum entitlements and that the MOA here, unlike the finding in *York University,* does not allow for the individual negotiation of inferior terms and conditions. A pre-hire agreement to opt out of binding minimum guarantees under the parties' MOA is clearly unenforceable. But the Association misstates the University's argument when it characterizes it in these terms.

53. Properly characterized, the University's argument does not rest on any ability to contract out of the minimum entitlements negotiated under the MOA. Indeed, in negotiating starting salary the University explicitly agrees that it cannot negotiate below the salary floor, and that retroactive increases will be applied to any salary that falls below the increased floor. The suggestion that pre-hire negotiations could detract from ongoing negotiated terms, like the right to grieve, access improvements to negotiated benefits, or to exercise academic freedom, absent some provision in the MOA that allows for such an extraordinary result, is obviously absurd. But that is not the argument the University makes.

54. Instead, the University's position is limited to circumstances where new faculty and librarians are hired at a rate that is *higher* than the negotiated minimum. Further, its position is that ATB increases will not apply to starting salaries *only* in circumstances where the starting salary *continues* to be at or higher than the minimum as adjusted by any retroactive ATB increases. The University's position is far narrower and requires a more nuanced examination than the broad assertion

that the University purports to be entitled to enter into pre-hire agreements contracting out of the MOA.

55. As the University repeatedly emphasizes, the MOA permits it to individually negotiate any mutually agreed-to starting salary that is at or above the floor. As set out above, one of the purposes of the MOA is to "not prevent individuals or groups from seeking and obtaining terms and conditions of employment which they consider more favourable than those referred to or determined through processes prescribed in this Agreement". To this end, the MOA permits individual faculty and librarians to negotiate a starting salary without the Association's agreement. The only constraint placed on this exercise under the MOA is that the salary must be at or above the negotiated (or awarded) floor. What the hiring letters effectively do is guarantee compliance with this minimum entitlement, including in circumstances where the floor is retroactively increased. This is not a circumstance such as *University of Ottawa,* where a party negotiated a condition of employment superior to any more broadly negotiated guarantee, from which the University then sought to resile. Neither is it like *York University* where the University sought to rely on a pre-hire agreement that was less than the minimum guarantee.

56. What makes determining the application of ATB increases in this case unusual is the combination of the right to individually negotiate a superior starting salary, the timing of the commencement of employment, the effective date of the retroactive increase and the date on which the retroactive increase is awarded.

57. At the time of hiring, retroactive ATB increases are clearly within the contemplation of the parties to the hiring letter, as reflected in its standard terms. In most cases, the date employment begins and the effective date of the "excluded" ATB increases is the same: July 1 of a given year. As addressed in the University's materials giving rise to the *July 2025 Award,* most faculty are hired at rates above the floor. Thus, it is significant context that the actual negotiated rate is one that was both permissible at the time it was agreed-to, and that is guaranteed to have also been permissible had the ATB increases been awarded and applied to the salary floors at the time the contract commenced. There

is no circumstance where new faculty will have individually negotiated a starting salary that is inferior to the minimum entitlement under the MOA. In this context, there is no practical difference between saying that the initial ATB increase will not apply to the start rate, on the one hand, and saying that the start rate shall be inclusive of the ATB increase, subject to the floor, on the other. Where both the ATB increase and the start rate become effective at the same time, or where the ATB increases is effective prior to the commencement of employment, I do not see this as akin contracting out of a future entitlement. As the University argues, the Association's position assumes that employment starts and then the ATB must be applied to the existing start rate. In fact, both events take place simultaneously.

58. Further, I note that the potential unfairness identified by the Association in respect of former employees does not arise on the University's position here. It is true that employees working under an expired agreement will frequently do so with the understanding that they will benefit from retroactive wage increases when the contract is ultimately settled. But that is not the case for new hires who negotiated their starting salary above the floor with the explicit and agreed-to understanding that it will not be subject to an initial across the board increase retroactive to a date prior to or on their date of hire.

59. Neither does the University's position raise the costing issues identified by the Association in respect of former employees. The Association notes that the University based its costings on faculty and librarians employed as of June 30, 2023. Such costings would not have included faculty hired on or after July 1, 2023.

