

**ARBITRATION BRIEF
FINAL OFFER SELECTION**

with respect to the final positions on the unresolved items

B E T W E E N :

McMASTER UNIVERSITY

(the "University")

- and -

McMASTER UNIVERSITY FACULTY ASSOCIATION

(the "Faculty Association" or "MUFA")

Submitted to: Kevin M. Burkett

WRITTEN SUBMISSIONS OF THE UNIVERSITY

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Table of Contents

| | |
|--|-----------|
| PART I – THE NATURE OF THE ARBITRATION And Award Requested | 1 |
| PART II – OVERVIEW OF THE UNIVERSITY'S POSITION..... | 3 |
| A. Salaries Impose a Significant Cost Burden Upon the University and Must be Contained..... | 3 |
| B. The Post-Retirement Promise | 5 |
| C. Change to Contain and Predict Costs Is Needed | 8 |
| i. Salary Cost Containment | 8 |
| ii. Cost Containment of the Post-Retirement Promise | 9 |
| iii. New Eligibility Requirements for New Employees to Receive Post-Retirement Benefits | 11 |
| PART III – THE FACTS..... | 12 |
| A. Background to 2008-2011 Round of Negotiations..... | 12 |
| B. Background to This Round of Negotiations | 13 |
| i. Remuneration..... | 14 |
| ii. Pension Contributions..... | 16 |
| iii. Post-Retirement Benefits | 18 |
| C. The University Faces Serious Financial Challenges and Must Abide by the Spirit of Compensation Restraint Legislation..... | 19 |
| D. Cost Containment and Predictability Is Necessary..... | 20 |
| E. The University's Sources of Funding Are Limited in Number and Growth Potential | 21 |
| i. Operating Funding | 22 |

| | | |
|---|---|-----------|
| ii. | Capital Funding..... | 23 |
| iii. | Research Funding..... | 23 |
| iv. | Non-Grant Funding..... | 24 |
| 1. | Tuition Fees | 24 |
| 2. | Donations and Fundraising | 25 |
| 3. | Investment Income..... | 25 |
| F. | The University's Costs and Expenses are Growing Faster than its Revenue..... | 27 |
| G. | Compensation Costs are Rising and Represent a Significant Percentage of the University's Operating Funds..... | 28 |
| i. | Compensation Costs Are Rising in Terms of Dollars and as a Percentage of Revenues | 28 |
| ii. | The Cost of Salaries Are a Significant Portion of Overall Compensation Costs. | 30 |
| iii. | The Costs of Post-Retirement Benefits Are Rising and Represent a Large Unfunded Accrued Cost to the University | 33 |
| iv. | The University Needs Cost Containment and Predictability | 34 |
| H. | The University Has Sought Assistance From All Stakeholders and There is a Need to Maintain Internal Equity | 35 |
| i. | Most Other Employee Groups Have Agreed to Minimal Salary Increases | 35 |
| ii. | Employee Groups Have Agreed to Increase Their Pension Contribution Rates and Have Closed the Salaried Plan to New Hires..... | 36 |
| iii. | Eligibility Criteria for Post-Retirement Benefits Have Changed | 39 |
| I. | The University's Proposal Keeps MUFA Near The Top Of The G-6 | 42 |
| PART IV – LAW AND ARGUMENT | | 43 |
| A. | The Role of an Arbitrator in Final Offer Selection is Replication | 43 |
| B. | The Replication Principle Leads to the University's Salary, Pension Contribution and Post-Retirement Benefits Proposals Being Awarded | 44 |
| C. | Total Compensation for MUFA Faculty and MUFA Librarians is Both Fair and Competitive | 45 |
| D. | The Experience of Appropriate Comparators Leads to the Salary, Pension Contribution and Post-Retirement Benefits Proposals Being Awarded in Order to Maintain Internal Equity..... | 46 |

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PART I – THE NATURE OF THE ARBITRATION AND AWARD REQUESTED

1. While not a trade union under the *Labour Relations Act*, the Faculty Association nevertheless negotiates certain terms and conditions of employment on behalf of all of the University's academic faculty and five of the University's Librarians. The University currently employs 1311 faculty members, of which 916 are members of MUFA.

2. The Parties have agreed to certain issues during negotiations, including an increase to the optional employee-paid group life insurance coverage from \$500,000 to \$1,000,000 and the establishment of a committee to study certain issues surrounding the provision of child care at the University. However, the Parties have not come to an agreement on a number of key issues, including compensation increases for 2011-2012, the amount to be paid by faculty members for pension contributions, what, if any, amounts new faculty members should

contribute towards their post-retirement benefits, and the design of the pension plan for new faculty members. The University's submissions during this Final Offer Selection process focuses on the first three of these issues. The University submits that the one-year award should be as follows:

- (a) in addition to maintaining the annual current career progress/merit ("CP/M") awards that provide an average 2.43% merit increase to each faculty member, the University's offer increases each faculty member's base salary by \$1,500 (or approximately 1.2% of the average faculty salary) for the 2011-2012 year. If awarded, the CP/M payments will be paid on July 1, 2011, and the increase to the base salary will be effective on the first full pay period in July, 2011;
- (b) because each MUFA member is currently paying far less in pension contributions than any other salaried employee group that is in the same defined benefit pension plan – both unionized and non-unionized – the University's position is that the contribution rates be increased so that MUFA members are paying the same rates as other employee groups. These increased pension contributions are also integral for the University to receive temporary solvency relief from the Provincial Government under recent regulations. The University does not propose that MUFA members pay any retroactive increases, but does propose the following future increases:
 - (i) effective July 10, 2011, 6.0% up to the Yearly Maximum Pensionable Earnings ("YMPE") and 8.0% above the YMPE;
 - (ii) effective January 8, 2012, 6.5% up to the YMPE and 8.75% above the YMPE;
- (c) because post-retirement benefits are extremely expensive, and the University has an accumulated unfunded liability of approximately \$174 million, the University is proposing that each faculty member hired after January 7, 2012, be required to contribute towards their post-retirement benefits (the "Co-Pay System") upon their retirement on the following terms:

| Years of Continuing Service | % of Yearly Cost Payable by Retirees | % of Yearly Cost Payable by University |
|-----------------------------|--------------------------------------|--|
| 30 or more | 25 | 75 |
| 25-30 | 50 | 50 |
| 20-25 | 75 | 25 |
| 10-20 | 100 | 0 |

3. The University and MUFA were unable to come to an agreement on these and other issues through negotiations. Having come to an impasse on these issues, the Parties agreed, pursuant to McMaster University policy entitled The Joint Administration/Faculty Association Committee to Consider University Financial Matters and to Discuss and Negotiate Matters Related to Terms and Conditions of Employment of Faculty, to have these three matters decided through final offer selection.¹

PART II – OVERVIEW OF THE UNIVERSITY’S POSITION

A. Salaries Impose a Significant Cost Burden Upon the University and Must be Contained

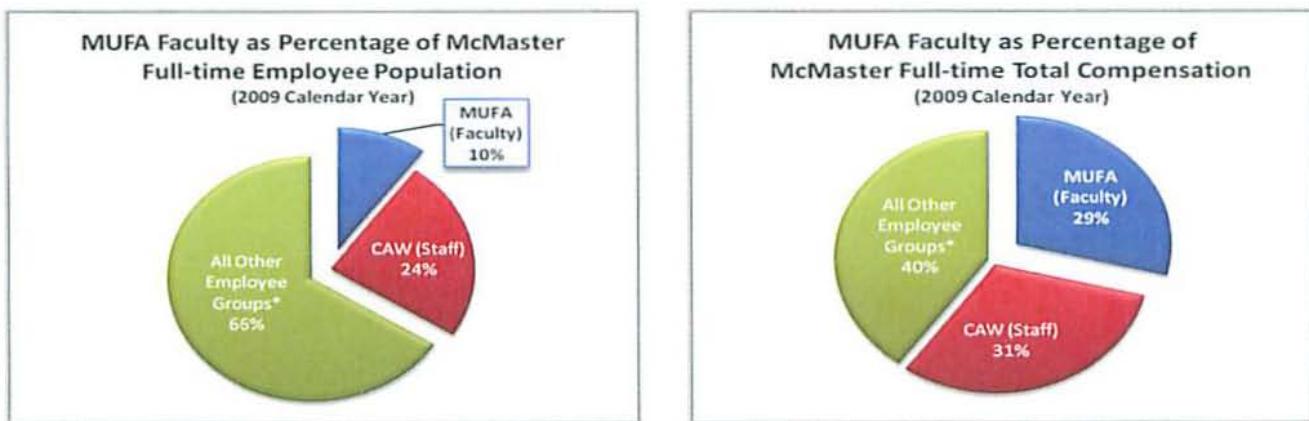
4. The University employs over 6,700 permanent employees. For the 2010/2011 operating fund expenditures, compensation costs will represent approximately 68% of the operating fund expenditures. Given the significant cost burden imposed by compensation, any effort by the University to achieve cost containment cannot be achieved without restraining the pace at which salaries are increasing. To this end, other employee groups – whether represented by a trade union or not – at the University have recently agreed to no across the board increases to their base salary for the next two years.² Even though the University is not requesting a zero across the board increase in this proceeding, fairness and equity dictate that MUFA Faculty and MUFA Librarians should not be placed in a substantially better position than these other employee groups.

