IN THE MATTER OF AN INTEREST ARBITRATION:

BETWEEN:

THE UNIVERSITY OF MANITOBA

Employer,

-and-

THE UNIVERSITY OF MANITOBA FACULTY ASSOCIATION

Association.

REPLY SUBMISSION OF THE UNIVERSITY OF MANITOBA FACULTY ASSOCIATION

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1. Set out below is UMFA's Reply to the Submission filed on behalf of the University on February 18, 2022 in support of its proposals in this interest arbitration. For ease of reference, when responding, reference is made to the specific paragraph numbers set out in the University's Submission.

Response to Introduction

2. Beginning at paragraph 3 of its Submission, the University refers to the Memorandum of Agreement describing the matters to be determined in this interest arbitration. In paragraph 4, it then cites specifically from Section 8 of that Agreement, which describes the "mutual aim" of the parties "to achieve reasonable advancement towards" the 25th percentile of salaries within the U15 Group rankings during the life of the three year renewed collective agreement.

3. The University correctly recognizes in paragraph 4 that Section 8 is the sole mutual aim of the parties contained in the MOA; all other sections of the MOA deal exclusively with various procedural matters. The inclusion of that one and only stated mutual objective of the parties in the MOA referring matters to interest arbitration reveals the significance of that consideration as the most substantial factor above all others to govern the arbitrator's determinations.

4. At paragraph 5 of its Submission, the University identifies the current salaries in 2020/2021 of Professors, Associate Professors and Assistant Professors at the University, based on a comparison of median salaries, as ranking in 13th through 15th position in the U15 rankings. In support, the University's own data from Statistics Canada, which it provides at **Tab 2** (and paragraph 29 of its Submission), indicates that currently:

- UM has the lowest Assistant Professor median salary amongst the U15 (15th place out of 15), nearly $10,000 less than the 25th percentile;

- UM the second lowest Associate Professor median salary amongst the U15 (14th place out of 15), nearly $7,000 less than the 25th percentile; and

- UM has the third lowest Professor median salary amongst the U15 (13th place out of 15), nearly $13,000 less than the 25th percentile.

5. As recognized by the University at paragraph 29 of its Submission, the current rates place “the University at or near the bottom of each Faculty member rank within the U15 Group.”

6. For its part, and based on a comparison of average (as opposed to median) salaries, UMFA’s Submission revealed that:

- UM has the second lowest Assistant Professor salary amongst the U15 (14th out of 15), and over $11,000 less than the 25th percentile;

- UM has the second lowest Associate Professor salary amongst the U15 (14th out of 15), and over $11,000 less than the 25th percentile; and

- UM has the second lowest Professor salary amongst the U15 (14th out of 15), and over $18,000 less than the 25th percentile.

7. Differences in the University’s deliberate use of “median” versus “average” numbers in this proceeding will be explained in greater detail while responding to the University’s general salary increase proposal. For the moment, applying either method of calculation, the results reveal that the current salaries of UMFA members in the professorial ranks are comparatively and unduly low in the U15 rankings. Further, as is illustrated in the University’s own chart contained at paragraph 102 of its Submission:

- in 2016/2017 Manitoba was the only university within the U15 with a 0% wage increase;

- in 2017/2018 Manitoba was one of three universities with a 0% wage increase, all others receiving more;

- in 2018/2019 Manitoba was one of five universities with a .75% increase or lower, all other universities receiving more;
- in 2019/2020 Manitoba was one of four universities with a 1.0% increase or lower, all other universities receiving more;
- in 2020/2021, Manitoba was, once again, the only University within the U15 with a 0% wage increase;

8. Given the above, it is not surprising that Manitoba is at or near the bottom. This must be remedied in accordance with the mutual desire of these parties.

9. This is the proper starting point for the arbitrator's determinations on monetary increases in this proceeding.

Response to Factual Background

(a) The Parties

10. As a minor point, at paragraph 15 of its Submission, the University provides a breakdown of the number of Faculty members, Instructors and Academic Librarians in the bargaining unit. These numbers are slightly different than the figures provided by UMFA in its own Submission. UMFA notes that its figures were based on dues records provided by the University, the most recent of which, at the time of the filing of written submissions, were from December 2021[1]. The University's figures may be slightly more up to date as a result. That said, the differences between the respective submissions are nominal.

[1] Due are typically remitted to UMFA one month after payment, in accordance with Article 33.3.2 of the Collective Agreement.

UMFA does not resort to interest arbitration on monetary issues often

11. At paragraphs 17-18, the University recognizes that this is only the second time in the last two decades that the parties have gone to interest arbitration to resolve monetary issues, and the first time since 2001. There have been six (6) collective agreements voluntarily negotiated in the interim, including three which involved UMFA's agreement to wage freezes. As explained in UMFA's Submission, the last three rounds of bargaining 2016 bargaining, 2017 bargaining, and the 2020 reopener clause bargaining) involved direct and substantial government interference through the imposition of wage mandates including wage freezes or nominal wage increases.

12. This history reveals that UMFA is not eager to resort to interest arbitration as a mechanism to resolve outstanding monetary issues unless that becomes absolutely essential. It is absolutely necessary in this round due to an impasse on outstanding monetary issues leading to a lengthy strike.

The Chart on previously bargained general salary increases in the University's Submission is incomplete and accordingly misleading

13. At paragraph 18 of its Submission the University has included a chart of General Salary Increases contained in the UMFA/UM Collective Agreements since 1995. It includes three market/recruitment and retention adjustments bargained for UMFA members in the years 2009, 2010 and 2011. However, it fails to include other additional adjustments bargained for UMFA members over the period 1995-2021 as follows:

- effective April 1, 2007, UMFA Members received, in addition to a 2.5% General Salary Increase, a $500 "market adjustment";
- effective April 1, 2008, UMFA Members received, in addition to a further 2.5% General Salary Increase, a further $500 market adjustment;
- effective April 1, 2013, UMFA members received, in addition to a 2.9% General Salary Increase, a further recruitment and retention market adjustment in the amount of $900 for every member whose salary was

below the threshold on the salary schedule for the ranks of Assistant Professor, Lecturer, Instructor II, Instructor I, Assistant Librarian, and General Librarian, and $1500 for Associate Professors below the threshold.

14. The University's chart also references the 2010 and 2011 adjustments as "market adjustments" when in fact they were negotiated by the parties as "recruitment and retention market adjustments, and reflected as such in the Collective Agreement.

15. Accordingly, these parties have an established history of providing additional base salary adjustments, beyond the General Salary Increase, to UMFA Members in a number of years, including 2007, 2008, 2009, 2010, 2011, and 2013. Notably, these adjustments were referred to as *market* adjustments prior to 2010, and as *recruitment and retention market* adjustments thereafter. These adjustments will be discussed further in response to the University's submission on recruitment and retention adjustments later in this submission.

16. UMFA's chart at paragraph 398 accurately sets out salary increases and adjustments back to 1998.

(b) Collective Bargaining

(i) <u>The Bargaining Process</u>

<u>No reference to prior rounds of bargaining</u>

17. The University's review of the bargaining process (paragraphs 21-26 of its Submission) focused solely on the current round of bargaining. UMFA reiterates that this arbitrator must understand the larger context in which bargaining in this round took place and how the parties ended up at interest arbitration to end a work stoppage, which was influenced by not only the present round of bargaining, but the previous two rounds, which included considerable interference by the government, causing UMFA to conclude agreements with general salary increases totaling just 1.75% between 2016-2021. This history is foundational to UMFA's proposals in this interest arbitration and is vital context

for the arbitrator. UMFA refers to paragraphs 22 to 62 of its Submission for relevant information about the 2016 and 2017 rounds of bargaining, and paragraphs 63-84 for information from the current round of bargaining.

Reference to the Final Recommendation of Mediator Peltz

18. At paragraph 22 of its Submission, the University has recited the entirety of Final Recommendation from Mediator Peltz dated November 25, 2021. Undoubtedly, this was included to imply that UMFA was being unreasonable by refusing to proceed to interest arbitration for a period of time after the final recommendation from the mediator and continuing the strike, while the University was immediately agreeable to this process to resolve the strike. UMFA responds as follows.

19. UMFA acknowledges that it did not immediately accept Mediator Peltz's recommendation to end the strike and proceed to interest arbitration. This was largely due to many remaining non-monetary operational issues (which UMFA typically refers to as governance issues), in addition to monetary issues, and UMFA sought to resolve all non-monetary issues prior to proceeding to interest arbitration.

20. UMFA's previous experience at interest arbitration supported its reluctance to proceed to this forum to resolve governance issues. In bargaining in October 2013 for the 2013-2016 collective agreement, on the eve of its bargaining deadline, UMFA came to an agreement with the University to avoid a work stoppage by taking all remaining issues, including several governance issues, to interest arbitration before Arbitrator Werier.

21. At interest arbitration in early 2014, the University immediately challenged the arbitrator's ability to make determinations on governance issues, relying on the principle that operational proposals should not typically be awarded at interest arbitration. The University's written submission in that interest arbitration, which is recited in the Werier Award, included the following comments:

> All of the UMFA proposals except the Health Care Spending Account involve proposals to change the wording of the collective agreement, to change the governance of the university as it affects faculty. Arbitrators have almost universally ruled that such governance issues are best left to the parties to negotiate, as opposed to having an arbitrator write the contract, for myriad reasons. This arbitrator has previously ruled in several interest arbitrations that he was unwilling to impose new language on the parties that would be best left to the parties to negotiate. Those principles are critically important to this process.

Tab 37, *2014 Interest Arbitration Award (Werier)*, page 8

22. Despite its obvious interests in encouraging interest arbitration to avoid a strike, the University also claimed, at arbitration, that UMFA could have and should have “forced the issue” and proceeded to strike if governance issues were sufficiently important to it, but had opted not to do so.

Tab 37, *2014 Interest Arbitration Award (Werier)*, page 8

23. Arbitrator Werier subsequently denied each of UMFA’s governance proposals. In effect, the University not only successfully avoided a strike, but successfully persuaded the arbitrator to avoid awarding any of the governance changes of importance to UMFA.

24. Given that prior experience, UMFA was not prepared to immediately default to interest arbitration in this round to deal with outstanding proposals on governance and working conditions, anticipating that the University would make the same preliminary and technical objections to its governance proposals, and anticipating a similar determination from an arbitrator to UMFA’s detriment.

25. Secondly, at the time Mediator Peltz issued his Final Recommendation (on November 25, 2021), the parties had yet to agree to final wording on a Memorandum of Agreement for the interest arbitration or a Return to Work Protocol. They had also not agreed to salary structure changes or resolved certain outstanding and significant non-monetary items, including the parameters around the University’s ability to assign

online/virtual teaching beyond the pandemic, as well as assurances that Members would be assigned their teaching duties in a manner that would allow each Member to take their full vacation entitlement in each academic year, and would have sufficient time to conduct meaningful research.

26. Following the end of Mediator Peltz's appointment, the Parties were able to reach an agreement on both of those issues. As contained in **Tab 1** of UMFA's Written Submission, the Parties agreed on a new Letter of Understanding (Appendix 'K') which establishes a Joint Committee to study the issues pertaining to digital teaching and learning in the present and future; creates definitions of hybrid, blended, and distance education delivery modes; sets temporary restrictions on the assignment of online delivery modes of teaching; and sets out a process for the circumstance where a Member seeks to withhold consent as to the assignment on a course dependent on information technologies. The Parties also agreed on new language in Articles, 17, 19, and 34 which prohibits Members from being assigned Remote Learning courses, except in limited emergency situations. Also, as contained in **Tab 1** of UMFA's Written Submission, the Parties were able to agree on language in Articles 17 and 19, which states that all "Members shall be assigned teaching duties in such a manner so as to ensure they have time to take their vacation entitlement."

Tab 1, Memorandum of Agreement between University of Manitoba-UMFA, dated January 31, 2022, Appendix "A"

27. Given the result of the 2014 Interest Arbitration, UMFA was wary to take such complex non-monetary issues to interest arbitration, especially when the parties' positions on these issues were drastically different.

28. Instead, UMFA, quite appropriately, sought to resolve all non-monetary issues, as well as certain monetary changes (i.e., the structural changes) in bargaining so that the focus of interest arbitration would be solely on outstanding monetary issues., Nothing negative can be taken from the fact that UMFA did not immediately agree to interest arbitration.

(ii) <u>Response on MOA and the U15 Group</u>

29. At paragraph 27 of its Submission, the University recites from section 8 of the MOA, which states:

> "In conducting the interest arbitration and determining the quantum of general salary increases and Recruitment and Retention Adjustments, the arbitrator **<u>shall be guided</u>** by the mutual aim of the Parties to achieve reasonable advancement in the U15 Group of Canadian Research University Salary Standings towards the 25th percentile, during the life of the Collective Agreement."

Tab 1, Memorandum of Agreement between University of Manitoba-UMFA, dated January 31, 2022

30. Earlier in its Submission, in paragraph 22, the University cites from the Final Recommendation of Mediator Peltz, where he had included in his Final Recommendation a "customized arbitration referral" he had drafted which he viewed as best suited to the issues and fair to both parties. That referral included the following language, at paragraph iv:

> "In making a salary award, the arbitrator **<u>will consider</u>** the parties' mutual aim to achieve reasonable advancement pin the U15 Group of Canadian Research University Salary Standings towards the 25th percentile during the life of the collective agreement."

Tab 9 to University's Submission, Final Recommendation of Arbitrator Peltz

31. It is significant that UMFA demanded, and the parties agreed to, stronger, more directive language than that proposed by Mediator Peltz in his referral regarding the significance of advancement int the U15 rankings. This reveals that the parties agreed to make that objective the <u>paramount</u> consideration for this arbitrator, as opposed to a factor to be weighted equally alongside more traditional factors, as would be the case had the parties agreed to the wording initially suggested by Mediator Peltz.

32. This wording also makes the current arbitration distinguishable from the analysis conducted by Arbitrator Freedman in 2001 in the interest arbitration between these parties (**Tab 5 to the University's submission),** where no mutual stated objective was included in the referral to interest arbitration. That arbitration and award will be discussed in further detail below.

(iii) Response to Agreed to Items

33. Beginning at paragraph 34, the University provides a summary of the relevant structural changes to the salary scale contained in Article 24 of the Collective Agreement. UMFA acknowledges that these changes will benefit its members, but submits that the University has exaggerated or overestimated the extent to which these will assist in advancing salaries amongst the U15 rankings. UMFA will respond further when discussing the University's salary proposals.

The University's Costing of these Structural Changes are Inaccurate

34. At paragraphs 42-44, the University states that the cost of these structural changes is not insignificant and "will only continue to increase over time." This is, at the very least, misleading, and at worst, false.