60. It is in light of all of this context that I find the established practice of excluding an initial ATB from starting salaries above the floor is instructive. There can be no doubt that the University's proposal for retroactive across-the-board increases was intended to be implemented in a manner consistent with this established practice. It is not just that it identified the practice in the 2023 correspondence; it also continued to assert that practice in every one of the hiring letters placed before me. The Association cannot say that it was unaware of the content of the hiring letters. The Association's only previously

stated objection to applying retroactivity in a manner consistent with the hiring letters and past practice was linked to unfairness arising from unconstitutional wage restraint legislation. That legislation is no longer in effect and was not in effect at the time material to the current dispute. In the absence of any proposal from the Association to depart from the practice identified in the hiring letters, I find that it is reasonable to conclude that it was not proposing a departure from that practice. The position it now pursues at the implementation stage is not, therefore, properly reflected in the proposal it pursued at interest arbitration.

61. For all of these reasons I find that the across-the-board increases should be implemented in a manner consistent with the hiring letters that are before me, i.e., subject to the salary floor, retroactive increases made effective on or before the start date for employment will not be applied to starting salary.

YEAR-3 ATB INCREASE

The University's Jurisdictional Objection

62. The University objects that the Association's proposed increases to the librarian salary floors does not fall within the scope of my jurisdiction under the 2025 MOS. In the University's submission, a special increase to the Librarian salary floor that is proposed in addition to the Association's proposal for a 4% across the board increase is patently not a proposal for an "across the board" increase. It is a proposal for a special increase that would apply to only one class of employees. Neither, it submits, does the proposal for a June 30, 2025 increase fall within the temporal scope of my jurisdiction at this phase of the proceeding.

63. Similarly, the University argues that the Association's proposal to first increase the salary floors by the ATB amount, and then further apply the ATB increase to the new floor for any faculty or librarians whose expired rate is below the new floor, is also not a proposal for an

"across the board" increase. It is rather another form of special increase, that would result in some faculty receiving a greater percentage increase than others.

64. The Association argues that its proposals are a moderated version of its proposals from the first phase of this arbitration, and that as a "salary related item that may be subjected to an ATB increase" they fall within my agreed-to jurisdiction for this phase.

65. Considering the unambiguous terms of the 2025 MOS it is clear that the University's jurisdictional objection must succeed. The relevant paragraphs of the 2025 MOS provide as follows:

> 1. Eli Gedalof will be appointed as mediator, and if necessary interest arbitrator, with respect to unresolved salary, benefit, and workload issues for the three year period July 1, 2023 to June 30, 2026, as per the terms and conditions in the August 2, 2024 emails attached hereto as Appendix A, and set out in this Memorandum of Agreement.
>
> 2. In respect of any interest arbitration, Eli Gedalof will hear and determine unresolved salary, benefit and workload issues as identified by the parties pursuant to paragraph 5(a) below for the three year period July 1, 2023 to June 30, 2026. Notwithstanding the foregoing, the parties agree that any across the board (ATB) percentage salary increase, including any salary related items that may be subject to an ATB increase, for the year 3 period of July 1, 2025 to June 30, 2026 shall not be rendered in any initial interest arbitration award and instead will be subject to the terms and conditions in paragraph 3 below.
>
> 3. Any ATB percentage salary increase, including any salary related items that may be subject to an ATB increase, for the period July 1, 2025 to June 30, 2026 will be subject to without prejudice discussions between the parties in the summer of 2025. If the parties are unable to reach agreement on an ATB percentage salary increase, including any salary related items that may be subject to an ATB increase for the period July 1, 2025 to June 30, 2026, Eli Gedalof will act as interest arbitrator to determine any ATB percentage salary increase and any salary related items that may

be subject to an ATB increase, for the period July 1, 2025 to June 30, 2026, with a mutually convenient interest arbitration hearing date to be scheduled in this regard in the fall of 2025.

4. In respect of any interest arbitration regarding unresolved salary, benefit, and workload issues for the period July 1, 2023 to June 30, 2026 (save and except year 3 ATB percentage salary increase, including any salary related items that may be subject to an ATB increase, as set out in paragraph 3 above), the parties will not refer to interest arbitration any issues other than those regarding unresolved salary, benefit or workload issues identified in the mediation briefs exchanged by the parties and provided to mediator Gedalof on or about October 3, 2024, other than in respect of the parties proposals on any ATB percentage salary increase, including any salary related items that may be subject to an ATB increase, for the period July 1, 2024 to June 30, 2025, in circumstances where the parties respective mediation briefs did not include such ATB percentage salary increase proposal or any salary related items that may be subject to an ATB increase, for a second year.