¹ University’s Book of Documents, Tab 1, page 3.

² The University is currently negotiating with the SEIU – Machinists, and the collective agreements for CAW Security and CUPE TAs and PDFs have not yet expired.

5. In 2009/10, 911 of the 6700 permanent employees at the University were MUFA Faculty. MUFA also includes 5 librarians who are not represented by the McMaster University Academic Librarians Association ("MUALA").

6. The cumulative compounded annual salary increases for MUFA Faculty from 2008 to 2010 was approximately 18.5%. For the calendar year 2009, MUFA Faculty accounted for approximately 29% of McMaster's total compensation, yet only comprised 10% of the employee population. By contrast, staff employees in the CAW Local 555, Unit 1 bargaining unit ("CAW staff") account for 24% of the employee population and 31% of overall total compensation. This highlights that MUFA Faculty, at approximately 40% the population of CAW staff, have a nearly equivalent impact on total compensation, as shown in the following charts:



7. In previous negotiations, the University and MUFA have agreed that the other G-6 (Queen's University, the University of Ottawa, the University of Toronto, the University of Waterloo, and the University of Western Ontario) universities are a reasonable faculty comparison to use when assessing terms and conditions of employment. Furthermore, because

the vast majority of faculty live near the university that employs them, and thus incur most of their costs in those cities, the only way to make a valid comparison between G-6 universities is if compensation is normalized between the various cities in which the G-6 universities are located.

8. When the salaries of MUFA Faculty and MUFA Librarians are normalized to the cost of living in Hamilton as determined by a neutral party (*Canadian Business*) from StatsCan data and compared to the University's G-6 peers, the University's Full Professors and Assistant Professors rank 2nd and Associate Professors rank 3rd. More specifically, among the five G-6 universities with medical and/or dental faculty, the University's Full Professors rank 1st and Assistant and Associate Professors rank 2nd.

9. If the University's final offer is selected, MUFA Faculty and MUFA Librarians will continue to remain near the top of the compensation charts of the G-6 because, in part, of the lower cost of living in Hamilton, Ontario.

B. The Post-Retirement Promise

10. The University has a strong tradition of providing a comprehensive benefit package to eligible employees once they retire from employment with the University. Historically, this security has been provided in two principle forms: a retirement income promise and post-retirement benefits (collectively, the "post-retirement promise").

11. The costs of the post-retirement promise have been increasing at a greater rate than the University's revenues. Accrued deficits associated with these plans are approaching \$500 million. Even with these escalating costs, however, the University has not sought, and does not seek, to change the existing terms of the post-retirement promise for its current

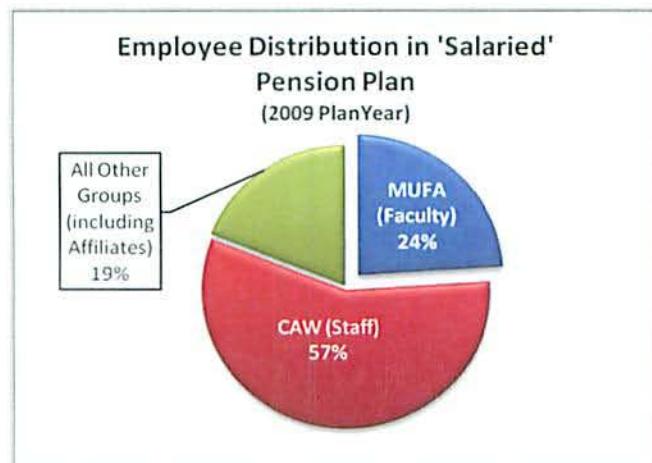
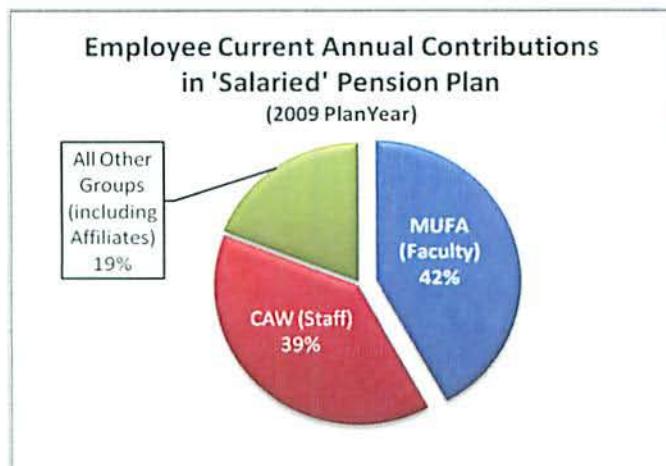
employees. However, the University has sought, and will continue to seek, the cooperation of its stakeholders in order to ensure that the post-retirement promise for new, and as yet to be hired, employees is continued on terms that enable the University to both contain and predict future costs.

12. Further, in order to address the expensive current service costs and deficit payments required for the defined benefit plans that exist at the University (the “Salaried Plan” and the “Hourly Plan”), many of the employee groups at the University who participate in either the Salaried Plan or the Hourly Plan have had their contributions increased. To maintain fairness and internal equity, MUFA Faculty and MUFA Librarians also need to increase the amount paid for their pension contributions.³ It is simply unfair for MUFA Faculty and MUFA Librarians to pay less than other employee groups for pension contributions.

13. The University’s proposal in this final offer selection, which is to increase the pension contributions made by MUFA Faculty and MUFA Librarians into the Salaried Plan, will not by itself solve the University’s financial challenges. However, increasing the pension contributions made by faculty members into the Salaried Plan would be one of many other fair, reasonable, and responsible measures already taken by the University that will enable it to contain its future costs.

14. MUFA members have a significant impact on the Salaried Plan. Individual MUFA members are currently paying significantly less in pension contributions than other individuals who participate in the Salaried Plan. An increase to each individual MUFA members pension contributions will have a large impact on the Salaried Plan as a whole.

Based on the 2009 pension statement information, the following charts highlight the significant impact that MUFA members have on the Salaried Plan. MUFA members' contributions account for nearly 42% of all plan members' contributions while they only comprise 24% of the employees in the Salaried Plan:



15. The Provincial Government has recently implemented a program whereby defined benefit pension plans in Ontario, including the University's Salaried Plan, may be eligible to

³ Members of MUFA participate in the Salaried Plan.

obtain Temporary Solvency Funding Relief from the Government on the first scheduled valuation date after September 30, 2008.⁴ This relief promises substantial financial benefits in the form of a deferral of an estimated \$40 million or more in payments over the first four years of the relief, and the extension of the period from five years to ten years to make these payments. Without this solvency relief, the University will be required to curtail expenditures elsewhere in order to maintain a responsible financial position. These expenditure reductions would necessitate substantial workforce reductions in addition to those already undertaken over the last two years and would affect the University's core mission materially.