35. At paragraph 43, the University provides a chart which shows that by Year 3, the additional performance increments cost over $6.5 million more, or over 4%, than what they would have been under the previous schedule. However, the University's figures are cumulative figures, i.e., the Year 2 difference includes the Year 1 difference; and the Year 3 difference includes the differences from Year 1, plus the additional difference in Year 2. This is not an accurate reflection of the true costs of these changes, in that the costs are not cumulative.

36. UMFA has conducted its own costing analysis. The actual cost of the new increments over the life of the contract are as follows[2]:

	2021-2022	2022-2023	2023-2024
Total increments	$4,674,131	$4,280,629	$3,642,290
% of previous year base salary	3.14%	2.78%	2.30%
Year-over-year reduction in total increments		$393,502	$638,340

37. As this reveals, the total increments do not come close to the figures cited by the University, and <u>decline</u> in both dollar amounts and as a percentage of total base salaries over time. This occurs because the new salary structure included increases to salary maxima, i.e., the point at which Members are no longer eligible for increments (because an increment cannot increase a Member's salary above the maximum).

	2021-2022	2022-2023	2023-2024
Total Members	1,226	1,226	1,226
Members receiving increments	1,185	1,158	963
% receiving increments	97%	94%	79%

38. In a stable population a balance, or "equilibrium", will ultimately emerge where new or promoted Members will begin receiving increments and will replace the Members who "max out" and/or leave through resignation or retirement. Once that balance is reached, the cost of increments no longer has any impact on total salary costs: everyone's salary increases every year, but total salary costs, and average salary, remain the same.

39. Accordingly, the University's claim about rising costs over time as a result of these structural changes is inaccurate and should not be relied upon.

<u>*The University's submission regarding changes to and use of Market Stipends*</u>

40. At paragraph 46 of the University's Submission, the University contends that recent amendments to the market stipend provisions in Article 31.3 will provide it with greater flexibility to award market stipends in market sensitive disciplines. It further contends, at

[2] The increments costs assume no general salary increase and no recruitment and retention adjustments.

paragraph 56, that to the extent a recruitment and retention issue exists among UMFA Members, that the changes to the market stipend provisions will "allow the University to adequately and meaningfully address those issues on a case-by-case basis."

41. Even before the recent amendments to the market stipend provisions, the University possessed the ability to award more market stipends in market sensitive disciplines than it had historically chosen to issue. As indicated at paragraph 47 of the University's Submission, market stipends have been and continue to be provided to UMFA Members in the Faculty of Law (approximately 20 UMFA Members) each year, regardless of the limitations that were in place in Section 31.3.5.3 on reducing the market stipend. To be clear, only Members in the Faculty of Law currently receive market stipends.

42. During bargaining in 2021, UMFA sought information from the University regarding the amount paid by the University through market stipends since 2017. The University provided the following statistics:

Year	Market Supplement Total
2017-18	$320,000
2018-19	$295,801
2019-20	$269,375
2020-21	$289,375

Tab 77, Email from Ken MacLean to Cameron Morrill, September 13, 2021

43. Even with market stipends of $10,000 or $15,000 issued in the Faculty of Law, the University has awarded, on average, less than <u>half</u> of the previous $600,000.00 cap on market stipends per year.

44. The University cited the 2001 Arbitration Award of Arbitrator Freedman at paragraph 189 of its Submission, in which he acknowledged the market stipend as being a valuable retention tool for sought after professors, and stated that the:

> "…market stipend provision…is a mechanism by which supplements in disciplines where the market demand is high may be paid to ensure that members do not find greener fields elsewhere."

Tab 35, Freedman Award, page 12

45. UMFA submits that Arbitrator Freedman would have come to a different conclusion about the true usefulness of market stipends as an important retention tool, had he known that the University would choose in future years to spend, on average, less than half of it per year on market stipends across a membership of over 1,200 members.

46. The University has continued to underspend on market stipends to the point that, during the 2021 collective bargaining round, UMFA was perplexed as to why the University was intent on raising the cap on market stipends. The parties have negotiated an increase to the market stipends cap to $1,000,000.00, but UMFA questions, given clear past practice by the University, whether it will ever spend to the cap, particularly considering that these market stipends must be paid out of the budgets of the individual faculties that wish to pay them.

47. If the University has indeed been restrained from spending to the cap on market stipends due to the previous limitation in Section 31.3.5.3, which UMFA submits is not the case, the University has also had the option to increase UMFA Member salaries up to an annual maximum of $250,000.00 outlined in Section 24.8.1-24.8.3 of the Collective Agreement, which permits the University, at its own discretion, to provide an increase to a Member's base salary in "exceptional circumstances" (an undefined term). Arbitrator Freedman also referred to these exceptional salary increases in his 2001 Arbitration Award, and had noted that these funds should also help in "ensuring in specific cases that Manitoba can truly compete effectively when circumstances require." Freedman had

also noted how the cap on these funds had increased from $150,000.00 to $250,000.00 for the newly negotiated 2001-2004 Collective Agreement.

Tab 35, Freedman Award, paragraph 12

48. While in bargaining, UMFA had sought information regarding current Members who had received an exceptional salary increase during the life of the 2017-2021 collective agreement. The data provided by the University indicated that only eight (8) current UMFA Members had been granted an exceptional salary increase, for a total of $71,512.85 over 4 years. Notably, section 24.8.3 of the Collective Agreement allows the University to provide up to $250,000.00 in exceptional salary increases <u>in each year</u> of the agreement.

Tab 77, Email from Ken MacLean to Cameron Morrill, September 13, 2021

49. The University's failure to spend to (or anywhere near to) the cap through market stipends or exceptional salary increases clearly points to a historical reluctance by the University to spend additional funds to improve UMFA Member salaries, not an inability to do so. That history reveals that extreme caution should be exercised when considering future use of the revised stipends by the University as it claims throughout its Submission as a reason to award its proposals in this proceeding.

Response to Legal Principles

50. Commencing at paragraph 58 of its Submission, the University sets out the interest arbitration principles that it states ought to govern in this process. UMFA takes issue with certain of the points raised.

Proper Comparators

51. UMFA takes no issue with the principle of comparability generally, but reiterates that the parties have stipulated in the MOA that the salaries of those in the U15 rankings are the pre-eminent comparator in this interest arbitration. Therefore, the other

comparators applied by Arbitrator Shime in the *McMaster University* award, cited by the University at paragraph 61 of its Submission (i.e., the salary and benefits of other universities in the province, those in the education sector- high school and community colleges, and those with other professional salaries-lawyers, doctors, engineers, social workers) deserve considerably less weight in this proceeding.

52. Public sector wage settlements recently achieved in Manitoba are also less relevant than in a traditional interest arbitration.

53. This interest arbitration is distinguishable from the 2001 interest arbitration between the parties. In that arbitration, Arbitrator Freedman noted that the agreement to resort to interest arbitration had come quickly:

> By virtue of circumstances this arbitration was conducted in an expedited fashion. The Faculty had gone on strike on Monday, there had been intense public focus on the situation, with considerable media commentary, and by sometime late Thursday<u>, the parties signed a brief agreement to submit the dispute to (essentially) binding arbitration and to have the Faculty go back to work.</u> About 36 hours later, the arbitration hearing commenced.
>
> <u>In these circumstances it is quite understandable that neither party had the opportunity to present with its submission at arbitration a statement of the principles that would govern the arbitration and pursuant to which I would arrive at a decision….</u>

Tab 35, 2001 Freedman Award, page 2

54. UMFA has produced, at **Tab 78,** a copy of the 2001 “brief agreement”. That MOA contains no reference to the factors that ought to be considered by the arbitrator. Specifically, no reference is made to the arbitrator being guided by any the mutual intentions of the parties, particularly a shared desire to climb the rankings amongst comparator universities, as is the case here.

Tab 78, 2001 Brief Agreement

55. Given that context, Arbitrator Freedman proceeded to apply traditional interest arbitration principles and factors in his determinations.

Tab 35, Freedman 2001 Award, pages 2-3

56. UMFA does not take issue with the other factors raised by the University in the replication analysis, but reiterates that they ought to be given appropriate and lesser weight in this proceeding, given the mutual aim of the parties.

Ability to Pay

57. At paragraph 63 of its Submission the University acknowledges that ability to pay is not a consideration in this interest arbitration, but nevertheless stresses that public sector funding cannot be viewed as limitless. It then states that arbitrators cannot be completely blind to the economic situation and must remain "responsible" when fashioning an award.

58. To be clear, these comments come from the Arbitration Board in the *Louis Riel* Interest Arbitration Award and must be read in their appropriate context. In that arbitration, the School Division was arguing that ability to pay was a relevant factor and that its ability was hampered by the government's financial mandates. The Board nevertheless determined that the *McMaster University* jurisprudence applied, and stated:

> 62 Louis Riel School Division is an entity operationally distinct from government but as the evidence before the board established, the Division is subject to close government financial control, when government so chooses. Legally, the Division is a creature of government. At the present time, government has placed a high priority of expenditure restraint and taxpayer relief, both for provincial taxpayers and local ratepayers. The Government has made the Division a vehicle for delivery of this policy. At the same time, the Division's trustees retain the right and the obligation to make educational decisions within the available financial resources. This is no easy task at the best of times, and especially so in the current environment.
>
> …
>
> 64 For these reasons, the board holds that the *McMaster University* jurisprudence applies. Government does not lack the ability to pay but has decided it is unwilling to pay more than a prescribed amount for labour costs at this time, opting instead for taxpayer relief as a policy choice. The level

> of public services and the provision of resources to pay for them is a political responsibility. The Division will have to lie within these constraints, which include the arbitration board's jurisdiction to make an award based on objective labour market data and the established relevant factors.
>
> 65 The present board adopts Arbitrator Ready's caveat in *City of Regina*, where he endorsed the *McMaster University* line of authority and stated as follows: "the fiscal objectives and taxation policies are for the politicians to develop. A considered application of the replication process cannot, however, be completely blind to the economic situation." An independent arbitration board must be responsible in fashioning an award but must not allow the government's bargaining mandate to dictate the result.

Tab 15 to the University's Submission, paragraphs 62-65

59. In the MOA, the parties have agreed, in paragraph 10, that:

> "Under no circumstances shall the arbitrator consider any collective bargaining mandate issued to the University by the Government. The University agrees it shall not disclose in arbitration the nature or details of any such mandate."

Tab 1, Memorandum of Agreement between University of Manitoba-UMFA, dated January 31, 2022 paragraph 10

60. UMFA acknowledges that the economic climate and government finances are generally relevant factors in this proceeding and has provided an expert report on these issues. However, despite its claim otherwise, the University's submission in these areas, including its analysis of the University's Financial Circumstances, are unquestionably a thinly disguised ability to pay argument. UMFA refers to paragraphs 117 to 129 of its Submission for jurisprudence regarding the ability to pay not being an appropriate consideration in this process and will discuss this further in response to the University's general salary increase proposal.

Conservative Process, Breakthrough Provisions and Monumental Changes

61. At paragraph 66 of its Submission, the University submits that interest arbitration is an inherently conservative process. In support, it cites from this arbitrator in *University*

of Toronto and CUPE Local 3902 (**Tab 17 to the University's Submission**) for the comment that "collective bargaining mandates are rarely achieved in a single round", and "aspirations are not demonstrated need." It then comments that "breakthrough provisions and monumental changes" are best left to the parties to negotiations.

62. Arbitrator Freedman commented as follows on what constitutes a breakthrough in a recent interest arbitration between *MGEU and Macdonald Youth Services:*

> I think it is more likely that the parties would have reached an agreement on wages for a shorter term than a longer one. A 2-year term would not be a "breakthrough" as that concept is understood in interest arbitrations, <u>where novel provisions are introduced into a contract by a board's award.</u>

Tab 43, *Macdonald Youth Services Award (Freedman),* para 65

63. UMFA is not proposing any breakthrough or monumental to the collective agreement as that term is understood in the authorities. Salary increases proposed by UMFA would not be a breakthrough as suggested by the University, nor can increases that advance salary in the U15 rankings be considered an inappropriate breakthrough or monumental change, given the parties agreement as to the focus of this proceeding.

64. UMFA generally agrees with the remainder of interest arbitration principles cited by the University, although it disputes the University's application of those principles. The Association will address those principles further in responding to specific proposals below.

<u>Response to the Mutual Aim of the Parties</u>

65. At paragraph 67 of its Submission, the University states that replication principles do not change simply because of the mutual aim of the parties under section 8 of the MOA- to achieve reasonable advancement in the U15 Group towards the 25th percentile, during the life of the Collective Agreement. In doing so, the University has sought to downplay the stated mutual objective of the parties.

66. UMFA acknowledges that the replication analysis and the mutual stated aim of the parties are somewhat related in this proceeding. However, it must be borne in mind that the parties have established specific parameters and have identified their mutual objectives that will dictate the outcome regarding salary increases. The parties have identified that this objective is more significant to the arbitrator's determinations than other factors. As stated in the *University of Toronto* decision cited by the University, where there was a commitment to continue to be a leader amongst the world's best teaching and research institutions, "more than mere lip service [to the ideal] is required…."

Tab 12 to the University's Submission, para. 19

67. As suggested by the University at paragraph 71 of its Submission, "<u>the parties' choice of words must be given meaning</u>" and that this mutual objective is the "<u>starting point</u>" for the replication analysis. UMFA agrees with that submission.

68. The University's rationale about other factors potentially reducing the outcome would, in application, see the arbitrator make initial determinations on appropriate salary progression in the U15 rankings, but then potentially determine that other, more traditional interest arbitration factors ought to serve to water down or reduce the advancement. That may be appropriate in more traditional interest arbitrations, but is not appropriate in this proceeding. In any event, neither party appears to be proposing that result.

69. UMFA will elaborate while responding to the University's submissions on the factors for consideration.

Response to the University's Proposals

(a) Section 1(a) of the MOA: General Salary Increases

70. Before responding to specific aspects of the University's proposed general salary increases, UMFA first responds to the University's repeated use of median salary and increment statistics as opposed to average salary and increment statistics throughout its Written Submission.

Median vs. Average Salary Statistics:

71. Beginning at paragraph 29, the University cites data from Statistics Canada showing the median salaries received by faculty in the U15 rankings. It adds, via footnote 3, that the median is "less susceptible to being inappropriately skewed in either direction due to outliers."

72. UMFA maintains that average salary data, as opposed to median salary, is a much more reliable and appropriate method of understanding and comparing compensation among the U15 institutions.

73. The mean (average) value of numerical data is the most commonly used statistical measure. It is routinely used when determining the central tendency of a set of statistical scores, such as salaries.

74. The median, which provides the value for which half of the members of the group fall below, and half fall above, is considered an alternative measure which is more often applied when there are skewed distributions due to outliers. When both measures are considerably different, this indicates that the data are skewed, and the median generally gives a more appropriate idea of the data distribution.

