IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN:

THE UNIVERSITY OF MANITOBA,

employer,

- and -

UNIVERSITY OF MANITOBA FACULTY ASSOCIATION,

union.

SUBMISSION OF THE UNIVERSITY OF MANITOBA

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(Matter No. 0189856 ABF)

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I. INTRODUCTION

1. The University of Manitoba (the "University") provides this Submission in support of its proposals in this interest arbitration between the University and the University of Manitoba Faculty Association ("UMFA").

2. There are three issues for determination in this arbitration:

> (1) the value of general salary increases for UMFA's members (the "General Salary Increases");
>
> (2) the value, if any, of recruitment and retention adjustments for UMFA's members (the "Recruitment and Retention Adjustments"); and
>
> (3) pay, pension, union due and benefit issues related to the period of time that UMFA's members were on strike (the "Return to Work Issues").

3. The parties' agreement to submit these matters to arbitration was captured in a Memorandum of Agreement, following a lengthy round of bargaining and mediation that extended throughout the fall and winter of 2021.

Memorandum of Agreement, January 31, 2022, section 1 (the "MOA"), Tab 1.

4. Along with various procedural matters, the MOA also states that it is the "mutual aim" of the parties to "achieve reasonable advancement towards" the 25^{th} percentile of salaries within the U15 Group of Canadian Research Universities (the "U15 Group") during the life of their three year renewed collective agreement.

MOA, preamble and section 8, Tab 1.

5. As the University will explain further in this Submission, the U15 Group is an association of 15 research focussed universities in Canada. Before this round of bargaining, the University sat in 13th to 15th position within the U15 Group in relation to the median salaries of its Professors, Associate Professors and Assistant Professors. The 25th percentile, by contrast, is a position located midway between 11th and 12th, out of the 15 institutions.

2020-21 Statistics Canada Median Salary Data, Faculty Members U15 Group, Release Date December 13, 2021 ("Statistics Canada Median Salary Data"), Tab 2.

6. The University's main position in this arbitration is that its proposed General Salary Increases of 1.25% in 2021, 1.5% in 2022, and 1.75% in 2023, will achieve reasonable advancement towards this position, and ought to be awarded.

7. The University and UMFA have already agreed to significant changes to the structure of the pay scale for UMFA's members (the "Structural Changes"). As a result of the Structural Changes, UMFA's members will benefit, as compared to their U15 colleagues, not only over the term of the renewed agreement, but also for years to come.

MOA, Appendix A, Articles 24.1-24.1.1, Tab 1.

8. When the impact of the Structural Changes is compounded with the University's proposed General Salary Increases, it becomes clear that the University's proposal will provide reasonable, if not *significant*, advancement towards the 25th percentile over the course of the three-year agreement.

Additionally, the University's proposed General Salary Increases are fair, reasonable and consistent with the objective criteria that are relevant to the replication analysis, including the general wage increases historically achieved within the U15 Group, the University's financial position, the provincial economy, the local cost of living and average weekly earnings, and the salary increases that have recently been achieved by other public sector bargaining units within Manitoba.

9. Therefore, the University submits that there is no need for Recruitment and Retention Adjustments in order to reasonably advance towards the 25th percentile of the U15 Group. Further, as will be explained, the University has no broad based recruitment or retention issues that could support such increases.

10. Finally, regarding the Return to Work Issues, the University submits that there is no justification for UMFA's requests regarding pay, pension, union dues, and benefits during the period of the strike. Effectively, what UMFA is seeking, is to be reimbursed for the economic consequences of its members' strike action. The parties have no recent history of agreeing to such compensation. Further, it has been expressly recognized that providing such compensation through interest arbitration runs contrary to the underlying purposes of a strike. In the circumstances, and for the reasons detailed further herein, UMFA's requests regarding the Return to Work Issues ought to be rejected.

11. In sum, the only matter that should be awarded in this arbitration is a General Salary Increase. The appropriate and reasonable increases are, as the University proposes, 1.25% in 2021, 1.5% in 2022, and 1.75% in 2023.

II. FACTUAL BACKGROUND

12. Before turning to the University's proposals on the three outstanding issues, this Submission first provides a brief factual background on the parties, their bargaining history, the significance of the U15 Group, and a number of items that were agreed to in bargaining that are relevant to the outcome of this arbitration.

(a) The Parties

13. The University is the largest post-secondary institution in Manitoba. It is continued under *The University of Manitoba Act,* CCSM c U60, and is subject to *The Advanced Education Administration Act,* CCSM c A6.3. It employs over 9,000 staff, including approximately 4,850 unionized employees spread across six bargaining units, and has approximately 31,000 students enrolled each year.

14. UMFA is the certified bargaining agent for approximately 1,260 of the University's staff. Subject to limited exceptions, UMFA represents all of the University's full-time academics within the categories of Faculty Member, Instructor and Academic Librarian. These categories are divided into 11 ranks, as follows:

<u>Faculty Members</u>	<u>Instructors</u>	<u>Academic Librarians</u>

Professor	Senior Instructor	Librarian
Associate Professor	Instructor II	Associate Librarian
Assistant Professor	Instructor I	Assistant Librarian
Lecturer		General Librarian

15. At the time of writing, UMFA's membership was compromised of approximately 977 Faculty Members, 226 Instructors and 58 Academic Librarians. In 2020/21, the University's salary costs totalled nearly $440 million, of which UMFA's members received approximately $151 million.

UMFA's Membership Spreadsheet, Tab 3.

2020/21 Salary Costs Spreadsheet, Tab 4.

16. The University and UMFA have a mature bargaining relationship. UMFA's predecessor, the Association of Academic Staff of the University of Manitoba, was created in 1951. Its name was changed in 1971, and UMFA was formally certified by the Manitoba Labour Board in 1974. Since then, the University and UMFA have entered into numerous collective agreements.

17. This is the fourth time in the last two decades that the parties have proceeded to interest arbitration to settle their outstanding differences, but only the second time that the issue of salary has come before an arbitrator.[1] In 2001,

[1] By agreement, the arbitrations before Arbitrator Arne Peltz in 2007 and Arbitrator Michael Werier in 2013 did not involve issues of salary.

Arbitrator Martin Freedman settled the terms of a collective agreement for the period of 2001-2004, including the issue of General Salary Increases.

***UMFA, Re*, 2001 CarswellMan 916 (Man Arb) (Freedman) [*UMFA, Re* (2001)], Tab 5.**

18. Since 2001, and until now, the parties have been able to resolve salary issues by way of mutual agreement, whether through negotiation or mediation. For reference, the General Salary Increases contained in the collective agreements between the parties over the last 25 years are as follows:

Contract Years	**Fiscal Year (April 1)**	**General Salary Increases**
1995-1998	1995	0.0%
	1996	0.0%
	1997	0.0%
1998-2001	1998	$740
	1999	1.0%
	2000	2.0%
2001-2004	2001	$1,500
	2002	2.5%
	2003	2.5%
2004-2007	2004	3.0%
	2005	3.0%
	2006	3.0%
2007-2010	2007	2.5%
	2008	2.5%
	2009	2.9% + $500 market adjustment
2010-2013	2010	0.0% + $500 market adjustment
	2011	0.0% + 1.0% market adjustment
	2012	2.9%
2013-2016	2013	2.9%
	2014	2.0%
	2015	2.0%
2016-2017	2016	0.0%
2017-2021	2017	0.0%
	2018	0.75%
	2019	1.0%
2020-2021 Wage Re-opener	2020	0.0% + $1950 Covid-19 Payment

Table of General Salary Increases with Notes, Tab 6.

19. Most recently, the University and UMFA were parties to a collective agreement with a term of April 1, 2017 to March 31, 2021 (the "2017 Agreement"). As explained further below, the 2017 Agreement was terminated by UMFA's strike on November 2, 2021, pursuant to section 63(3) of *The Labour Relations Act*, CCSM c L10.

2017 Agreement, Tab 7.

***The Labour Relations Act*, CCSM c L10, section 63(3) [the *LRA*], Tab 8.**

(b) Collective Bargaining

20. This matter comes to interest arbitration following a prolonged attempt by the parties to conclude a revised collective agreement through both negotiation and mediation.

(i) The Bargaining Process

21. The parties first met to bargain on August 5, 2021. Negotiations continued throughout the summer and fall, without a renewed agreement. On October 16-18, 2021, UMFA held a strike vote, which affirmed a strike mandate. Shortly thereafter, the parties began mediation with Arne Peltz. Eight days of mediation passed without a resolution, before UMFA initiated its strike on November 2, 2021.

22. The strike lasted 35 days. The parties met with Mediator Peltz numerous times over the course of 28 days in October and November 2021. On November 25, 2021, Mediator Peltz issued his Final Recommendation to the parties, indicating that he believed that they had reached an impasse and would require interest arbitration to settle the outstanding terms of the agreement. The Final Recommendation, in whole, stated:

> 1. On Sunday November 21, 2021, after 28 days of mediation, I advised the parties as follows:
>
> > There is no likelihood that the parties will reach a settlement of outstanding differences without a protracted continuing strike. Such an ongoing work stoppage is detrimental to the parties, their relationship, the student body and the community as a whole. I therefore recommend that all outstanding differences be remitted by the parties to voluntary, binding, independent interest arbitration …
>
> 2. The University accepted this recommendation. UMFA did not. Mediation continued. However, my persistent efforts over the past four days have been unsuccessful. The parties remain far apart. I therefore reiterate my recommendation that all outstanding differences be referred to binding interest arbitration.
>
> 3. Interest arbitration is a recognized component of the collective bargaining process. It can resolve disputes where the parties are simply unable to reach an agreement on their own. It can be especially useful where there are innocent third parties seriously impacted by a strike – here students.
>
> 4. In this case, there are both monetary and operational issues outstanding. Based on intensive discussion with the parties, I have drafted a customized arbitration referral which in my view is suited to the issues and will be fair to both parties, as follows.
>
> > (i) The parties will appoint a sole arbitrator by mutual agreement. If they cannot agree, the arbitrator will be appointed by the Chair of the Manitoba Labour Board.

(ii) The parties will conclude a Return to Work Agreement as soon as possible and UMFA will terminate the strike. Any unresolved issues respecting return to work, including the claimed full pay and benefits for strikers, will stand referred to the arbitrator for determination along with the outstanding collective agreement issues.

(iii) The arbitrator will apply established interest arbitration principles including replication.

(iv) In making a salary award, the arbitrator will consider the parties' mutual aim to achieve reasonable advancement in the U15 Group of Canadian Research University Salary Standings toward the 25th percentile during the life of the collective agreement.

(v) Bargaining mandates issued by government will not be considered by the arbitrator.

(vi) Notwithstanding paragraph 4(iii), governance proposals will be considered by the arbitrator on their merits, with a view to achieving a fair and reasonable result. Governance proposals will not be rejected by the arbitrator on the basis that operational issues are better left to collective bargaining as opposed to interest arbitration.

(vii) While awaiting the arbitration hearing, the parties are encouraged to negotiate and/or mediate, which may narrow the issues or facilitate a settlement before hearing.

5. The University has accepted the foregoing. UMFA has not. UMFA insists that all issues except advancement in the U15 Salary Standings (Recruitment and Retention Adjustments or R&R) be settled by negotiation, and only then will it arbitrate R&R. This precondition is wholly unrealistic and unworkable. Students should not continue to suffer during a leisurely and ultimately futile negotiation.

6. I urge UMFA to reconsider. There is no need for this strike to continue. If it does, this will not be because of a restrictive government mandate or employer intransigence. Like the

> University, UMFA should be willing to subject all its proposals to scrutiny before an independent arbitrator and to live with the result.
>
> 7. I see no further value in mediation at this time.

Final Recommendation of Arne Peltz, November 25, 2021, Tab 9.

23. Notwithstanding Mediator Peltz's Final Recommendation, UMFA remained firm that it would not proceed to interest arbitration until certain issues relating to governance and working conditions were resolved. The parties, therefore, met again on six more occasions, while the strike continued.

24. On December 5, 2021, four months after bargaining began and 33 days into UMFA's strike, the parties reached a tentative agreement to refer the final three outstanding issues to interest arbitration. As noted above, this agreement was ultimately captured in the MOA.

MOA, section 1, Tab 1.

25. At the same time, the parties reached an agreement on a Return to Work Protocol, which was ultimately ratified by UMFA. The strike ended and classes resumed at the University on December 7, 2021.

Return to Work Protocol, December 22, 2021, Tab 10.

(ii) The MOA and the U15 Group

26. It will come as no surprise, based on the outstanding issues in the MOA, that compensation was an important matter for both the University and UMFA in this round of collective bargaining.

27. Throughout bargaining and mediation, both parties sought an avenue by which the salaries of UMFA's members could reasonably advance within the Canadian market of research based post-secondary institutions. Ultimately, this led the University and UMFA to agree to section 8 of the MOA, which describes their mutual aim of making reasonable advancement towards the 25^{th} percentile of the U15 Group:

> In conducting the interest arbitration and determining the quantum of General Salary Increases and Recruitment and Retention Adjustments, the **arbitrator shall be guided 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. The Arbitrator may consider arguments about the total effect of Article 24 in achieving reasonable advancement towards the 25th percentile during the life of the Collective Agreement.**

MOA, section 8 (emphasis added), Tab 1.

28. For background, the U15 Group is an association of 15 research focussed post-secondary institutions in Canada. The University is one of only four

U15 institutions across the three Prairie Provinces, and is the only U15 Group member in Manitoba.

29. In each fiscal year, Statistics Canada publishes data comparing the median salaries that were received by Faculty Members[2] in the U15 Group. In 2020/21, the median data[3] placed the University at or near the bottom of each Faculty Member rank within the U15 Group:

Assistant Professor			**Associate Professor**			**Professor**	
University	**Median Salary**		**University**	**Median**		**University**	**Median**
Queen's	$135,450		McMaster	$167,575		UBC	$204,350
Ottawa	$126,600		Waterloo	$161,550		Waterloo	$202,450
UBC	$125,250		Toronto	$160,348		McMaster	$201,325
Waterloo	$123,300		Queen's	$159,950		Toronto	$198,764
Saskatchewan	$121,200		Ottawa	$159,350		Ottawa	$194,950
McMaster	$119,225		Saskatchewan	$155,125		Saskatchewan	$189,325
Toronto	$119,215		UBC	$155,050		Queen's	$179,875
Western	$119,100		Western	$148,925		Western	$177,650
Dalhousie	$107,275		Alberta	$132,550		Alberta	$177,300
Calgary	$106,575		Dalhousie	$132,225		McGill	$172,800
McGill	$105,000		McGill	$131,400		Calgary	$168,800
Alberta	$104,800		Calgary	$127,425		Dalhousie	$164,975
Montreal	$101,550		Montreal	$125,375		Manitoba	$153,900
Laval	$96,700		Manitoba	$123,125		Montreal	$153,725
Manitoba	$94,925		Laval	$115,850		Laval	$146,850
25th Percentile	**$104,900**		**25th Percentile**	**$129,413**		**25th Percentile**	**$166,888**
UM difference $	**$9,975**		**UM difference $**	**$6,288**		**UM difference $**	**$12,988**
UM difference %	**10.5%**		**UM difference %**	**5.1%**		**UM difference %**	**8.4%**

Statistics Canada Median Salary Data, Tab 2.

[2] To be clear, Statistics Canada publishes the median salaries for the ranks of Professor, Associate Professor and Assistant Professor. While the University also has Lecturer rank within its Faculty Members, Statistics Canada does not publish data on the median salaries of a comparable position within the U15 Group.
[3] For background, median salary, as published by Statistics Canada, is a useful tool for comparing salaries at post-secondary institutions because it indicates the mid-point of the salaries that were actually paid to Faculty Members in any given year. By utilizing a median, instead of an average, the calculation is less susceptible to being inappropriately skewed in either direction due to outliers.

30. As the foregoing reveals, by the final year of the 2017 Agreement, the median salaries of the University's Faculty Members fell below the 25th percentile of the U15 Group by amounts ranging from $6,288 to $12,988. This equated to a difference of 5.1% to 10.5% of the University's median salaries, depending upon the rank in question.

31. As is set out in greater detail in Part V below, the University's primary position in this arbitration is that the Structural Changes, when compounded with the University's proposed General Salary Increases, <u>will</u> provide the "reasonable advancement … towards" this 25th percentile that the parties have agreed they ought to achieve. There is no need for any further upward adjustment to adequately reduce the gap between the University's median salaries and the 25th percentile of the U15 Group during the life of the renewed agreement.

(iii) Agreed To Items

32. Finally, it is necessary to highlight a number of the key items that were agreed to by the parties in the course of negotiation and mediation.

33. First, the parties have agreed that the revised agreement will have a three-year term, from April 1, 2021 to March 31, 2024 (the "2021 Agreement").

MOA, Appendix A, Article 24.1, Tab 1.

34. Second, and perhaps most importantly, the parties have agreed to significant Structural Changes to the salary scale contained in Article 24. The full impact of the Structural Changes, when compared to the U15 Group, will be expanded upon in Part V below. At this point, however, it is sufficient to understand that the Structural Changes will benefit UMFA's members in three distinct ways.

MOA, Appendix A, Articles 24.1-24.1.1, Tab 1.

35. First, the Structural Changes increased the "floor" (first step) and "maximum" (top step) of the salary scale of each rank. In this way, and even before any further adjustments, the parties substantially increased the entrance salaries for UMFA's most junior members and new hires. Simultaneously, the parties ensured that many of the most senior members who had reached, were close to reaching, or had exceeded the maximum salary within their scale, will now have additional earning potential as they continue to advance towards the increased maxima.