[emphasis added]

…

66. As reflected in the emphasized phrases above, the sole issue that was reserved for the second phase of this proceeding was a singular across-the-board increase for the period July 1, 2025 to June 30, 2026. The defining feature of an "across the board" increase is that it applies "across the board", i.e., it is a general increase that is the same for everybody. The across-the-board increase is repeatedly referred to throughout the 2025 MOS in the singular. The Association seizes on the phrase "including any salary related items that may be subject to an ATB increase". But as evidenced by the word "including", that phrase is not a stand-alone grant of jurisdiction; it rather identifies various heads of compensation that will be subject to the same, singular, "across the board increase". The term "across the board increase" stands in contrast to "special increase" or, as the Association refers to its proposal in its brief, "special adjustment". These terms are commonly used and well-understood in collective bargaining and interest

arbitration. These are sophisticated labour relations parties and it is inconceivable that in reserving "an ATB percentage salary increase" to a second phase of interest arbitration they intended to allow for a separate "special adjustment" to the salary floor for a given class.

67. The Association's proposal to apply the increase to the Librarian floors on June 30, 2025 is also clearly outside of the scope of my temporal jurisdiction. Were this the only problem with the proposal one might address it by simply applying the increases on July 1, prior to the application of the ATB. However, given that the proposal for any form of special increase is not within my jurisdiction, I need not determine whether I can or should exercise any jurisdiction I may have to permit the Association to amend the implementation date for this proposal.

68. The Association's proposals to increase the salary floor for Librarians I and II, and to apply ATB to salaries after first raising salaries to the new floor, are therefore dismissed.

The Year-3 ATB Increase

The Association's Argument

69. In addition to its brief, reply brief and oral submissions, the Association relies on all of its submissions in the prior phase of this proceeding. Those submissions are summarized in the *July 2025 Award* and I will not repeat them here.

70. As a starting point, the Association emphasizes the University's status as the highest ranked and most prestigious university in Canada, and indeed one of the top-ranked public universities in the world. Compensation, it submits, must reflect that stature and the workload and performance expectations that come with it. Further, this stature underlies the parties' joint commitment, most recently recognized in the *July 2025 Award,* to maintaining compensation at the University that is "top of market".

71. In the Association's submission, its proposed ATB increase of 4% is necessary to fully compensate faculty and librarians for their elevated quality of work and the exceptional effort they put in to producing that work, and to maintain them as top of market.

72. The Association also relies on inflation as a key factor in support of its wage proposal. Applying the parties' historical "prior year" model for assessing inflation, which was also adopted in the *2023 Award* and again in the *July 2025 Award,* the Association submits that salary increases for faculty and librarians under the prior agreement left them a compounded 1.4% behind. In its submission, its proposed 4% increase is required to complete the gradual catch up of wages to inflation. The *Burkett 1982 Award* recognized that catch up could take place over reasonable period of time, and in the Association's submission it would not be reasonable to wait more then 4 years to close the gap.

73. The Association also submits that in the broader economy, wages do not merely track inflation over time; there ought also to be real wage growth, reflecting growth in productivity. Absent real wage growth, the Associaton submits that its members are lagging behind other workers across Canada and Ontario. They also lag behind growth in salaries for the University's senior leadership team.

74. In the Association's submission, the University is also in a strong financial position. In the fiscal year ending April 30, 2025, the University generated net income of $519 million, an increase from $507 million in the prior fiscal year. It has over $300 million in liquid cash reserves. In the current fiscal year enrolment grew by 2.9% and operating grant funding, the Association asserts, will increase by 7% over three years, beginning in 2024. Notwithstanding limits on fee increases and changes to immigration policy that could limit international student revenue, the Association submits that the University is thriving financially, and revenue growth exceeds the increases it is seeking.

The University's Argument and Reply

75. The University submits that its proposed 1.5% is an appropriate ATB increase, consistent with the agreements it has reached with internal comparators and reflective of current budgetary realities. Like the Association, it repeats and relies on its submissions from the first phase of this proceeding, and again I will not repeat my summary of those submissions.