16. Further, the University currently pays the entire cost of post-retirement benefits on a cash basis, which is extremely expensive. As set out in the Report on Non-Pension Post Retirement Benefit Cost and Disclosure for the Fiscal Year Ending April 30, 2010 under CICA section 3461 (the "Post Retirement Benefit Costing"), the University's non-pension accrued benefit obligation as of April 30, 2010, is \$173,744,000.⁵

17. Similar to its other efforts to contain and predict costs, as will be described in detail below, the University has worked with its stakeholders in order to address the costs of post-retirement benefits.

C. Change to Contain and Predict Costs Is Needed

i. Salary Cost Containment

18. Given that the University employs over 6,700 permanent employees, it cannot contain its costs without restraining salary increases across all of its employee groups. As a result, the

⁴ University's Book of Documents, Tab 2.

⁵ University's Book of Documents, Tab 3.

University has successfully negotiated, and will continue to negotiate, agreements with its employee groups that curtail the rate of increases in salary. However, given that 916 of the University's permanent employees are MUFA Faculty or MUFA Librarians, salary cost containment cannot be achieved without also curtailing the rate of salary increases for this employee group.

ii. Cost Containment of the Post-Retirement Promise

19. The major problem of both elements of the post-retirement promise is that the rate of growth for these costs exceeds the rate of growth of the University's revenues.⁶ In addition, the University cannot reliably predict the costs of the post-retirement promise or make provision for its cost of labour with any accuracy. The only certainty is that costs will continue to remain unpredictable and that sizeable investment gains under the pension plan and funding relief must occur for the costs to remain stable. Given the indexation provisions of the defined benefit pension plan, the deficit in this plan will remain threateningly high to increase unless action is taken on contributions.⁷

20. In furtherance of the University's objective to achieve cost containment and predictability in the Salaried Plan, the University has also negotiated and/or implemented changes with some of its stakeholders, such that:

- (a) employees in the CAW staff bargaining unit pay higher employee contribution rates than in the past towards the Salaried Plan;

⁶ University's Book of Documents, Tab 4.

⁷ The current special payments for the deficit in the Hourly Plan was \$777,000 between July 1, 2007, to June 30, 2007. Under normal solvency funding rules, this would increase to \$2.2 million per year as of July 1, 2010. The University is currently seeking temporary solvency relief from the Provincial Government. The current special payments for the deficit in the Salaried Plan is \$8,425,000 per year.

- (b) in accordance with an interest arbitration award of the Honourable George Adams, effective May 1, 2010, employees hired into the CAW staff bargaining unit participate in a revised defined benefit pension plan, with substantially reduced benefits;⁸
- (c) employees in The Management Group (“TMG”) who participate in the Salaried Plan pay higher contribution rates than in the past;
- (d) employees in the CAW staff bargaining unit are paying a premium on contribution rates for a superior unreduced early retirement formula;
- (e) effective 2006 and 2007, new employees hired by the University and who participate in the Salaried Plan are no longer eligible to immediately vest, but are instead subject to a two year vesting period;⁹
- (f) effective June 16, 2009, all newly hired employees in TMG participate in the University’s Group RRSP; and
- (g) effective June 16, 2009, all newly hired employees of the University who are Senior Academic/Administrative Officers (“SAAO”) participate in the University’s Group RRSP;
- (h) effective July, 2010, all librarians who are represented by MUALA will pay higher pension contributions. The increased contributions had retroactive application since the collective agreement between the University and MUALA was only concluded in February, 2011. Further, new employees will participate in the University’s Group RRSP.

21. In order to obtain Temporary Solvency Funding Relief for both the Hourly Plan and the Salaried Plan, the University must implement a sustainability plan showing that the Salaried Plan is sustainable in the long term. Sustainability is determined by reference to savings targets that are designed to move towards more equal sharing of current service costs as between employer and employee. Increased employee contributions are expected to be the most significant contributor to this rebalancing. In order to meet this threshold for the Salaried Plan, the University requires that the pension contributions of all employee groups, including

⁸ University’s Book of Documents, Tab 5.

MUFA, be 6.5% for the amount up to the YMPE and 8.75% for the amount in excess of the YMPE.

22. In addition to the Salaried Plan, the University also has the Hourly Plan. Employees who are represented by the SEIU, IUOE, and CAW parking and security¹⁰ participate in the Hourly Plan. The Hourly Plan has been closed to all new hires. New employees participate in the University's Group RRSP plan. The University has negotiated with these stakeholders increases in the pension contributions made by the employees. Since the valuation date of the Hourly Plan was July 1, 2010, the University is currently seeking solvency relief for the Hourly Plan as well.

iii. New Eligibility Requirements for New Employees to Receive Post-Retirement Benefits

23. With respect to the post-retirement benefits portion of the overall post-retirement promise, the CAW and all other bargaining agents representing employees at the University have agreed that new employees must have at least 10 years of cumulative service as of the date of retirement in order to be eligible for post-retirement benefits. Furthermore, the following bargaining agents have agreed that employees in their respective bargaining units shall be subject to different qualifying criteria, and will be responsible for contributing to the cost of their post-retirement benefits:

- (a) CAW staff and parking and transit services employees;
- (b) SEIU operation and maintenance employees;

⁹ For members of the University's Faculty and for TMG members, the effective date was July 1, 2006; for Librarians and for

(c) SEIU hospitality staff; and

(d) IUOE operating engineers.

24. New employees who are hired by the University into MUFA Faculty or MUFA Librarian positions are immediately granted more favourable terms in relation to post-retirement benefits than members of TMG and SAAO. TMG employees hired on or after June 16, 2006, and SAAO employees hired by the University on or after June 16, 2009, are not eligible for any post-retirement benefits regardless of their length of service with the University.

25. These changes to the eligibility criteria for post-retirement benefits have assisted the University to contain and predict costs and must also be applied to MUFA Faculty and MUFA Librarians. They will serve ultimately to reduce the University's unfunded liability that will cause significant long-term damage to the University's core mission if left unaddressed.

PART III – THE FACTS

A. Background to 2008-2011 Round of Negotiations

26. During negotiations with MUFA for the period July 1, 2008 to June 30, 2011, the University agreed to provide MUFA Faculty and MUFA Librarians with an increase to the salary floor of 3.5% in each of the three years of the agreement; a salary increase above and beyond the increase to the salary floor of 3% in Year 1 and 2 and 3.25% in Year 3; and a flat

CAW staff, the effective date was June 16, 2006; for any other member of the Salaried Plan, the effective date was July 1, 2007.

¹⁰ University's Book of Documents, Tab 6.

dollar salary increase of between \$275 to \$750 depending upon the rank of the Faculty member or Librarian for each year of the three years of the agreement. With these across the board increases, as well as CP/M, MUFA Faculty and MUFA Librarians were provided with a cumulative compound salary increase of 18.5% over the term of this agreement.

27. MUFA Faculty and MUFA Librarians did not have their pension contribution rates increased during the last round of negotiations. In fact, the Parties explicitly agreed that any change to the pension provision during the period July 1, 2008, to June 30, 2011, would be cost neutral. This meant that throughout the entire life of the current agreement, the pension contributions made by MUFA Faculty and MUFA Librarians were at the rates of 5% for the amount up to the YMPE and 6.5% for the amount above the YMPE. During this same period, other employee groups were paying higher pension contributions for the same defined benefit pension plan.

28. During the life of the current agreement between the Parties, the University approached MUFA with the possibility of renegotiating the pension plan contributions that were being made by MUFA Faculty and MUFA Librarians to put them in line with the pension plan contributions of the other employee groups participating in the Salaried Plan. MUFA refused to renegotiate the pension plan contributions that were made by MUFA Faculty and MUFA Librarians at that point.