36. The value of the agreed upon increases to the floors and maxima varies, with Academic Librarians and Faculty Members receiving the same percentage of upward adjustment, and Instructors receiving heightened increases. On average, floors were increased by 17.9% across the ranks, while maxima were increased by an average of 10%. A comparison of the floors and maxima, both before and after the Structural Change, is as follows:

Rank	Previous Floor	Revised Floor	% Change		Previous Maximum	Revised Maximum	% Change
Professor	$105,269	$120,684	14.6%		$157,904	$168,957	7.0%
Associate Professor	$85,732	$98,285	14.6%		$128,597	$137,599	7.0%
Assistant Professor	$73,038	$83,734	14.6%		$109,558	$117,227	7.0%
Lecturer	$58,298	$66,835	14.6%		$87,448	$93,569	7.0%
Senior Instructor	$74,627	$98,285	31.7%		$111,939	$137,599	22.9%
Instructor II	$68,566	$83,734	22.1%		$102,850	$117,227	14.0%
Instructor I	$59,552	$75,000	25.9%		$89,326	$105,000	17.5%
Librarian	$96,630	$110,779	14.6%		$144,944	$155,090	7.0%
Associate Librarian	$77,212	$88,518	14.6%		$115,818	$123,925	7.0%
Assistant Librarian	$66,989	$76,797	14.6%		$100,482	$107,516	7.0%
General Librarian	$58,163	$66,679	14.6%		$87,243	$93,350	7.0%
		Average:	**17.9%**			**Average:**	**10.0%**
		Median:	**14.6%**			**Median:**	**7.0%**

37. The second way in which the Structural Changes will benefit UMFA's members is through the removal of the "threshold" from the salary scale. For background, a member progresses through the salary scale from the floor to the maximum by receiving yearly performance increments. Under previous agreements, however, the salary scale contained a threshold salary, after which the value of a member's performance increment would reduce, even as the member continued to move towards the maximum. Under this system, the members at or above the threshold within each rank received a lesser performance increment than they had before they passed the threshold. For reference, the final salary scale from the 2017 Agreement was as follows:

	(1) Floor	(2) Increment	(3) Threshold	(4) Increment	(5) Maximum
Professor	$105,269	$3,900	$140,361	$2,924	$157,904
Assoc Professor	$85,732	$3,174	$114,309	$2,383	$128,597
Asst Professor	$73,038	$2,705	$97,386	$2,028	$109,558
Lecturer	$58,298	$2,159	$77,731	$1,620	$87,448
Sr Instructor	$74,627	$2,763	$99,501	$2,073	$111,939
Instructor II	$68,566	$2,540	$91,423	$1,905	$102,850
Instructor I	$59,552	$2,206	$79,401	$1,654	$89,326
Librarian	$96,630	$3,578	$128,841	$2,685	$144,944
Assoc Librarian	$77,212	$2,859	$102,949	$2,145	$115,818
Asst Librarian	$66,989	$2,481	$89,316	$1,861	$100,482
General Librarian	$58,163	$2,155	$77,550	$1,616	$87,243

2017 Agreement, Sections and Appendices as Negotiated Pursuant to Appendix I, Article 24.1.4, Tab 7.

38. Now, after the Structural Changes, the threshold has been removed and all performance increments within a rank are of equal value. Members who previously would have been above the threshold within each rank will now benefit by receiving the same increments as any other member within their rank. For reference, the 2021/22 salary scale, prior to any General Salary Increase, is as follows:

	(1) Floor	(2) Increment	~~(3)~~ ~~Threshold~~	~~(4)~~ ~~Increment~~	(3) Maximum
Professor	**$120,684**	**$4,827**			**$168,957**
Assoc Professor	**$98,285**	**$3,931**			**$137,599**
Asst Professor	**$83,734**	**$3,349**			**$117,227**
Lecturer	**$66,835**	**$2,673**			**$93,569**
Sr Instructor	**$98,285**	**$3,931**			**$137,599**
Instructor II	**$83,734**	**$3,349**			**$117,227**
Instructor I	**$75,000**	**$3,000**			**$105,000**
Librarian	**$110,779**	**$4,431**			**$155,090**
Assoc Librarian	**$88,518**	**$3,541**			**$123,925**
Asst Librarian	**$76,797**	**$3,072**			**$107,516**
General Librarian	**$66,679**	**$2,667**			**$93,350**

MOA, Appendix A, Article 24.1.1, Tab 1.

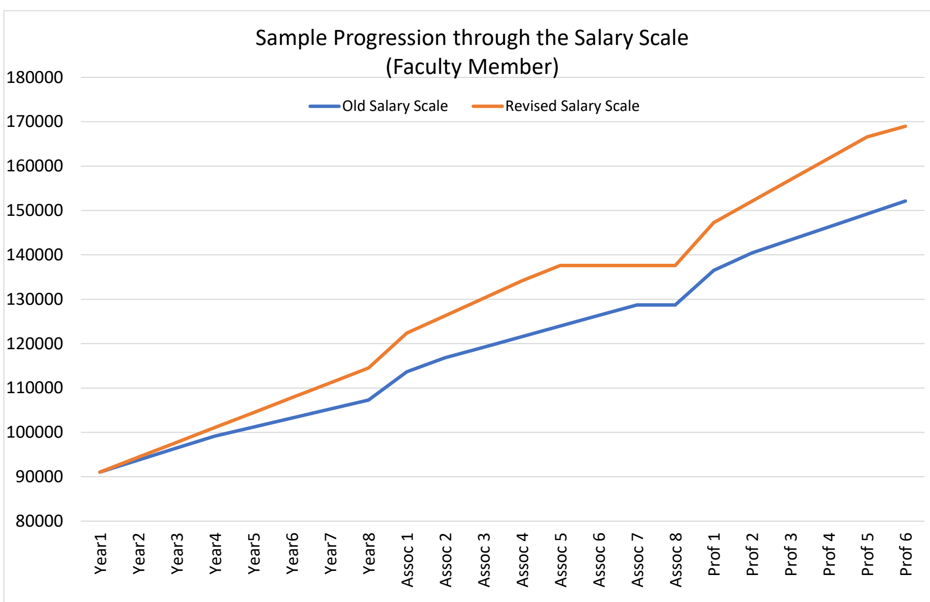
39. Third, and finally, the Structural Changes have also substantially increased the value of the yearly performance increments for members within each rank.

40. For example, while Senior Instructors would previously have been entitled to an increment of $2,763 before the threshold and $2,073 after the threshold, all Senior Instructors are now entitled to a performance increment of $3,931. Similarly, while Associate Professors were previously entitled to $3,174 before the threshold and $2,383 after the threshold, all Associate Professors are now entitled to an increment of $3,931.

41. As a result of these changes, the increments under the 2017 Agreement will increase by amounts ranging from 23.8% to 89.6%, even before any General Salary Increase is applied to the value of the increments in the latter two years. On average, the Structural Changes have increased increments 27.3% before the threshold and 69.7% after the threshold:

Rank	Previous Pre-Threshold Increment	Revised Increment	% Change		Previous Post-Threshold Increment	Revised Increment	% Change
Professor	$3,900	$4,827	23.8%		$2,924	$4,827	65.1%
Associate Professor	$3,174	$3,931	23.9%		$2,383	$3,931	65.0%
Assistant Professor	$2,705	$3,349	23.8%		$2,028	$3,349	65.1%
Lecturer	$2,159	$2,673	23.8%		$1,620	$2,673	65.0%
Senior Instructor	$2,763	$3,931	42.3%		$2,073	$3,931	89.6%
Instructor II	$2,540	$3,349	31.9%		$1,905	$3,349	75.8%
Instructor I	$2,206	$3,000	36.0%		$1,654	$3,000	81.4%
Librarian	$3,578	$4,431	23.8%		$2,685	$4,431	65.0%
Associate Librarian	$2,859	$3,541	23.9%		$2,145	$3,541	65.1%
Assistant Librarian	$2,481	$3,072	23.8%		$1,861	$3,072	65.1%
General Librarian	$2,155	$2,667	23.8%		$1,616	$2,667	65.0%
		Average:	**27.3%**			**Average:**	**69.7%**
		Median:	**23.8%**			**Median:**	**65.1%**

42. Taken together, these Structural Changes will have a significant impact on the salary progression of UMFA's members for years into the future. As is illustrated by the following chart, the further a member[4] progresses in his/her/their career at the University, the greater the gap becomes between the member's earning ability under the newly revised salary scale, and the previous salary scale:



[4] A hypothetical starting salary of $91,059 was used for this member.

43. The cost of the Structural Changes is not insignificant to the University. In the first three years alone, by the end of the 2021 Agreement, the Structural Changes will increase UMFA's payroll costs by $6,514,909, or just over 4%:

	Year 1	Year 2	Year 3
Additonal performance increment Cost vs old salary schedule - $	$2,197,209	$4,690,820	$6,514,909
Additonal performance increment Cost vs old salary schedule - $	1.45%	3.19%	4.01%

44. Moreover, as is apparent from the chart in paragraph 42, these costs will only continue to increase over time.

45. While costly, however, the Structural Changes are also fundamental to achieving the parties' mutual aim of reasonable advancement towards the 25th percentile of the U15 Group. As noted above, further detail on the impact that the Structural Changes will have on the University's ranking within the U15 Group is provided below in Part V of this Submission.

46. Finally, the last agreed to items that are necessary to note in this interest arbitration are the revisions to Article 31.3 regarding market stipends (the "Market Stipend Changes").

MOA, Appendix A, Articles 31.3.3 and 31.3.5.3, Tab 1.

47. Under Article 31.3, the University can provide annual market stipends to groups of UMFA members where market forces justify increased compensation. Market stipends may be used where academics within a particular field are in high demand or where private industry wages impact the ability of all universities to recruit and retain within a particular market, leading to inflated salaries across U15

Group institutions. As an example, market stipends are currently provided to the Faculty of Law to aid in recruitment and retention. Associate Professors, Professors, and Senior Instructors receive a yearly market stipend of $15,000, while Assistant Professors, Instructor I and Instructor II's receive $10,000.

2017 Agreement, Article 31.3.3, Tab 7.

48. Unfortunately, however, market stipends have not been used more broadly within the University. This is due to the restricted manner in which stipends could, until now, be applied to members within a rank. If the University wished to provide a market stipend under the 2017 Agreement, for example, it was obligated to provide the same stipend to each member of the rank within the market sensitive discipline, subject only to one narrow exception: where a member had been hired in the last three years, the University could reduce or prorate the value of his/her/their stipend, if providing the member with the same stipend as all others would result in anomalously high compensation.

2017 Agreement, Article 31.3.3.5, Tab 7.

49. The narrow nature of this exception made it difficult for the University to utilize stipends because, in reality, anomalies could arise for *any* member, not just those who were hired in the last three years. As an example, because the University is not required to hire individuals at the floor of their pay scales, an exceptional individual may have been hired at or near the top of his/her/their rank five years ago. Providing that member with the same market stipend as others within

the rank could have led to anomalously high compensation, which may be unfair in the circumstances.

50. To be clear, this is not a mere speculative example. Due to market demand and inflated salaries across Canada, the University has been hiring individuals at elevated starting salaries for years, particularly within the Department of Computer Science in the Faculty of Science and the Department of Accounting and Finance in the I.H. Asper School of Business. As highly competitive Departments, these are two areas where market stipends could have been effectively used to recruit and retain Faculty Members. Unfortunately, the University has been unable to provide market stipends in these Departments, amongst others, because it had no way of avoiding compensation anomalies for individuals who had been hired more than three years ago.

51. Fortunately, in the course of bargaining for the 2021 Agreement, the University and UMFA agreed to two important Market Stipend Changes that will make the stipend a more accessible and useful tool to address narrow issues of recruitment or retention within particular markets.

52. First, the parties agreed that the University can now provide a reduced or prorated market stipend to *any* member within a rank, if providing the same market stipend to that member would otherwise result in an anomaly. Using the same example provided above, the University is no longer prevented from reducing a stipend for an individual who was hired five years ago at or near the top of

his/her/their rank. Now, the University has greater flexibility to provide market stipends to individuals within market sensitive disciplines, while ensuring that it does not create unfairness within a rank.

MOA, Appendix A, Article 31.3.5.3, Tab 1.

53. Second, the parties agreed to increase the University's cap on yearly market stipends from $600,000 to $1,000,000, an increase of approximately 66%. This increase will allow market stipends to be used more broadly across the University, where appropriate and necessary.

MOA, Appendix A, Article 31.3.3, Tab 1.

54. With the foregoing in mind, the University turns to the issues in this interest arbitration.

III. ISSUES

55. There are three issues for determination in this arbitration, as set out in section 1 of the MOA:

a) The General Salary Increases;

b) The Recruitment and Retention Adjustments; and

c) The Return to Work Issues.

MOA, Section 1, Tab 1.

56. As an overview, the University's position on these issues can be briefly summarized as follows:

(a) **General Salary Increases:** The University proposes General Salary Increases of 1.25% in 2021; 1.5% in 2022; and 1.75% in 2023. Compounded with the Structural Changes, these proposed increases will provide the University with reasonable advancement towards the 25th percentile of the U15 Group over the course of the 2021 Agreement. These increases are also objectively fair and reasonable, as they take into account the general wage increases historically achieved within the U15 Group, the University's financial position, the provincial economy, the local cost of living and average weekly earnings, and the salary increases that have recently been achieved by other public sector bargaining units within Manitoba.

(b) **Recruitment and Retention Adjustments:** No Recruitment and Retention Adjustments should be applied to the base salaries of UMFA's members. The University's data confirms that it does not have a general recruitment or retention problem that justifies further increases to base salaries, nor are such increases necessary to achieve reasonable advancement towards the 25th percentile of the U15 Group. To the extent that any recruitment or retention issues exist or arise for narrow groups of UMFA's members as a result of market forces, the Market Stipend Changes will allow the University to adequately and meaningfully address those issues on a case-by-case basis.

(c) **Return to Work Issues:** All four of UMFA's proposals regarding pay, pension, benefits and union dues during the period of the strike ought to be rejected. There is no legal justification in labour relations to permit UMFA and its members to recover these amounts through interest arbitration. Further, these parties have no recent history of agreeing to fully compensate UMFA's members for the economic consequences of a strike. The University submits that the request to set such a precedent in this proceeding ought to be rejected.

57. Following a brief summary of the applicable principles of interest arbitration, the remainder of this Submission will expand upon these positions.

IV. LEGAL PRINCIPLES

(a) Principles of Interest Arbitration

58. The principles of interest arbitration are well established. The aim of interest arbitration is to replicate the agreement that the parties would have reached, had they continued to bargain freely.

***UMFA, Re* (2001), at para 6, Tab 5.**

See also, *Lakeland College and LCFA, Re*, 2015 CarswellAlta 527 at para 15 (Alt Arb) (Sims) [*Lakeland College*], Tab 11.

59. Replication is an objective analysis. While the parties' stated positions provide useful context, arbitrators must be cautious to avoid relying upon the "subjective self-imposed limitations of the parties". To be clear, parties resort to interest arbitration specifically because they have been unable to conclude an agreement, while insisting upon their own subjective limits. Arbitrators must, therefore, focus instead upon the objective "market forces and economic realities that would have ultimately driven the parties to a bargain".

***University of Toronto v UTFA*, 2006 CarswellOnt 11578 at para 17 (Ont Arb) (Winkler) [*University of Toronto*, 2006], Tab 12.**

See also, *Lakeland College,* at paras 16 and 21, Tab 12.

60. In assessing the objective data, arbitrators frequently cite the principle of comparability – that is, how are employees, who are similarly situated and performing similar work, compensated? Comparability is a strong indicator of what two parties would have agreed upon, had they been able to reach a bargain, in the current labour market and economic circumstances.

***Lakeland College,* at para 17, Tab 11.**

61. When undertaking a comparability analysis, both internal comparators (employees of the same employer) and external comparators (employees of a different employer) are relevant. When assessing university salaries, in particular, appropriate comparisons may include salaries from similarly situated post-

secondary institutions, as well as wage settlements recently achieved by other employees within the province: see *UMFA, Re* (2001). As Arbitrator Shime explained in the seminal *McMaster University v MUFA*, 1990 CarswellOnt 4199 at para 21 (Ont Arb) (Shime), university salaries can be established with reference to at least four different groups in the following order:

> (1) Salary schedules and benefit comparisons with other universities in [the province]… :
>
> (2) Salary schedule and benefit comparisons with universities outside of [the province] …
>
> (3) Comparisons within the education sector such as high schools and community colleges.
>
> (4) Comparisons with other professional salaries, e.g. — lawyers, doctors, engineers, social workers.

***UMFA, Re* (2001), at paras 9 and 51, Tab 5.**

***McMaster University v MUFA*, 1990 CarswellOnt 4199 at para 21 (Ont Arb) (Shime), Tab 13.**

See also, *Lakeland College*, at para 18, Tab 12.

62. Beyond the principle of comparability, arbitrators have recognized that a number of additional objective criteria may be considered in the replication analysis, including:

- The bargaining history of the parties;
- The cost of living and average weekly earnings;
- Demonstrated need; and
- Current economic conditions and forecasts.

***UMFA, Re* (2001) at paras 9, 51 and 56, Tab 5.**

See also, *Ontario College of Art & Design University and Ontario College of Art Faculty Assn, Re*, 2021 CarswellOnt 6512 at para 3 (Ont Arb) (Kaplan), Tab 14.

See also, *Louis Riel School Division and Louis Riel Teachers' Assn, Re*, 2020 CarswellMan 190 at paras 57, 65 and 131 (Man Arb) (Werier), Tab 15.

63. In the public sector, the University acknowledges that the concept of "ability to pay", as it is traditionally understood in the private sector, is not an appropriate consideration for replication. It is clear from the authorities, however, that public sector funding must not be viewed as unlimited. Arbitrators cannot be "completely blind to the economic situation" that the parties find themselves in and must remain "responsible" when fashioning an award, with appropriate reference to the financial circumstances of the parties and the current economic climate.

***Louis Riel,* at paras 57 and 65, Tab 15.**

***Manitoba and MACA, Re*, 2021 CarswellMan 205 at paras 102-103 (Man Arb) (Peltz) [*Manitoba and MACA*], Tab 16.**

64. In applying these principles and objective factors, arbitrators must also ensure that they reach an adjudicative decision. In other words, arbitrators should not attempt to simply mediate the differences between the parties, nor reach some middle ground.

***UMFA, Re* (Freedman), at paras 6-7, Tab 5.**

See also, *Manitoba and MACA,* at para 98, Tab 16.

65. Further, arbitrators must avoid imposing their own subjective notions of what is “fair” or “just”. As Arbitrator Freedman explained in his 2001 award involving these parties, the role of interest arbitrators is not to reach the result that they believe is “fair”, but is to reach the result that the parties would have reached, based on the objective factors listed above. By incorporating these objective criteria into awards, arbitrators will achieve outcomes that are *objectively* fair and reasonable, based on the prevailing market and economy.