76. In the University's submission, faculty and staff compensation as a percentage of its total operating expenses has grown from 57.51% in 2020-21 to 61.87% in 2024-25 to a projected 64.00% in its 2025-26 Budget. Further, its operating expenses are increasing at a rate that outpaces its ability to grow revenue. Base operating grant funding has been frozen for decades, and domestic tuition has been frozen since a 10 percent decrease was mandated in 2019-20. The University in 2024-25 generated less total revenue from tuition fees and operating grants combined than it did in 2018-19, *not adjusted* for inflation. Historically, compensation increases have been funded by international student tuition. With changes in government policy, the international cohort decreased by 6% in 2024 and will decrease by a further 5% in 2025. In a crowded market for international students, the University submits that it cannot continue to increase international tuition to keep pace with increased operating expenses. This issue was addressed in the University's March 2025 Arbitration brief and it submits that the contrast between the stagnation of key revenue sources and increased expenses has only grown.

77. Addressing inflation, the University submits that the prior year CPI has increased, over the relevant 12-months, by 1.6% in Ontario, and 1.73% nationally. Its proposed 1.5% increase is reasonable in this context. Further catch up, it submits, would not be appropriate at this time in light of its financial circumstances and other factors.

78. In the University's submission, internal comparators continue to provide important guidance, as recognized in the *July 2025 Award.* Since that award, the University has negotiated collective agreements with CUPE Local 3902, Units 3, 6 and 7. Since the initial application of

Bill 124, those units have negotiated increases of between 15.8% and 16.6% non-compounded over 6 years. The Association has already achieved a 16% non-compounded increase over 5 years, and on the University's proposal that would increase to 17.5% over a comparable 6-year period.

79. The University further submits that salaries for faculty at the University compare favourably to the salaries paid at universities across Ontario and Canada. The most recent data available from Statistics Canada is from 2023, and that data places the rate at University of Toronto for all ranks combined at the top, some $350 ahead of second place UBC, and almost $20,000 ahead of third place University of Waterloo. The "top of market" principle, it emphasizes, does not require maintaining the University's *relative position* to other universities; a requirement that would lead to "whipsawing" as those other universities seek to catch up to the University of Toronto. In the University's submission, its faculty are already at the top of market, and an increase beyond its proposed 1.5% is not required to maintain that position.

80. In reply to the Association, the University argues that the Association has again overstated the relevance of inflation, to the effective exclusion of other considerations, as it was found to have done in the *July 2025 Award*. Further, when one compares the changes in the CPI to UTFA ATB increases over the period 2005-06 to 2024-05, based on the data submitted by UTFA, growth in salaries has actually exceeded inflation by some 5.8%. Further, the University notes that the Association's argument that real wage growth has stagnated in comparison to the broader economy does not account for wage growth through the PTR process. There is also, it submits, no proper comparison to the most senior academic administrators, whose compensation remains subject to and governed by the *Broader Public Sector Executive Compensation Act, 2014.*

81. The Association's assessment of the University's financial position, argues the University, is also flawed. In its submission, the Association has quoted selectively from the University's Financial Report of April 30, 2025, omitting important qualifications and context.

For example, the Association describes "an across-the-board increase in operating grand funding of about 7% over three years by the Government of Ontario, starting in 2024." It omits, however, the rest of the paragraph from the Report which explains that the increase is only to 20% of the budgeted operating revenues, and there is no commitment to continue that funding beyond 2026-27. The fiscal challenges identified in the *July 2025 Award,* it argues, remain apposite these months later.

82. Finally, the University argues that the Association's proposed 4% ATB increase is not normative amongst the University's closest comparators, being the U-15 Universities within Ontario. These universities, it submits, experienced the impact of Bill 124 and the financial consequences that followed the determination of its unconstitutionality. Over the period 2020-21 to 2024-25, wage increases at University of Toronto have already exceeded all of these comparators. Normative increases at those comparators for 2025-26, freely bargained, are more in the range of 2-2.5% than the 4% proposed by the Association. Increases at McMaster University of 5.5% and at University of Waterloo of 3.6% represent catch up in circumstances where those parties had not yet reconciled with Bill 124 and the earlier spike in inflation.