75. There is no skewed distribution to be concerned about in this proceeding.

76. The following chart reveals the difference between the mean (or average) versus median for professor base salaries at the University of Manitoba in 2020-2021:

Mean vs Median Salaries – UM 2020-2021 Per Statistics Canada

Rank	Mean salary (average)	Median salary	Difference (% of mean)
Full professor	$152,000	$152,575	0.38%
Associate professor	$121,150	$121,925	0.64%
Assistant professor	$99,200	$94,925	4.31%

77. This comparison reveals that there is no evidence of a substantial difference between the average and median at any of the professor ranks at the University of Manitoba. This result suggests that there is not a problem with a skewed distribution in the data requiring the use of a median over an average.

78. Nor is there a considerable difference between the mean and median among the U15 universities for 2020-2021:

U15 mean and median salaries, 2020-2021, per Statistics Canada					
				Mean - Median	
University	Professor Rank	Mean	Median	$	% of Mean
Alberta	Assistant	$111,775	$104,800	6,975	6.24%
Alberta	Associate	$135,925	$132,075	3,850	2.83%
Alberta	Full	$186,300	$176,250	10,050	5.39%
Calgary	Assistant	$112,125	$106,575	5,550	4.95%
Calgary	Associate	$131,375	$126,200	5,175	3.94%
Calgary	Full	$175,400	$167,000	8,400	4.79%
Dalhousie	Assistant	$108,800	$107,275	1,525	1.40%
Dalhousie	Associate	$133,025	$130,375	2,650	1.99%
Dalhousie	Full	$167,175	$164,050	3,125	1.87%
Laval	Assistant	$97,975	$96,700	1,275	1.30%
Laval	Associate	$116,075	$114,125	1,950	1.68%
Laval	Full	$142,275	$146,850	-4,575	-3.22%
Manitoba	Assistant	$99,200	$94,925	4,275	4.31%
Manitoba	Associate	$121,150	$121,925	-775	-0.64%
Manitoba	Full	$152,000	$152,575	-575	-0.38%
McGill	Assistant	$113,850	$105,000	8,850	7.77%
McGill	Associate	$133,950	$129,250	4,700	3.51%
McGill	Full	$173,775	$169,725	4,050	2.33%
McMaster	Assistant	$123,250	$119,225	4,025	3.27%
McMaster	Associate	$166,350	$166,200	150	0.09%
McMaster	Full	$203,675	$198,825	4,850	2.38%
Montréal	Assistant	$103,000	$101,550	1,450	1.41%
Montréal	Associate	$123,700	$123,900	-200	-0.16%
Montréal	Full	$153,575	$153,725	-150	-0.10%
Ottawa	Assistant	$129,325	$126,600	2,725	2.11%
Ottawa	Associate	$156,275	$159,100	-2,825	-1.81%
Ottawa	Full	$190,900	$194,475	-3,575	-1.87%
Queen's	Assistant	$139,350	$135,450	3,900	2.80%
Queen's	Associate	$163,125	$158,825	4,300	2.64%
Queen's	Full	$181,500	$178,200	3,300	1.82%
Saskatchewan	Assistant	$122,425	$121,200	1,225	1.00%
Saskatchewan	Associate	$153,800	$152,775	1,025	0.67%
Saskatchewan	Full	$195,350	$188,300	7,050	3.61%
Toronto*	Assistant	$133,750	$124,675	9,075	6.79%
Toronto*	Associate	$170,200	$165,325	4,875	2.86%
Toronto*	Full	$218,050	$207,125	10,925	5.01%
UBC	Assistant	$132,525	$125,250	7,275	5.49%

UBC	Associate	$158,450	$155,050	3,400	2.15%
UBC	Full	$207,950	$202,000	5,950	2.86%
Waterloo	Assistant	$122,325	$123,300	-975	-0.80%
Waterloo	Associate	$160,125	$159,350	775	0.48%
Waterloo	Full	$201,575	$200,850	725	0.36%
Western	Assistant	$127,500	$119,100	8,400	6.59%
Western	Associate	$154,325	$146,250	8,075	5.23%
Western	Full	$187,450	$175,625	11,825	6.31%

* University of Toronto salaries are for 2019-2020

79. Given the lack of a skewed distribution, there is no need to apply a comparison of a median salary instead of an average salary when comparing the U15 institutions and rankings.

80. There are, however, several benefits to the University's submission in relying on the median as opposed to the mean in support of its proposals, primarily that it can portray itself as being a generous employer on the one hand, while on the other hand maintaining its image of cost-effective management through cost savings.

81. UMFA provides the following basic example to illustrate this point. Consider three individuals with the salaries below:

Individual	**Salary**
A	$10
B	$20
C	$60

The **average**, or mean, salary is (10 + 20 + 60)/3 = **$30**

The **median** is B's salary= **$20** (B splits the sample such that an equal number of individuals fall above and below the value).

82. If each individual is provided with a $10 raise, the salaries now look like this:

Individual	**Salary**
A	$20
B	$30
C	$70

The average salary becomes (20 + 30 + 70)/3 = **$40**

The median is now **$30** (the figure which splits the sample equally above and below).

Note that both the mean and median have increased by $10, and total salary costs have increased by $30.

83. An employer can increase the median salary by targeting specific individuals whose salaries are located near the median. Using the above example:

- the Employer could increase B's salary by $10, resulting in the median salary increasing to $40.

  The result: the Employer has been able to increase the median by $10, yet payroll has only had to increase by $10.

  On the other hand, to increase average salaries by $10, the University would have to increase payroll by $30.

84. The University, by relying on the median, has effectively utilized this same calculation logic throughout its submission. The University can increase salaries through targeted salary increases, thereby identifying a greater median figure, while still paying considerably less than the cost of increasing the average for all UMFA members.

85. The University first started talking about median salaries in the 2013 round of bargaining. In those negotiations, the University had proposed a recruitment and retention market adjustment of $1,500 for Associate Professors whose salaries fell below the threshold rate existing at the time. Approximately two-thirds of Associate Professors' salaries were below the threshold, and so those members received a $1,500 adjustment to base salary under the University's proposal.

86. By targeting those Associate Professors under the threshold only, the University was able to claim that the median Associate Professor salary had increased by $1,500,

and did so. However, the average salary of Associate Professors went up by approximately $1,000.

87. When UMFA had questioned the University about its proposal, the University's negotiators were clear that reliance on the median was about reporting increased salaries while minimizing the cost of doing so. The University has applied the same method in support of its proposals in this proceeding.

(i) *Impact of using the median when considering the structural changes*

88. The following example illustrates the impact of the difference between the calculation of median vs. mean on the new increments under the revised salary structure.

89. As a basic principle, increments are paid to those members who are below the maximum in their rank. The parties have negotiated greater increments in this round for UMFA members under the revised salary structure. The most significant increase is for full Professors, as shown in the table below[3]:

Number of full professors receiving increment, 2020-2021	374	**Effect on median**	**Effect on mean**
Full professors receiving increment, 2021-2022 **Increment= $4,827**	371	+$4,827	+$4,778
Full professors receiving increment, 2022-2023 **Increment= $4,827**	274	+$4,827	+$3,766
Full professors receiving increment, 2023-2024 **Increment= $4,827**	213	+$4,827	+$2,829

90. Given the increased maximum under the new salary structure, nearly all Full Professors will receive at least a partial increment in 2021-2022. The number receiving an increment thereafter drops off substantially as more and more Professors reach the

[3] For illustrative purposes only, this table assumes no general salary increase in any year.

maximum. By 2023-2024, approximately 57% of full professors would receive an increment.

91. Since not all full Professors receive a full increment in 2021-2022, the average salary increases by less than $4,827 (the average is $4,778 in 2021-2022). The increase in the median, however, is higher, at $4,827.

92. As fewer full Professors receive increments (because they reach the maximum), the average declines. However, since more than 50% of full Professors continue to receive the full increment each year, the median nevertheless increases by the full amount of the increment, $4,827.

93. The difference in the average and the median expands as time goes on, and less and less Professors receive the increment. By 2023-2024, the average increase for UMFA members is $2,829, yet the University can continue to report that the median salary is $4,827.

94. In 2020-2021, the mean and median are virtually the same. By 2023-2024, the median is far higher than the mean. That gap reflects salary growth at the bottom of the distribution that is outpacing growth at the top. It provides the University with the ability to pose as providing a greater benefit to UMFA members, while the true cost is significantly lower.

(ii) Applying the median to forecast salary advancements in the U15 rankings

95. The University has applied the median salary analysis across the U15 in forecasting salaries and rankings in 2023-2024. The result is that the University's cheaper salary proposal nevertheless has the University moving up the U15 rankings further than UMFA's more costly proposals. This ought to be considered with caution. Consider the following example.

96. According to the University's chart at paragraph 107, at the Full Professor rank, the University predicts that the new salary structure, combined with its proposed general salary increases, will increase the median salary to $175,884, enough to rank 11th among U15 median Full Professor salaries. However, applying UMFA's average salary calculations, these same parameters will only increase the average Full professor salary to $167,664, more than $8,000 less than the median.

97. At the same time, the University projects the 25th percentile among Full Professor median salaries to be $175,478 (paragraph 107 of its Submission), while UMFA projects the 25th percentile among average Full professor salaries to be $179,748, over $4,000 more than the median.

98. Compared to an average salary analysis, UM's median is higher, and the U15 25th percentile is lower. The difference nets out to a little over $10,000. It permits the University to illustrate advancement among the U15 quicker, and at a lesser cost, than what the average reveals.

99. The attractiveness of the use of the median is also revealed by looking more closely at a comparison of the Universities of Alberta, Calgary and Manitoba.

Full professor salary, 2020-2021			
	Mean (average)	**Median**	**Mean - Median**
Alberta	$186,300	$176,250	$10,050
Calgary	$175,400	$167,000	$8,400
Manitoba	$152,000	$152,575	-$575

100. It is far easier to compete with Alberta and Calgary salaries when one targets the median rather than the mean: Manitoba is $36,400 behind Alberta in terms of mean salary, but only $23,675 behind in terms of median salary. According to UM's projections (paragraph 107), UM's median full professor salary catches up to, and then surpasses, Calgary by 2023-2024. The gap between UM and Alberta also declines significantly, from $23,675 to $7,331. These same results are not realized when one considers the average

difference. The median allows for the portrayal of greater advancement than the average, and therefore is more beneficial to the University to apply.

(iii) *Conclusion on the use of the median over the average*

101. The use of the median provides the University with better optics about its proposals in this proceeding, and suggests a greater benefit to UMFA members and greater advancement in the U15 rankings than what is actually the case, based on a more appropriate application of the average.

102. Calculations using the average salary statistic, as UMFA has in this proceeding, is the preferred method when conducting comparative salary analysis for a number of reasons:

(1) there is no substantive problem with skewed salaries in the U15 rankings necessitating the use of a median calculation;

(2) use of the average includes the effect of salary increases on all Members and is dollar based, whereas the median reflects changes only to the bottom half of Members, and is number of people based;

(3) use of the median permits the University to exaggerate the value of structural changes and general salary increases it proposes for many UMFA members, including the extent of advancement in the U15 rankings; and

(4) the average provides a more complete, more accurate and more reliable picture of the true effect of the parties' respective salary proposals.

Specific response to the University's General Salary Increase Proposals:

103. First, as a general observation, the University's position is that:

- even before taking any general salary increase into account, as a result of structural changes reached in bargaining, UMFA members will make significant progress towards the 25th percentile by the end of 2023-2024. According to the University, Associate Professors will close the gap entirely, and the gap for Assistant Professors and Full Professors nearly closing the completely; and

- including the University's proposed general salary increase, UMFA members can expect to reach a position that is "exceptionally close" to the 25th percentile by the end of Collective Agreement (paragraph 107)

104. Curiously, this result conflicts with the University's own warning, in paragraphs 70-72 of its Submission, about the parties not agreeing to reach 11th or 12th place within the U15 Group, but rather "reasonable advancement" towards the 25th percentile, and the significance of the parties' choice of words being given appropriate meaning. Nonetheless, the University submits that its proposal sees UMFA members reach the 25th percentile during the life of this Collective Agreement.

105. In support of its position, the University has provided a variety of charts and graphs to support its proposals and its claims about advancement towards the 25th percentile. UMFA has reviewed these in detail and questions their accuracy, not only for their reliance on median increases, but for additional reasons explained below. The arbitrator must exercise caution in accepting the information provided in support of the University's proposals.

(i) The Impact of the Structural Changes Alone

106. Beginning at paragraph 75, the University submits that the changes to the structural changes will advantage UMFA's members over others in the U15 group. UMFA submits that the University has overestimated the extent to which its members will now see such an advantage as a result of the structural changes negotiated in this round.

107. At paragraph 77-78, the University has provided a chart which allegedly shows that the increments received by UMFA members will now exceed those of their U15 counterparts, particularly those counterparts that are found at or around the 25th percentile. UMFA is critical of the information contained in this table.

108. First, a review of University's chart reveals that the increments provided to UMFA members even before the structural changes were agreed to already exceeded the increments of those counterparts found at or around the 25th percentile, those being Montreal, Alberta, Dalhousie, Calgary, and McGill, according to the Universities own data (and better than Laval as well). The vast majority of the "red highlights" (indicating lower increments than the University of Manitoba) on the University's chart would have remained red highlights if the comparison was based on the University's increments in 2020.

109. Since increments at the University already exceeded these U15 counterparts, the new increments do not result in a newfound "advantage.".

110. Secondly, UMFA submits that caution must be exercised when reviewing the University's increment figures from each institution. The University submits, at paragraph 77, that these figures are based on what is "currently known" for each institution. However, at least some of the data is not current and underestimates the increments provided at comparator institutions.

111. By way of example, UM reports in its chart that McGill's increment structure for all professorial ranks is "$0, $845, $1,235, $1,625 or $2,015 depending on performance". According to the McGill Salary Policy Guidelines 2022,[4] the merit grid for the January 1 – December 31, 2021 year was actually $0, $1,000, $1,800, $3,050 or $4,750, depending on performance. This is a considerable difference from what the UM has presented.

[4] https://www.mcgill.ca/apo/files/apo/academic_salary_policy_2022_-_implementation_guidelines_final_31012022_0.pdf

112. Further, the performance increments at McGill vary widely from year to year. In fact, the top category of performance increments at McGill (known as a Category 1 performance increment) was as high as $7,850 in the 2016-2017 Academic Salary Policy.[5]

113. The UM's figures appear to have been taken from the 2019-2020 Academic Salary Policy Implementation Guidelines,[6] and are, curiously, the lowest increments McGill has paid in the last five years. Reliance on the 2019-2020 guidelines is a particularly odd choice given that McGill has released three (3) updated policy implementation guides since the 2019-2020 guidelines, each providing for considerably more generous performance increments than the rates reported in paragraph 77 of the University's Submission.