***UMFA, Re* (2001), at paras 6-7, Tab 5.**

See also, *Manitoba and MACA,* at para 98, Tab 16.

66. Finally, it is necessary to note that interest arbitration is an inherently conservative process. This is related to the principle of “demonstrated need”. As stated in *University of Toronto and CUPE, Local 3902, Re*, 2015 CarswellOnt 10143 (Ont Arb) (Kaplan): “Collective bargaining mandates, for either side, are rarely achieved in a single round. … [A]spirations are not demonstrated need …”. Breakthrough provisions and monumental changes are, therefore, both best left to the parties to negotiate. Absent exceptional circumstances, these types of changes should not be awarded through interest arbitration.

***University of Toronto and CUPE, Local 3902, Re*, 2015 CarswellOnt 10143 at paras 31 and 39 (Ont Arb) (Kaplan), Tab 17.**

(b) The Mutual Aim of the Parties

67. For greater certainty, the foregoing principles of replication do not change simply because the University and UMFA have agreed upon a mutual aim under section 8 of the MOA – that is, “to achieve reasonable advancement in the [U15 Group] towards the 25th percentile, during the life of the Collective Agreement”.

MOA, section 8, Tab 1.

68. Instead, the mutual aim of the parties and the replication analysis are “inextricably interrelated” and must be considered together. As the Board explained in *University of Toronto* (2006), where the parties had agreed that their mutual aim was to ensure that the University of Toronto maintained its position as a leader amongst the world’s best teaching and research institutions:

> It is obvious that in the context of this dispute, the two principles [replication and the pursuit of excellence] are inextricably interrelated. Any attempt to replicate an agreement that might have been reached between the parties has to take into account the fact that the parties would be bargaining on common ground with respect to their mutual, commendable devotion to the excellence and reputation of the University.

***University of Toronto* (2006), at para 7, Tab 12.**

69. In that case, the Board found that through their express commitment to excellence, the parties had recognized that it was necessary for the total compensation received by faculty and librarians to remain at the top of the relevant market. This, the Board described as the “starting point” for its replication analysis.

Then, the Board reasoned, that the extent to which that commitment would have influenced the ultimate bargain between the parties depended upon the traditional objective replication criteria, such as the relevant market and proper comparators, general economic conditions and the market forces that existed at that time.

***University of Toronto* (2006), at paras 18-20 and 22, Tab 12.**

70. To be clear, in this case, the mutual aim expressed by the University and UMFA was <u>not</u> to reach or maintain a certain position within the relevant market, as it was in *University of Toronto* (2006). The parties did not agree, for example, to reach the 11th or 12th position within the U15 Group. Instead, the parties agreed that their mutual aim was to "achieve reasonable advancement" within the U15 Group "towards the 25th percentile" over the life of the 2021 Agreement.

MOA, preamble and section 8, Tab 1.

71. The parties' choice of words must be given meaning. The stated intention – to "achieve reasonable advancement … towards the 25th percentile" – is the "starting point" for the replication analysis.

***University of Toronto* (2006), at para 20, Tab 12.**

72. What will constitute "reasonable advancement" over the life of the 2021 Agreement depends not only upon the U15 Group itself, but also upon the traditional objective criteria within the replication analysis, such as the current provincial economy, the financial circumstances of the University, cost of living and

average weekly earnings, demonstrated need, and recent agreements achieved by other public sector bargaining units within Manitoba.

See, for example, *University of Toronto* (2006), at para 22, Tab 12.

V. THE UNIVERSITY'S PROPOSALS

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

73. The University proposes that General Salary Increases of 1.25% in 2021, 1.5% in 2022, and 1.75% in 2023 ought to be awarded.

74. These increases, when compounded with the Structural Changes, will reasonably advance the University towards the 25th percentile of the U15 Group. Further, these proposed increases are objectively reasonable, in light of the remaining criteria within the replication analysis. Specifically, they are consistent with the general salary increases historically achieved within the U15 Group, and they take into account the University's financial position, the state of the provincial economy, recent wage advancements achieved by other public sector unions in Manitoba's labour market, and the cost of living and average weekly earnings in Manitoba.

(i) The Impact of the Structural Changes within the U15 Group

75. To begin, it is necessary to understand that the Structural Changes, alone, will contribute significantly to achieving reasonable advancement towards the 25th percentile over the life of the 2021 Agreement.

76. By eliminating the threshold in the pay scale and increasing members' yearly performance increments, the parties have attempted to ensure that UMFA's members receive greater performance increments year after year than their U15 counterparts. Over the course of the 2021 Agreement, and beyond, the compounding benefit of these increased increments should continue to advantage UMFA's members over others in the U15 Group.

77. For illustration, consider the table below. It sets out the pay scales as they are currently known for 2021/22 within the U15 Group, and includes the University's pay scale both before and after the Structural Changes. Only those increments that are still slated to exceed the University's year over year have been highlighted in green. Meanwhile, all those increments that are currently less than the University's have been highlighted in red. Increments highlighted in yellow may be more or less than those paid by the University, depending upon the employee's seniority, length of service, performance, or other discretionary determinations made by the U15 institutions in question:

University	Assistant Professor			Associate Professor			Professor			
	Salary Ranges			Salary Ranges			Salary Ranges			
	Floor	Ceiling	Increment	Floor	Ceiling	Increment	Floor	Ceiling	Increment	Notes
Manitoba (2020)	$73,038	$109,558	$2705 or $2,028	$85,732	$128,597	$3,174 or $2,383	$105,269	$157,904	$3,900 or 2,924	
Manitoba (2021)	**$83,734**	**$117,227**	**$3,349**	**$98,285**	**$137,599**	**$3,931**	**$120,684**	**$169,957**	**$4,827**	
Laval	81 739	112 595	$1,729	96 750	127 106	$1,840	112 159	144 461	$2,131	2019 scales
Montreal	78 138	110 903	1914 to 1642	89 738	130 866	2,231 to 1,807	111 114	148 636	2,344 to 2,052	
Alberta	$78,458	$109,082	2,552	$91,209	$137,003	3,271	$113,499	$158,597	4@ 3,847(Step 1 to 5), 4@ 3,271 (Step 5.5 to 9), n@ 2,552 (Step 9.5 and over)	
UBC		no max	1.25%. 8 years at Assistant. Increments decrease in size from 2.0 to 0.5 in year 8		no max	1.25%. 8 years at Associate. Increments decrease in size from 1.5 to 0.5 in year 8		no max	1.25%. 15 years at Professor. Increment size is 1.0 and then discretionary after that	***Merit Pay. Can receive 0, 0.5, 1, 1.5 or 2 units
McGill		no max	0, $845, $1,235, $1,625 or $2,015 depending on performance		no max	0, $845, $1,235, $1,625 or $2,015 depending on performance		no max	0, $845, $1,235, $1,625 or $2,015 depending on performance	*** Merit Pay. Upon promotion they receive a $5,000 increase in base salary.
Calgary	$75,435	$111,184	1,900	$89,056	$144,975	2400 or $1,200	$104,771	no max	2700 or $2,000	
Dalhousie	$76,514	$128,863	$2,731	$93,779	$163,257	$2,731	$108,522	$197,863	$2,731	a salary adjustment on promotion in the amount of $2,766 for those Members promoted to Associate Professor and a salary adjustment on promotion in the amount of $2,766 for those Members promoted to Professor shall be added to their regular salary rate for 2021/22 effective 1 July 2021;
McMaster	$83,438	no max	$4,505 for the first 15 years, then $3,379 the next 10 year, then $2,252 until retirement	$104,135	no max	$4,505 for the first 15 years, then $3,379 the next 10 year, then $2,252 until retirement	$128,456	no max	$4,505 for the first 15 years, then $3,379 the next 10 year, then $2,252 until retirement	120 increments are made available per 100 faculty. People are awarded between 0 and 2.5 increments in 0.25 incremental units.
Western	$84,701	no max	0 to $5,444. Average of $2,722	$96,399	no max	0 to $5,444. Average of $2,722	$116,677	no max	0 to $5,444. Average of $2,722	Receive 0 - 4 salary points
Sask	$98,178	$117,978	3,300	$117,978	$137,778	3300	$137,778	$160,878	3300	
Waterloo	$84,462	no max	4,131	$106,305	no max	4,131	$135,431	no max	4,131	0.25 SIU for each FTE Member, plus 0.25 SIU for each FTE Member with salary below T2, plus 0.5 SIU for each FTE Member with salary below T1.
Toronto	$64,476	$110,056		$79,115	no max		$106,214	no max		***Merit Pay
Ottawa	$87,856	$121,509	$5,342 to $4,718	$97,049	$168,530	$5,034 to $2,831	$116,522	$203,422	$4,718 to $2,831	
Queen's	$74,262	no max	3,380 plus Junior increment of $675 if below $111,393	$74,262	no max	3,380 plus Junior increment of $675 if below $111,393	$74,262	no max	3,380 plus Junior increment of $675 if below $111,393	*** Merit Pay. $338 per merit point and you can receive 0-7, 10, 12, 15 or 20 Merit points with that standard being 10 points

Comparison of Current Salary Scales, U15 Group, p 1, Tab 18.

78. From the foregoing, it is clear that based on the Structural Changes alone, the vast majority of Faculty Members within UMFA can now expect to receive increments that will exceed those of their U15 Group counterparts, especially those counterparts that are found at or around the 25th percentile.

79. The same holds true for Academic Librarians. The tables that follow set out the most recent floors, maxima and increments for Academic Librarians in the U15 Group (excluding Quebec institutions and the University of Toronto). Once again, following the Structural Changes, the University's Librarians should be entitled to greater performance increments year after year than most of their U15 colleagues:

	Librarian			**Associate Librarian**		
	Min	**Max**	**Increment**	**Min**	**Max**	**Increment**
UBC	68016	no max	merit pay	68016	no max	merit pay
Queen's	98825	no max	2214 - $632 plus merit pay of $521 per merit point	83013	no max	2214 - $632 plus merit pay of $521 per merit point
Western	93849	no max	3288 to 2157 average	78154	no max	3288 to 2157 average
University of Alberta	102364	170080	3762	86,744	144,452	3206
Ottawa	102745	162803	3303 - 1982	90357	147268	3742 - 2311
Manitoba	**110779**	**155090**	**4431**	**88518**	**123925**	**3541**
Dalhousie	87,786	145928	2167	75253	122336	2509
University of Calgary	80,674	144,975	2,400 or 1,200	72292	101374	1900
Sask	117978	144378	3300	98178	117978	3300
Waterloo	95420.4	143130.5	Merit pay	87654.7	131482	merit pay
McMaster	76918.6	123133.1	Merit pay. 1.5% - 3.0% depending on performance	71425.2	107965	Merit pay. 1.5% - 3.0% depending on performance

	Assistant Librarian			General Librarian		
	Min	Max	Increment	Min	Max	Increment
UBC	68,016	97,850				
Queen's	71154	no max	2214 - $632 plus merit pay of $521 per merit point	63248	no max	2720
Western	67502	no max	3288 to 2157 average	68515	no max	3255 average
University of Alberta	86167	124387	2548	62,231	86,166	2,176
Ottawa	76580	123207	3742 - 3303	64623	108281	3742 - 3303
Manitoba	**76797**	**107516**	**3072**	**66679**	**93350**	**2267**
Dalhousie	67731	103371	2509	61241	88235	2509
University of Calgary	60768	82843	1700			
Sask	81678	98178	3300			
Waterloo	80390	120585	merit pay	73626	110439	merit pay
McMaster	65930.8	97266.03	Merit pay. 1.5% - 3.0% depending on performance	60436.4	87078.16	Merit pay. 1.5% - 3.0% depending on performance

Comparison of Current Salary Scales, U15 Group, p 2, Tab 18.

80. Finally, while not all U15 Group institutions have a position that is comparable to an Instructor, the data that the University was able to compile on comparable positions confirms that the same pattern holds true. As an aside, this is not surprising, given that the University and UMFA specifically designed the Structural Changes to create parity between the University's ranks of Senior Instructor and Associate Professor, as well as Instructor II and Assistant Professor:

	Instructor I			Instructor II			Senior Instructor		
	Min	Max	Increment	Min	Max	Increment	Min	Max	Increment
Manitoba	**75,000**	**105,000**	**3,000**	**83,734**	**117,227**	**3,349**	**98,285**	**137,599**	**3,931**
Alberta	63,152	91,224	2,552	75,912	102,080	3,271	92,267	113,621	3,559
Calgary	58,672	79,573	1,700	67,054	111,184	1,900	80,674	144,975	2400 or 1200
Dalhousie	60,756	105,428	2,560	76,100	129,402	2,560	91,443	153,378	2,560
Sask				65,178	104,778	3,300	81,678	121,278	3,300
UBC	64,872	no max	merit pay						

Comparison of Current Salary Scales, U15 Group, p 3, Tab 18.

81. To illustrate the benefit to UMFA's members of these increased increments over three years, the University has calculated how the median salaries[5] of its Faculty Members can be anticipated to advance over the course of the 2021 Agreement after the Structural Changes. To be clear, the following calculation does not include any General Salary Increase:

University of Manitoba Median Salaries: Revised Increments Applied						
	2020/21	2021/22	2022/23	2023/24	$ Increase in Median Since 2020	% Increase in Median since 2020
Assistant Professor	$94,925	$98,274	$101,623	$104,972	$10,047	10.6%
Associate Professor	$123,125	$127,056	$130,987	$134,918	$11,793	9.6%
Professor	$153,900	$158,727	$163,554	$168,381	$14,481	9.4%

82. Based on the foregoing, each median salary can be expected to increase by over $10,000 by the end of the third year under the revised salary scale, even before any General Salary Increase is applied.

83. The same calculation can be performed for each U15 Group institution, by adding the most recent yearly performance increments that employees are entitled to receive (before any General Salary Increase) to the 2020/21 median salaries reported by Statistics Canada. When the resulting projected median salaries are compared, it becomes clear that the University will make reasonable progress towards the 25th percentile based on the Structural Changes alone, even before General Salary Increases are taken into account.

[5] This calculation assumes that the complement of UMFA's members will stay consistent between 2020 and the end of the 2021 Agreement.

84. First, for the rank of Assistant Professor, under the revised salary scale, the difference between the University's median salary and the 25th percentile of median salaries in the U15 Group is expected to reduce by $6,053 by the end of the 2021 Agreement. This amounts to a reduction in the differential from 10.5% to 3.7%. The following two tables illustrate this change. The tables contain the same data, but the table on the left is sorted by 2020/21 median salaries reported by Statistics Canada, while the table on the right is sorted by the projected 2023/24 median salaries:

Assistant Professor		Sorted by 20-21 Median Salary					Assistant Professor		Sorted by 23-24 Median Salary			
University	**Median Salary**	21-22	22-23	23-24			**University**	**Median Salary**	21-22	22-23	23-24	
Queen's	$135,450	$138,830	$142,210	$145,590			Queen's	$135,450	$138,830	$142,210	$145,590	
Ottawa	$126,600	$126,600	$126,600	$126,600	Above max		Waterloo	$123,300	$127,431	$131,562	$135,693	
UBC	$125,250	$125,250	$125,250	$125,250	Merit Pay		McMaster	$119,225	$123,730	$128,235	$132,740	
Waterloo	$123,300	$127,431	$131,562	$135,693			Western	$119,100	$121,822	$124,544	$127,266	
Saskatchewan	$121,200	$121,200	$121,200	$121,200	Above max		Ottawa	$126,600	$126,600	$126,600	$126,600	Above max
McMaster	$119,225	$123,730	$128,235	$132,740			UBC	$125,250	$125,250	$125,250	$125,250	Merit Pay
Toronto	$119,215	$119,215	$119,215	$119,215			Saskatchewan	$121,200	$121,200	$121,200	$121,200	Above max
Western	$119,100	$121,822	$124,544	$127,266			Toronto	$119,215	$119,215	$119,215	$119,215	
Dalhousie	$107,275	$110,006	$112,737	$115,468			Dalhousie	$107,275	$110,006	$112,737	$115,468	
Calgary	$106,575	$108,475	$110,375	$111,184	Hits max		Calgary	$106,575	$108,475	$110,375	$111,184	Hits max
McGill	$105,000	$106,235	$107,470	$108,705			Alberta	$104,800	$107,352	$109,082	$109,082	Hits max
Alberta	$104,800	$107,352	$109,082	$109,082	Hits max		McGill	$105,000	$106,235	$107,470	$108,705	
Montreal	$101,550	$103,192	$104,834	$106,476			Montreal	$101,550	$103,192	$104,834	$106,476	
Laval	$96,700	$98,429	$100,158	$101,887			Manitoba	$94,925	$98,274	$101,623	$104,972	
Manitoba	$94,925	$98,274	$101,623	$104,972			Laval	$96,700	$98,429	$100,158	$101,887	
25th Percentile:	**$104,900**								**25th Percentile:**		**$108,893.50**	
UM Difference:	**$9,975**								**UM Difference:**		**$3,922**	
% Difference:	**10.5%**								**% Difference:**		**3.7%**	

Tables of Median Salary Changes within the U15 Group (Increments Only), p 1, Tab 19.