The Association's Reply

83. The Association submits in reply that there is no basis for a sub-inflationary increase. The University has no answer, in the Association's submission, to the fact that salaries were and remain eroded by the COVID-era inflationary surge. Catch up, it maintains, is still required.

84. Neither, submits the Association, has the University accurately reflected the reality of its financial position. The University has budgeted a 4.1% increase in compensation. Its cash position remains stronger than it was in 2 of the 3 prior years, it has a net income of $519 million, an excellent credit rating, an operating margin well above the Provincial Governments minimum threshold, and a projected increase in operating revenue of $98 million. This is a University with a balanced budget, a healthy surplus, and the ability to make choices

about its priorities. Revenue is not frozen, submits the Association, it is increasing. While the cap on international students is a challenge, and there has been a decline in the number of new students, the Association submits that international enrolment actually grew in 2024, and there is projected growth into the future. It is the excellence of faculty and librarians, submits the Association, that attracts these students and makes this growth possible.

85. The Association further notes that the University has not made a formal "inability to pay" argument, and that in any event such an argument was rejected by Arbitrator Teplitsky at a time when the University was in far more dire economic circumstances than now (see *Governing Council of the University of Toronto and UTFA,* unreported, October 5, 2010 (the "*Teplitsky 2010 Award*")).

86. The Association also disputes that the internal comparators relied upon by the University are relevant. There is, as addressed in the *July 2025 Award,* no history of faculty salaries following others on campus or *vice versa.*

87. In comparing salaries at University of Toronto to other universities across the country, the Association notes that the University's finances are far stronger than many others, which are running operating deficits. Critically, the Associaton submits that the University's own data shows that it is no longer top of market. UBC in particular is another university, like U of T, that is in a strong financial position, albeit running a smaller surplus than U of T. In 2024, UBCFA salaries increased by 3%, where UTFA salaries increased by only 2.5%. Based on the University's own data, this means that salaries at UBC have already surpassed those at U of T. Further, the Association submits, the economic increase for faculty at UBC mirrored the increase in the collective agreement between the BCGEU and the Government of BC. At the time of the hearing in this matter, the BCGEU and the Government of BC had negotiated a tentative agreement providing for a 3% increase for 2025. In the Association's submission, it is reasonable to assume that faculty salaries at UBC will rise by the same amount when they reach an agreement for that year. The

Association's proposed 4% increase would maintain its members as top of market by a modest margin.

Analysis

88. The guiding principles applicable in this matter are summarized at paragraphs 19-25 of the *July 2025 Award,* which I repeat and rely upon here. This includes the generally applicable principles that guide interest arbitration, first and foremost of which is the principle of replication. Replication, enshrined in Article 6(16) of the MOA, is in turn informed by the principle of comparability. In seeking to replicate the agreement these parties would have reached had they been able to agree, interest arbitrators will look to how similarly situated parties settled their agreements as objective evidence of how these parties would likely have reached their own agreement. For the reasons set out in the *2023* and *July 2025 Awards,* other important factors include inflation and the "top of market" principle, in addition to broader economic conditions and the University's financial circumstances.

89. There is no dispute that the U-15 universities, both in Ontario and across the country, are key comparators. As in the first phase of this interest arbitration, however, the parties join issue over the weight that ought to be ascribed to the University's internal comparators. Prior to and since the *July 2025 Award,* the University has consistently bargained increases between 1.8-2.0% for the year 2025 with its other bargaining agents. During and post-Bill 124, over a 6-year period commencing either 2020 or 2021, and ending either 2025 or 2026, it has bargained non-compounded increases of 15.8% with all but CUPE Unit 3, where increases totalled 16.6%. The Association has already been awarded increases totalling 16% over 5 years. The University's proposed 1.5% increase, while less than it has bargained with others for 2025-26, would still result in greater increases for the Association's members over the six-year period during and post-Bill 124 (17.5% non-compounded), The Association's proposed 4% increase would far outstrip increases for the University's other bargaining agents (20% non-compounded).

90. Citing the *July 2025 Award* at para. 72, the University argues that these internal comparators provide important guidance in setting the appropriate range for faculty and librarians. The Association dismisses these comparators as being of limited utility. It also cites para. 72 of the *July 2025 Award* which finds that "there is nothing in the evidence before me to suggest that faculty salaries have historically followed the University's internal comparators".