McGill University Merit Grid[7]

Merit category	**1-Jun-22**	**1-Jun-21**	**1-Jun-20**	**1-Jun-19 (reported by UM)**	**1-Jun-18**
Category 1	$4,750	$4,400	$4,400	$2,015	$2,650
Category 2	$3,050	$2,770	$2,850	$1,625	$2,000
Category 3	$1,800	$1,700	$1,750	$1,235	$1,350
Category 4	$1,000	$1,000	$1,000	$845	$700
Category 5	$0	$0	$0	$0	$0

114. In fact, focusing on McGill's Category 1 and 2 performance increments, the rates cited by the University from 2019-2020 appear to be the lowest increments that McGill has paid since 2000 (with the exception of what appears to have been a salary freeze in 2013).

[5] https://www.mcgill.ca/apo/files/apo/academic_salary_policy_fy2016-2017_20160219.pdf

[6] https://www.mcgill.ca/apo/files/apo/academic_salary_policy_-_implementation_guidelines_june_2019.pdf

[7] https://www.mcgill.ca/apo/academic-life-cycle/academic-salary-policy-and-academic-salary-data

115. By relying on the 2019-2020 data for McGill, the University has deliberately underestimated future performance increment growth at that university. For example, in paragraph 84 of its Submission, the University projects median Assistant Professor salaries increments across the U15 through 2023-2024. For McGill, it projects that, by 2023-2024, the median Assistant Professor salary increment will increase by only $3,705 over that term, an average increase of $1,235 per year, or under 1.2% annually. In effect, that result assumes that McGill Assistant Professors will receive, on average, what amounts to a Category 3 performance increase from the 2019-2020 guidelines (see table above). This is a highly implausible result, given that:

- that is an outdated performance increment figure; and
- even if it were the accurate category 3 performance increment at McGill, it ignores the fact that over the period between 2014-2019, 93.4% of McGill professors received Category 1 through 3 increments. Reliance on the Category 3 figure exclusively is misleading.[8]

116. Accordingly, the University's projections for increment increases for McGill in the charts at paragraph 85 (Associate Professor) and paragraph 86 (Full Professor) of its Submission, in which it seeks to apply the most recent yearly performance increments to the median salaries to provide increments through 2023-2024 (before any general salary increase) suffers from the same significant inaccuracies.

117. This is just one example of the caution that ought to be exercised in over-reliance on one of the University's charts where it makes comparisons among the U15 comparators. The University has not provided the base documents it relied upon to obtain current increment information from each institution, and so these inaccuracies are not easily seen.

118. The method used by the University to make projections about increments into 2023-2024 also makes certain assumptions. For example, it assumes that the increments

[8] https://www.mcgill.ca/maut/files/maut/combined_salary_forum_presentation_2019-11.pdf , slide 4

at comparator institutions will not be increased in their respective negotiations. As both parties have explained, few of the U15 institutions have collective agreements beyond 2021. Further changes will invariably result from those negotiations (particularly given the increase in cost of living in the three years of this collective agreement).

119. The University's projection also assumes that the increment rates at each institution do not fluctuate from year to year, as they do at McGill, based on updated guidelines outside of the collective agreement.

120. Another factor is that, unlike various other institutions amongst the U15, the UM/UMFA collective agreement contains a maximum salary for each professional rank which, once attained, precludes the Member from receiving <u>any</u> further increments. In contrast, eight (8) of the institutions in the U15 rankings have <u>no</u> maximum for full professors, and six institutions have no maximum for Assistant and Associate Professors.

121. For example, UMFA has calculated that 43% of full professors will have reached the new maximum by 2023-2024, at which time they will not be eligible for further increments. This imposes a limit on the total value of increments that a Member can expect to receive, whereas other U15 Universities do not share a similar limitation. That reality limits how advantageous the new increments will be to UMFA members in the professorial ranks over those in other U15 institutions.

122. These facts raise serious concerns about accepting the University's assertion that structural changes alone will nearly close, or close entirely, the difference between the 25th percentile and the University's ranking by the end of the collective agreement in the professional ranks, even before general salary increases are considered.

123. The same holds true for the University's assessments of increments for Academic Librarians at paragraph 79, and Instructors at paragraph 80 of its Submission. For the same reasons cited above, the University's claims that UMFA members in these ranks "should be" (the University's language at paragraph 79) entitled to greater performance

increments year after year than their U15 counterparts must be approached with some skepticism. The University has provided Instructor increment comparator data from just four U15 institutions, and has excluded Laval, the University's closest current comparator, and Montreal, a comparator institution approximating the 25th percentile, from its analysis for Academic Librarians.

<u>University's calculations on how median salary increases of Faculty Members will advance over the life of the collective agreement:</u>

124. At paragraphs 81-82, the University provides a chart to illustrate the benefit of increased increments for the professorial ranks over the three years of this collective agreement, after the revised structural changes. It reveals that the median increase for a full professor at the University of Manitoba in real dollars, as a result of increment increases, will be $14,481 ($4,827 x 3) by 2023-2024. While true for a contingent of full professors, it is not the case for all. In fact, the <u>average</u> increase through the increment for full professors is less than $11,500. This is not an insignificant amount, but certainly does not reach the level illustrated by the University. This is a further example of how the University has, in relying on the median, highlighted a greater increase than what will be realized by many UMFA members in the professorial ranks.

125. Therefore, the University's claim at paragraph 82, to the effect that each median salary can be expected to increase by over $10,000 by the end of the Collective Agreement under the revised salary scale inflates the real increase that will be realized by many UMFA members.

126. At paragraph 88, the University acknowledges that Statistics Canada does not publish median data for Instructors or Academic Librarians, but states that the same trends regarding increments across the U15 should be expected for both. The University appears to have applied the same assumptions and logic in its analysis for those ranks that it did for those in the professorial ranks. As such, the assertion that these ranks will continue to earn increments that surpass those of their U15 counterparts is similarly unreliable.

127. UMFA acknowledges that the structural changes, including an increase to increments received by its members, are a gain achieved in negotiations. Caution should be exercised, however, in assuming that these increases significantly improve the University of Manitoba's placement in the U15 rankings.

128. Using the UMFA forecasts described in paragraphs 305-322 of the UMFA Submission, and applying the salary schedule changes only, with zero General Scale Increases and no Retention and Recruitment Adjustments, UMFA projects that the gap between average UM salaries and the 25th percentile through 2023-2024 would in actuality become significantly greater:

Professor Rank	Average salary 2023-2024	25th percentile 2023-2024	Difference 2023-2024	Difference 2020-2021	% increase in difference
Full	$161,388	$188,319	$26,931	$18,475	45.8%
Associate	$130,181	$146,016	$15,834	$11,050	43.3%
Assistant	$107,198	$120,614	$13,417	$11,088	21.0%

The University's Proposed General Salary Increases

129. At paragraphs 98-99, the University acknowledges that the mutual aim of the parties in advancing among the U15 rankings will ultimately depend on the general salary increases that are applied at other U15 Group institutions over the next three years. The University also correctly recognizes that for the most part, those increases are not known at the present time.

130. The University then proceeds, in the ensuing paragraphs, to make projections on general salary increases that are based entirely on historic trends between 2009 and 2021, and applies those same trends through 2023-2024, and submits that its wage proposals in this proceeding are consistent with those historic trends.

131. The University's reliance on historical trends ignores the recent stark rise in the cost of living that will persist over the life of this collective agreement. This is an important factor that has been ignored in the University's projections.

132. Notably, the University has also disregarded the fact that the University's own arguments on wage trends among the U15 between 2015/16 and 2020/21 generally aligned with the national CPI (Consumer Price Index) rates over that same time period.

133. At paragraph 102 of its Submission, the University provides a chart of annual general salary increase within the U15 Group. The University relies on this chart to argue that the average general salary increases in more recent years (i.e., 2015-2020) have been lower, at 1.46%, than in the previous five years (2009-2015), when the average was 1.97%.

134. Remarkably, whereas the average general salary increase among the U15 was 1.46% between 2015/2016 and 2020/2021, the annual increase in national CPI in that same time period was 1.5%, i.e., nearly the equivalent:

Year	**National CPI increase**
2015	1.1%
2016	1.4%
2017	1.6%
2018	2.3%
2019	1.9%
2020	0.7%
2015-2020 average	**1.5%**
Average U15 general salary increase	**1.46%**

135. There is a correlation between the "downward trend" in general salary increases over this period for U15 institutions, and the rate of inflation during this time period.

136. The University disregards this correlation in its projections through 2023-2024. It has relied solely on historic trends, without that context.

137. UMFA has considered cost of living increases in forecasting projected salaries for the U15 through 2023-2024; the University has not. Higher cost of living trends are

expected to persist for the years of this collective agreement. It is inappropriate to assume that those higher than normal inflation increases will not influence the outcomes of negotiations amongst U15 comparators for the years at issue. Logic demands that outcome.

138. As stated at paragraph 59 of UMFA's Submission, University President Benarroch made remarks in December 2020 during a Senate Meeting about how he and his team remained committed to finding ways to "improve salaries over time", noting that the current situation had seen salaries negatively impacted by inflation over the past five years, acknowledging that this was a concern that required addressing in future rounds.

Tab 16, December 2, 2020 Senate Meeting Minutes

139. The University's failure to consider inflation increases and its impact on likely percentage general salary increases across the U15 will only serve to ensure that the University's claims at paragraph 105, "that the University should be expected to make more than reasonable progress towards the 25th percentile over the course of the 2021 Agreement", will not come to fruition.

140. At paragraph 103, the University notes that 11 institutions have increases for 2021/2022 with an average increase of 1.59%. Yet, none of these agreements were signed more recently than September 2021, and most were signed much earlier, including several signed in 2019. It would not have been apparent to those respective institutions and associations at the time they negotiated salary increases that cost of living figures would reach as high as they are currently.

141. In paragraph 103, the University recognizes that only four institutions have established increases in 2022/23, including Waterloo (with a 1% increase), Ottawa (1%), and Montreal (1.5%). UMFA notes that:

- the Montreal collective agreement was signed in January 2021;
- the Waterloo collective agreement was signed in February of 2021; and
- the Ottawa collective agreement was signed in September of 2021.

142. It would also not have been apparent to those respective institutions and associations at the time of bargaining that true and forecasted cost of living figures would have been as high as they are now. In January and February 2021, uncertainty from the pandemic would have persisted, and in September 2021, some five months ago, the data was not forecasting increases in CPI above 3%.

143. Undoubtedly, percentage salary increases amongst the U15 will rise as more agreements are negotiated with updated cost of living figures for 2022-2023 and 2023-2024. It is far more unlikely, knowing the recent correlation between cost of living and general salary increases among the U15, and applying common logic, that the average increase for 2022-2023 established by four institutions will continue to hover so far below the percentage cost of living rate increases. It is also unlikely that the average increase for 2022-2023 will remain lower (1.33%) than the average increase even in 2021-2022 (1.59%), which is a suggestion the University appears to be making (paragraphs 102-104 of its Submission).

144. The University's projected salary increase for each U15 institution is provided at paragraph 107 of its Submission. In explaining its chart, the University states that it "assumes" that median salaries will continue to advance in a manner similar to that of the last ten years. Without considering the rise in inflation, this is a flawed projection. Nevertheless, the University relies on that flawed projection to conclude that "it appears that the University can be expected to reach a position that is exceptionally close to the 25th percentile by 2024."

145. For the reasons cited above, that is unlikely.

<u>The chart at paragraph 102 reveals the gaps in UMFA pay between 2016-2021 as compared to the U15 rankings:</u>

146. The chart provided by the University at paragraph 102, which it uses to support the lower wage trends in recent years, serves another significant purpose: it reveals the

extent to which UMFA salary increases have failed to increase adequately over the time period between 2016-2021 as compared to others in the U15 rankings:

University	2016/2017	2017/2018	2018/2019	2019/2020	2020/2021	Total
UBC	2%	2%	2%	2%	2%	10%
Alberta	1%	1.5%	0%	0%	--	2.5%
Calgary	1%	0%	0%	1.7%	--	2.7%
Sask	2.75%	0%	0%	1.25%	1.95%	5.95%
Manitoba	**0%**	**0%**	**0.75%**	**1%**	**0%**	**1.75%**
McMaster	1.5%	1.7%	1.7%	1.67%	1.83%	8.4%
Queen's	1.25%	1.5%	1.75%	1.6%	1.6%	7.7%
Ottawa	1.7%	1.7%	2.8%	2%	2%	10.2%
Toronto	1.75%	1.75%	1.9%	2.9%	--	8.3%
Waterloo	1.95%	1.5%	2%	2.15%	2.15%	9.75%
Western Ontario	1%	1%	1.5%	1.5%	1.5%	6.5%
McGill	0.75%	0.75%	0.75%	0.75%	1%	4%
Montreal	1.5%	1.75%	2%	1%	2%	8.25%
Laval	1.76%	1.5%	1.75%	1.25%	3.9%	10.16%
Dalhousie	1.5%	1.5%	1.25%	1.25%	1%	6.5%
Average %	1.43%	1.21%	1.34%	1.47%	1.74%	**7.19%**

147. The above chart reveals that UMFA members' salaries increased the least among all the U15 comparators between 2016-2021, by a considerable margin.

148. The average increase over that timeframe was 7.19%. Meanwhile, UMFA's salary only increased 1.75% over those years, a difference of nearly 5.5% from the average. The next closest increase over that same time frame was 2.5% , while many increased 5%-10%.

149. UMFA salary increases never once achieved the average increase of the U15 increases in any of those years.

150. The University's chart at paragraph 102 also contains known salary increases for 2021-2022. Consideration of those known increases reveals the following:

University	2021-2022 known increases
UBC	2%
Alberta	--
Calgary	--
Sask	1.95%
Manitoba	**1.25% (UM proposed)**
McMaster	2%
Queen's	1.9%
Ottawa	1%
Toronto	--
Waterloo	1%
Western Ontario	1.75%
McGill	1%
Montreal	2%
Laval	1.65%
Dalhousie	1.25%
Average %	**1.6%**

151. The University's proposal of 1.25% for 2021-2022 remains below the average of known increases for 2021-2022. This, even after five years of significantly lower than average percentage increases.

152. Notably, the University's proposal for 2022-2023 (1.5%) remains below the average for known increases in 2021-2022 among the U15 rankings (1.6%). These facts reveal the inappropriateness of the University's general salary increase proposals.

Response to the University's Financial Circumstances

153. Beginning at paragraph 116, the University provides its submission on its financial circumstances. It starts that analysis by conceding that ability to pay is not a proper consideration.

154. It further remarks, at paragraph 117, that the University is currently in a stable financial position, yet it is not in a position to take on "overly generous" or unjustified

labour costs, and goes so far as to suggest that any increase beyond its own proposal would put the financial health of the University at risk.

155. These comments, and the comprehensive explanations that follow between paragraphs 118 to 152 of its submission, are a thinly veiled ability to pay argument. UMFA's primary position is that these explanations are not relevant to the arbitrator's analysis, which is well established by the authorities, and is a principle the University itself acknowledges, but then ignores, between pages 53-69 of its Submission.