85. Second, for the rank of Associate Professor, under the revised salary scale, the difference between the University's median salary and the 25th percentile of median salaries is expected to reduce by $6,194. After the Structural Changes alone, the University's median salary is projected to be a negligible $94 or 0.1% away from the 25th percentile:

Associate Professor		Sorted by 20-21 Median Salary			
University	**Median**	21-22	22-23	23-24	
McMaster	$167,575	$170,954	$174,333	$177,712	
Waterloo	$161,550	$165,681	$169,812	$173,943	
Toronto	$160,348	$160,348	$160,348	$160,348	merit pay
Queen's	$159,950	$163,330	$166,710	$170,090	
Ottawa	$159,350	$162,181	$165,012	$167,843	
Saskatchewan	$155,125	$155,125	$155,125	$155,125	Above max
UBC	$155,050	$155,050	$155,050	$155,050	merit pay
Western	$148,925	$151,647	$154,369	$157,091	
Alberta	$132,550	$135,821	$137,003	$137,003	Hits max
Dalhousie	$132,225	$134,956	$137,687	$140,418	
McGill	$131,400	$132,635	$133,870	$135,105	
Calgary	$127,425	$128,625	$129,825	$131,025	
Montreal	$125,375	$127,182	$128,989	$130,796	
Manitoba	$123,125	$127,056	$130,987	$134,918	
Laval	$115,850	$117,690	$119,530	$121,370	
25th Percentile:	**$129,412.50**				
UM Difference:	**$6,288**				
% Difference:	**5.1%**				

Associate Professor		Sorted by 23-24 Median Salary			
University	**Median**	21-22	22-23	23-24	
McMaster	$167,575	$170,954	$174,333	$177,712	
Waterloo	$161,550	$165,681	$169,812	$173,943	
Queen's	$159,950	$163,330	$166,710	$170,090	
Ottawa	$159,350	$162,181	$165,012	$167,843	
Toronto	$160,348	$160,348	$160,348	$160,348	merit pay
Western	$148,925	$151,647	$154,369	$157,091	
Saskatchewan	$155,125	$155,125	$155,125	$155,125	Above max
UBC	$155,050	$155,050	$155,050	$155,050	merit pay
Dalhousie	$132,225	$134,956	$137,687	$140,418	
Alberta	$132,550	$135,821	$137,003	$137,003	Hits max
McGill	$131,400	$132,635	$133,870	$135,105	
Manitoba	$123,125	$127,056	$130,987	$134,918	
Calgary	$127,425	$128,625	$129,825	$131,025	
Montreal	$125,375	$127,182	$128,989	$130,796	
Laval	$115,850	$117,690	$119,530	$121,370	
		25th Percentile:		**$135,011.50**	
		UM Difference:		**$94**	
		% Difference:		**0.1%**	

Tables of Median Salary Changes within the U15 Group (Increments Only), p 2, Tab 19.

86. Finally, for the rank of Professor, under the revised salary scale, the difference between the University's median salary and the 25th percentile of median salaries is expected to reduce by $5,603. This equates to a reduction in the differential from 8.4% to 3.3%:

Professor		Sorted by 20-21 Median Salary			
University	**Median**	21-22	22-23	23-24	
UBC	$204,350	$204,350	$204,350	$204,350	Merit Pay
Waterloo	$202,450	$206,581	$210,712	$214,843	
McMaster	$201,325	$203,577	$205,829	$208,081	
Toronto	$198,764	$198,764	$198,764	$198,764	Merit Pay
Ottawa	$194,950	$197,781	$200,612	$203,422	hits max
Saskatchewan	$189,325	$189,325	$189,325	$189,325	Above Max
Queen's	$179,875	$183,255	$186,635	$190,015	
Western	$177,650	$180,372	$183,094	$185,816	
Alberta	$177,300	$177,300	$177,300	$177,300	Above Max
McGill	$172,800	$174,035	$175,270	$176,505	
Calgary	$168,800	$170,800	$172,800	$174,800	
Dalhousie	$164,975	$167,706	$170,437	$173,168	
Manitoba	$153,900	$158,727	$163,554	$168,381	
Montreal	$153,725	$155,777	$157,829	$159,881	
Laval	$146,850	$148,981	$151,112	$153,243	
25th Percentile:	**$166,887.50**				
UM Difference:	**$12,988**				
% Difference:	**8.4%**				

Professor		Sorted by 23-24 Median Salary			
University	**Median**	21-22	22-23	23-24	
Waterloo	$202,450	$206,581	$210,712	$214,843	
McMaster	$201,325	$203,577	$205,829	$208,081	
UBC	$204,350	$204,350	$204,350	$204,350	Merit Pay
Ottawa	$194,950	$197,781	$200,612	$203,422	hits max
Toronto	$198,764	$198,764	$198,764	$198,764	Merit Pay
Queen's	$179,875	$183,255	$186,635	$190,015	
Saskatchewan	$189,325	$189,325	$189,325	$189,325	Above Max
Western	$177,650	$180,372	$183,094	$185,816	
Alberta	$177,300	$177,300	$177,300	$177,300	Above Max
McGill	$172,800	$174,035	$175,270	$176,505	
Calgary	$168,800	$170,800	$172,800	$174,800	
Dalhousie	$164,975	$167,706	$170,437	$173,168	
Manitoba	$153,900	$158,727	$163,554	$168,381	
Montreal	$153,725	$155,777	$157,829	$159,881	
Laval	$146,850	$148,981	$151,112	$153,243	
		25th Percentile:		**$173,984.00**	
		UM Difference:		**$5,603**	
		% Difference:		**3.3%**	

Tables of Median Salary Changes within the U15 Group (Increments Only), p 3, Tab 19.

87. In the University's submission, the foregoing is clear evidence that the Structural Changes will provide the University and UMFA with reasonable advancement towards the 25th percentile over the life of the 2021 Agreement. Even before taking into account any General Salary Increases, the gap between the median salaries of Associate Professors and the 25th percentile is expected to close entirely. For Assistant Professors and Professors, considerable advancement will still be made, reducing the differential between the 25th percentile and the University's median to 3.7% and 3.3% respectively.

88. While Statistics Canada does not publish median data on Instructors and Academic Librarians, the same trends should be expected for both. As noted above, the information that is available indicates that the increments that will be received by Academic Librarians and Instructors after the Structural Changes should exceed the vast majority of the increments received at U15 Group

comparator institutions. Just as with the Faculty Members, therefore, the benefit of these increased increments will become apparent over the course of the 2021 Agreement, as Academic Librarians and Instructors continue to earn increments that surpass those of their U15 counterparts.

(ii) The University's Proposed General Salary Increases

89. Next, the University submits that the considerable impact of the Structural Changes will only be further compounded by the University's reasonable proposal of General Salary Increases of 1.25% in 2021, 1.5% in 2022, and 1.75% in 2023.

90. Applying the University's proposed General Salary Increases to the revised pay scale, the University's median salaries across all ranks are expected to increase anywhere from 14.3% to 16.9% over the course of the 2021 Agreement, as follows:

Rank	Median 2020/21	New 2021/22 Increment	2021/22 (1.25% GSI)	2022/23 (1.5% GSI)	2023/24 (1.75% GSI)	% Increase from 2020/21
Professor	$153,900.00	$4,827.00	$160,650.75	$167,959.92	$175,884.36	**14.3%**
Associate Professor	$123,125.00	$3,931.00	$128,595.06	$134,513.95	$140,927.74	**14.5%**
Assistant Professor	$94,925.00	$3,349.00	$99,460.56	$104,351.71	$109,636.58	**15.5%**
Librarian	$125,859.00	$4,431.00	$131,863.24	$138,338.65	$145,335.75	**15.5%**
Associate Librarian	$112,540.00	$3,541.00	$117,487.75	$122,844.18	$128,650.97	**14.3%**
Assistant Librarian	$79,984.00	$3,072.00	$84,055.80	$88,434.72	$93,154.97	**16.5%**
General Librarian	$71,093.00	$2,267.00	$74,248.66	$77,663.40	$81,363.78	**14.4%**
Senior Instructor	$111,450.00	$3,931.00	$116,774.13	$122,515.70	$128,719.52	**15.5%**
Instructor II	$95,933.00	$3,349.00	$100,481.16	$105,387.61	$110,690.62	**15.4%**
Instructor I	$75,456.00	$3,000.00	$79,399.20	$83,635.19	$88,197.09	**16.9%**

91. Of course, because this is median data, the salary increases received by individual UMFA members will vary. Some employees will receive a greater percentage increase by the end of the 2021 Agreement, while others will receive less.

92. To assist in this regard, the University has prepared a “Salary Calculator”, which is an Excel spreadsheet that allows for a simple calculation of how any individual member’s salary will change over the course of the 2021 Agreement based upon the Structural Changes and the University’s proposed General Salary Increases. A similar Salary Calculator was provided to UMFA and was available on the University’s website during bargaining to permit members to calculate how their salaries would change under the University’s then-current monetary proposals.

Salary Calculator Examples, p 1, Tab 20.

93. To illustrate how UMFA’s members will benefit from the University’s proposal in this arbitration, the University has prepared three examples using the Salary Calculator.

94. First, the Salary Calculator indicates that a Professor, who was previously at the top of his/her/their salary scale (earning $157,904), would earn $174,492.74 by the end of the 2021 Agreement, through the combined impact of the increased maximum, increased increments, and the University’s General Salary

Increases. This is an increase of $16,588.74 or 10.5% over three years, due exclusively to the Structural Changes and the University's proposed General Salary Increases.

Salary Calculator Examples, p 1, Tab 20.

95. Second, an Instructor II, who was previously at the bottom of his/her/their salary scale (earning $68,566), would earn $94,691.94 by the end of the 2021 Agreement. This is a difference of $26,125.94 over the course of three years, or an increase of 38.10%. Admittedly, under the previous salary scale, the Instructor II's salary still would have increased, but only to $76,186. Effectively, this means that 26.99% of the 38.10% increase is attributable exclusively to the Structural Changes and the University's proposal.

Salary Calculator Examples, p 2, Tab 20.

96. Finally, an Assistant Librarian earning a salary equivalent to the previous threshold ($89,316), would earn $102,913.18 by the end of the 2021 Agreement. This is a difference of $13,597.18 or 15.22% over three years. Without the Structural Changes and the proposed General Salary Increase, the same Assistant Librarian's salary would have increased only 6.25% by the end of three years, to a total of $94,899.

Salary Calculator Examples, p 3, Tab 20.

97. In the University's submission, this is clear evidence that UMFA's members will benefit considerably when the University's proposed General Salary Increases are compounded with the previously agreed to Structural Changes.

98. But how will these increased salaries compare to the U15 Group over the course of the next three years?

99. Admittedly, because the parties have agreed to a prospective aim – that is, to make reasonable progress towards the 25th percentile by 2024 – the degree of progress that the University can make will depend upon the general salary increases that are applied at other U15 Group institutions over the next three years. Unfortunately, many of those increases currently remain unknown. Data from Faculty Bargaining Services released in June 2021 indicates that only the University of Waterloo had reached an agreement until 2023/24, while 10 institutions had agreements that ended in 2020/21, and the remainder expired in 2020/21 or 2019/20.[6]

Faculty Bargaining Services, Across-the-board Salary Increases for Full-time Faculty in Canada: 2009 to 2025, June 2021 ("FBS Report"), Tab 21.

100. Notwithstanding the limited data for the years 2021-2024, a number of meaningful conclusions can be drawn from the data that is available at this time.

[6] Subsequently, the University was able to determine that the University of Ottawa has ratified a collective agreement similar to that of Waterloo, while the University of Saskatchewan has reached a tentative agreement to add a single year to its current agreement in 2022/23. This information is not contained in the FBS Report at Tab 23, but is contained in the chart at paragraph 101.

101. First, the University's proposals of 1.25% in 2021, 1.5% in 2022 and 1.75% in 2023 are entirely consistent with the historic trends in general salary increases within the U15 Group.

102. Since 2009, the average general salary increase within the U15 Group has been 1.7%. Perhaps more important, however, is the fact that there has been a clear downward trend in the value of general salary increases in the latter half of the past decade. While the average general salary increase between 2009/10 and 2014/15 was 1.97%, the same calculation between the years 2015/16 and 2020/21 yields an average of half a percentage less, at 1.46%:

	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17	2017/18	2018/19	2019/20	2020/21	2021/22	2022/23	2023/24
British Columbia	3.32	0.00	0.00	2.45	2.40	2.00	2.00	2.00	2.00	2.00	2.00	2.00	2.00		
Alberta	4.75	4.75	1.75	2.00	1.65	1.65	1.50	1.00	1.50	0.00	0.00				
Calgary	4.50	0.00	2.00	2.00	0.00	0.00	2.00	1.00	0.00	0.00	1.70				
Saksatchewan	5.25	4.50	4.00	4.00	1.00	2.25	2.25	2.75	0.00	0.00	1.25	1.95	1.95	1.80	
Manitoba	2.50	0.00	0.00	2.90	2.90	2.00	2.00	0.00	0.00	0.75	1.00	0.00			
McMaster	3.00	3.25	1.50	1.50	0.00	0.90	1.50	1.50	1.70	1.70	1.67	1.83	2.00		
Queen's	3.20	3.20	1.25	1.50	1.50	2.50	1.00	1.25	1.50	1.75	1.60	1.60	1.90		
Ottawa	3.50	3.00	1.71	2.00	2.00	3.50	3.50	1.70	1.70	2.80	2.00	2.00	1.00	1.00	1.00
Toronto	1.25	2.25	1.00	1.00	1.00	1.91	1.91	1.75	1.75	1.90	2.90				
Waterloo	3.00	0.00	0.00	3.00	3.00	3.00	1.95	1.95	1.50	2.00	2.15	2.15	1.00	1.00	1.00
Western Ontario	3.25	1.50	1.50	1.50	1.50	1.25	1.00	1.00	1.00	1.50	1.50	1.50	1.75		
McGill	0.00	0.50	0.90	1.20	0.00	1.00	0.75	0.75	0.75	0.75	0.75	1.00	1.00		
Montreal	3.01	2.00	2.00	2.00	1.50	2.00	1.00	1.50	1.75	2.00	1.00	2.00	2.00		
Laval	3.50	0.00	0.00	2.50	3.00	3.00	1.00	1.76	1.50	1.75	1.25	3.90	1.65	1.50	
Dalhousie	3.00	3.40	1.25	1.25	1.75	2.00	1.75	1.50	1.50	1.25	1.25	1.00	1.25		
Average %:	**3.14**	**1.89**	**1.26**	**2.05**	**1.55**	**1.93**	**1.67**	**1.43**	**1.21**	**1.34**	**1.47**	**1.74**	**1.59**	**1.33**	**1.00**
Median %:	**3.20**	**2.00**	**1.25**	**2.00**	**1.50**	**2.00**	**1.75**	**1.50**	**1.50**	**1.70**	**1.50**	**1.89**	**1.75**	**1.25**	**1.00**
			2009-2015 Average:			**1.97**			**2015-2021 Average:**			**1.46**			
													Total Average:		**1.70**

Table of General Salary Increases, U15 Group, 2009-2024, Tab 22.

FBS Report, Tab 21.

103. Following 2020/21, as noted above, the data within the U15 Group becomes increasingly incomplete. Nevertheless, the same trend of adjustments in

or around 1.5% continues. The average general salary increase for 11 institutions in 2021/22 was 1.59%. Only four institutions have established increases in 2022/23,[7] with an average of 1.33%. Waterloo and Ottawa, the only institutions to have settled adjustments into 2024 at this time, both have increases of 1.0% in 2021/22, 2022/23 and 2023/24.

104. Given the foregoing, the University maintains that its proposals are entirely consistent with the clear trend within the U15 Group since 2015. While there is little data for 2021-2024, the agreements that have been settled wholly support General Salary Increases of 1.25%, 1.5% and 1.75%.

105. Second, and while the University acknowledges that the following calculations can only provide a rough estimate of how U15 Group median salaries may be expected to advance over the next three years, the University submits that when historical trends in median salary increases within the U15 Group are applied to the median salaries for 2020/21 at each institution, it becomes clear that the University should be expected to make more than reasonable progress towards the 25th percentile over the course of the 2021 Agreement.

106. Using Statistics Canada's median salary data dating back to 2011, the average increase in median salaries for each rank of Faculty Member at each U15 institution can be calculated over the last 10 years. These 10-year average

[7] The Saskatchewan agreement is tentative, but has been included in the calculation.

increases vary between institutions and ranks. For example, the median salary for Associate Professors at Dalhousie University increased an average of 2.3%, while Assistant Professors increased only 1.8% on average. The median salary for Associate Professors at University of Saskatchewan increased an average of 3.1%, while Professors increased only 2.8%.

Table of Changes in Median Salary, U15 Group, 2011-2021, Tab 23.

107. Assuming that median salaries will continue to advance in a manner similar to that of the last ten years, these 10-year average increases can then be applied to the 2020/21 median salaries of each rank at each institution, to calculate what median salaries may be by the end of the next three years. When these projections are compared to the University's anticipated median increases calculated in paragraph 90 above (based on the Structural Changes and the University's proposed General Salary Increases), it appears that the University can

be expected to reach a position that is exceptionally close to the 25th percentile by 2024:

Assistant Professor			Associate Professor			Professor	
University	**Median Salary**		**University**	**Median**		**University**	**Median**
Queen's	$144,164		McMaster	$182,581		UBC	$225,256
Ottawa	$139,957		Ottawa	$176,674		Waterloo	$222,514
UBC	$136,068		Waterloo	$176,016		McMaster	$218,714
Waterloo	$133,170		Toronto	$173,690		Toronto	$214,047
McMaster	$130,280		Queen's	$171,745		Ottawa	$213,648
Western	$129,765		UBC	$171,409		Saskatchewan	$205,678
Saskatchewan	$129,757		Saskatchewan	$170,003		Queen's	$191,447
Toronto	$127,631		Western	$162,261		Western	$191,310
McGill	$113,405		McGill	$142,750		McGill	$186,632
Dalhousie	$113,173		Dalhousie	$141,560		Alberta	$183,215
Calgary	$110,786		Manitoba	$140,927		Manitoba	$175,884
Manitoba	$109,636		Alberta	$138,195		Dalhousie	$175,073
Montreal	$108,083		Montreal	$134,226		Calgary	$174,950
Alberta	$107,976		Calgary	$131,676		Montreal	$165,249
Laval	$102,619		Laval	$121,142		Laval	$153,558
25th Percentile	**$110,211**		**25th Percentile**	**$139,561**		**25th Percentile**	**$175,478**
UM difference $	**$575**		**UM difference $**	**-$1,366**		**UM difference $**	**-$406**
UM difference %	**0.5%**		**UM difference %**	**-1.0%**		**UM difference %**	**-0.2%**

Projected Median Salary Increases, 2023/24, Tab 24.

108. Admittedly, these projections do not account for new hires, promotions, turnover or retirements at the University, which may alter the complement of Faculty Members over the next three years. A change in complement could alter the median salary calculation, either by increasing or decreasing it, depending upon the position of the departing staff within the pay scale.

109. On the other hand, these projections are likely overly generous to many of the U15 Group institutions for two reasons.