B. Background to This Round of Negotiations

29. The Parties have agreed to certain issues that have been raised during negotiations, including an increase to the optional employee-paid group life insurance coverage from \$500,000 to \$1,000,000 and the establishment of a committee to study certain issues

surrounding the provision of child care at the University. However, the Parties have not agreed on three¹¹ key issues – compensation increases, pension contributions, and the Co-Pay System.

i. Remuneration

30. During negotiations, the University communicated that, given its financial position and the Provincial Government's desire to freeze compensation plans at their current levels for a two year period, it was seeking an agreement whereby across-the-board, flat dollar and other increases would remain the same until the third year of the agreement. Under this initial proposal put forward by the University, the MUFA Faculty CP/M and MUFA Librarian merit systems would continue without modification to their current terms, thus resulting in an average salary increase for MUFA Faculty and MUFA Librarians of 2.43% per year. In addition to these merit increases, the University initially proposed total compensation increases as follows:

| Year | Period | Increase |
|------|-------------------------------|----------|
| 1 | July 1, 2011 – July 9, 2012 | 0 % |
| 2 | July 10, 2012 – July 9, 2013 | 0 % |
| 3 | July 10, 2013 – July 9, 2014 | 2.0 % |
| 4 | July 10, 2014 – July 9, 2015 | 2.0 % |
| 5 | July 10, 2015 – June 30, 2016 | 2.5% |

¹¹ A fourth issue, namely, the structure of the post-retirement pension promise for new faculty members, is of paramount importance to the University, but is not part of this final offer selection process.

31. As negotiations progressed, both the University and MUFA made a number of counter-proposals regarding salaries that included the University offering two \$1000 lump sum payments during certain years of the agreement, in addition to the MUFA Faculty CP/M and MUFA Librarian merit increases of 2.43%. Unfortunately, the Parties were unable to reach an agreement on salaries through collective bargaining.

32. The University's most recent settlement offer of March 9, 2011, provided for the following:

| Year | PERIOD | ATB* | BASE INCREASE | CP/M |
|------|------------------------------|-------|---------------|---------|
| 1 | July 1, 2011 – June 30, 2012 | 0% | 0 | 2.43%** |
| 2 | July 1, 2012 – June 30, 2013 | 0% | \$1000*** | 2.43%** |
| 3 | July 1, 2013 – June 30, 2014 | 3.00% | 0 | 2.43%** |
| 4 | July 1, 2014 – June 30, 2015 | 3.00% | \$1000*** | 2.43%** |
| 5 | July 1, 2015 – June 30, 2016 | 3.25% | 0 | 2.43%** |

33. Although the University is amenable to providing MUFA Faculty and MUFA Librarians with an increase to their base salary through this process (instead of a lump sum payment), the University's offer is that the amount be restricted to an increase in base salary

of \$1,500,¹² in addition to the MUFA Faculty CP/M and MUFA Librarian merit increase of an average of 2.43%.

34. If this offer is accepted, and even with an increase in pension contributions, it is expected that all MUFA Faculty and MUFA Librarians who participate in the CP/M process by submitting an annual report will experience a net increase in compensation. This is predicated on computations in which the University has assumed that the CP/M ratings for each faculty member this year are identical to those given in the previous year. The computation excludes five MUFA members who chose not to provide an annual report last year.

ii. Pension Contributions

35. During negotiations, the University proposed that new hires would participate in the Group RRSP Proposal or a revised defined benefit pension plan instead of the Salaried Plan. MUFA rejected the University's proposal. The University has chosen not to seek a change to the pension plan arrangement for new faculty members in this process; however, in doing so, the other cost-containment changes sought by the University become critically more important.

36. In any event, in order to bring pension contributions that faculty members make towards their pension plan in line with other employee groups, the University initially requested that the pension contributions made by MUFA Faculty and MUFA Librarians be increased, as of July 10, 2011, to 6% for the amount up to the YMPE and to 8% for the amount over the YMPE and, as of January 8, 2012, to 6.5% for the amount up to the YMPE

¹² This represents an increase of 1.2% of the average faculty salary.

and 8.75% for the amount over the YMPE. Subsequently, the University requested that the pension contributions made by MUFA Faculty and MUFA Librarians be increased, as of July 1, 2011, to 5.75% for the amount up to the YMPE and 7.65% for the amount over the YMPE. In this same offer, it also requested that the pension contributions be further increased as of July 1, 2012, to 6.5% for the amount up to the YMPE and 8.75% for the amount over the YMPE.

37. This proposed increase in pension contributions is fair and equitable. There is no compelling reason why a MUFA member, who has a best average earnings of \$100,000, should be paying approximately 25% less in pension contributions than a TMG member for the identical pension benefit.¹³ The chart below illustrates this unfairness:

**Pension Benefit versus Employee Contribution Cost Examples - MUFA compared to TMG
Contribution Rates as of January 8, 2012**

| Member | Pension Benefit at Retirement | | | | Employee Pension Contributions (As of January 8, 2012) | | | | Difference MUFA Member is paying on Identical Pension Benefit |
|---|-------------------------------------|--------------------|-----------------------------------|---|---|--|--|---|---|
| | Best Average Earnings ("BAE") | Pension Service | Pension Formula ^[1] | Estimated Annual Pension at Retirement ^[2] | Current Pensionable Salary ^[3] | Contribution on Salary up to YMPE ^[4] | Contribution on Salary above YMPE ^[4] | Total Annual Employee Contributions | |
| TMG Member (hired before June 16, 2009) | \$100,000 (48 month average) | 30 years | 1.4% & 2.0% | \$51,504 | \$110,000 | 6.5% | 8.75% | \$8,563 | -24.8% |
| MUFA Member | \$100,000 (48 month average) | 30 years | 1.4% & 2.0% | \$51,504 | \$110,000 | 5.0% | 6.5% | \$6,442 | |

^[1] Formula is (% of BAE up to the Average YMPE plus % of BAE above the Average YMPE) multiplied by Pensionable Service

^[2] Estimate utilizes the 2010 Year's Maximum Pensionable Earnings ("YMPE") as the Average YMPE for the above examples (2010 YMPE is \$47,200)

^[3] For simplicity, assumes that current pensionable salary is \$110,000

^[4] Estimate utilizes the 2010 Year's Maximum Pensionable Earnings ("YMPE") for the above example (2010 YMPE is \$47,200)

38. MUFA rejected the University's proposal and has countered throughout collective bargaining with a lower increase in pension contributions. However, due to the University's desire to have internal equity amongst its employee groups, as well as its need to secure

temporary solvency relief from the Province of Ontario, it is requested that the increase in pension contributions be implemented as proposed by the University.

iii. Post-Retirement Benefits

39. During negotiations, the University communicated to MUFA that it could not continue to ignore the costs of post-retirement benefits and that it was essential for the Parties to agree upon a model for the provision of this benefit that was affordable and sustainable. As of April 30, 2010, the University's non-pension accrued benefit is \$173,744,000 and the annual accrual cost, which must be funded through operating and research budgets, was \$22,300,000. For this reason, during negotiations the University proposed that all employees hired after June 30, 2011, be required to participate in a Co-Pay System whereby retirees would pay a certain percentage of the yearly cost of post-retirement benefits based upon their years of service at the University. No present employees in the MUFA Faculty or MUFA Librarians would be required to participate in the Co-Pay System; it would only apply to new hires.

40. MUFA rejected this proposal. However, due to the University's need to have fairness and internal equity amongst its employee groups, as well as its need to contain its future costs, it is requested that MUFA Faculty and MUFA Librarians hired after January 7, 2012, be required to participate in the Co-Pay System as proposed by the University.

41. The University and MUFA have been unable to conclude an agreement due to, among other reasons, the outstanding issues regarding salaries, pension contributions, and post-retirement benefits. As a result, the parties have agreed to conclude an agreement on all other matters, and to take their dispute over these three issues to arbitration.

¹³ This example assumes that both the MUFA Faculty member and the TMG member have the same pensionable service.

C. The University Faces Serious Financial Challenges and Must Abide by the Spirit of Compensation Restraint Legislation

42. In his memorandum attaching the University's 2009/2010 Consolidated Budget, the President of the University at that time, Dr. Peter George, advised the University community, among other things, that:¹⁴

- (a) the impact of the current economic climate has significantly reduced the University's investments held for pensions and endowments;
- (b) the University's expenses are continuing to rise at a rate greater than revenue;
- (c) barring provincial government intervention, the University will be facing significant pension deficit payments for a minimum of the next 10 years;
- (d) the uncertainty around investment returns presents a significant exposure and risk to the University;
- (e) the rising cost of post-retirement benefits will grow to double-digit millions of dollars;
- (f) the challenges amount to a minimum of \$50 million in new annual costs that the University will have to fund in the next few years.