156. In particular, UMFA relies on the often-cited comments from Arbitrator Shime in *McMaster University and McMaster University Faculty Association*:

> I am in agreement with the faculty that there is little economic rationale for using ability to pay as a criterion in arbitration. In that regard I need only briefly repeat what I have said in another context, that is, public sector employees should not be required to subsidize the community by accepting substandard wages and working conditions: see e.g. *General Truck Drivers, etc. v. B.C. Railway Co.* (1973) (Shime); *Re University of Manitoba,* May 16, 1979 (Williams). Thus, for example, <u>if I were faced with data showing that the salary scale for assistant professors at McMaster was less than that of other universities in Ontario, I would have no hesitation in increasing the amount to achieve the same standards for McMaster **regardless of the university's fiscal position.**</u>

Tab 27, *MACA 1991 Award (Chapman),* pages 7-8

157. Without prejudice to the position that ability to pay is not an appropriate factor in this process, UMFA responds briefly as follows.

<u>*Revenues and Expenditures*</u>

158. At paragraph 122, the University explains that the "block grant" received from the Province has decreased since 2017/2018, undoubtedly in support of its claim that it cannot provide any further increase than what it is proposing in this proceeding.

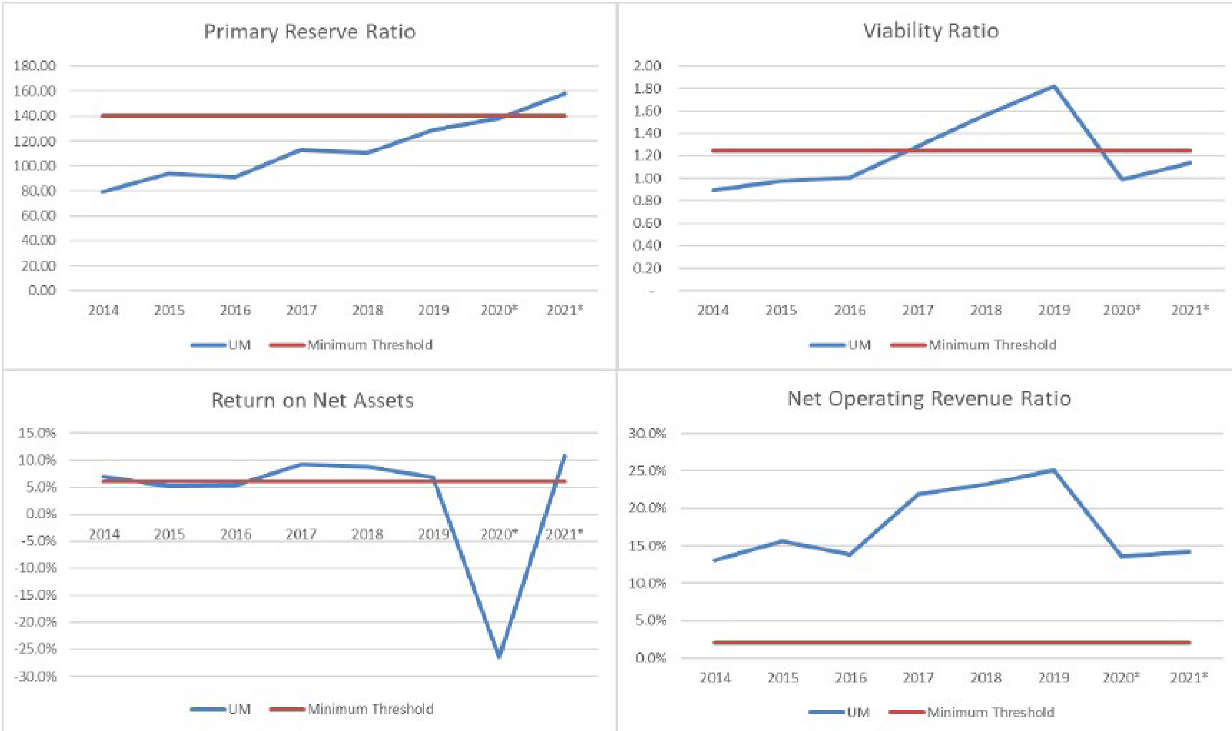
159. On February 24, 2022, the University announced in UM Today that it had received an increase to its 2022/2023 provincial operating grant by over $3 million, for a total of $354,465.526. The article notes that this additional $3 million was provided to support the proposed expansion of nursing seats in the College of Nursing, while the remainder of the grant was held at the same level as the 2021/2022 grant.

Tab 79, UM Today, February 24, 2022

160. The University provided a chart at paragraph 122 of its Submission and at **Tab 25** which indicates that the total 2021/2022 grant amount was $340,139,500. Yet, even subtracting $3 million from the $354,465.526 provided by the province in 2022/2023, it would appear that the University itself has claimed that it received over $350,000,000 in operating grants from the Province in 2021/2022, a difference of $10 million dollars from what it claimed in its Submission.

Composite Financial Index

161. At paragraph 134, the University included their Composite Financial Index (CFI) scores in their submission:



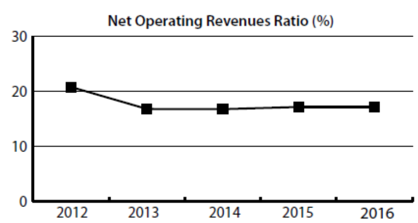
162. UMFA notes that the University's net operating revenue ratio (table in the bottom right corner) is approximately four (4) times the red line. At paragraph 34 of its Submission, the University labelled the red line in the graph as a "minimum threshold." interestingly, in their 2014-2015 and 2015-2016 annual reports (the only years in which they published CFI analysis results for the University), they characterize it is an "ideal score."

Net Operating Revenue Ratio

Did the University generate a positive or negative cash flow?

The Net Operating Revenue Ratio indicates whether a university is living within its available resources, and if its aggregated activities resulted in a surplus or a deficit.

A positive score indicates that a university has generated a surplus, and a negative score indicates that a university has generated a deficit. An ideal score for this ratio is 4.0%, which is considered to be indicative of a sound ability to generate a positive cash flow from a university's total activities.



Tab 80, University of Manitoba Annual Financial Report 2016, Page 7

163. It is an important distinction: Labelling a value as "ideal" rather than "minimum" means that deviations in either direction are problematic. When the net operating

revenues ratio greatly exceeds the ideal value, it indicates that the institution has under-allocated resources to its core operations.

164. UM's weaker performance on the primary reserve ratio and the viability ratio generally results from UM's practice of internally restricting their resources[9] rather than reflecting any financial strain faced by the University.[10]

165. In any event, the University submits that it has just reached above the minimum thresholds in key indicators and must remain above or increase its reserves to achieve the minimum thresholds. This is an obvious ability to pay argument that ought to be disregarded. Every University is wrestling with the same ratios. This is not a reason to reduce otherwise appropriate compensation for UMFA members.

<u>Operating Surplus</u>

166. At paragraph 142, the University advises that it had an operating surplus of $94 million in the year ending March 31, 2021. While it seeks to explain how the majority of that surplus is restricted (i.e., cannot be used to fund salary increases), it concedes that approximately one third of that surplus- $34 million to be exact- can be used to do so. Remarkably, $34 million is the estimated total cost of UMFA's proposed salary adjustments through General Salary increases and Recruitment and Retention Adjustments over the three years of the collective agreement. To be clear, that $34 million of the surplus is only the surplus in <u>one</u> year.

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[9] UM generally re-classifies nearly all their unrestricted net assets as "internally restricted". Taking both unrestricted net assets and internally restricted net assets together, UM's non-externally restricted Cash and Investments grew from $120M in 2015 to $246M in 2020. That figure was not disclosed by UM in their 2021 annual report and could not be calculated with the information they provided. UM declined UMFA's request to provide the 2021 figure.

[10] UMFA notes as well that it is unable to calculate the CFI ratios itself. The CFI analysis was originally designed in the U.S. for U.S. universities, and Canadian universities adapted it to the Canadian context and only started using it relatively recently (UM claims to have been the first to publish the results of this analysis in 2014-2015, UM Annual Financial Report 2016, p. 6). The ratio formulae are not laid out clearly in the UM annual reports.

167. At paragraph 147-148, the University submits that the surplus realized for 2021 cannot be expected year after year. However, the University fails to mention that it has experienced an operating surplus of at least $80 million in every year since 2015. UMFA refers back to paragraphs 179-181 of its Submission and **Tab 41** for further information about the financial status of the University.

168. At paragraph 150, the University cautions that enrollment may be impacted in future years because UMFA proceeded to strike in 2016 and 2021. It is very unlikely that the strike will have a negative impact on enrollment and UMFA challenges the appropriateness of such a statement. In any event, it is unlikely that the University of Manitoba, it being the largest post-secondary institution in the Province, the only research focused post-secondary institution, and the only member of the U15 Group of Canadian Research Universities, will experience large-scale transfers or enrollment decreases to the University of Winnipeg or the University of Brandon as a result of work stoppages centered around appropriate pay for its faculty and academic staff.

Maintenance costs

169. Further, at paragraph 151, the University advises that it has approximately $300 million in deferred maintenance costs, including some which must be expended just "to keep the lights on". Every university within the U15 has deferred maintenance costs.

170. In fact, the University's deferred maintenance obligations are less than those of comparator universities:

University	Year	Total revenues ($ millions)	Deferred maintenance ($ millions)	Deferred maintenance as % of total revenue
McGill[11]	2020-2021	$1,466	$1,310.0	89%
Calgary[12]	2020-2021	$1,393	$529.5	38%
Alberta[13]	2019-2020	$1,855	$385.0	21%
Dalhousie[14]	2020-2021	$762	>$500	66%
Ottawa[15]	2018-2019	$1,126	$387.5	34%
Queen's[16]	2019-2020	$1,019	$345.0	34%
UM	2020-2021	$957	$300.0	31%

171. The University of Manitoba is not an outlier in this regard. In fact, other universities have far higher deferred maintenance costs, yet continue to pay their academic staff greater salaries.

172. In a letter to University President Benarroch dated February 15, 2022, the Province announced that the University will be receiving, in addition to its operational grant, an additional $4.2 million to assist with deferred maintenance costs.

[11] Nathan Greenfield, "Universities start year with massive maintenance backlog," *University World News*, January 9, 2021, https://www.universityworldnews.com/post.php?story=20210108142956914; Financial Statements of the Royal Institution for the Advancement of Learning/McGill University, p. 3:
[12] From University of Calgary Management Discussion & Analysis 2020-2021, p. 11: https://www.ucalgary.ca/finance/sites/default/files/teams/5/fr-2021-mda.pdf ; and University of Calgary Consolidated Financial Statements 2020-2021, p. 6: https://www.ucalgary.ca/finance/sites/default/files/teams/5/fr-2021-financial-statement.pdf
[13] University of Alberta Capital Plan Infrastructure 2021-2024, p. 6: https://www.ualberta.ca/facilities-operations/media-library/documents/capital-plan-2021-2024.pdf; University of Alberta Consolidated Financial Statement for the Year Ended March 31, 2020, p. 5: https://www.ualberta.ca/university-services-finance/media-library/financial-statements/fs-2020.pdf
[14] Dalhousie University Annual Financial Report March 31, 2021, p. 26 and p. 7: https://cdn.dal.ca/content/dam/dalhousie/pdf/dept/financial-services/Reports/Annual%20Reports/2020-21%20Annual%20Financial%20Report.pdf

[15] University of Ottawa Review of the Financial Results 2018-2019, p. 6: https://www.uottawa.ca/ressources-financieres/planification-financiere/sites/www.uottawa.ca.ressources-financieres.planification-financiere/files/review_financial_statements_2018-2019.pdf; Consolidated Financial Statements of University of Ottawa, Year ended April 30, 2019, p. 2: https://www.uottawa.ca/ressources-financieres/planification-financiere/sites/www.uottawa.ca.ressources-financieres.planification-financiere/files/financial_statements_2018-2019.pdf

[16] Queen's University at Kingston Consolidated Financial Statements, April 30, 2020, p. 3, p. 2: https://www.queensu.ca/financialservices/sites/webpublish.queensu.ca.finwww/files/files/2019-2020%20Financial%20Statements.pdf

Tab 81, Letter from Deputy Minister Charron dated February 15, 2022

State of the Provincial Economy

173. The University has provided a brief review of the provincial economy. It has not provided an expert opinion in this regard. In contrast, UMFA has provided an opinion by Dr. Fletcher Baragar which reviews the state of the provincial economy and the fiscal circumstance of the government. UMFA submits that his opinion ought to be preferred over the analysis conducted by the University's representatives and counsel.

174. In that regard, UMFA makes the following comments regarding the submission of the University.

175. At paragraph 158, the University references the size of the provincial deficit due to the COVID-19 pandemic and notes that the current figures do not include the impact of the fourth wave and the Omicron variant. However, Professor Baragar's analysis, which was completed in February 2022, (i.e., during the Omicron wave) considered current circumstances and determined that current conditions and short term forecasts still give every indication that the province's current trajectory provides for rapidly diminishing budget deficits year after year. He also submits that is likely to continue regardless of any new policy initiatives that government chooses to introduce in 2022 or 2023.

176. At paragraph 159, the University cites uncertainty about the general economic outlook, and notes that the full impact of the Omicron 4th wave has not yet been felt throughout the economy, and that there remains the possibility of future waves. Building on that, at paragraph 160, the University points out that the forecasted rebound in 2021 will not return the economy to its pre-pandemic level, even after increasing by 4.6%, because it dropped by the same amount in 2020.

177. This conclusion downplays the expected continuation of fairly strong economic growth into 2022 referenced by Professor Baraga. He explains that the more recent

forecasts estimate that GDP will increase by 3.9% in 2021 (*lower* than the University's stated forecast) and 3.8% in 2022, completing the recovery and pushing GDP levels beyond their pre-pandemic peak in mid-2022. The University's submission fails to provide or consider any GDP forecasts for 2022.

Tab 39, Baragar Report, page 2

178. It is also significant that the Manitoba GDP forecast for 2022, it being 3.8%, is higher than the average provincial growth rate over the last decade.

179. At paragraphs 159-160 the University also warns that it is not clear whether additional COVID-19 variants will emerge, further delaying economic recovery. It does, however, recognize that all public health restrictions will be removed this month. Significantly, the government has been open about the fact that its new strategy is not one that is likely to involve further economic shutdowns, but instead a plan to reduce/eliminate restrictions and to "learn to live" with COVID-19. In fact, on March 2, 2022, the government announced that, as of March 15, 2022, all self-isolation requirements after testing positive for COVID-19 will be eliminated.