110. First, as explained above, there has been a significant reduction in the average salary adjustments achieved within the U15 Group in the latter half of the past decade. While increases averaged 1.97% between 2009 and 2015, increases dropped to 1.46% on average between 2015 and 2021. Notwithstanding the recent downward trend, the University has calculated the historical averages by using ten years of data, rather than five, to ensure that it is as generous as possible to comparator U15 Group institutions.

See Table of General Salary Increases, U15 Group, 2009-2024, Tab 22.

111. Second, these projections do not account for any depressed general salary increases within the U15 Group that may result from the ongoing COVID-19 pandemic.

112. Waterloo, for example, has historically had comparatively high median salary increases year after year (an average of 2.6% for Assistant Professors, 2.9% for Associate Professors and 3.2% for Professors), no doubt due to its relatively high general salary increases, which averaged 2.1% over the same period of time. Ottawa, similarly, has had median salary increases that averaged above 3% for each of its ranks, with general salary increases averaging 2.3% over the same period of time.

Table of General Salary Increases, U15 Group, 2009-2024, Tab 22.

Table of Changes in Median Salary, U15 Group, 2011-2021, Tab 23.

113. Both Ottawa and Waterloo, however, have now agreed to three years of depressed 1.0% general salary increases in 2021, 2022 and 2023. Because these decreased general salary increases depart from the historical pattern of general salary increases at these institutions, the projections for Ottawa and Waterloo above are likely over estimates. The same will be true for any other institution that agrees to reduced general salary increases in light of the economic uncertainty caused by COVID-19.

114. Therefore, the University submits that, in the absence of any ability to accurately predict the general salary increases that will be achieved in the U15 Group over the next three years and how, precisely, those adjustments will impact median salaries, the foregoing comparison is helpful. It accurately depicts how median salaries have increased within the U15 Group over the last ten years, and compares that pattern to the University's projected median salary improvements following the Structural Changes and General Salary Increases. Based on this comparison, alongside all the foregoing, the University maintains that its proposal for 1.25%, 1.5% and 1.75% will achieve reasonable, if not more than reasonable, advancement, towards the 25^{th} percentile by the end of the 2021 Agreement.

115. Further, as will be explained in the sections that follow, the University's proposed General Salary Increases are consistent with the remaining objective criteria within the replication analysis.

(iii) The University's Financial Circumstances

116. As noted above, the University concedes that "ability to pay" is not a proper consideration in public sector interest arbitrations. The authorities are clear, however, that arbitrators "cannot be blind" to the financial circumstances of the parties and the broader economic situation. Arbitrators must ensure that their awards remain "responsible" in light of these circumstances.

***Louis Riel,* at para 65, Tab 15.**

***MACA and Manitoba,* at paras 102-103, Tab 16.**

117. The University's offer reasonably and responsibly accounts for the financial health of the University. As will be explained, the University is currently in a stable financial position, but is *not* in a position to take on overly generous or unjustified increased labour costs. Salaries and benefits remain the University's largest expenditure, accounting for over 75% of its general operating revenue. Compounded with the uncertainty created by the COVID-19 pandemic, the University's need to rely on government funding, and the volatility of other sources of operating revenue such as international student enrollment, the University maintains that any increase beyond its proposed General Salary Increase would not be responsible, and would unnecessarily risk the financial health of the University.

A. Revenues and Expenditures

118. As a starting point, it is necessary to understand that the University's finances are divided into multiple funds. In 2019/20, the University's budget was distributed across the funds as follows:

- General operating fund – 65%;
- Ancillary fund – 4%;
- Sponsored research fund – 20%;
- Special purpose and trust fund – 8%; and
- Capital fund – 3%.

UM Finances, September 2021 Presentation with Speaking Notes, slide 3 ("2021 Finance Presentation"), Tab 25.

119. The largest fund, the general operating fund, is used to pay for the salaries and benefits of UMFA's members, as well as the wages of all staff across the University. As noted above, these costs are significant – in 2020/21, salaries for the University's staff totalled nearly $440 million, including $151 million for UMFA's members.

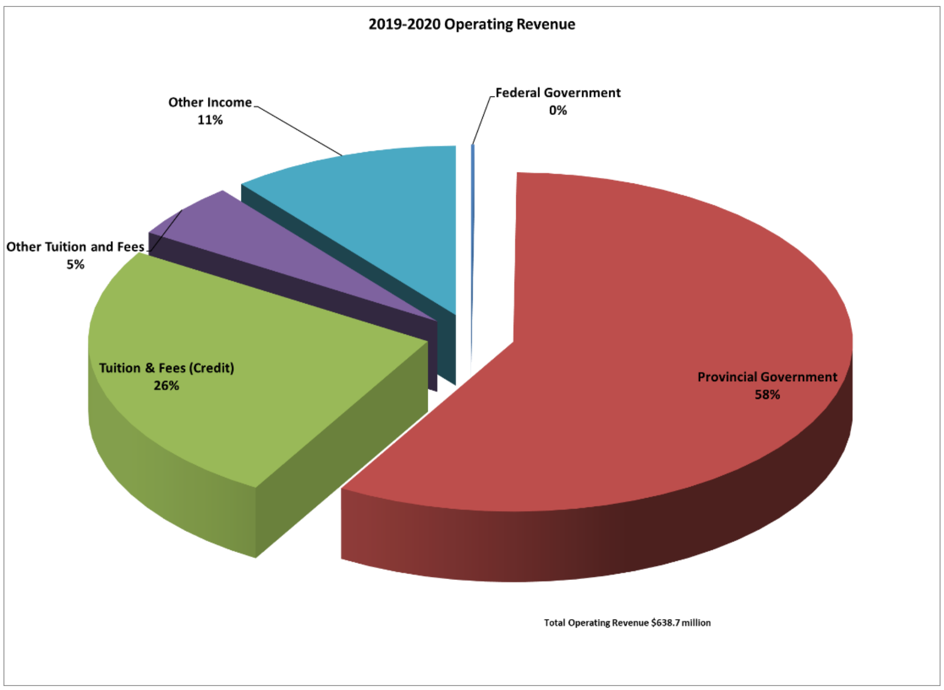
2021 Finance Presentation, slides 3 and 6, Tab 25.

120. The bulk of the remaining funds – sponsored research fund, the special purpose and trust fund, and the capital fund – are all "restricted purpose" funds, meaning each has restrictions on how it can be used. None of these three

funds are available to pay for the general operations of the University, including salaries and benefits.

2021 Finance Presentation, slide 3, Tab 25.

121. The University's general operating revenue comes from a number of sources. In 2019-20, the division was as follows:



2021 Finance Presentation, slide 4, Tab 25.

122. The largest source of general operating funding is a "block grant" provided each year by the provincial government. The grant is not tied to performance, but is calculated yearly by the province by considering the value of the grant the year before, and determining whether an increase or decrease is

warranted. In the last few years, the province has decreased the block grant each year, as follows:

University of Manitoba					
Summary of Annual Provincial Operating Grant funding					
	2017/18	**2018/19**	**2019/20**	**2020/21**	**2021/22**
Operating					
Base Grant	$ 351,379,300	$ 348,458,500	$ 344,989,600	$ 327,735,000	$ 335,559,400
Transitional Support Fund				$ 14,475,900	
ACCESS	$ 4,830,100	$ 4,330,100	$ 4,330,100	$ 4,330,100	$ 4,330,100
Leadership Institute				$ 250,000	$ 250,000
Total Provincial Operating Grant	**$ 356,209,400**	**$ 352,788,600**	**$ 349,319,700**	**$ 346,791,000**	**$ 340,139,500**
Year Over Year % Change		-1.0%	-1.0%	-0.7%	-1.9%

2021 Finance Presentation, slide 4, Tab 25.

123. The second largest source of revenue for the general operating fund is tuition and other fees. In Manitoba, there are two factors that contribute to the University's comparatively low tuition rates.

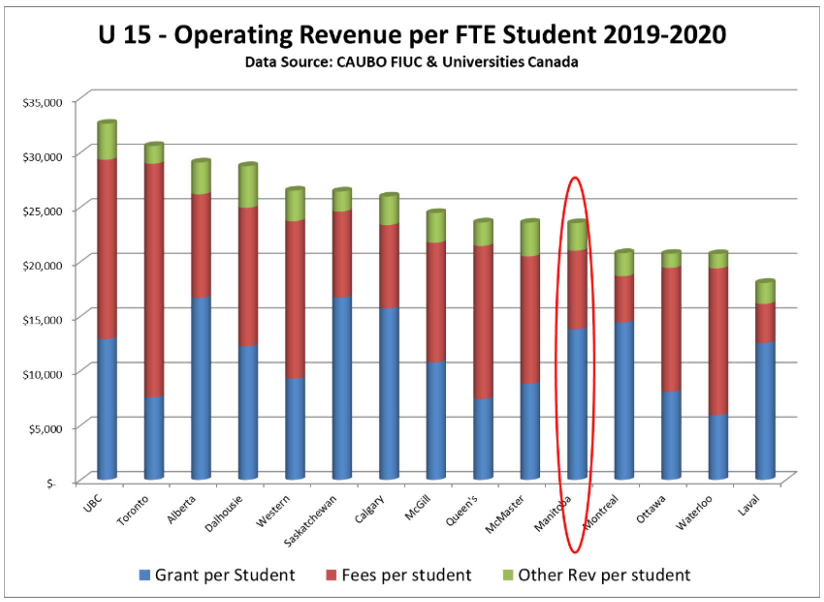
2021 Finance Presentation, slide 4, Tab 25.

124. First, in 1999, Manitoba's provincial government rolled back tuition rates by 10%. For the majority of students, those rates were then frozen for ten years. Only in 2009, was tuition permitted to gradually begin increasing again in the province.

Province of Manitoba, News Release, "Tuition Freeze Extended as Part of 2008 Funding to Universities, Colleges", April 7, 2008, Tab 26.

125. Second, in Manitoba, maximum tuition for Canadian students is set by the Minister of Education under s 2.2(6) of *The Advanced Education Administration Act*. For this reason, the University cannot unilaterally increase tuition beyond the

limits set by the Minister to compensate for funding shortfalls. As the following chart reveals, many U15 institutions, particularly in Ontario, can rely heavily on tuition and other fees to fund operating expenses. The University, by contrast, must continue to rely upon the provincial grant, the value of which is beyond the University's control:

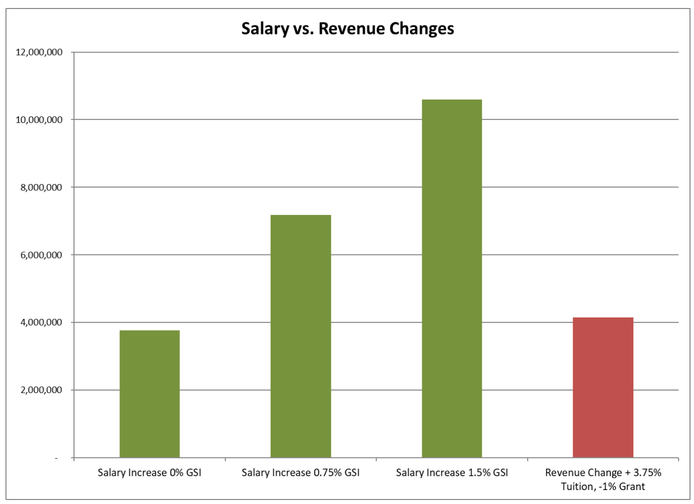


2021 Finance Presentation, slide 5, Tab 25.

***The Advanced Education Administration Act*, CCSM c A6.3, s 2.2, Tab 27.**

126. These constraints impact the availability of funding to pay for increased salary and benefit costs. Currently, over 75% of the University's general operating fund is required to pay for salaries and benefits. And, if past trends in provincial funding continue, increasing salary costs, beyond those proposed by the University in this interest arbitration, could easily overwhelm increased revenues.

127. For illustration, in the chart that follows, the first green bar indicates the increased costs associated with a 0% General Salary Increase (based exclusively on increased increment payments). The next two bars indicate how salary costs will increase with a 0.75% general salary increase or a 1.5% general salary increase.[8] The red bar, meanwhile, projects the increased revenues that will be available if tuition is increased by 3.75% and the provincial grant is decreased by 1% (as it has been in past years):



2021 Finance Presentation, slide 7, Tab 25.

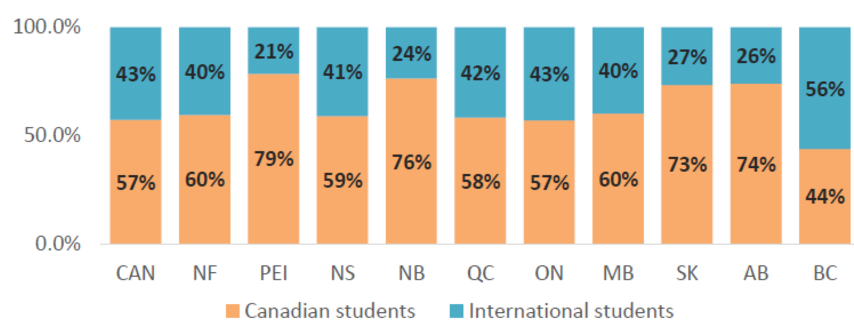
128. All the foregoing background is provided to illustrate how the University's finances are constrained by the provincial government's discretion – both in determining the value of the block grant in each year and in setting the maximum amount that tuition can be increased. The University is not at liberty to

[8] These are the projected cost increases, before accounting for the impacts of turnover. Retirements, for example, may reduce salary costs.

simply increase its general operating fund through considerable tuition increases for Canadian students.

129. This brings us to the issue of international student tuition. As the Canadian Association of University Business Offices ("CAUBO") reports, in recent years, government grants have declined per student across Canada, but expenditures have not proportionately decreased. Increasingly, post-secondary institutions have been forced to rely upon the tuition paid by increasing international student enrollments to fund shortfalls in their budgets (and, particularly, increased salary costs). For example, although international students make up a relatively small proportion of the University's student body (19.8% in Fall 2019), nearly half of the University's tuition fee revenue (40%) was generated by international students in 2019/20:

Figure 1: Tuition Fee Revenue by Status of Student in Canada, 2019/2020



CAUBO Report, The Financial Landscape of Canadian Universities, pp 2, 3 and 6 ("CAUBO Report"), Tab 28.

130. According to the CAUBO, increased reliance on international students has also created "income volatility" in Canadian universities. It is currently unclear whether international students will continue to enrol in Canadian universities at

similar rates, or whether this trend may soon decline. At the University, for example, the proportion of international students from China has significantly decreased in recent years. At the moment, enrollments from India have increased to offset this decline, but it is uncertain whether this pattern will continue. The COVID-19 pandemic has created further uncertainty, given the restrictions on international movement and the continued emergence of new variants.

CAUBO Report, p 12, Tab 28.

131. Further, until now, the University's international student enrollments have increased considerably, from 9.6% in 2011 to 19.8% in 2019. The University is, however, likely approaching the upper limit of international student enrollment that it can accommodate. This means that the revenue growth generated by the increase in international students over the last decade can be expected to slow, and will need to be replaced by other revenue increases (i.e. an increase in the provincial grant or domestic tuition revenues) to continue to fund rising operating costs, such as salaries.

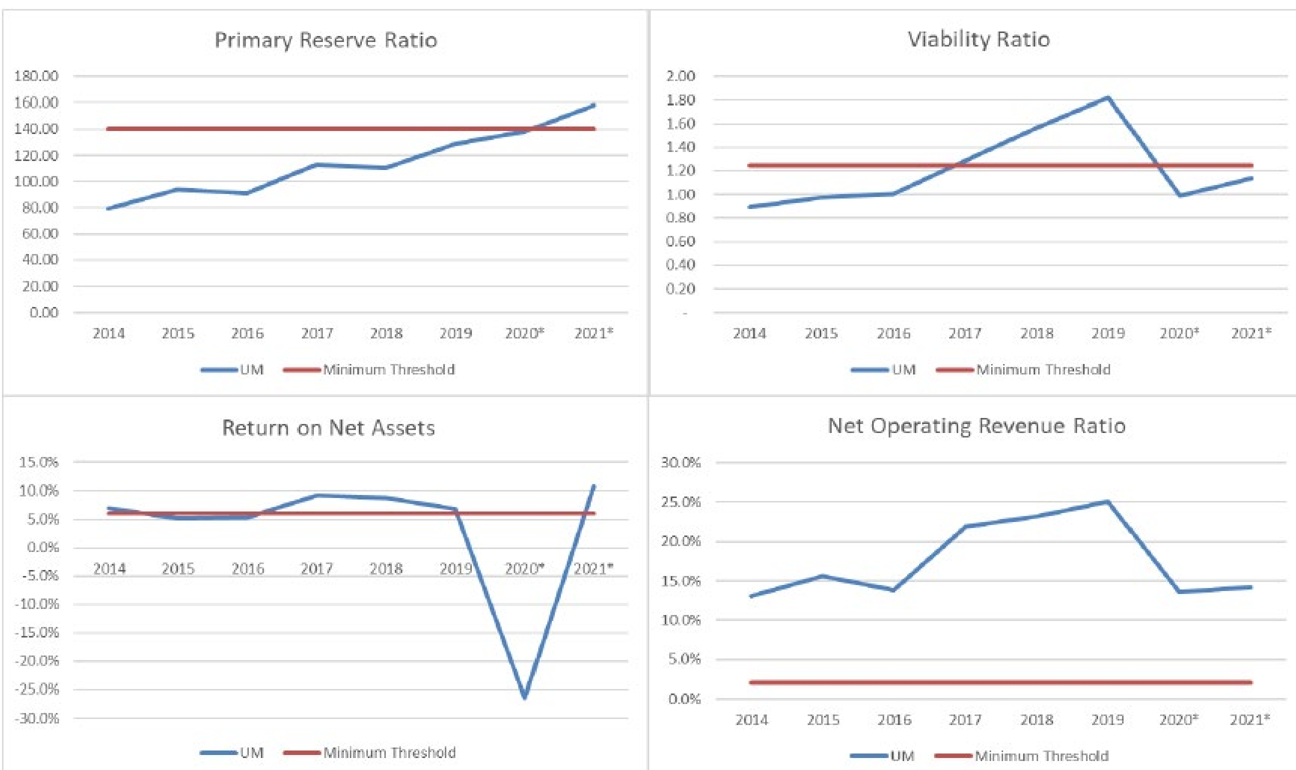
B. Composite Financial Index

132. With this background on the University's expenditures and revenue sources, it is also necessary to examine the overall financial health of the institution.