43. The Executive Summary to the Consolidated Budget for 2009/2010 also states, among other things, as follows:¹⁵

The operating environment continues to tighten with pressures on both revenue and expense. *The greatest pressure is compensation with unfunded post-retirement benefits and special pension deficit payments.* The weaker operating position results in narrowing of the debt service coverage ratio, a guideline established to monitor the level of debt that the University is taking on to provide new facilities to support growth and demand for space. Declining internal endowment and operating fund appropriation balances will continue to 2009/10, falling to \$93.3 million and \$24.3 million, respectively.

¹⁴ University's Book of Documents, Tab 7.

¹⁵ University Book of Documents, Tab 8 [Emphasis Added].

44. The University's 2010/2011 Consolidated Budget projects a similar financial situation to that which existed in 2009/2010.¹⁶

45. In addition, on May 18, 2010, the Government of Ontario enacted the *Public Sector Compensation Restraint to Protect Public Services Act*.¹⁷ This legislation prohibits compensation increases for employees in the broader public sector who do not bargain collectively. This prohibition applies for a two year period running from March 24 2010, to March 31, 2012, or, in other words, for the entire life of the agreement at issue in the present case. The prohibition explicitly applies to every university in Ontario, including McMaster University.

46. Even though the *Public Sector Restraint to Protect Public Services Act* does not apply to employees that bargain collectively with respect to the collective agreement that was in place at the point that the legislation became effective on March 24, 2010, the Policy Statement¹⁸ published by the Government of Ontario regarding this legislation clearly states that when these agreements expire and new contracts are negotiated, they should not include any net increase in compensation. To this end, this Policy Statement indicates that universities, such as McMaster University, will not receive any funding increases to account for all contracts negotiated since March of 2010 that include compensation increases.

D. Cost Containment and Predictability Is Necessary

47. While the University has varied sources of funding, its operating costs and other expense obligations – most notably the costs of providing the post-retirement promise – are

¹⁶ University's Book of Documents, Tab 4.

¹⁷ University's Book of Documents, Tab 9.

growing at a greater rate than the University's funding sources. Sizeable investment gains under the pension plan, solvency funding relief, and increased contribution levels must occur for the costs to remain stable.

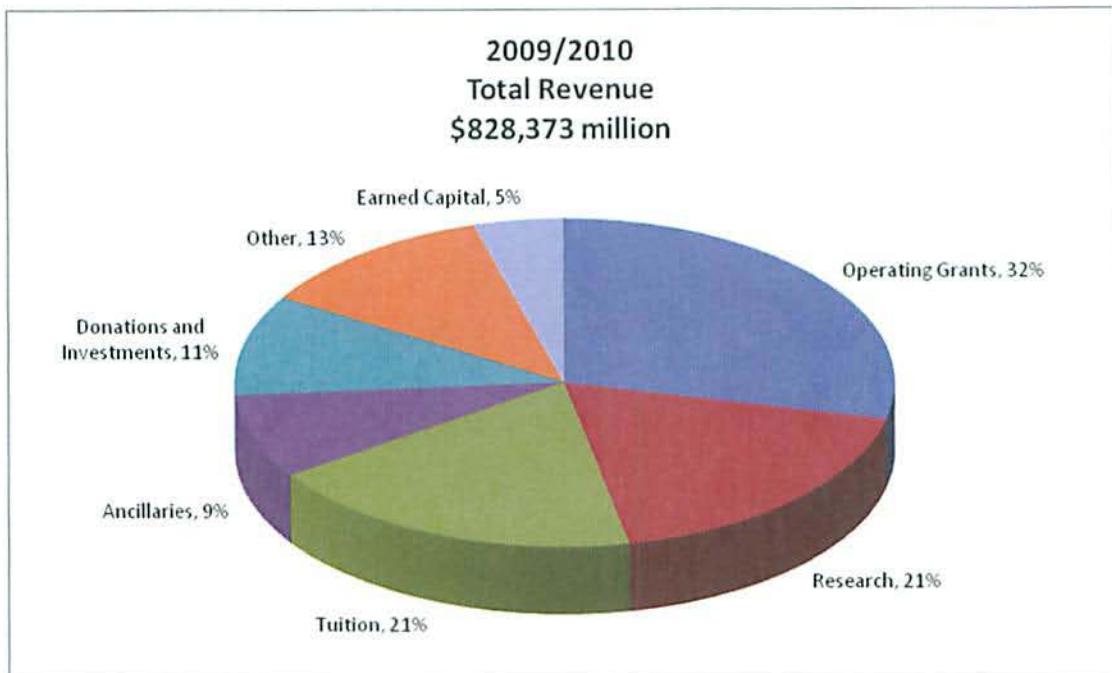
48. As previously noted, in order to obtain Temporary Solvency Funding Relief, the University must implement a sustainability plan showing that the Salaried Plan is sustainable in the long term. Sustainability is determined by reference to savings targets that are designed to move towards more equal sharing of current service costs as between employer and employee. Increased employee contributions are expected to be the most significant contributor to this rebalancing. In order to achieve this, the University requires that the pension contributions of all employee groups be 6.5% for the amount up to the YMPE and 8.75% for the amount over the YMPE.

E. The University's Sources of Funding Are Limited in Number and Growth Potential

49. The University's total revenues in 2009/2010 were \$828,373,000 million. However, the University has limited sources of funding, and these sources of funding provide either fixed income or very limited potential for increases. They include funding from the Province of Ontario, research funding from the Federal Government, funding from tuition fees, donations, endowment investment returns, and other fundraising efforts. Some of the University's sources of funding, such as many donations and endowment investment returns, are directed to specific purposes, and cannot be used by the University for compensation and

¹⁸ University's Book of Documents, Tab 10.

benefit costs. The chart and discussion below specify and outline the University's sources of funding:¹⁹



i. Operating Funding

50. Operating funds are generally comprised of operating grants provided by the Province of Ontario, as well as revenue from tuition fees.

51. Operating funds are used for the day-to-day operations of the University, including paying the majority of the costs of the post retirement promise.

52. Operating grants received from the Province are based on a funding formula that takes into consideration the number of students that enrol at the University over a period of time, up to a cap that is approved by the Province, and to the extent that the Province has set aside sufficient funding to meet provincial enrolment growth.

¹⁹ University's Book of Documents, Tab 4.

53. In fiscal year 2007/2008, operating grants received by the University from the Province totalled \$199.9 million. In fiscal year 2008/2009 and 2009/2010, the Province granted the University \$208.7 million and \$222.9 million, respectively, in operating grants.²⁰ In its Consolidated Budget for 2010/11, the University has budgeted for \$214.5 million in operating grants for fiscal year 2010/2011.

ii. Capital Funding

54. The Province is the primary source of funding of capital projects for academic and academic-support purposes.

55. The Province provides funding for minor capital-related infrastructure projects through the Facilities Renewal Programme. The Facilities Renewal Programme is a grant for minor capital projects that is provided annually by the Province. Although it is insufficient, this funding is intended to assist the University deal with its ongoing need for maintenance, repair, renovation, and modernization of existing facilities. This is restricted funding, which the University is prohibited from using for other purposes, such as compensation, pension, and benefit costs.

iii. Research Funding

56. Historically, the majority of government funding for university research has been provided by the federal research granting councils, such as the Natural Sciences and Engineering Research Council, the Social Sciences and Humanities Research Council, and the Canadian Institutes of Health Research. In 1997, the federal government established the

²⁰ University's Book of Documents, Tab 4.