Tab 82, CBC News, Manitoba to expand gathering limits, allow more fans at events as COVID-19 restrictions ease next week, February 2, 2022

Tab 83, CBC News, Manitoba to drop self-isolation requirement for people who test covid positive, March 2, 2022

180. Furthermore, the very recent announcement of the elimination of all public health restrictions on March 15, 2022 can be expected to provide a further boost to economic activity and to government revenue. This new development is given little weight in the University's analysis. The full impact of the easing and ultimate elimination of these restrictions during the first quarter of 2022 was likely not fully accounted for in the growth forecasts released in January and early-February 2022.

181. At paragraph 161, the University references "current" employment rate data for Manitoba. The University relies on labour market data from November 2021, when the December 2021 and January 2022 figures show further strengthening of the labour market in Manitoba. As Baragar noted in his report, employment levels now exceed pre-pandemic levels. The University's analysis downplays the strength of the labour market.

Tab 39, Baragar Report, page 15

182. While the point raised by the University regarding the decline and incomplete recovery in part-time work is valid, the overall changing composition of employment is toward more full time jobs as opposed to part-time positions. This is another indicator of strength in the labour market and in the economy as a whole (and presumably for household budgets as well). Some Manitoba figures[17]:

Full Time employment

January 2020 (pre pandemic)	**January 2022**	**Change:**
523,900	541,900	+18,000

Part Time employment

January 2020 (pre pandemic)	**January 2022**	**Change:**
138,500	123,600	-14,900

183. At paragraph 162, the University acknowledges that CPI is "relatively high" in Manitoba for 2021 and 2022, <u>at 2.9% and 2.6% respectively</u>. The figures relied upon by the University are dated and do not capture the significant increase in the CPI that occurred in late 2021 and January 2022. The true CPI rate in Manitoba for 2021 has been confirmed as <u>3.3%</u> (not 3.2% as claimed by the University at paragraph 163) and is forecasted to be <u>3.6%</u> in 2022- a whole percentage point higher than the University's

[17] Statistics Canada CANSIM II, Table 14100287 *Labour force characteristics, monthly, seasonally adjusted and trend-cycle, last 5 months, monthly*. https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1410028703

stated forecast of 2.6%. As such, the University has significantly understated the rise in the cost of living in Manitoba for 2021 and 2022 in its analysis.

184. The University's submission at paragraphs 162-163 also suggests that Manitoba's inflation rates tend to fall <u>below</u> the national rate. As Professor Baragar indicated in his report, Manitoba's inflation rates tend to track very closely to the national figure.

Tab 39, Baragar Report, page 11

185. At paragraph 164, the University suggests that the latest forecasts do not include data or forecasts on the impact of the Omicron wave. However, the latest real growth forecasts for 2021 (i.e., the average of the private sector forecasts), which were released in early 2022, can be expected to have included, at least in part, the impact of the Omicron wave. Presumably, this is why the forecasts are calling for 3.9% growth in 2021 as opposed to the 4.6% figure cited by the University, based on an earlier forecast.

186. At paragraph 165, the University refers to the current situation as "uncertain economic times" justifying its general salary increase proposal. With respect, there is unquestionably greater economic certainty at this point in time than there has been at any time since the start of the COVID-19 pandemic two years ago.

<u>Cost of living</u>

187. At paragraphs 167 of its submission, the University suggests that Winnipeg's cost of living remains comparatively low as compared to other cities in or around the U15 rankings. It provides a chart that suggests that Winnipeg's CPI index, or cost of living, in 2021 is lower than most other cities, except for Montreal, Vancouver and Quebec City.

188. The University appears to misinterpret what the CPI actually indicates. CPI is a constructed index number that measures a weighted basket of prices of goods and services purchased by households. The index number is relative to a base year (2002) set equal to 100, i.e., the CPI for 2002 = 100. That is the case for every province/city.

189. Interprovincial CPI comparisons for different years, then, attempt to capture the relative change in the cost-of living between provinces over that period of time. The University appears to be using the different CPI values for different provinces for any given year as a comparative indicator of different levels in the cost-of-living, which is inappropriate- that would only hold in the very special case where, in the base year 2002, the cost of living in all of the provinces was equal, which obviously was not the case. So, for any year, a lower CPI for any province/city relative to the others does not imply a lower cost of living in that province relative to the others; it only implies that the proportionate change in the cost-of-living in that province has, since the base year, been less that the proportionate change in the other provinces/cities.

190. UMFA cautions against reliance on the University's chart as a measurement of cost of living levels amongst the comparator cities. From a glance, one might be taken by the fact that this chart would appear to indicate that Winnipeg's cost of living is greater than Vancouver's.

191. At paragraph 171, the University introduces average weekly earnings as a comparative tool amongst the U15 institutions. Average weekly earnings in Manitoba are indeed below the Canadian average. It is also appropriate to note that, according to Statistics Canada[18], average weekly earnings in Manitoba increased 4.2% in 2020 and 3.1% in 2021[19], far greater than the salary increases provided to UMFA member in 2020 and far greater than the rates proposed by the University for 2021. This is another standard against which the appropriateness of the University's salary offer may be assessed, in addition to a comparison with cost of living increases.

[18] https://www150.statcan.gc.ca/t1/tbl1/en/tv.action?pid=1410022201

[19] This data is year-to-date ending November 2021.

Labour Market Trends

192. At paragraph 173, the University submits that, despite the parties' agreement to comparisons within the U15 rankings, Arbitrator Freedman acknowledged in his 2001 Award that recent wage settlements in Manitoba can also be relevant. UMFA reiterates that, while Arbitrator Freedman did consider those settlements in his analysis, the parties did not agree to a Memorandum of Agreement in 2001 specifying the primary objective of the parties, as they have in this proceeding. Therefore, Arbitrator Freedman was less restricted in the factors for consideration and the weight to be applied to each:

> By virtue of circumstances this arbitration was conducted in an expedited fashion. The Faculty had gone on strike on Monday, there had been intense public focus on the situation, with considerable media commentary, and by sometime late Thursday, the parties signed a brief agreement to submit the dispute to (essentially) binding arbitration and to have the Faculty go back to work. About 36 hours later, the arbitration hearing commenced.
>
> In these circumstances it is quite understandable that <u>neither party had the opportunity to present with its submission at arbitration a statement of the principles that would govern the arbitration and pursuant to which I would arrive at a decision….</u>
>
> …
>
> In any interest arbitration a number of factors are typically considered relevant. <u>Without necessarily assigning any order of importance to these</u>, they would include, in a case like this, the compensation and benefits of academics in other comparable universities, recently negotiated settlements and the prevailing and forecasted economic climate. The employer's ability to pay may be relevant as could the compensation levels in the local community (both in the public and private sectors), and there may also be other factors appropriately considered by an arbitrator, depending on the circumstances. I was given some data on most of these matters.

Tab 35, *2001 Interest Arbitration Award (Freedman),* pages 2-3

193. Nonetheless, UMFA does acknowledge that other public sector settlements are a consideration for the arbitrator, albeit a more limited consideration.

194. At paragraph 174, the University acknowledges that there are several collective agreements that extend into 2021-2022, but few that extend beyond that time. It begins its analysis by referring to the award between the Province of Manitoba and the Manitoba Association of Crown Attorneys, which provided for general wage adjustments of 1.2% in 2021. UMFA has already explained in its Submission the context in which that increase was awarded, which included limited economic data (far more limited than at present), considerable economic uncertainty, and inflation projections of 1.6% for 2021 and 2.0% for 2022, far below the ultimate result for 2021 and what is forecasted for 2022 (3.3% and 3.6%, respectively):

> The data for 2021-2022 (Year 3) are limited but present forecasting calls for positive economic and employment growth. Inflation is projected to rise to 1.6% in 2021 and 2.0% in 2022. <u>All the data for Year 3 are uncertain because the course of the pandemic itself is unpredictable</u>. A third wave was underway in Manitoba as this award was being finalized.

Tab 22, *MACA Award (Peltz),* para 217

195. Arbitrator Peltz determined that the economic realities of COVID precluded full achievement of cost of living increases at the time, but made an award that tracked somewhat along with inflation. It is doubtful that he would have awarded a 1.2% increase had he known at the time that inflation in 2021 would have increased to 3.3%.

Tab 22, *MACA Award (Peltz),* para 218-219

196. UMFA refers back to paragraphs 354-355 of its Submission for further information on that Award.

197. UMFA further notes that the MACA Award provided for general wage increases of 1.4% in 2019 and 0.5% in 2020. During that same time period, UMFA members received general wage increases of 1% in 2019 and 0% in 2020.

198. The University refers to the settlement between the Province of Manitoba and the Legal Aid Lawyers' Association, which provided for the same wage adjustments as

determined by Arbitrator Peltz in the MACA Award. That LALA agreed to that outcome is not determinative in this proceeding for the same reasons the MACA Award is not determinative. LALA also received greater increases in 2019 and 2020 than UMFA members.

199. At paragraph 177, the University notes that similar patterns have been achieved in the education sector extending into 2021-2022, and notes simply that they have received a "cost of living adjustment" in 2021. The University conveniently fails to mention that the actual COLA adjustment received by teachers, and as well, to date, a large contingent of non-teaching staff, ended up being <u>3.3%,</u> i.e., the same general salary increase sought by UMFA in this proceeding.

Tab 84, Letter from Manitoba School Board Association to Board Chairs, Superintendent and Secretary Treasurers dated January 26, 2022

200. UMFA refers to paragraphs 359-362 of its Written Submission for further information on these COLA adjustments for 2021-2022.

201. The University also notes that the Provincial Health Labour Relations Services and the Manitoba Nurses Union agreed to a seven year agreement which contains a 1.2% adjustment in 2021-2022, and 2% increases in 2023-2023 and 2023-2024. The University argues that the MNU Agreement is further support for this Arbitrator to award UMFA members its proposed general wage increases, because they mirror the imposed outcome for MACA and the negotiated outcome with LALA for the year 2021. UMFA responds as follows.

202. First, the complete set of general wage increases reached in the MNU Agreement must be considered in full. Those increases are as follows:

April 1, 2017: 1.25%
April 1, 2018: 1.25%
April 1, 2019: 1.4%
April 1, 2020: 0.5%
April 1, 2021: 1.2%
April 1, 2022: 2.0%
April 1, 2023: 2.0%
Total: 9.6%

203. It is significant that the entirety of the MNU Agreement provides for total general wage increases of 9.6% before compounding, and over 10% after compounding, over a span of seven years (between 2017 and 2024). Further, the general wage increases are retroactive to the start of the Agreement. i.e., April 1, 2017.

204. Comparatively, under the University's proposal, UMFA members would receive the following general salary increases over the same time period:

MNU	UMFA
April 1, 2017: 1.25%	April 1, 2017: 0%
April 1, 2018: 1.25%	April 1, 2018: 0.75%
April 1, 2019: 1.4%	April 1, 2019: 1.0%
April 1, 2020: 0.5%	April 1, 2020: 0.%
April 1, 2021: 1.2%	April 1, 2021: 1.25% (proposed)
April 1, 2022: 2.0%	April 1, 2022: 1.5% (proposed)
April 1, 2023: 2.0%	April 1, 2023: 1.75% (proposed)
Total: 9.6%	**Total: 6.25%**

205. Further, while the MNU Agreement does contain the same general wage increases for 2021 as the University has proposed in this interest arbitration, it is important that this arbitrator appreciate that the MNU Agreement provides for significant additional compensation for virtually every member of the MNU bargaining unit, over and above the general wage increases, for the years at issue in this interest arbitration. A few examples:

- Licensed Practical Nurses (LPNs), who make up just less than 20% of the MNU membership, received an additional 3% step to their wage scale as of April 1, 2021;

- General Duty Nurses, or Nurse II's, who make up almost 74% of the bargaining unit, received an additional 3% step to their scale in 2021, followed by another 2% step in 2022;

- Nurse 3's received an additional 2% step as of April 1, 2021;

- Nurse 4's from outside the largest centres will have their salary scales adjusted as of April 1, 2021 to match the scales for those working in St. Boniface Hospital, Health Sciences Centre, and Brandon Regional Hospital. For Nurse 4's at the highest step, this meant a roughly 4.25% special adjustment;

- The MNU Agreement contains a multitude of additional compensation increases, including but not limited to the following:

  – a signing bonus for every member of $0.50 for each hour paid at regular rates for all positions worked for Central Table Employers between October 1, 2020, and September 30, 2021, with a minimum amount of $500 per nurse in the unit as of date of ratification. For a full-time nurse working 2015 hours annually, this amounts to a bonus of $1007.50 which, for a Nurse II at the top rate, equates to about 1.1% of annual pay;

  – raising the academic allowance for Nurse Practitioners (NPs) as of April 1, 2021 (which amounts to a 2.5% special adjustment for all NPs, above and beyond the general wage increase);

  – increasing the Evening and Night Shift premiums;

  – providing monetary incentives of up to $2,000 for full-time nurses, and $3,000 for full-time nurses working in the ICU, effective April 1, 2021;

  – increases to the rates for nurses working in northern & remote locations, and a 10% increase to isolation allowances;

  – all overtime will now be paid at double time rates as of date of ratification;

- compensation for telephone and email consultations over 15 minutes in duration;
- an increase to the meal allowance;
- increased premium for temporary transfers; and
- work disruption compensation for travel between sites, depending on distance travelled.

Tab 85, MNU Contract Highlights

206. It is apparent that the vast majority of MNU's 12,000 members will receive adjustments to compensation in 2021 that significantly exceed the value of the general wage increases over the seven years; only a very small number of nurses, if any, will see their compensation rise solely as a result of general wage increases.

207. Considered from a total compensation perspective, the special adjustments reflected in the MNU Agreement, together with the significant signing bonus for every member who worked during October 2020 to September 2021 – which for many MNU members will approximate about 1% of pay – support UMFA's submission that more than the 1.2% general wage adjustment as proposed by the University is appropriate for 2021.

208. It is also very probable that, as more public sector collective agreements are settled, they will reflect the rise in the cost of living that is now being realized over the years at issue in this interest arbitration. Settlements attained before these increases are less influential.

Conclusion on the University's proposed General Salary Adjustments:

209. The University's proposal, which it sells as advancing UMFA's salaries in the U15 rankings, possesses the serious potential of having the opposite effect. It overstates the significance of structural changes in improving UMFA's standing versus others in the U15, and then provides nominal general salary increases that fall below the likely increases to be awarded to those in the U15 rankings over the life of the collective agreement. A further

fall down the U15 rankings, or even remaining stagnant, is a very real risk, should the arbitrator award the general salary proposals proposed by the University. Either outcome would run completely against the mutually stated objective of the parties in this proceeding. Greater increases than those proposed by the University are necessary to protect against that outcome.

210. Further, given the jointly stated aim of the parties pursuant to the MOA for the upcoming collective agreement, the arbitrator should err, if at all, on the high side. Should UMFA salaries rise above the 25th percentile by the end of the current collective agreement, once salaries are negotiated for the next several years at other universities, that would provide good arguments the University could use at the next round of bargaining, to constrain further significant wage increases, if sought at that time by UMFA.