133. In Canada, for decades, the financial health of post-secondary institutions has been measured against a Composite Financial Index ("CFI"). The

CFI measures four ratios, two of which consider long term health and two of which consider short term health. To obtain an accurate picture of the financial position of a post-secondary institution, all four ratios must be considered together.

134. Each ratio has a "minimum threshold" that is recommended for an institution. Falling below the minimum threshold is an indicator that the financial health of the institution is at risk. The University's position on each of the four ratios is as follows:



2021 Finance Presentation, slides 9-12, Tab 25.

135. The first ratio, Primary Reserve, compares days of accumulated reserves to operating expenses. It is a long-term indicator and is presented in days

of reserves to indicate how long the University could continue to operate based on its reserves alone. The University has improved considerably in this ratio in recent years, but only surpassed the minimum threshold in 2020.

2021 Finance Presentation, slide 9, Tab 25.

136. The second ratio, Viability Ratio, evaluates the ability of an institution to meet its long-term debt obligations by dividing unrestricted net assets by long-term debt. It reveals the amount of debt that could be paid by unrestricted reserves. The significant drop in this ratio in 2020 was due to a required change in accounting standards,[9] but the University nevertheless currently remains below the minimum recommended threshold. In order to meet the minimum threshold, the University needs to increase its reserves.

2021 Finance Presentation, slide 10, Tab 25.

137. The third and fourth ratios measure short term health.

138. The Return on Net Assets measures whether an institution is better off at the end of a fiscal year than at the start of the year. Once again, the drop in 2020 was due to the accounting standard change. In recent years, the University has risen to just above the minimum threshold for this ratio.

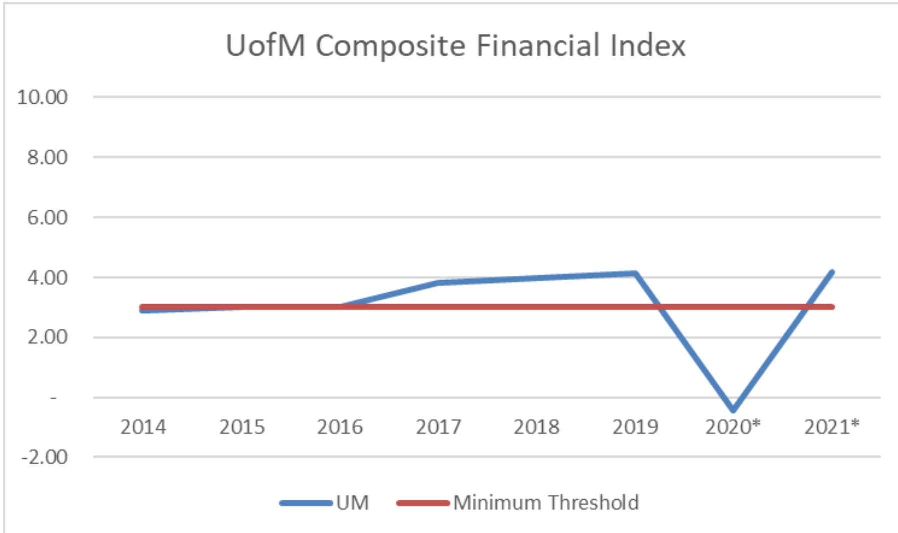
[9] The University was required to adopt Full Public Sector Accounting Standards by the provincial government, which changed the classification of certain debt that was recorded as deferred contributions under the previously used public sector not-for-profit accounting standards.

2021 Finance Presentation, slide 11, Tab 25.

139. Finally, the Net Operating Revenue indicates whether the institution is able to conduct its operations using *only* the revenues generated in the same fiscal period. The University is above the minimum threshold for this ratio. It is important to understand, however, that in order to improve the University's position in the long-term ratios, the University must continue to exceed the minimum threshold in this ratio, to ensure that its overall reserve can fund its operations for the minimum number of days required by the Primary Reserve Ratio and can meet its long-term debt obligations as required by the Viability Ratio.

2021 Finance Presentation, slide 12, Tab 25.

140. When combined, these ratios produce one indicator of financial health, which reveals that since 2016, the University has been able to make some progress to rise above the minimum threshold. To be clear, however, the University is not significantly above the threshold, and must still work on increasing its ratios, especially on the long-term indicators:

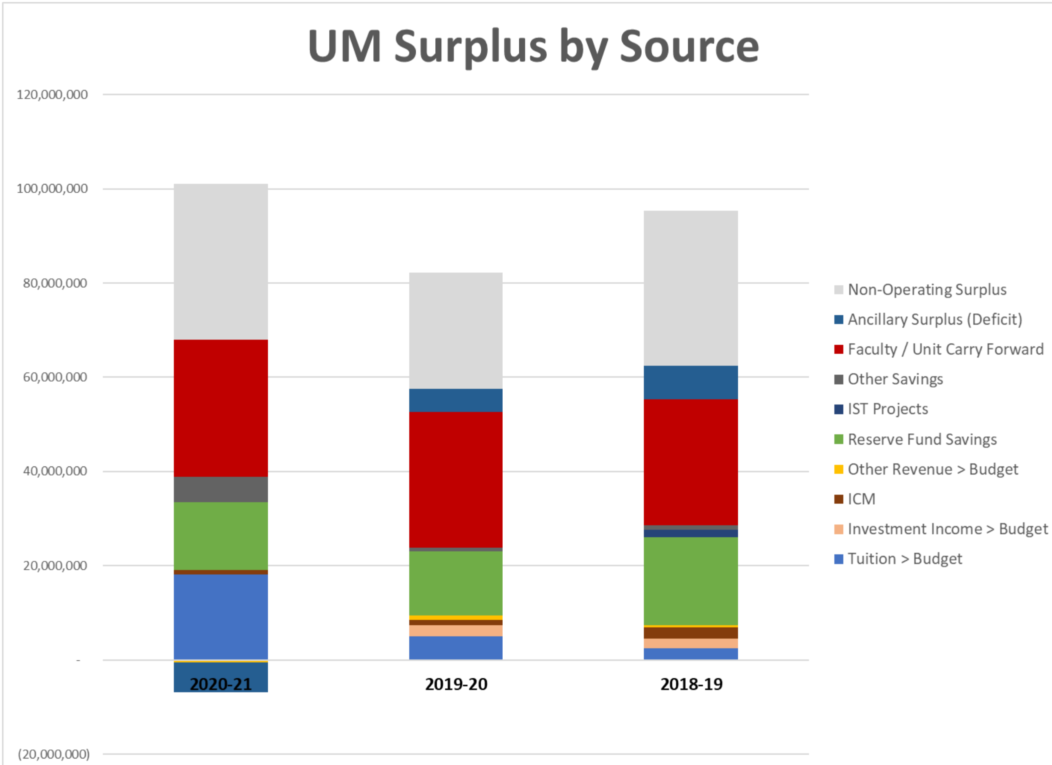


2021 Finance Presentation, slide 13, Tab 25.

C. Surplus

141. Finally, it is necessary to comment on the University's surplus and explain why the surplus cannot be used as a justification for further increases to the salaries of UMFA's members, beyond what has been proposed by the University.

142. In the year ending March 31, 2021, the University experienced a surplus of $94 million. Only a small portion of that surplus, however, is unrestricted and is available to pay for increased operating expenses. The following graph illustrates the surplus and its components:



University of Manitoba Financial Results, Background Information Presentation with Speaking Notes ("Background Information Presentation"), slide 14, Tab 29.

143. Just as the University's revenues are comprised of restricted and unrestricted funds, the surplus is as well.

144. In 2020/21, approximately $30 million of the surplus (the grey portion) consisted of non-operating funds, such as research grants, which cannot be used to pay for general operating expenses such as salaries.

Background Information Presentation, slide 14, Tab 29.

145. The red portion, approximately $30 million again, is the result of Faculty carry forward. Generally speaking, these funds exist for three reasons: (1) individual Faculties have put small amounts away each year for capital projects; (2)

there has been turnover in academic staff resulting in lower salaries for new hires; or (3) Faculties have been conservative in spending due to uncertainty regarding revenues as a result of the pandemic and the costs of salaries under future collective agreements. It is the University's hope that once the 2021 Agreement is renewed (and assuming that the University's proposal on General Salary Increases is accepted), Faculties will have the comfort to fill positions and make other expense commitments that have been delayed pending an understanding of future salary costs.

Background Information Presentation, slides14-15, Tab 29.

146. The dark blue portion at the bottom of the bar for 2020/21 is a small deficit. This arose from a loss on ancillary services, due to decreased traffic on campus because of the COVID-19 pandemic.

Background Information Presentation, slide 14, Tab 29.

147. Finally, this leaves approximately one third of the surplus in 2020/21, which is unrestricted. This portion may be spent on general operating expenses. It must be noted, however, that a significant portion of this surplus in 2020/21 arose from tuition revenues that were greater than the projected budget. When the pandemic began in spring of 2020, the University (like many post-secondary institutions) made a conservative estimate of enrollment revenues for the 2020/21 academic year due to the fact that many classes could not take place in person. The

University budgeted for this outcome and anticipated decreased enrollment revenues.

Background Information Presentation, slide 14, Tab 29.

148. Surprisingly, however, enrollment significantly exceeded the University's budgeted forecast. Presumably, because students could not work or travel, many enrolled in school or took more credit hours than they ordinarily would have. While this resulted in more tuition revenue than initially anticipated in 2020/21, there is no indication that these increased enrollment revenues will continue – this is not a surplus that should be expected year after year. In fact, this anomaly will likely cause decreased tuition revenues in future years, as those students who would otherwise have delayed their studies to travel or work will now graduate sooner. For example, Summary Reports on student enrollment indicate that following increases in enrollment and credit hours in 2020/21, both began to drop in 2021/22:

Term	**% Change in Enrollment (over same term in the prior year)**	**% Change in Credit Hours (over same term in the prior year)**
Fall 2020	2.4%	4.0%
Winter 2021	3.4%	3.5%
Summer 2021	3.2%	4.5%
Fall 2021	0.1%	(2.1%)
Winter 2022	(3.3%)	(2.9%)

University of Manitoba, Enrollment Summaries, Tab 30.

149. In effect, therefore, the University anticipates that the surplus revenues arising from enrollment in fiscal 2020/21 were simply realized earlier than originally anticipated due to the pandemic.

150. Further, it is important to recall that the University has now had two strikes in the last five years, 2016 and 2021. Many students have had their post-secondary education impacted by one, if not two, of UMFA's work stoppages. The full extent of the reputational harm that the University has suffered as a result of these strikes cannot yet be determined with certainty. It can be reasonably anticipated, however, that enrollment may be impacted in the years to come, especially given that the University is not the only post-secondary institution within Winnipeg.

151. Finally, it is necessary to note that the University also has significant deferred maintenance costs, approximately $300 million, which are upcoming and will need to be funded. Year after year, surplus funds are dedicated to these deferred maintenance costs. As just one example, the University is responsible for maintaining its hydro infrastructure, and the hydro grid is in serious need of repair. In order to keep the lights on, literally, the University will need to expend approximately $90 million on repairs and updates to the power distribution system in the coming years.

Background Information Presentation, slide 15, Tab 29.

D. Conclusion

152. In conclusion, and to reiterate, the University acknowledges that ability to pay is not a proper consideration in the replication analysis between these parties. Nevertheless, an arbitrator cannot be blind to the University's financial circumstances. With the ongoing uncertainty caused by COVID-19, the University's inability to unilaterally increase domestic tuition fees, and its continued reliance on international students and the provincial block grant, the General Salary Increases proposed by the University are fair and reasonable and ought to be awarded.

153. Simply put, there is nothing in the financial health of the University, its revenues, expenditures, or surplus, which would justify more generous General Salary Increases than those proposed by the University.

(iv) The State of the Provincial Economy

154. Manitoba's economic and fiscal circumstances are also relevant to the replication analysis, especially in light of the extent to which the University relies on government funding.

155. In the University's submission, it is undeniable that Manitoba (like all provinces) continues to deal with an unprecedented public health emergency. While economic recovery has occurred in Manitoba since the onset of COVID-19, the pandemic has dramatically increased the provincial deficit and can be expected to

cause ongoing increased healthcare and social services costs into 2022 and well beyond.

156. In light of the ongoing uncertainty regarding full economic recovery and the continued financial pressures posed by the pandemic, the University maintains that its proposal on General Salary Increases is more than reasonable, and nothing greater would have been agreed to, had the parties freely bargained in these uncertain economic times.

157. Beginning with the deficit, prior to the pandemic, the Province's forecasted deficit in 2020/21 was $200 million. By the end of the second quarter of 2021, a year and a half into the pandemic, this forecast had ballooned to $1.23 billion for fiscal year 2021/22.

Manitoba, 2021/22 Mid-Year Report Fiscal and Economic Update, p 3, ("Mid-Year Report"), Tab 31.

Manitoba, Budget 2020: Fiscally Responsible Outcomes and Economic Growth Strategy, excerpt, p 8, Tab 32.

158. Contributing immensely to the deficit in 2021/22, is approximately $1.18 billion which was designated for pandemic response. By September 2021, which was only the end of the second quarter, the province had spent nearly 70%, or $800 million, of the $1.18 billion set aside for the year. Notably, this was months before the arrival of the fourth wave and the omicron variant, which have undoubtedly led again to increased healthcare expenditures. Pandemic spending in Manitoba has been spread across numerous programs, including healthcare system

costs and personal protective equipment, safe schools funding, business bridge grants and pandemic sick leave.

Mid-Year Report, pp 2 and 6-8, Tab 31.

159. Turning to general economic indicators, the pandemic has caused significant disruption and uncertainty. While there were signs of economic recovery throughout 2021, it is not yet clear how the arrival of omicron in December impacted Manitoba's economy, nor is it clear if additional variants will arise, further delaying full economic recovery. While Manitoba is currently scheduled to eliminate all public health restrictions in mid-March, the Province's Chief Provincial Public Health Officer recently confirmed that we should expect future waves and variants to continue to emerge.

CBC News Article, "6 COVID-19 deaths reported in Manitoba Wednesday", February 16, 2022, Tab 33.

160. Beginning with real GDP, production in Manitoba suffered a decline of 4.6% in 2020. This was the largest drop in real GDP since 1984. While real GDP is forecasted to increase by 4.6% in 2021, it is important to note that this forecast is from the contracted 2020 position. Therefore, even if this pre-omicron forecast comes to fruition, it will not return Manitoba to its pre-pandemic baseline.

Mid-Year Report, p 11, Tab 31.

161. Employment rates have rebounded considerably in Manitoba. In the height of the pandemic, 90,000 jobs were lost within Manitoba. By November 2021,

Manitoba reported that it had regained nearly all of them, 86,100. Across Canada, Manitoba is performing well in employment rates, and has the second lowest rate of unemployment. However, recovery in employment is not universal – employment amongst part-time workers continues to remain deflated, presumably from the ongoing impacts of the pandemic on the hospitality industry.

Mid-Year Report, p 13, Tab 31.

162. At the time of the Mid-Year Review, Manitoba was forecasting CPI to be relatively high in 2021 and 2022 at 2.9% and 2.6% respectively. These levels were not unique to Manitoba – both projections fall below the national forecast of 3.1% and 2.7%. Unfortunately, elevated CPI is a direct consequence of the continued labour and market disruptions caused by COVID-19. Supply chain bottlenecks are pushing prices upwards as consumer demands increase and businesses struggle to secure inputs for production. Labour shortages have similarly slowed production.

Mid Year Report, p 11, Tab 31.

163. Statistics Canada similarly reports that from April 2020 to April 2021 (the starting point for the 2021 Agreement), CPI in Manitoba increased 3.2%. Once again, this falls slightly below the Canadian average of 3.4%.

Statistics Canada, Consumer Price Index by geography, all-items, February 16, 2022, Tab 34.

164. In conclusion, there has been recovery in the provincial economy since the crash caused by COVID-19 in 2020. Nevertheless, the deficit remains significant and it is clear that elevated spending will continue into 2022 and beyond, as the provincial healthcare system continues to grapple with omicron, the potential for future variants, and delayed healthcare procedures. Moreover, the latest economic and fiscal reports from Manitoba do not include data or forecasts on the impact of the omicron wave. It is currently unclear if the same rate of recovery can still be predicted for 2021 and beyond.

165. In these uncertain economic times, the University maintains that its proposed increases of 1.25%, 1.5% and 1.75% are more than reasonable, combined with the impact of the Structural Changes. There is nothing in the economic or fiscal circumstances of the Province that would justify a further upwards adjustment.

(v) Cost of Living and Average Weekly Earnings

166. Additionally, the University submits that its proposal is further supported by Manitoba’s comparatively modest cost of living and its relative position within Canada regarding average weekly earnings.

167. First, notwithstanding increased inflation in Manitoba, Winnipeg remains one of the most affordable cities in which to live in Canada. Amongst the

cities in or around the U15 Group campuses,[10] Winnipeg's Consumer Price Index remains comparatively low, exceeding only Vancouver, Quebec City and Montreal in 2021:

Annual CPI	**2017**	**2018**	**2019**	**2020**	**2021**
Calgary	137.8	141.1	143.1	144.7	149.3
Edmonton	137.1	140.8	143.2	144.7	149
Saskatoon	135	138.1	140.3	141.4	144.9
Toronto	133.7	137.1	139.9	140.3	144.3
Ottawa-Gatineau	129.9	133.2	135.9	137.8	143.6
Ontario	131.9	135	137.5	138.4	143.2
Halifax	131.2	134	136	136.7	142
Winnipeg	**130.2**	**133.3**	**136.4**	**137.2**	**141.5**
Montréal	127.3	129.5	132.4	133.7	138.7
Vancouver	127.3	131	134.1	134.9	138.5
Québec	126.8	128.6	130.5	131.6	136.2

Statistics Canada, Consumer Price Index, annual average, January 19, 2022, Tab 35.