Canada Foundation for Innovation to invest in research infrastructure projects. The Province also provides funding for direct research through grants and contracts from its various Ministries. Research funding must be used for direct research. The University cannot use this funding for other purposes, including for compensation, pension, and benefit costs that are not directly related to the specific research project.

iv. Non-Grant Funding

1. Tuition Fees

57. Since 1996, domestic tuition fees have been divided into two categories: regulated and deregulated. Tuition fees are deregulated for some professional programmes, such as medicine and engineering, and all graduate programmes. In March of 2006, the Province announced a tuition fee setting policy, which covered the periods of 2006/2007 to 2009/2010. This Policy allows the University to increase tuition fees for regulated programs by 4.5%, and deregulated programs by 8%, subject to an overall maximum cap of 5% per year. It has been extended for two years through 2011/2012. The University has increased fees by the maximum allowable increase for each year of the program.²¹

58. Tuition fee income for 2007/2008 was \$132.7 million, was \$141.3 million for 2008/2009, and was \$154.7 million for 2009/2010. Total tuition fee income is projected to be \$157.6 million for 2010/2011, based on projected student enrolment and the maximum allowable increase in tuition fees.²²

²¹ University's Book of Documents, Tabs 4 and 8.

²² University's Book of Documents, Tabs 4 and 8.

59. While universities in Ontario have the full legal authority to set their own tuition fees, the Province will penalize a university by reducing its operating grants if such a university charges tuition fees above the specified levels.

2. Donations and Fundraising

60. An integral and essential part of the University's financial planning is its fundraising and donation activities. These activities are administered through University Advancement, and are overseen by the Vice-President (University Advancement).

61. Although the University has managed to enhance its fundraising base and average size of donations, almost all of the donations that the University receives have restricted terms of use. When such targeted donations or gifts are received, the University has no discretion over how these funds can be used. In other words, the University cannot unilaterally direct these donations or gifts to assist it with its general operating expenses, such as compensation, benefits, and pension costs.

62. The University was engaged in an aggressive fundraising campaign, which started in 2006 and ended in 2010. For example, in 2009, the University raised \$42.9 million. Of that \$42.9 million, however, only \$2.2 million was undesignated by a donor, and therefore available to the University to assist with general operating expenses.

3. Investment Income

63. Some of the University's investment income is generated from restricted donations received by the University, which are established as specific purpose trusts. The University

has no discretion over the use of these trust funds, or the income thereon, which can only be used for the purpose specified by the donor.

64. Most of the trust funds contain terms that prohibit the original capital from being spent, and limiting the investment income earned from the original capital exclusively for the purposes specified by the donor. Therefore, most of these funds are not available to assist with the University's operating expenses.

65. Where the use of investment returns is not restricted, the investment income generated is used under the policies set by the University's Board of Governors.

66. The amount of annual income budgeted for expenditure on designated uses, on both restricted and internally restricted endowments, is set at a maximum of 4% of the three-year average market value of endowment capital. This policy is designed to preserve the real value of the endowment capital. In 2007/2008, approximately \$13.1 million of expenses were funded through external endowment income. In 2008/2009, approximately \$12.2 million of expenses were funded through external endowment income.²³ In 2009/2010, approximately \$6.6 million of expenses were funded through external endowment income.²⁴ A significant proportion of these funds were directed towards student scholarships, student bursaries, and faculty compensation.

67. The University also has a General Endowment Fund that includes accounts that have been endowed by the Board of Governors. A Board policy requires that all unrestricted donations, bequests, and other funds be added to the General Endowment Fund.

²³ University's Book of Documents, Tab 8.

²⁴ University's Book of Documents, Tab 4.

68. The investment income generated from the General Endowment Fund is used as a supplementary source of Operating Funds. Generally, use of the capital in the General Endowment Fund is restricted to special one-time needs, which must be approved by the Board of Governors through the annual budget.

F. The University's Costs and Expenses are Growing Faster than its Revenue

69. The challenges facing the University compound each year, as the demands placed on the delivery of core, mission-based research and academic activities increase. The University's expenses continue to rise at a greater rate than the rate of inflation, and at a greater rate than the rate of its revenue. Its revenues fall well short of need. Base budget funding from the Province is not indexed to inflation, thus reducing the year over year purchasing power of these grants.

70. The University also continues to face a number of financial challenges that are not currently accounted for, including:

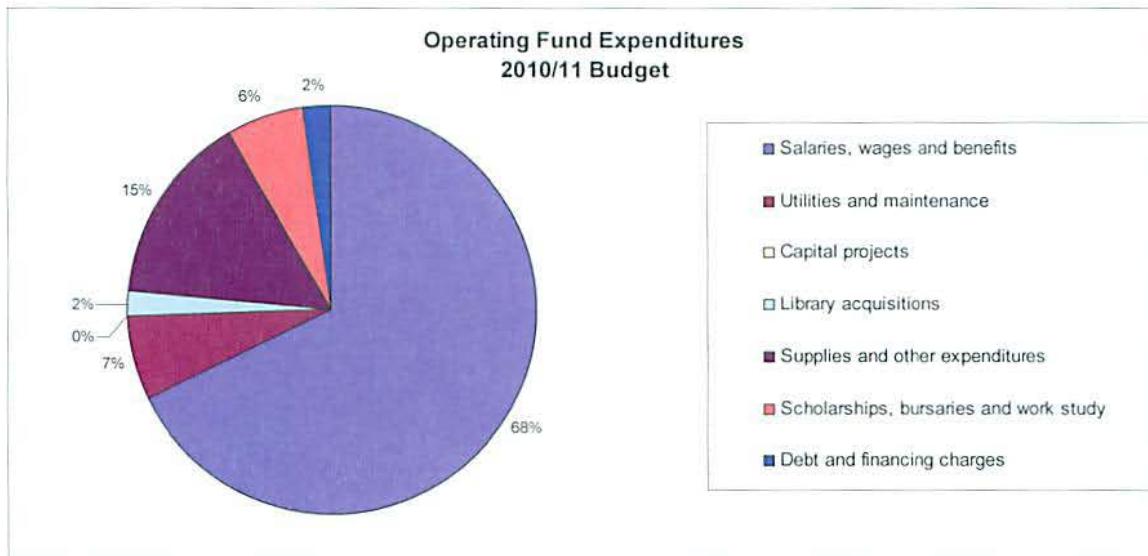
- (a) significant deferred maintenance costs of buildings;
- (b) potential future debt-servicing payments resulting from the need for capital financing of new or renovated space;
- (c) increasing class size and increasing student-to-faculty ratios;
- (d) increased costs of library resources;
- (e) increasing demand for student services;
- (f) rising research costs in the wake of declining research funding from granting agencies; and
- (g) costs of awards and financial aid for students.

G. Compensation Costs are Rising and Represent a Significant Percentage of the University's Operating Funds

i. Compensation Costs Are Rising in Terms of Dollars and as a Percentage of Revenues

71. The University employs over 6,700 permanent employees, with approximately 67% of these employees being involved in direct academic and research activities, and 33% in administrative support.

72. For the 2010/2011 operating fund expenditures, compensation costs will represent approximately 68% of the University's operating fund expenditures.²⁵



73. The Annual Financial Report for 2009/2010 shows a total compensation expense of \$507.7 million. This amount represented 62.2% of total expenses. The total number of faculty members and permanent staff increased by 1.2% during 2009/2010, but total salaries and wage expenses increased by 4.5%. Compensation expenses during 2008/2009 represented

60.7% of the University's total expenses. The increase from 60.7% to 62.2% is mainly the result of a 12% year over year increase in employee benefit costs, driven mainly by pension costs.²⁶

74. The University's total compensation costs have increased by over 148% since 2000, whereas its revenues have increased by just over 116% during that same period.²⁷

75. As a percentage of revenues, the University's audited cost for the provision of employee benefits has increased by over 475% from 2.6% in 2000 to 15% in 2009. During that same time period, the University's audited cost of benefits, as a percentage of salaries, has risen from 5% in 2000 to 30% in 2009.²⁸

From Audited Financial Statements

| | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 |
|-------------------------------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| Salaries & Wages | 202,452 | 213,669 | 234,855 | 259,202 | 281,616 | 300,976 | 310,585 | 334,776 | 357,644 | 370,227 | 381,926 |
| Employee Benefits | 9,993 | 21,092 | 23,006 | 22,851 | 38,367 | 67,552 | 92,037 | 101,671 | 110,638 | 112,264 | 125,761 |
| Total Compensation | 212,445 | 234,761 | 257,861 | 282,053 | 319,983 | 368,528 | 402,622 | 436,447 | 468,282 | 482,491 | 507,687 |
| TOTAL REVENUES | 382,646 | 426,878 | 454,929 | 516,318 | 606,233 | 637,186 | 685,372 | 730,966 | 731,989 | 731,819 | 828,373 |
| Benefits as a % of salaries | 5% | 10% | 10% | 9% | 14% | 22% | 30% | 30% | 31% | 30% | 33% |
| Compensation as a % of Revenue | 55.5% | 55.0% | 56.7% | 54.6% | 52.8% | 57.8% | 58.7% | 59.7% | 64.0% | 65.9% | 61.3% |
| Going Concern (GC) Liabilities | | | | 761,068 | | | 970,516 | | | 1,187,728 | |
| Ratio of GC Liabilities to Revenues | | | | 1.47 | | | 1.42 | | | 1.62 | |

²⁵ University's Book of Documents, Tab 4.