(b) Section 1(b) of the MOA: Response to Recruitment and Retention Adjustments

211. The University has taken the position that no recruitment and retention adjustments are warranted, claiming that the "the University does not have any broad recruitment or retention problem" (paragraph 9, paragraph 188 and elsewhere). UMFA disputes this claim and responds as follows.

The University's Submission Runs Counter to the Facts

212. In its Submission at paragraph 398, UMFA provided a chart indicating that the parties agreed to recruitment and retention adjustments in nearly every year between 2007-2013. For ease, the relevant portions of the chart are reproduced below:

Year	% Increase	Recruitment and Retention Adjustment
2007-2008	2.5%	$500 recruitment and retention market adjustment for all members
2008-2009	2.5%	$500 recruitment and retention market adjustment for all members
2009-2010	2.9%	$500 recruitment and retention market adjustment for all members
2010-2013 CBA		
2010-2011	0%	$500 recruitment and retention market adjustment to base salary
2011-2012	0%	1% recruitment and retention market adjustment to base salary
2012-2013	2.9%	
2013-2016 CBA		
2013-2014	2.9%	Assistant Professor, Lecturer, Instructor II, Instructor I, Assistant librarian and General Librarian below the threshold received a recruitment and retention market adjustment of $900 to their base salary; Associate Professor below the threshold received a recruitment and retention market

		adjustment of $1,500 to base salary
2014-2015	2.0%	
2015-2016	2.0%	
2016-2017 CBA		
2016-2017	0%	
2017-2021 CBA		
2017-2018	0%	
2018-2019	0.75%	
2019-2020	1%	
2020-2021 CBA		
2020-2021	0%[20]	

213. Clearly, the parties recognized that there were certain recruitment and retention issues that required addressing in six different years (2007, 2008, 2009, 2010, 2011, and 2013) which were addressed through adjustments.

214. Notably, the 2013-2016 collective agreement (i.e., the last agreement involving an adjustment) was the last agreement that was voluntarily negotiated outside of government interference.

215. In its Submission, UMFA also summarized the 2016, 2017 and current bargaining rounds. It identified statements made by the University's own representatives to the effect that, even back in the 2016 round of bargaining, solving existing recruitment and retention issues was a priority.

216. UMFA noted that while in bargaining in 2016, the parties acknowledged that the wages paid to faculty at the University of Manitoba were at the bottom of a group of 13 comparable Canadian universities. Both UM and UMFA agreed that salary increases were a top priority in the 2016 round of bargaining.

Tab 3, Manitoba Labour Board decision, pages 10 – 11

[20] UMFA negotiated a one-time COVID stipend equating to 1.6% average salary for 2020, but with zero on the salary scale.

217. As set out further in UMFA's Submission, the University had made a comprehensive settlement proposal to UMFA that would result in average salaries being increased by 17.5% over four years. In its comprehensive settlement proposal, in terms of its wage and market adjustment offer in comparison with other Canadian universities, the University said:

- "Nationally, most settlements within the U15 larger universities have been in the range of 1.5%. The University's proposal is slightly more generous than these comparators, and <u>thus will help ensure that our institution continues to be competitive in the recruitment and retention of faculty members."</u> (p. 6)

- <u>"It is important that the University be competitive when we recruit nationally and internationally for faculty members</u>. The University's proposal is based upon relevant comparators, with particular emphasis on the U15 large universities." (p. 7)

218. The government subsequently interfered in bargaining, causing the University to withdraw its proposal and causing the parties to end up with a one year collective agreement containing a wage freeze. Quite obviously, the replacement of considerable salary increases with a wage freeze could not have assisted in efforts to address recruitment and retention at the University.

219. Before the 2017 round of bargaining, the government introduced the PSSA, which mandated that all collective agreements be subjected to a four-year "sustainability period", with maximum wage and monetary increases at 0%/0%/.75%/1%.

220. UM's lead bargainer, Greg Juliano, sought a government mandate which would allow the University to offer 3% in the fourth year (the first year not restricted by the PSSA sustainability period) or alternatively allowing the University to offer a wage opener in the fourth year on condition that if no agreement was reached, the fourth year compensation would be settled by way of binding interest arbitration. One can reasonably infer that the pursuit of a 3% mandate, or a wage reopener in the last year was proposed at least partially in recognition of the fact that low salary increases would have a negative effect on the University's standing in the U15, and on recruitment and retention issues.

221. The 3% mandate request was denied by government, as was the proposal to permit the parties to resort to binding arbitration, but approval was granted for a wage reopener in the fourth year. The University complied with the government's direction and a four-year collective agreement was ultimately agreed to with wage increases as follows:

2017 – 0%
2018 – .75%
2019 – 1%
2020 – wage reopener as per Letter of Understanding Appendix I

222. During bargaining for the wage reopener in 2020-2021, the government once again directed the University not to agree to any general salary increase. The end result was another wage freeze.

223. As a result, faculty salaries at UM were:

- frozen in both 2016 and 2017;
- increased only 0.75% in 2018;
- increased only 1% in 2019; and
- while a one-time stipend of $1,950 was paid, salaries were frozen in 2020.

224. Following the outcome of the wage reopener negotiations, University President Michael Benarroch acknowledged that:

- salaries had not kept up with inflation over the previous years;
- the University was committed to finding ways to improve salaries over time, and
- there was a need to communicate with government on the need for competitive compensation as the University enters the next round of negotiations with UMFA.

Tab 16, December 2, 2020 Senate Meeting Minutes

225. Between 2016 and 2021, UMFA members received a total general salary increase of just 1.75%. Undoubtedly, these nominal increases could not have assisted in reducing

or protecting against recruitment and retention issues, an objective raised by the University itself back in 2016 before these subsequent rates were ever bargained.

Effects of this bargaining chronology on recruitment and retention:

226. In the seven years since the last recruitment and retention market adjustment was bargained in 2013, UMFA Members have endured three years of wage freezes, and four other years where the salary increase was no greater than 2%. Any recruitment and retention problems acknowledged by the parties in 2013 and raised by the University again in 2016 will have undoubtedly been severely exacerbated by the minimal salary progression among UMFA Members as compared to their U15 comparators over this time period. No other conclusion is plausible.

The current round of bargaining:

227. Notably, in this round of bargaining, the University's representatives made comments at the bargaining table and in the media acknowledging that recruitment and retention issues exist and are problematic. UMFA refers to paragraphs 368-376 of its Submission for references to those comments.

228. UMFA has also provided survey responses from its members that indicate dissatisfaction amongst its membership with their salaries, consideration of leaving for other institutions, and raising personal experiences with faculty retention and recruitment issues in their respective departments. Those are set out at paragraphs 378-382 of UMFA's Submission.

229. Despite all of this context and history, the University suggests to this arbitrator that there are no current recruitment and retention issues that require addressing. That position is curious, knowing the ongoing efforts since approximately 2007 to address recruitment and retention issues, and the government's interference in recent years which has prevented meaningful salary increases from being negotiated. Any issues that existed prior to the government's interference beginning in 2016 have only intensified since.

230. Contrary to the University's claims, there continues to be a recruitment and retention problem at the University.

231. Notably, at no point when acknowledging recruitment and retention issues in bargaining and in the media in this round did any University official qualify their statement by suggesting that recruitment and retention issues only existed in specific areas of the UMFA Membership.

232. In any event, the University has approached this portion of its submission as if UMFA has to validate that a recruitment or retention problem exists. It has provided data and percentages to show that there are no recruitment and retention problems at the present time. Yet it cannot explain away the fact that efforts were made to remedy recruitment and retention issues in the recent past, before being waylaid by the government directives, and that its own representatives have publicly and openly acknowledged that such issues persist to this day.

233. These parties have identified, in the MOA referring outstanding issues to this proceeding, that recruitment and retention adjustments are to be addressed by this arbitrator. There is no "problem" that UMFA must first establish in this proceeding before the arbitrator can award adjustments. The parties agreed to the existence of such problems, through the MOA, and the need to address them through a comparison to and advancement in the U15 rankings.

<u>Use of Market Stipends to address recruitment and retention:</u>

234. At paragraph 189 of its Submission, the University claims that if any recruitment and retention issues do exist, these can be adequately addressed on a case by case basis through the revised market stipends. It relies on comments made by Arbitrator Freedman in 2001 to support its view that any outstanding recruitment and retention issues can be addressed in that fashion. UMFA notes that these comments, made two decades ago in 2001, about the use and application of market stipends to address

recruitment and retention issues clearly did not have the anticipated effect, given the need for additional recruitment and retention adjustments between 2007 and 2013, and further concerns and efforts raised by the University to address those issues through to the present round. The same optimism shown by Arbitrator Freedman in 2001 regarding the use of market stipends to remedy recruitment and retention issues should not and cannot be repeated, given this history. Real adjustments are necessary, as opposed to the University's proposal to simply leave this to the discretion of the University in possibly awarding a stipend increase on a case by case basis.

<u>The parties' history in negotiating market adjustments:</u>

235. It is also notable that any special lump adjustment that has ever been negotiated between these parties has traditionally been referred to as a market adjustment or, more recently as a "recruitment and retention adjustment." It is not necessarily the case that a particular recruitment and retention problem was identified through hard data before these parties have negotiated adjustments.

236. In fact, it has largely been the practice of the parties to issue an adjustment to <u>all</u> ranks, not just specific ranks, whenever an adjustment is being issued, regardless of any hard evidence of any recruitment and retention issues in that rank to support that adjustment. That practice has been in place for decades.

237. The University has placed significant emphasis in this proceeding on the principle of replication, i.e., what these parties would have ultimately settled on in bargaining. It is notable, then, the University's position contrasts with the tradition of these parties to provide recruitment and retention adjustments, regardless of any hard data identifying a problem.

238. Notwithstanding the above comments, UMFA also responds to the University's data as follows.

Faculty

239. At paragraph 194, the University explains that eighty three (83) faculty members resigned in the period between 2015-2020. Despite its best efforts to put a positive spin on this reality, this is a significant number of departures that only confirms that recruitment and retention issues persist within the faculty ranks.

240. The University's claim is that 83 resignations-which it defines as any departure not caused by retirement, death, or a return to school- is nevertheless manageable. In support, it relies on commentary from *Cape Breton (Regional Municipality) and NSGEU*). A review of that Award shows that the alleged recruitment and retention issue claimed by the union in that case was supported by four members leaving over a span of six years, and the arbitrator explaining that this was minimal turnover and that "some turnover is inevitable" (**Tab 41 to the University's Submission, paragraph 58**). It also refers to the *Seven Oaks School Division and Seven Oaks Teachers Assn, Award* where the Association did not allege a recruitment and retention issue at the time, but forewarned of a problem in the future (**Tab 42 to the University's submission, paragraph 95**). Clearly, those facts differ from the instant circumstances.

241. That 83 faculty members have left since 2015 is not coincidental- that has occurred during the same time period during which UMFA members have had the lowest general salary increases among any of the U15. This has undoubtedly had a negative effect on recruitment and retention.

242. That reality also confirms that that the use of market stipends, considered by Arbitrator Freedman as a tool in addressing recruitment and retention, did not have the desired effect. The University submits that this was recognized by Arbitrator Freedman and remains "true today", despite failing to address recruitment and retention problems in the interim period (paragraph 215 of the University's submission).

243. The University's ongoing claims at paragraphs 199-200 that these newly revised stipends can address any narrow market-based retention issues must be considered with caution, given the history of its use of those stipends.

244. With respect to recruitment, the University suggests, beginning at paragraph 203, that it has been able to hire for all openings. It provides information at **Tab 44 to its Submission**- a document entitled "Academic Hirings" which reveals that the Provost's Office received a <u>staggering</u> 165 requests to fill academic positions during between June 1, 2020 and March 31, 2021, i.e., less than one year.

245. The University also submits that, of those requests, 131 involved positions represented by UMFA, with 113 recommendations received by the Provost that have been approved to date. While correct, UMFA members are part of these hiring committees and advise that in many instances, the University has been unable to hire their preferred candidate, but rather another candidate because the preferred candidate has elected to take a position elsewhere.

246. UMFA reiterates the comments made by President Benarroch during a Senate Meeting on October 6, 2021 where he stated:

> "There was a shared desire to have an institution that attracts and retains <u>the best and the brightest individuals to work and study at the University</u>."

Tab 17, October 6, 2021 Senate Meeting Minutes

247. Further adjustments as proposed by UMFA are necessary to achieve that mutual desire.

(c) <u>Section 1(c): Response on Return to Work Protocols</u>

(i) Full Salary and Benefits

248. The University states that UMFA's request for salary and benefits for the period of the strike is without justification. UMFA disputes that assertion and responds as follows.

249. Beginning at paragraph 217 of its Submission, the University has referenced three arbitration awards which dealt in part with a request by the union for a payment to its members following job action. It references these awards as support for its argument that UMFA's request for full salary and benefits "lacks any justification in labour relations". UMFA submits, however, that these three awards can be distinguished from the matter in question, and the reasoning relied upon by the University based on these awards should be rejected. In particular, these three awards should be distinguished because in each case, the union in question did not seek recompense for services rendered – as does UMFA – but for a lump-sum payment to mitigate wage losses. In addition, no union in any of these awards provided information detailing the work done by their members for which they were owed compensation. UMFA has provided that information in its Submission beginning at paragraph 409.

250. At paragraph 219 of its Submission, the University references the award by Arbitrator Burkett in *Mount Allison University and MAFA*, in which the University asserts that the arbitrator was "faced with a similar proposal from a striking faculty association. He rejected the request, and his reasons for doing so are directly analogous to the case at hand."

Tab 46 to the University's Submission, *Mount Allison University and Mount Allison Faculty Association*

251. The award in *Mount Allison* can be distinguished from UMFA on the basis that UMFA's request is different from the proposal presented to Arbitrator Burkett. MAFA's compensation proposals were for a lump sum payment to be made to each of its striking members, and for a donation to be made to a student bursary fund. By contrast, UMFA

is seeking compensation for services actually rendered by UMFA members to the University (as noted at paragraphs 404 to 452 of its Submission), with individual payments made to UMFA members based on the duties they have performed. For this reason alone, *Mount Allison* should be distinguished.

252. Arbitrator Burkett, at paragraph 32 of his award, noted “how unusual it would be for a third party interest arbitrator to order an employer to compensate employees for the period of time they withheld services during a strike”. He added that an understood consequence of striking for the union was that its members would “suffer a loss of earnings and would most certainly have make-up work to do upon their return”. UMFA, however, is not seeking compensation for the period of time that they withheld their services during a strike, nor can UMFA’s work be simply classified as “make-up work”. UMFA members were expected by the University to complete 100% of their annual teaching duties, all or almost all of their research duties, and all or almost all of their service duties, post-strike. Further, UMFA has provided evidence that only <u>after</u> the strike began did the University make clear that teaching duties would not be reduced after the strike (paragraph 410 of UMFA’s Written Submission).