91. My views on the relevance of internal comparators have not changed. Salaries for faculty are not primarily driven by internal comparators. The University competes for faculty on a provincial, national and global stage. Faculty and librarians at other U-15 universities continue to provide the primary comparators for the Association's members. But internal comparators do provide important guidance, particularly where they are reflective of bargaining norms more broadly, and in the University sector in particular. I find again that while the Association is not limited to the increases the University has bargained with others on campus, this consideration militates against extraordinary non-normative increases.

92. In applying external comparators in the wake of Bill 124, other wage restraint legislation across the country, and following the 2022 spike in inflation, it is important to look beyond narrow year-to-year comparisons. McMaster University, for example, received a 5.5% + $950 increase in 2025-26, exceeding the 4% sought by the Association here. But this increase clearly constitutes catch-up in circumstances where those parties had not yet reconciled three years of Bill 124 wage restraint, which I note was preceded by two years of 1.5% increases. Over the five years preceding the 5.5% increases, faculty at McMaster had received a total of 6% in wage increases plus $2,300 in lump sum payments. This compares to a 16% increase for faculty and librarians at the University of Toronto over the same period. As Arbitrator Teplitsky cautioned in *University of Toronto and University of Toronto Faculty Association,* unreported, October 5, 2010 (the "*2010 Teplitsky Award*"), tying increases at the University of Toronto to other institutions that are engaged in catching up to the University of Toronto would result in inappropriate "whipsawing" (p.11).

93. Similarly, increases of 4.7% in 2024-25 and 3.6% in 2025-26 at the University of Waterloo, awarded through final offer selection in *The University of Waterloo v The Faculty Association of the University of Waterloo,* 2024 CanLII 34273 (ON LA)(Burkett), must be considered in the context of catch-up. In that case, the University of Waterloo had fallen behind both inflationary measures and recognized comparators at the University of Ottawa and Queens University. For the period 2020-21 to 2024-25, during which the Association's members received 16% in ATB increases, faculty at University of Waterloo received between 12.85 and 13.85% depending on date of hire.

94. In this context, I find that freely bargained outcomes for 2025-26 at University of Ottawa (2.5%) and Queens University (2.25%) are more compelling comparators. Faculty at Queens did not serve a Bill 124 moderation period and faculty at the University of Ottawa had a Bill 124 reopener which was resolved.

95. Having regard to the parties' joint commitment to maintaining the University of Toronto at "top of market", as discussed at paras. 23 and 80 of the *July 2025 Award,* I also find that salaries and increases at the University of British Columbia are especially relevant at this time. Based on the 2022 data provided by the University in its March 2025 brief, all ranks combined salaries at UBC trailed the University of Toronto by $17,525.00. According to the data filed in this second phase, that gap shrunk to $375.00 in 2023. I note, however, that a shrinking delta between wages at the University and its next closest comparator does not give rise to a need for a salary adjustment under the "top of market" principle (see again the *2010 Teplitsky Award* at p.11 and his caution against whipsawing).

96. However, in 2024, salaries at UBC increased by 3% while salaries at University of Toronto increased by 2.5%. It appears, therefore, that at least by the limited measure I have been provided in this proceeding, salaries at the University of Toronto are no longer top of market. It also appears unlikely that the 1.5% increase proposed by the University will be sufficient to restore and maintain the University of Toronto at the top of market.

97. Neither, however, do I find that this factor warrants awarding the 4% increase sought by the Association. The Association assumes that faculty at UBC will ultimately bargain a 3% across-the-board increase in 2025, tracking the first year of a four-year agreement between the BCGEU and the Government of British Columbia. Perhaps that will come to pass, but I am not prepared to make that assumption based on the prior round of bargaining. Future increases to faculty salaries at UBC can be assessed in conjunction future wage increases at the University of Toronto. A salary increase in line with other Ontario U-15 universities who have bargained agreements post-Bill 124 will ensure that salaries at the University of Toronto are restored to top of market, at least for the time being. In my view, that is what is required by the top of market principle at this time.