²⁶ University's Book of Documents, Tab 4.

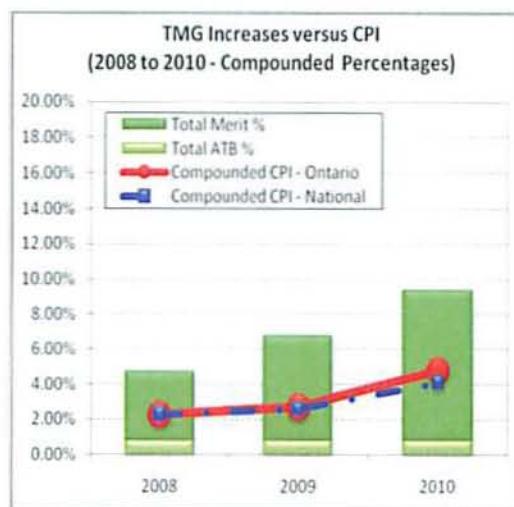
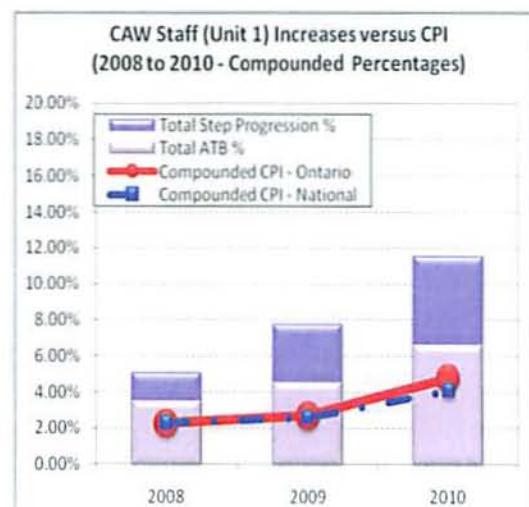
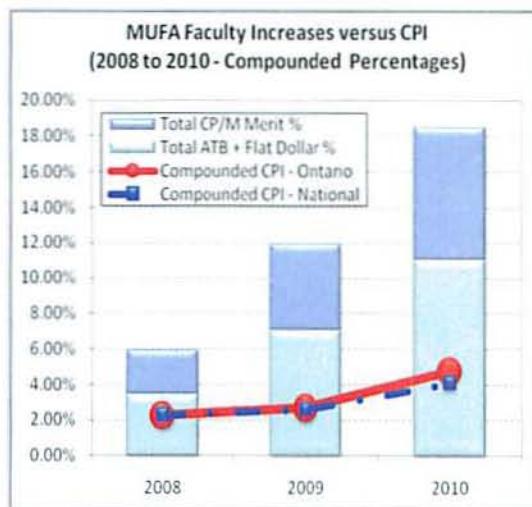
²⁷ University's Book of Documents, Tab 8.

²⁸ University's Book of Documents, Tab 8.

ii. The Cost of Salaries Are a Significant Portion of Overall Compensation Costs

76. The University employs over 6,700 permanent employees, of which 911 are MUFA faculty members and 5 are MUFA Librarians.

77. MUFA Faculty have done very well when compared to other employees at the University. The cumulative compounded increase for MUFA Faculty is approximately 18.5%, versus 11.5% for CAW Unit 1 (staff) and 9.5% for TMG. These graphs highlight that MUFA increases have far exceeded the rate of inflation, and greatly outpaced the increases of other comparator groups at McMaster:



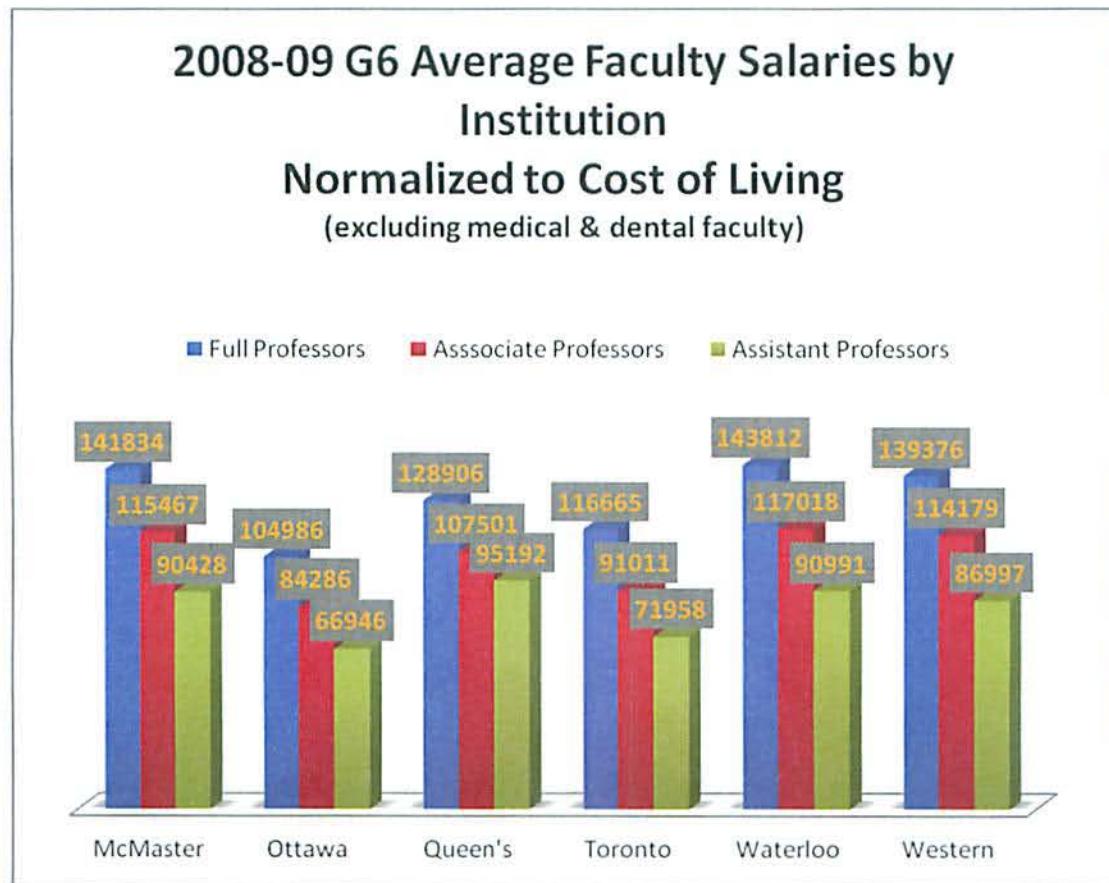
78. Moreover, MUFA Faculty have done very well when compared to the G-6 universities. Since the vast majority of faculty live near the university that employs them, and thus incur most of their costs in those cities, the only credible measure to compare between G-6 universities is if compensation is normalized between the various cities in which the G-6 universities are located. Cost of living index data was obtained through the *Canadian Business Magazine's "The Best Places to do Business in Canada" 2008*²⁹ and 2006³⁰. For comparison purposes, Hamilton was calibrated to a value of 100. The cost of living index for the University and its G-6 peers (Queen's University, the University of Ottawa, the University of Toronto, the University of Waterloo, and the University of Western Ontario) is the following:



²⁹ <http://list.canadianbusiness.com/rankings/best-places-to-do-business/2008/intro/Default.aspx?sp2=1&d1=a&scl=0>.