168. Winnipeg's cost of living remains an important factor when assessing the extent to which the University's wages ought to advance towards the 25th percentile. While the University is competing for staff with institutions such as University of Alberta, University of Calgary, University of Saskatchewan and Dalhousie University, the cost of living in Winnipeg means that the salaries of the University's staff will go further living and working in Manitoba than elsewhere. In *UMFA, Re* (2001), Arbitrator Freedman previously commented on the value of Winnipeg's low cost for UMFA's members:

> The other side of the coin is the cost to live in a particular community. Without delving into a lengthy exposition of all the relevant factors, **the costs of living in Winnipeg,**

[10] Ontario, as a whole, has also been included. Statistics Canada does not have CPI information for Hamilton (McMaster) and Kitchener-Waterloo (Waterloo).

> **where the members of UMFA work, are lower than in a number of other cities in Canada, and substantially lower than in a few of those cities. Certainly maintaining an acceptable standard of living is a major consideration in attracting and retaining faculty members, and not only is the salary side of the component very important, but the expenditure side is very important as well.** Although "nominal" salaries may be below the national average, **"real" salaries must be regarded as higher than the nominal appears to be, because of the over-all lower cost of living in Winnipeg than in many other cities.** Many factors go into the mix; the cost of housing, marginal tax rates, sales tax rates, the cost of owning and operating an automobile, and many others. While all the factors, and their relative significance, and the precise numbers will never be agreed upon in an interest arbitration like this, **I think the University is correct when it argues that an academic salary goes farther in Winnipeg than it does in many other communities where an academic may be considering locating**…

***UMFA, Re* (Freedman), at para 56 (emphasis added), Tab 5.**

169. Based on the current Consumer Price Index data, the University submits that the same remains true today. Winnipeggers continue to benefit from a relatively low cost of living, as compared to many of the cities and communities in which other U15 schools are located. When it comes to the University's ability to attract and retain academic staff, Winnipeg's relatively low cost of living must be taken into account.

170. Similarly, the average cost of a home, as reported by the Canadian Real Estate Association online through an interactive map at https://www.crea.ca/housing-market-stats/national-price-map/, indicates that

housing in Manitoba remains relatively affordable, as compared to the vast majority of the U15 Group provinces:

Province	**2020**	**2021**
British Columbia	$851,754	$1,031,067
Ontario	$751,655	$922,735
Quebec	$401,247	$473,032
Alberta	$491,835	$420,842
Nova Scotia	$320,638	$375,858
Manitoba	**$303,573**	**$334,256**
Saskatchewan	$267,800	$284,200

171. Correspondingly, and unsurprisingly, Statistics Canada also reports that Manitoba's average weekly earnings remain comparatively low in relation to the other provinces that house U15 Group institutions. Average weekly earnings, including overtime, since 2016 are as follows:

Province / AWE	**2017**	**2018**	**2019**	**2020**
Alberta	1,128.76	1,147.70	1,164.03	1,200.98
Ontario	993.23	1,022.00	1,049.73	1,126.30
Saskatchewan	1,009.28	1,014.37	1,041.12	1,091.88
British Columbia	943.69	969.25	997.86	1,081.22
Quebec	902.7	931.06	964.09	1,039.14
Manitoba	**910.37**	**936.61**	**953.81**	**992.54**
Nova Scotia	861.36	871.87	904.98	966.54

Statistics Canada, Average Weekly Earnings, 2016-2020, March 30, 2021, Tab 36.

172. In light of the foregoing, the University maintains that its proposed General Salary Increases are more than fair. The parties agreed that their mutual aim was to achieve reasonable advancement towards the 25th percentile of the U15 Group. The University's proposal provides just that. There is nothing in the cost of living or the average weekly earnings that would justify any further increase. And, to

the contrary, the cost of living in Winnipeg confirms that it continues to be one of the most affordable major cities to live and work in within the U15 Group.

(vi) Labour Market Trends in Manitoba

173. Finally, while the parties have clearly agreed that the most appropriate comparators are the post-secondary institutions within the U15 Group, it was expressly recognized by Arbitrator Freedman in his 2001 Award that recent wage settlements within Manitoba can also be relevant when applying the principle of replication to the University's salaries.

See, *UMFA, Re* (2001), at para 51, Tab 5.

See also, *McMaster University* (Shime), at para 21, Tab 13.

174. In Manitoba, there are currently a number of public sector collective agreements that extend into 2021/22, but very few that continue beyond that time. Those that do exist, however, further confirm that the University's proposals are fair, reasonable and reflective of the agreement that these parties would have reached, keeping in mind that they aim to make reasonable progress towards the 25th percentile. The University's proposed General Salary Increases are consistent with recent wage adjustments achieved in Manitoba's public sector, especially when the compounding costs and effects of the Structural Changes are taken into account.

175. To begin, on May 19, 2021, Arbitrator Peltz issued an award between the Province of Manitoba and the Manitoba Association of Crown Attorneys

("MACA") that provided for general wage adjustments of 1.4% in 2019, 0.5% in 2020 and 1.2% in 2021, and expired on March 29, 2022. The same pattern of general wage adjustments was subsequently agreed to through negotiation between the Province and the Legal Aid Lawyers' Association ("LALA"), with an agreement expiring on March 25, 2022.

***Manitoba and MACA*, Tab 16.**

Province of Manitoba and Legal Aid Lawyers' Association, Settlement Document, August 24, 2021, Tab 37.

176. There are, therefore, at least two public sector agreements involving professionals, settled since the onset of the pandemic, that confirm that salary adjustments at or around 1.2% in 2021/22 are fair and appropriate, in light of Manitoba's current economic climate and labour market.

177. Similar patterns have also been achieved in the education sector in Manitoba. Every school division in Manitoba has now settled the terms of a collective agreement extending to 2021/22, with general salary increases of 1.6% in 2018, 1.4% in 2019, 0.5% in 2020 and a Cost of Living Adjustment in 2021.

Manitoba School Boards Association, Teacher Settlements, 2018-2022, Tab 38.

178. Currently, the Province is awaiting an interest arbitration decision for its largest bargaining unit, the Manitoba Government Employees Union (the "MGEU"). The MGEU arbitration was held following the settlement of the MACA and LALA agreements. Therein, the Province argued that the pattern established by

those two bargaining units was similarly appropriate for the MGEU, and sought a wage adjustment of 1.2% in 2021/22.

179. One of the few public sector agreements that currently extends beyond 2021/22 is the recent agreement between the Manitoba Nurses' Union ("MNU") and the Provincial Health Labour Relations Services ("PHLRS"). The parties agreed to a seven year agreement, extending from April 1, 2017 to March 31, 2024. The MNU agreement includes the same 1.2% adjustment in 2021/22 as both the MACA and LALA agreements, but also includes 2.0% general wage adjustments in 2022/23 and 2023/24:

- 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%

MNU, Collective Agreements & Wage Scales, Wage Benefit Summary, Tab 39.

180. Based on the 2% general wage increases achieved in the final years of the MNU agreement, and the COLA adjustments agreed to by teachers across Manitoba, it may be tempting to conclude that the University's proposals of 1.5% and 1.75% for 2022/23 and 2023/24 are unreasonably low.

181. It must be kept in mind, however, that the University and UMFA have already agreed to the Structural Changes which, even before the compounding effects of the General Salary Increases, will cost the University just over 4% in additional payroll costs by the end of the 2021 Agreement:

	Year 1	Year 2	Year 3
Additonal performance increment Cost vs old salary schedule - $	$2,197,209	$4,690,820	$6,514,909
Additonal performance increment Cost vs old salary schedule - $	1.45%	3.19%	4.01%

182. When combined with the compounded 4.6% in General Salary Increases that the University has proposed over the course of three years, the total payroll cost of the UMFA bargaining unit is anticipated to increase by a considerable 12.9%. Notably, in section 8 of the MOA, the parties expressly agreed that this combined impact could be considered when attempting to achieve reasonable advancement towards the 25th percentile.

MOA, Tab 1, section 8, Tab 1.

183. In the University's submission, therefore, its proposal on General Salary Increases is wholly in line with the weight of public sector agreements in Manitoba. While the General Salary Increases in 2022/23 and 2023/24 may not rise to the same level as those in the MNU agreements and teachers' agreements, the General Salary Increases must be considered in light of the Structural Changes, their cost to the University, and their impact on members' wages over the term of the 2021 Agreement.

(vii) Conclusion

184. In conclusion, regarding General Salary Increases, the University maintains that 1.25%, 1.5% and 1.75% will provide the parties with reasonable advancement towards the 25th percentile of the U15 Group over the life of the 2021 Agreement. When the Structural Changes are considered alone, it is clear that UMFA's members will receive the benefit of increased yearly increments, as compared to their U15 counterparts. These increased increments will benefit UMFA's members over time, and significantly reduce the differential between the University's median wages and the 25th percentile of the U15 Group.

185. Further, the University's proposed General Salary Increases are entirely consistent with the historical increases achieved within the U15 Group. And, although it is difficult to anticipate how the U15 median salaries will advance at this time given how few institutions have agreed to general salary increases for the years in question, the University submits that when historical trends are used to project how median salaries may increase in the next three years, it can be reasonably expected that the University will make significant progress towards the 25th percentile by 2024.

186. Finally, there is nothing in the University's financial circumstances, the provincial economy, the cost of living, average weekly earnings, or labour market trends in Manitoba that would justify a greater General Salary Increase. The University's proposal is objectively fair and reasonable, and ought to be awarded.

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

187. The second issue in this interest arbitration is whether Recruitment and Retention Adjustments ought to be awarded and, if so, in what amounts. In considering this second issue, the parties have once again agreed that the Arbitrator ought to consider their mutual aim of reasonable advancement towards the 25th percentile of the U15 Group over the life of the collective agreement.

MOA, sections 1(b) and 8, Tab 1.

188. The University submits that no Recruitment and Retention Adjustments are warranted. To be clear, the University does not have any broad recruitment or retention problem. Across all ranks, turnover remains relatively low and the University is consistently able to hire more staff than resign.

189. The compounded impacts of the Structural Changes and the University's proposed General Salary Increases will adequately advance the University towards the 25th percentile of the U15 Group. To the extent that certain Faculties may be vulnerable to recruitment or retention issues due to unique market pressures, those issues can be adequately addressed on a case-by-case basis through the (newly revised) market stipend. As Arbitrator Freedman explained in 2001, narrow issues of recruitment or retention between these parties need not be dealt with through broad, across the board salary increases:

> …[T]here are other features of the salary arrangement that should facilitate the retention of sought-after teachers. The Agreement contains an "exceptional circumstances" clause which permits the University to increase a member's base salary. The University requires this flexibility to retain "certain high caliber academic staff who are being aggressively pursued by other institutions". UMFA does not challenge or object to this clause. The sum total of such permitted increases has risen from $50,000 per year in the previous contract, to $150,000 per year in the present Agreement, to an agreed $250,000 per year in the new contract. This provision is important, as it is a focussed means of ensuring in specific cases that Manitoba can truly complete effectively when circumstances require. **As well, the "market stipend" provision referred to below 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.**

UMFA, Re **(Freedman) at para 53, Tab 5.**

190. To assist with the recruitment and retention analysis, the University has prepared three spreadsheets, which it has attached hereto as Tab 40, setting out the resignations and new hires across each rank over a period of five years: 2016-2021.

Recruitment and Retention Spreadsheets, Tab 40.

191. As a preliminary note, in these spreadsheets, the University has defined a “resignation” as any departure from the University that is not caused by retirement, death, or a return to school. In this way, resignation has been defined broadly enough to include any departure that could relate to the acceptance of a position at another institution or in industry. It could also include, however,

relocations for family reasons, health related resignations or individuals who leave to accept a promotion at another institution, such as a move to Department Head or Dean. While the University submits that these three latter types of resignations are not retention issues per se, as will become apparent, even with these resignations included in the calculation, there is no evidence of a broad-based recruitment or retention issue that could warrant a further salary adjustment.

(i) Faculty Members

192. The first spreadsheet applies to Faculty Members. It indicates that, as of the time of writing, the University employed 5 Lecturers, 239 Assistant Professors, 317 Associate Professors and 416 Professors.

Recruitment and Retention Spreadsheets, p 1, Tab 40.

193. There are a number of points that must be made regarding the Faculty Member data.

194. First, over the course of five years, from 2015-2020, 40 Assistant Professors resigned, 28 Associate Professors resigned and 15 Professors resigned. At first blush, this may appear to be a large number of resignations. In reality, however, this amounts to a resignation rate of <u>only</u> 1.7% each year on average.

Recruitment and Retention Spreadsheets, p 1, Tab 40.

195. To be clear, a turnover rate of 1.7% annually in a group of almost 1,000 Faculty Members is not a retention problem. It cannot be the goal of the parties, or an interest arbitrator, to eliminate turnover completely. Instead, the aim must be to ensure that the turnover is manageable for the employer. In the University's view, a turnover rate of 1.7% is reasonable and manageable. There is no objective evidence to the contrary.

See, for example, *Cape Breton (Regional Municipality) and NSGEU, Re*, 2006 CarswellNS 705 at para 58 (NS Arb) (Venoit), Tab 41.

See also, *Seven Oaks School Division and Seven Oaks Teachers Assn Re*, 2012 CarswellMan 855 at paras 80-81, 88 and 134 (Man Arb) (Werier), Tab 42.

196. Further, this is confirmed when the University's voluntary turnover rates are compared to the rates at other post-secondary institutions in Canada. The University receives annual reports from HR Metrics, which compare a number of the University's metrics (including voluntary turnover within Faculty) with other post-secondary institutions. A number of the comparators are U15 Group members. In recent years, the University's voluntary turnover rate[11] for Faculty has consistently fallen below the average of other institutions:

Faculty Voluntary Turnover Rate	2019	2020
University Rate	2.30%	1.20%
Average Rate	3.50%	4.00%

HR Metrics Reports, 2019 and 2020, Tab 43.

[11] Faculty voluntary turnover rate is defined as: "Permanent faculty employees who left the organization voluntarily as a percentage of permanent faculty headcount".

197. Therefore, it is clear that the University's turnover rate for Faculty Members is reasonable and manageable within the market of Canadian post-secondary institutions.

198. Second, it is also important to note that turnover rates at the University vary tremendously between Faculties. While most Faculties have a resignation rate of less than 2% on average over the last five years, there are a handful of Faculties that, to varying degrees, exceed 2% on average per year:

Faculty	Total Resignations over 5 Years	Average Resignation Rate
College of Dentistry	5	2.9%
College of Pharmacy	6	6.0%
Kinesiology & Rec Management	5	5.0%
Faculty of Architecture	4	2.8%
Faculty of Graduate Studies	1	6.7%
Faculty of Law	4	4.2%
Faculty of Social Work	4	5.0%
I.H. Asper School of Business	12	4.5%

Recruitment and Retention Spreadsheets, p 1, Tab 40.

199. Notably, many of the foregoing Faculties involve professional programs – such as Dentistry, Pharmacy, Architecture, Law, Social Work, and the I.H. Asper School of Business. For many of these programs, the University is inevitably required to compete with private industry wages to retain Faculty Members. These are the type of circumstances in which the University can utilize the market stipend to ensure that it adjusts salaries accordingly, so as to reduce unnecessary turnover.

200. In fact, as noted above, the University already utilizes the market stipend within the Faculty of Law. Now, with increased flexibility in the manner in which it can be used, and an increase on the overall cap, the University will be able to use the market stipend more broadly, and more generously, to address any narrow market-based retention issues.

201. Further, and in any event, it is also clear from the data that even where there has been higher turnover within a professional Faculty, the University has no recruitment problem. In each of the foregoing categories (with the exception of Graduate Studies), the University has been able to recruit and hire at least as many, if not more, new Faculty than have resigned over the course of the last five years:

Faculty	Resignations over 5 Years	New Hires over Five Years	New Hires Exceed Resignations
College of Dentistry	5	11	6
College of Pharmacy	6	8	2
Kinesiology & Rec Management	5	12	7
Faculty of Architecture	4	8	4
Faculty of Graduate Studies	1	0	(-1)
Faculty of Law	4	9	5
Faculty of Social Work	4	4	0
IH Asper School of Business	12	22	10

Recruitment and Retention Spreadsheets, p 1, Tab 40.

202. In light of the foregoing, the University plainly has no recruitment problem. This is true even where market forces may result in greater turnover within a professional Faculty.

203. Finally, in or around June 2020, the University also began keeping electronic records of the results of its hiring competitions. As a result of new position requests submitted between June 2020 and March 31, 2021, hiring committees made 113 recommendations to the Provost's Office for the hiring of Faculty Members, Instructors and Academic Librarians. The Provost approved all of the recommendations she received, and the recommended individuals received offers of employment. Of those 113 positions, only four positions remain unfilled, and one position is currently in negotiation.

Academic Hiring Data, June 1, 2020 to March 31, 2021, Tab 44.

204. In the University's submission, therefore, after the Structural Changes and the University's General Salary Increases, there should be no recruitment or retention issue that could warrant a further adjustment. Even if there is a market specific retention issue within a professional Faculty, the changes to the market stipend discussed above will allow the University to adequately address such matters. To reiterate, it must not be the goal of the parties, or an arbitrator, to eliminate any turnover – addressing issues of recruitment and retention are only aimed at ensuring that the rate of turnover is one that the employer can manage. The parties have already agreed to provide the University with the tools to manage

market specific recruitment or retention issues. No further increase is justified for Faculty Members.

(ii) Instructors

205. Next, regarding Instructors, it is clear from the data that there are no recruitment or retention issues in any of the Faculties.

206. The University employs 226 Instructors across 21 Faculties/Schools/Colleges. Some have as few as one instructor, while others have upwards of 20, 30 or 40. Over a 5-year period, only 7 Instructors resigned across these 21 Faculties/Schools/Colleges. This is a resignation rate of 3.1% over five years, or 0.62% per year within all of the Instructor I, Instructor II and Senior Instructor ranks.

Recruitment and Retention Spreadsheets, p 2, Tab 40.

207. A turnover rate of less than 1% each year simply cannot justify a Recruitment and Retention Adjustment. This is especially so, in light of the fact that the Structural Changes were designed to provide additional benefits to Instructors, by creating parity between the ranks of Senior Instructor and Associate Professor, as well as Instructor II and Assistant Professor.