98. I also find that inflation continues to be a very significant factor in awarding across-the-board increases. Using the prior year CPI, as these parties have historically done, the Ontario year-over-year increase on all items for the period July 2024 to July 2025 was 1.6%. The national figure is 1.73%. The increases awarded during the first two years of the current MOA were slightly higher (by 0.2%) than the prior years' inflation. However, as the Association correctly argues, wage increase since the Bill 124 years and the pandemic-era spike in inflation have not kept pace with increases in the cost of living. Following the *July 2025 Award* the current gap, again using the prior year model, is a compounded 1.4%.

99. In awarding increases for the first two years of the current MOA, the *July 2025 Award* reads, at para. 75:

> On balance, I find that increases of 3.5% in 2023 and 2.5% 2024 are appropriate. These increases, in the aggregate, slightly exceed inflation as calculated on the preceding year model. They do not, however, provide for significant inflationary catch up, as did the *2023 Award*. This is not to say that the gap will not be closed. The bargaining history between these parties suggests otherwise. But again, I emphasize that every round of bargaining must be decided based on the factors as applicable at the time.

100. Considering the other factors before me, especially the University's close comparators and the parties' commitment to maintain top of market standing, I find it appropriate to award an ATB increase that exceeds prior year inflation. However, I do not find it appropriate to close the gap entirely. In reaching this conclusion, I agree with the following comments by Arbitrator Burkett in *1982 Award* between these parties, at para. 60:

> I do not intend to suggest, by providing for a 6.5% catch-up factor, that the objective of salary restoration must necessarily be achieved within a four-year time span. Even if a specific time frame could be justified, which it cannot, the effect of proposing that the matter be resolved within a fixed number of years would place the parties in a straitjacket with respect to future rounds of bargaining; a straitjacket from which it might prove very difficult to achieve voluntary agreement. All that need to be said at this point is that salary restoration should be achieved within some reasonable period.

101. In this case I do not find it appropriate to award the full 3 to 3.13% that would be required to close the gap entirely. Such an award would not adequately weight the comparator data before me, central to the replication exercise. Instead, an award of 2.5% provides a more normative outcome, and one that would also reduce the existing inflationary gap and restore the University to top of market.

102. An award of 2.5% is also not out of touch with the broader collective bargaining landscape, including the University's internal comparators. Finally, I find that an award of 2.5% also properly accounts for the current state of economic uncertainty and the financial challenges facing the University. The Association is correct that the University has not made out an inability to pay, and there is nothing in the record before me to suggest that it is facing dire economic circumstances. But the current state of economic uncertainty militates against a non-normative ATB increase at this time.

CONCLUSION AND AWARD

103. For all of these reasons I award an ATB increase of 2.5%, effective July 1, 2025. This ATB increase is retroactive and applied to base salary, salary minimums, per course stipends/overload and PTR increments and break points.

104. For clarity, retroactive increases are payable in a manner consistent with the determination of the implantation dispute above.

105. I remain seized with respect to the implementation of this award.

Dated at Toronto, Ontario, this 12th day of January 2026.

"*Eli Gedalof*"

_____

Eli A. Gedalof, Sole Arbitrator

SCHEDULE "A"

APPEARANCES

FOR THE UNIVERSITY

Counsel

Jonathan Maier, Hicks Morley LLP
John Brooks, Hicks Morley LLP

University

Andrew Ebejer, Senior Legal Counsel, OUC
Kelly Hannah-Moffat, Vice-President PSEC
Heather Boon, Vice-Provost, Faculty & Academic Life
Kate Enros, Executive Director, Academic Life & Faculty Relations, VPFAL
Jessican Eylon, Manager, Special Projects and Governance, PSEC
Melanie Wright, Associate Director, Academic HR Services, VPFAL
Samantha Figenshaw, Faculty Relations Consultant, VPFAL
Aurora Drummond, Articling Student, OUC

FOR THE ASSOCIATION

Counsel

Wassim Garzouzi, Ravenlaw LLP
Julia Williams, Ravenlaw LLP
Sarah Millman, Ravenlaw LLP
Emily McBain-Ashfield, Ravenlaw LLP

Association

James Mason
Raymond Kwong
Arjumand Siddiqi
Jess Martin
Nellie De Lorenzi
Harriet Sonne de Torrens
Jun Nogami
Sherri Helwig
Terezia Zorić