Tab 46 to the University’s Submission, *Mount Allison University and Mount Allison Faculty Association,* para 32

253. With respect to duties during the strike, the Association’s members were given specific authorization by the University to conduct essential work during the period of the strike.

254. As mentioned at paragraph 426 of the UMFA Submission, the University confirmed via letter on December 3, 2021 that it would “not impede grant work, research equipment purchasing, salary payment activities, etc., and furthermore, that “The University will not impede any other activity which, if left uncompleted, would result in harm to research and/or other projects currently undertaken by an UMFA member”. Previously, the University had confirmed via letter on October 27, 2021 that “We have arranged with our insurer, CURIE, to ensure liability insurance continues to cover striking faculty members that enter campus in order to perform limited duties, or deal with emergency situations”.

Tab 62, correspondence from AVP Smith to Dr. Flemming, dated December 3, 2021

Tab 60, Letter dated October 27, 2021

255. UMFA members have performed the work required of them, but in return the University is suggesting that UMFA members are not owed compensation for that work, even though non-striking members were paid for that same work (as noted in the UMFA Submission on at paragraphs 420-423). It would be unconscionable to expect a full five weeks' worth of work without compensation from a union worker who went on strike.

256. The University also relies upon an argument (at paragraph 225 of its Submission) that UMFA's request "would improperly eliminate all economic consequences for striking members, thereby reducing pressure to reach a compromise…", and that it "would risk encouraging these parties (and potentially others) to resort to strikes unnecessarily in the future, when faced with obstacles in bargaining." It relies on the same argument at paragraph 249 of its Submission in contending that there should be no reimbursement to UMFA for paying for Member Benefits during the strike. In making this argument, it references Arbitrator Burkett's reasoning at paragraph 32 of his award:

> To compensate striking employees for their strike-related losses or to force the University to make payments to charitable organizations after the fact would serve to lessen future resistance to the use of the right and, if the right is exercised in the future, make it more difficult to reach a compromissory result. It follows from the foregoing that, while parties themselves may choose to include such payments in the terms of a voluntary settlement of a strike/lockout, a third party should not award them.

Tab 46 to the University's Submission, *Mount Allison University and Mount Allison Faculty Association,* para 32

257. UMFA submits that in the present case, the opposite scenario is in play. If an employer is enabled to rely upon the fact that a union member went on strike in order to justify withholding wages for the services rendered by that union member, the employer will be given an incentive to push a union toward a strike to not only save significant amount of money, but also to punish its union members with unpaid forced labour should

they exercise their right to strike. Further, if union members cannot rely upon the labour law regime to protect their right to be paid for services rendered after a strike or lockout, this will elongate strikes and lockouts, as members would be forced to pressure their employer to pay them what they are owed.

258. UMFA submits that an employer paying its employees for services rendered is not equivalent to avoiding the economic consequences of a strike. UMFA members have suffered economic consequences for their decision to exercise their right to strike: they were not paid their salaries for 35 days. Strike pay can never mitigate all the losses that this lack of pay necessarily entails. The University also does not consider in its Submission the other consequences of a strike which UMFA members must consider before making the decision to strike, such as walking picket lines in sub-zero temperatures for hours at a time; damage to personal and professional relationships; and damaged relationships with students.

259. At paragraph 227 of its Submission, the University cited *Diageo Canada Inc. and UFCW*, which involved the employer offering a Return to Work Good Will Payment or Back to Work Bonus as part of a final offer to the union, made on a without prejudice basis. The offer was rejected by the union. Arbitrator Freedman, at paragraph 77 of his award, refused to award this payment to union members because "…the offer of a special payment was subject to the members fulfilling certain conditions, which did not occur". He continued at paragraph 77:

> "…there was a quid pro quo at the foundation of the offer of a back to work payment, and that was that the Company's Final Offer would be accepted in its entirety and the employees would immediately return to work. That did not happen, and the strike continued for another month. Thus, the premise of the proposal has disappeared."

Tab 47 to the University's Submission, *Diageo Canada Inc. and United Food and Commercial Workers Union, Local 832,* para 77

260. The University relies on Arbitrator Freedman's award to argue at, paragraph 228 of its Submission, that "It would be improper…for the union to be awarded full wages and

benefits for the period of the strike, when the University did not receive the benefit of its employees' services <u>during that time</u>" [emphasis added]

261. *Diageo Canada Inc* should be distinguished from the present case on the grounds that the Association is seeking neither a "back to work bonus" nor a "return to work good will payment".

262. Further, as noted in UMFA's Submission, the University gave permission – both explicit and implicit – to its employees to perform certain duties during the period of the strike (paragraphs 424 to 429 of the UMFA Submission) such that it did receive some of the benefit of its employees' services during the period of the strike. In addition, the University has, <u>since the end of the strike, received the benefit of its employees' services</u>. The University has received 100% of the teaching services it would have received but for the strike (paragraphs 409 to 416 of the UMFA Submission); a significant percentage, if not all, of the benefits of research duties it would have received of Members but for the strike (paragraphs 430 to 437 of the UMFA Submission); a significant percentage, if not all, of the service duties it would have received from Members but for the strike (paragraphs 438 to 446 of the UMFA Submission); and a significant percentage, if not all, of the professional and teaching duties that it requires of its academic librarians that it would have received but for the strike (paragraphs 447 to 450 of the UMFA Submission). It is for these services rendered, and not as a bonus or act of good will, that UMFA members seek compensation.

263. It must be noted that the University has demonstrated that it benefited financially from the strike in the form of wages left unpaid, to a total of $7,795,294.25, plus a total of $341,722.12 in savings for member benefits. However, following the strike, it has demanded of its employees and received from them the work required to provide full teaching and instruction to its students. It is unconscionable that an employer should receive the full benefits of workers' labour and not be required to provide compensation for that labour on the basis that those members exercised their right to strike.

264. The University also cites the final offer selection arbitration award of Arbitrator Brown in *Nanaimo Golf and Country Club,* in which the union's final offer included a one-time payment of $1,000 for each employee following the lockout. At paragraph 62 of his award, Arbitrator Brown stated that he was not persuaded that such payments were a "frequent feature in situations where employees have lost income during lockouts", and noted that the locked-out employees had also received strike pay to offset their income losses.

Tab 48 to the University's Submission, *Nanaimo Golf and Country Club and Unite-Here, Local 40*, para 62

265. The award in *Nanaimo Golf and Country* Club must also be distinguished from UMFA. It is important to note that the reason Arbitrator Brown was not persuaded by the union's submission was because the union provided no evidence to support its claims, as he notes at paragraph 62. By contrast, UMFA has provided evidence that the University gave permission to striking members for certain forms of work to continue during the strike (paragraphs 424-433 of the UMFA Submission). UMFA has also surveyed its members to determine the amount of work rendered to the University to make up for work not completed during the strike (paragraphs 419 to 423, 430 to 437, and 441 to 446 of the UMFA Submission).

266. At paragraph 231 of the University's Submission, it states that Arbitrator Brown recognized that the request for the lump sum payment "was particularly problematic where members had already been compensated by their union during a work stoppage". *However*, this is not what Arbitrator Brown had concluded. At paragraph 83 of his award, Brown states:

> "While the lump sum payment initially appears to be problematic because the employees received significant pay from the Union during the dispute, it is a one time cost to the Employer and not built into ongoing costs" [emphasis added]"

Tab 48 to the University's Submission, *Nanaimo Golf and Country Club and Unite-Here, Local 40*, para 83

267. As part of the final offer selection arbitration process, Arbitrator Brown awarded the $1,000 lump-sum “good faith payment” to the unionized workers who went on strike.

268. The University’s reliance on *Nanaimo Golf and Country Club* can be distinguished on the same grounds as *Diageo Canada*. In *Nanaimo Golf and Country Club,* the union (Unite-Here) sought “a good faith payment” – a lump sum of $1,000 per striking member – and “was unsure of the wage loss experienced by the employees during the lockout”.

Tab 48 to the University’s Submission, *Nanaimo Golf and Country Club and Unite-Here, Local 40*, para 14

269. In the present case, UMFA is not seeking a lump sum per striking member, but rather individual compensation for services rendered by individual Members to the University. Further, where Unite-Here was unsure of the wage loss experienced by its members, the University has provided the exact total of wage losses suffered by UMFA Members, and UMFA has shown that the duties expected of members were rendered to the University.

270. Another key distinguishing feature between UMFA and the three awards cited by the University is that the University, in negotiating a Return to Work Protocol with UMFA, demanded that the Protocol include a provision that required UMFA Members to comply with all Senate approved or mandated changes in the academic schedule. Section 2 of the Return to Work Protocol states:

> *2. Members shall comply with all Senate approved or mandated changes in the academic schedule, the provisions for modifications in the examination periods and changes in regulations or waivers of regulations and any other requirements resulting from the implementations passed by Senate on November 3, 2021, and by Senate Executive at its meeting of November 17, 2021.*

Tab 18, Return to Work Protocol

271. As stated in UMFA’s Submission at paragraph 413, “This consent and waiver is predicated on the University declining the option of term abridgment and to instead

require the full amount of instructional days and teaching hours for all courses in a compressed second half of the academic year. The Association agreed to the inclusion of this consent clause, knowing that its request for full salary and benefit compensation for members during the period of the strike would be referred to arbitration." This arbitration is therefore the only venue in which compensation for the teaching duties required to complete the academic year can be awarded, as the academic schedule restructuring cannot be grieved by UMFA or its Members.

(ii) Contributions to the Pension Plan

272. At paragraphs 232-243 of its Submission, the University argues that pension contributions should not be made by the University for the period of the strike. Its argument is focused on why the University should not be obligated to do so, rather than on a legal impediment:

> "…there is no applicable document that defines an approved leave of absence as including a strike. …"
>
> "The University submits that there is no justification for an amendment to the Plan. …"
>
> "…there is no compelling reason to interfere with the text of the [University Pension] Plan through arbitration in this case."

273. The issue of lost pension contributions stems from the University's decision not to allow contributions to the pension plan for striking members during the period of the strike. This was communicated to UMFA via letter from AVP Smith to Dr. Flemming dated October 26, 2021, in response to a letter from Dr. Flemming dated October 25, 2021, in which he asked that the "Association be provided information about maintaining contributions to the pension plan for the duration of a job action".

Tab 60, correspondence from AVP Smith to Dr. Flemming, dated October 27, 2021

274. The University's action has created an inequity as to pension contributions between those members who were on strike and those who did not. Without any evidence submitted as to a legal impediment for resolving this inequity, it is apparent that the University was using pension loss as a source of leverage during the strike. Such a practice should not be rewarded.

275. The University of Brandon, prior to the 2011 strike by the Brandon University Faculty Association, authorized the Association to pay the premiums for the Brandon University Retirement Plan subsequent to the conclusion of the strike, subject to the terms of the Back to Work Protocol. Such authorization was contained in a Job Action Protocol. Brandon University and UMFA later negotiated a Back to Work Protocol, in which the University agreed that:

> "The Employer shall pay the Employer's full share of contributions to Employee benefits and pension plans pursuant to the terms of the Collective Agreement for the period of the strike."

Tab 86, *Brandon University-Brandon University Faculty Association Memorandum of Understanding and Job Action Protocol, signed October 12, 2011,* and

Brandon University-Brandon University Faculty Association Back to Work Protocol, dated November 2011

276. Brandon University did not identify a legal impediment to allowing BUFA to cover pension contributions of its members, nor did it find one to retroactively pay its full share of pension contributions to the Member Pension Plan for the period of the strike. The University of Manitoba has also not identified a legal impediment in its Submission, and there is no legitimate justification for why the pension contributions should not be provided.

(iii) Union Dues

277. At paragraph 245 of its Submission, the University submits that following the termination of the 2017-2021 Collective Agreement as a result of the strike, "the University had no obligation to remit union dues to UMFA under the 2017 Agreement."

278. UMFA recognizes that the obligation to collect and remit dues ceased to exist with the termination of the agreement. However, the same could be said of other obligations which the University had pursuant to the Collective Agreement, such as pension contributions and provision of health benefits. Yet, prior the start of the strike, UMFA and the University corresponded on the implications of the strike on each of those two items. What was left out of those communications was the University's stated intention to cease its collection of union dues from UMFA Members who chose not to strike. As stated at paragraph 484 of the UMFA Submission, UMFA was left "...unaware of such intention prior to choosing job action and causing the termination of the collective agreement."

279. At paragraph 246 of its Submission, the University has also suggested that union dues for the period of the strike should not be remitted to UMFA because "…remittance of union dues will disclose to UMFA the identity of those individuals who chose to continue to work during the strike." Throughout the 35-day strike, however, UMFA kept daily records as to which UMFA Members were on strike (and performing their picket duty). Such records were necessary in order for UMFA to determine which Members were entitled to daily strike pay. From these records, UMFA can deduce which Members were not on strike each day, without drawing that same information from the records related to the union dues.

(iv) Reimbursement for Benefits

280. The University once again makes the argument, at paragraph 249 of its Submission, that reimbursement for benefits would "make a strike more appealing and the resolution of matters through negotiation less likely." Again, the University discounts the many other consequences of a strike, which UMFA Members must consider before

making the decision to strike, such as walking picket lines in sub-zero temperatures for hours at a time; damage to personal and professional relationships; and damaged relationship with students. To suggest that UMFA would find the prospect of a strike more appealing in the future because they would recoup the cost of covering Member benefits is a serious misinterpretation of the impact of a strike on a union and its member, as well as the consideration that are at play when making the decision to strike.

281. UMFA also reserves the right to make Supplementary Reply/Rebuttal Submissions at the hearing.

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 4th day of March, 2022.

Garth Smorang/Joel Deeley
Counsel to UMFA

List of Documents and Authorities

77. Email from Ken MacLean to Cameron Morrill, September 13, 2021

78. 2001 Memorandum of Agreement between UMFA and University of Manitoba referring issues to arbitration

79. UM Today, February 24, 2022

80. University of Manitoba Annual Financial Report 2016 (excerpt)

81. Letter from Deputy Minister Charron dated February 15, 2022

82. CBC News, *Manitoba to expand gathering limits, allow more fans at events as COVID-19 restrictions ease next week,* February 2, 2022

83. CBC News, *Manitoba to drop self-isolation requirement for people who test covid positive,* March 2, 2022

84. Letter from Manitoba School Board Association to Board Chairs, Superintendent and Secretary Treasurers dated January 26, 2022

85. Manitoba Nurses' Union Contract Highlights

86. Brandon University-Brandon University Faculty Association Memorandum of Understanding and Job Action Protocol, signed October 12, 2011, and Back to Work Protocol, dated November 2011