208. Undoubtedly, the departure of one Instructor within a Faculty will appear significant where that Faculty only had a few Instructors to begin with. For

this reason, however, examining Instructor resignations within a single Faculty is not appropriate, as turnover rates may skew upwards. It is far more meaningful to examine the resignation rate across all Faculties/Schools/Colleges.

209. Further, just as with Faculty Members, the University has been able to hire significantly more Instructors over the past five years than have resigned. While there have been 7 departures, 4 of which were in the Instructor I rank, there were 122 new hires, including 75 in the Instructor I rank. The discrepancy between the departures and the new hires is due to an overall increase in the hiring of the Instructors at the University in recent years.

210. In conclusion, there is no need for a Recruitment and Retention Adjustment for Instructors.

(iii) Academic Librarians

211. Finally, regarding Academic Librarians, the University submits that there is similarly no justification for a Recruitment and Retention Adjustment.

212. The University currently employs 58 Academic Librarians spread across the four ranks: General Librarian, Assistant Librarian, Associate Librarian and Librarian. Over the past five years, only 6 Academic Librarians have resigned – 3 General Librarians, 3 Associate Librarians, and 2 Assistant Librarians. No Librarians, the top rank in the pay scale, have departed.

Recruitment and Retention Spreadsheets, p 3, Tab 40.

213. The University has more than made up for these resignations. Over the same period of time, 21 General Librarians, 5 Assistant Librarians and 2 Associate Librarians were hired. In other words, there were three times as many new hires as there were resignations in the last five years.

214. In these circumstances, the University submits that a yearly turnover rate of 2.76%, or just over one Librarian per year out of a group of 58, is not cause for alarm, nor is it cause for a Recruitment and Retention Adjustment. Academic Librarians will receive the benefit of the Structural Changes and the General Salary Increases. There is no need for a further Recruitment and Retention Adjustment.

(iv) Conclusion

215. In conclusion, there is no evidence of a recruitment or retention problem at the University that would justify further salary adjustments beyond the Structural Changes and the General Salary Increases. To the extent that turnover may be higher in any particular Faculty or market, the University maintains that it now has the tools to adequately address any market related retention issue through the use of the market stipend. This was already recognized by Arbitrator Freedman over 20 years ago, and it is true today.

(c) Section 1(c) of the MOA: Return to Work Issues

216. Turning to the third and final matter in this arbitration, the Return to Work Issues, the University submits that all of UMFA's proposals regarding the Return to Work Issues ought to be rejected. While the University expressly reserves the right to respond more fully to UMFA's proposals on the Return to Work Issues once UMFA's written Submission is received, it provides its initial position here based on its current understanding of UMFA's proposals regarding the Return to Work Issues.

(i) Full Salary and Benefits

217. First, UMFA has requested that the University provide its members with "full salary and benefits" for the period of the strike. This request, if awarded, would cost the University $7,795,294.25 in salary costs and $341,722.12 in benefits.

Strike Cost Spreadsheet, Tab 45.

218. With all due respect to UMFA, and its members' decision to exercise their right to strike, this request lacks any justification in labour relations. For the reasons that follow, the University submits to ought to be rejected.

219. In *Mount Allison University and MAFA, Re*, 2014 CarswellOnt 16645 (Ont Arb) (Burkett), Arbitrator Burkett 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.

***Mount Allison University and MAFA, Re*, 2014 CarswellOnt 16645 (Ont Arb) (Burkett) [*Mount Allison*], Tab 46.**

220. First, he 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. While the right to strike is fundamental to the workplace, he explained that it must be exercised only with "due regard" to the merits of the positions advanced and the "consequences" of the strike. He found that, before striking, the association must have understood those consequences – the university would "come under pressure from the community and from its students" and could "suffer a loss of reputation", but the association's members would also "suffer a loss of earnings and would most certainly have make-up work to do upon their return".

***Mount Allison*, at para 32, Tab 46.**

221. Next, he went on to explain that due to the disruption caused by a strike, one of the purposes of a strike is to "militate against future reliance upon the exercise of the right". He found this purpose would be undermined where an arbitrator awarded full compensation to employees for the period of the strike, making it less likely that the parties would reach a compromise in the future:

> 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.

***Ibid*, Tab 46.**

222. He concluded that while an employer may agree to make payments to employees as part of a voluntary settlement to end a strike or lockout, “a third party should not award them”.

***Ibid*, Tab 46.**

223. The University submits that the same holds true in this case.

224. As the *LRA* in Manitoba recognizes, strikes are designed to place pressure upon employers to compel compromise, and bring about agreement to terms and conditions of employment. A strike, however, is not a one way street. While a strike will undoubtedly place pressure upon an employer, striking employees must also accept that they will jeopardize their right to full wages and benefits for the period of time that they withhold their services. In this way, strikes rightfully exert pressure in both directions, to bring parties closer to a common ground. The right to strike should not be exercised lightly. It is the ultimate economic disruption in the workplace.

225. In the University’s respectful submission, therefore, awarding UMFA’s members with full wages and benefits for the period of the strike would improperly

eliminate all economic consequences for striking members, thereby reducing the pressure to reach a compromise. As a result, it would risk encouraging these parties (and potentially others) to resort to strikes unnecessarily in the future, when faced with obstacles in bargaining. If a union's members do not expect to suffer any economic consequence as a result of a strike, there is no reason to delay the use of one. The risks of such an approach are only increased where, as here, there are innocent third parties – namely, students – who will also suffer from strike action.

226. When faced with proposals for payments to a union, during a strike or lockout, other Arbitrators have reached similar conclusions.

227. In *Diageo Canada Inc and UFCW, Local 832, Re*, 2016 CarswellMan 339 (Man Arb) (Freedman), for example, Arbitrator Freedman refused to award a $500 return to work payment to striking union members in interest arbitration. In that case, the employer had, in fact, offered the $500 return to work payment as part of a final offer in an attempt to entice employees to immediately return to work. Although the union had rejected the final offer, it maintained that this payment still ought to be awarded in arbitration because members had, eventually, return to work. Arbitrator Freedman disagreed, finding that the employer had not received the benefit of the employees' return to work when the $500 offer was made:

> I find the Union's argument to be without merit. **As explained above the offer of a special payment was subject to the members fulfilling certain conditions, which did not occur.** The members did not accept the Final Offer and immediately return to work. Their

> rejection of the Final Offer terminated the notion of a "back to work" payment. **Had the Final Offer been accepted, the members would have received, among other benefits, the back to work payment, but at the same time the Company would have been back to normal operations about one month earlier than actually happened. That was the "quo" in the "quid pro quo". It would be unreasonable for me to award the special payment to the members, and not at the same time give the Company the economic value for such payment that it did not receive, which I cannot do.**

***Diageo Canada Inc and UFCW, Local 832, Re*, 2016 CarswellMan 339 at para 77 (Man Arb) (Freedman), Tab 47.**

228. In the University's submission, *Diageo Canada* provides further support for the principle that while two parties may agree to provide strike pay or a one time payment as a part of a return to work agreement, third party arbitrators should generally avoid doing so. It would be improper, in the University's submission, 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 during that time.

229. In *Nanaimo Golf and Country Club and UNITE-HERE, Local 40 (Final Offer Selection), Re*, 2016 CarswellBC 1239 (BC Arb) (Brown), similarly, the parties had advanced to final offer selection interest arbitration after an employer lock out. The union's final offer included a one-time payment of $1000 for each locked out employee who returned to work. While the Arbitrator ultimately selected the union's final offer for other reasons, he noted that he was not persuaded that, even in a lockout situation, a lump sum payment was "a frequent feature in situations where

employees have lost income during lockouts". He further noted that the employees in question had received lockout pay from their union, which had helped offset the income loss during the dispute in any event.

***Nanaimo Golf and Country Club and UNITE-HERE, Local 40 (Final Offer Selection), Re*, 2016 CarswellBC 1239 at paras 62 and 83 (Ont Arb) (Brown), Tab 48.**

230. Notably, in this case, UMFA's striking members similarly received strike pay from UMFA in the amount of $200 each day of the strike, including weekends. This totaled $1,400 per week of tax free income.

University of Manitoba Faculty Association, General Job Action Information, Updated October 31, 2021, Tab 49.

231. In light of all the foregoing, the University submits that UMFA's request for full compensation is not only uncommon, but was expressly recognized by Arbitrator Burkett to run contrary to the purpose of strike action. Arbitrator Freedman, similarly, recognized that where the employer does not receive the bargain of employees' return to work, it would be unreasonable to reward them with return to work payments. Further, Arbitrator Brown recognized that such a request was particularly problematic where members had already been compensated by their union during a work stoppage. The University has never before fully compensated UMFA and its members, in the manner sought here, for the period of a strike and there is no justification to do so in these circumstances either.

(ii) Contributions to the Pension Plan

232. Similarly, the University submits that just as there is no justification for awarding full pay and benefits for the period of the strike, there is no reason to award UMFA's members with pension contributions for the time that they withheld their services. As the members were not providing service to the University during the period of the strike, they should not be entitled to be treated as having performed pensionable service under the terms of the Pension Plan. This proposal, if accepted, would cost the University $701,576.48 in pension contributions.

Strike Cost Spreadsheet, Tab 45.

233. As a matter of background, the University's Pension Plan is applicable to all University employees, both unionized and non-unionized. It is a money purchase plan with a defined benefit supplement under the Income Tax Act (the "ITA") and applicable Regulations. Under the applicable Regulations, contributions to the Plan can only be made (1) in accordance with the terms of the plan text; and (2) on a "current service basis for the period" in question.

234. As the Plan administrator, the University's Pension Committee is obligated to administer the Plan in accordance with its text, as registered under the ITA. The text of the Plan *does* permit contributions to be made during an approved leave of absence (whether paid or unpaid), as "basic salary" (the basis on which contributions are calculated) is defined to include an approved leave of absence:

> **"Basic Salary"** – shall mean the regular gross salary applicable to the Member's rank or classification as such is determined in accordance with the terms of a collective agreement or employment policy … provided that the Basic Salary, for a Member on an approved leave of absence or a reduced appointment shall be computated in accordance with the then current University policy. …

The University of Manitoba Pension Plan (1993), Consolidated Plan Document, section 1.1 (the "Plan"), Tab 50.

235. If the approved leave of absence is unpaid, the employee must also contribute the share of both the employee and the University under the Plan. The only exception to this rule is where an employee is on long term disability, which is specifically addressed within the Plan text.

Plan, section 4.1(c), Tab 50.

236. To be clear, however, there is no applicable document that defines an approved leave of absence as including a strike. Neither the Plan, nor the 2017 Agreement, nor any previous collective agreement with UMFA, have ever defined a strike as an approved leave of absence, either for the purposes of the Plan or otherwise. There is also no applicable University policy that defines an approved leave as including a strike. And, in fact, no collective agreement between the University and any of its other bargaining units, nor any policy applicable to excluded employees, contemplates that a strike may constitute an approved leave of absence.

See, for examples, 2017 Agreement, Articles 22.1.5 and 22.2.5, Tab 7.

See also, for example, University of Manitoba, Leaves of Absence Policy and Procedure, Tab 51.

237. There is, therefore, currently no basis upon which a strike could be treated as an approved leave for any University employee under the Plan. Generally speaking, this makes sense, because an approved leave of absence, by definition, requires the University's approval. The University has no part in approving a strike.

238. In short, therefore, what UMFA is in fact seeking is a retroactive amendment to the Plan text to include a strike as an approved leave of absence. It is not as simple as awarding retroactive payments to be made to UMFA's members.

239. The University submits that there is no justification for an amendment to the Plan. First, were the amendment to apply to all employees under the Plan, it would exceed the scope of this interest arbitration and would be inconsistent with longstanding University policy applicable to non-unionized members.

University of Manitoba, Leaves of Absence Policy and Procedure, Tab 51.

240. Second, if UMFA is proposing that an exception be created only for its members under the Plan text, the University submits that such an exception is not appropriate and should not be awarded through interest arbitration.

241. In *UMFA, Re* (2001), for example, UMFA made a similar request to alter the structure of benefits for UMFA's members. Specifically, UMFA proposed to revise the collective agreement to distinguish between benefits for UMFA's

members, as opposed to those available for the remainder of the University's staff. At that time, all University staff benefits had been jointly administered through the Staff Benefits Committee for 40 years. The University insisted that no change was required to the structure of benefits administration for UMFA's members. Arbitrator Freedman agreed, and found:

> … [A] structure that has been in place for about 40 years, and that has operated, at least to some degree, successfully, should not be interfered with or substantially modified by an interest arbitrator unless there are clear and compelling reasons to do so. No such reasons have been provided …

UMFA, Re **(Freedman) at para 15, Tab 5.**

242. In the same manner, there is no compelling reason to interfere with the text of the Plan through arbitration in this case. UMFA has provided no justification as to why a period of time that its members withheld their services on strike ought to be recognized as pensionable service, let alone why such a change should be awarded retroactively.

243. Furthermore, even if an amendment to the Plan was awarded, contributions can still only be made under the Plan on a "current service basis for the period in question" as noted in paragraph 233 above. Contributions for 2021 must be made on or before April 30, 2022 to be considered "current". Any attempt to apply pension contributions arising from the strike after April 30, 2022 would risk exceeding yearly maximums under the Plan, and should not be permitted.

(iii) Union Dues

244. UMFA's third request regarding the Return to Work Issues is that the University be ordered to remit to UMFA the union dues for those members who crossed the picket line to work during the course of the strike. This proposal, if awarded, would cost the University $58,689.72, as the salaries of members have already been paid and dues have not been deducted.

Strike Cost Spreadsheet, Tab 45.

245. The University is opposed to UMFA's proposal. As noted above, the 2017 Agreement was terminated on or around November 2, 2021 as a result of UMFA's strike. Following the termination, the University had no obligation to remit union dues to UMFA under the 2017 Agreement.

246. At a more basic level, however, the University is concerned that the remittance of union dues will disclose to UMFA the identity of those individuals who chose to continue to work during the strike. The University is fundamentally opposed to disclosing the identities of these employees.

247. Once again, the decision to strike should not be taken lightly. UMFA, and its members, must have been aware that UMFA would not have a right to continue to collect union dues during the period of the strike from those individuals who chose to work. There is no justification in labour relations for compensating

UMFA for the hours worked by individuals who no longer had a collective agreement and chose to cross the picket line during the period of the strike.

(vi) Reimbursement for Member Benefits

248. Finally, UMFA has requested that the University reimburse UMFA for the cost of members' benefits which UMFA paid during the period of the strike.

249. The University reiterates the same position taken throughout this section – there is simply no justification for UMFA to be reimbursed for the cost of benefits during the period of the strike. What UMFA is requesting is reimbursement for one of the economic consequences of strike action. Were a third party arbitrator to award UMFA recovery of these expenses, the University submits that it would only create a precedent whereby UMFA would anticipate that it would be reimbursed in the future, making a strike more appealing and the resolution of matters through negotiation less likely.

VI. CONCLUSION

250. In conclusion, for the reasons set out herein, the University submits that the only matter that ought to be awarded in this interest arbitration are General Salary Increases of 1.25% in 2021, 1.5% in 2022 and 1.75% in 2023.

251. UMFA's proposals regarding Recruitment and Retention Adjustments and the Return to Work Issues ought to be rejected.

to award UMFA recovery of these expenses, the University submits that it would only create a precedent whereby UMFA would anticipate that it would be reimbursed in the future, making a strike more appealing and the resolution of matters through negotiation less likely.

VI. CONCLUSION

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251. UMFA's proposals regarding Recruitment and Retention Adjustments and the Return to Work Issues ought to be rejected.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 18th day of February, 2022.

THOMPSON DORFMAN SWEATMAN LLP

Per: ______________________________

Adrian B. Frost / Miranda D. Grayson

VII. LIST OF DOCUMENTS AND AUTHORITIES

1. Memorandum of Agreement, January 31, 2022;
2. 2020-21 Statistics Canada Median Salary Data, Faculty Members U15 Group, Release Date December 13, 2021;
3. UMFA's Membership Spreadsheet;
4. 2020/21 Salary Costs Spreadsheet;
5. *UMFA, Re*, 2001 CarswellMan 916 (Man Arb) (Freedman);
6. Table of General Salary Increases with Notes;
7. University of Manitoba and UMFA, Collective Agreement, April 1, 2017-March 31, 2021;
8. *The Labour Relations Act,* CCSM c L10, excerpts;
9. Final Recommendation of Arne Peltz, November 25, 2021;
10. Return to Work Protocol, December 22, 2021;
11. *Lakeland College and LCFA, Re*, 2015 CarswellAlta 527 (Alt Arb) (Sims);
12. *University of Toronto v UTFA*, 2006 CarswellOnt 11578 (Ont Arb) (Winkler);
13. *McMaster University v MUFA*, 1990 CarswellOnt 4199 (Ont Arb) (Shime);
14. *Ontario College of Art & Design University and Ontario College of Art Faculty Assn, Re*, 2021 CarswellOnt 6512 (Ont Arb) (Kaplan);
15. *Louis Riel School Division and Louis Riel Teachers' Assn, Re*, 2020 CarswellMan 190 (Man Arb) (Werier);
16. *Manitoba and MACA, Re*, 2021 CarswellMan 205 (Man Arb) (Peltz);
17. *University of Toronto and CUPE, Local 3902, Re*, 2015 CarswellOnt 10143 (Ont Arb) (Kaplan);
18. Comparison of Current Salary Scales, U15 Group;
19. Tables of Median Salary Changes within the U15 Group (Increments Only);
20. Salary Calculator Examples;

21. Faculty Bargaining Services, Across-the-board Salary Increases for Full-time Faculty in Canada: 2009 to 2025, June 2021;
22. Table of General Salary Increases, U15 Group, 2009-2024;
23. Table of Changes in Median Salary, U15 Group, 2011-2021;
24. Projected Median Salary Increases, 2023/24;
25. UM Finances, September 2021 Presentation with Speaking Notes;
26. Province of Manitoba, News Release, “Tuition Freeze Extended as Part of 2008 Funding to Universities, Colleges”, April 7, 2008;
27. *The Advanced Education Administration Act*, CCSM c A6.3, excerpt;
28. CAUBO Report, The Financial Landscape of Canadian Universities;
29. University of Manitoba Financial Results, Background Information Presentation with Speaking Notes;
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31. Manitoba, 2021/22 Mid-Year Report Fiscal and Economic Update;
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