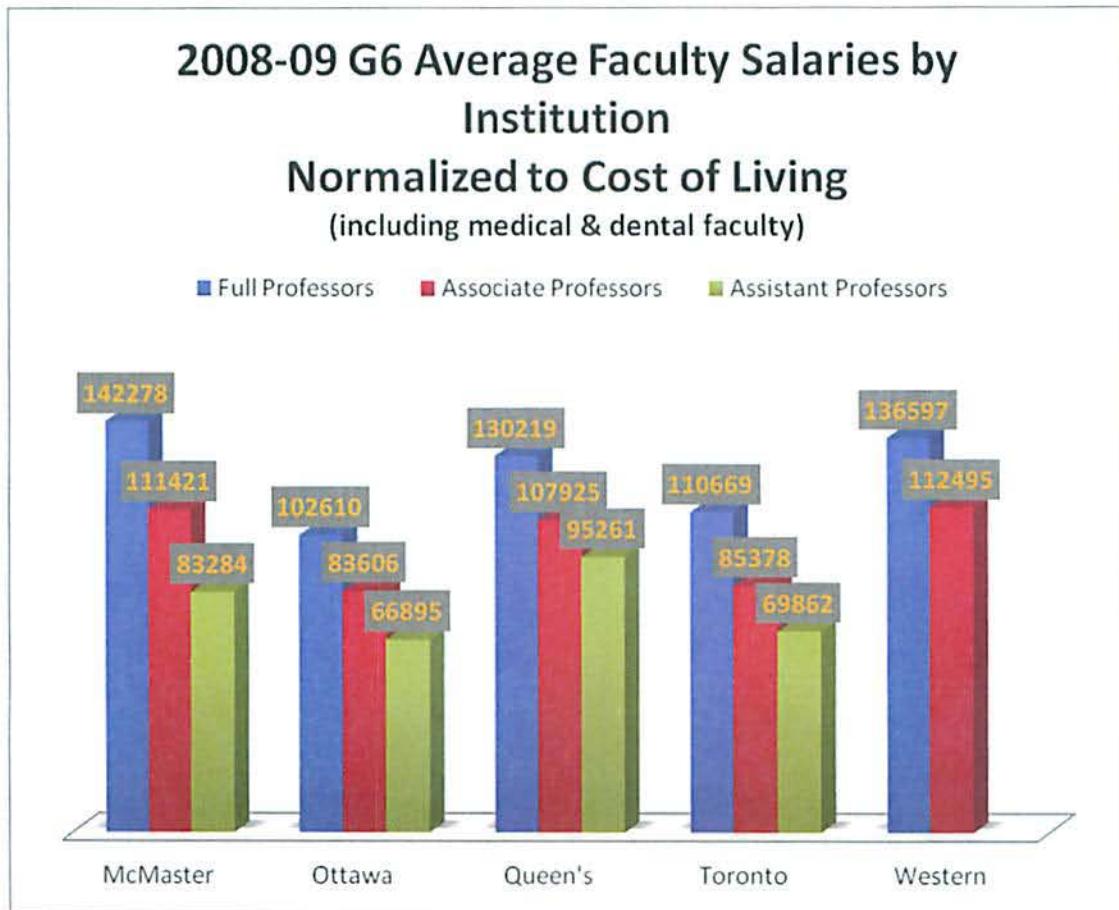
79. The cost of living index allows the comparison of the University's compensation to that of its G-6 peers in terms of purchasing power given that the vast majority of employees at any university live in the area of the institution where they work. The chart highlights that Hamilton has the lowest cost of living.

80. Since the University and MUFA have previously agreed that the other G-6 universities are a reasonable faculty comparison to use when assessing terms and conditions of employment, when the salaries of MUFA Faculty and MUFA Librarians are normalized to the cost of living in Hamilton and compared to the University's G-6 peers, the University's Full Professors and Assistant Professors rank 2nd and Associate Professors rank 3rd.



³⁰ <http://rankings.canadianbusiness.com/bestcitiesforbusiness/list.asp?pageID=list&year=2006>.

81. More specifically, among the five G-6 universities with medical and/or dental faculty, the University's Full Professors rank 1st and Assistant and Associate Professors rank 2nd.



iii. **The Costs of Post-Retirement Benefits Are Rising and Represent a Large Unfunded Accrued Cost to the University**

82. The University provides post-retirement benefits, which include extended health, dental, and life insurance to a substantial proportion of its full-time employees. The University continues to fund these post-retirement benefits on a cash basis, and has budgeted \$5.7 million for 2010-2011 for this particular expense. The shortfall between the annual unfunded accrued value of the benefits earned, which was \$22.3 million in 2009-2010, and the cash cost of the benefits paid to the retirees, which was \$5.0 million in 2009-2010, is

building an ever-escalating unfunded accrued benefit obligation for the University. Based on the “Report on Non-Pension Post Retirement and Post Employment Benefit Expense and Disclosure for the Fiscal Year Ending April 30, 2010 Under CICA Section 3461”³¹, the University’s non-pension accrued benefit obligation as of April 30, 2010, is \$173,744,000.

iv. The University Needs Cost Containment and Predictability

83. Salary adjustments and the ever-increasing cost of providing the post-retirement promise as the employee population ages and retires means that compensation costs will continue to grow at a far greater rate than any of the University’s revenue sources. Moreover, the University continues to make annual special deficit payments for both the Hourly Plan and the Salaried Plan.

84. The expenses related to the post-retirement promise dominate the increase in total benefit costs. While some positive steps have been taken to manage the rate of growth of the post-retirement promise, these costs continue to put pressure on operating and research budgets and further efforts, such as the modest proposals put forth by the University in this final offer selection process, will alleviate some of the University’s cost pressures.

85. The sheer size of the post-retirement promise obligations in relation to the University’s financial resources hinders the University’s academic and research objectives, and adversely affects the University’s balance sheet strength. It directly affects the University’s credit ratings, thereby limiting its flexibility. It is apparent that with total compensation costs escalating at a rate greater than revenue, cost saving measures are required in order to establish cost containment and cost predictability.

³¹ University Book of Documents, Tab 3.

H. The University Has Sought Assistance From All Stakeholders and There is a Need to Maintain Internal Equity

i. Most Other Employee Groups Have Agreed to Minimal Salary Increases

86. Given the University's financial position and the Provincial Government's desire to freeze compensation plans at their current levels for a two-year period, the University has been required to provide minimal salary increases for all other employee groups. In 2010, employees in the TMG received 0% across the board salary increases, but were eligible for merit increases. Meanwhile, employees in SAAO received 0% across the board salary increases, but were eligible for awards from the Performance/Variable Pay Plan program.

87. The University agreed to provide minimal lump sum payments³² to unionized staff to, among other things, offset some of the concessions that the University requested from the trade unions, which included higher pension contributions. The SEIU hospitality staff negotiated salary increases that included only lump sum payments - \$600 to \$1000 in 2011, \$1050 to \$2150 in 2013, and \$300 to \$600 in 2015 - with the specific amounts depending upon status and job classification. At the same time, the SEIU operations and maintenance staff also negotiated salary increases that included only lump sum payments - \$1000 to \$1725 in 2011, with the specific amounts depending upon job classification, \$125 in 2012, \$1808 for grandparented employees in 2013, and \$536 for grandparented employees in 2015.

88. CUPE negotiated a three-year agreement for its Sessional Faculty with across the board salary increases of 0% for the first two years, and 3% for the last year of the agreement.

³² These payments, and all of the lump sum payments, are different than what the University is proposing in this process. The University's proposal is to increase each MUFA member's base salary by \$1,500.

89. The CAW staff negotiated salary increases of 1% in 2009, 2% in 2010, and 2.75% in 2011, plus a one-time lump sum payment of \$1000 for all full-time employees and \$500 for all part-time employees. These negotiations concluded before the Provincial Government passed the Compensation Restraint Legislation and issued its accompanying directive regarding a compensation freeze for unionized groups.

90. Finally, the University and MUALA have recently concluded bargaining on its first collective agreement. Up until March 16, 2010, the employees currently in MUALA were members of MUFA. During negotiations for a first collective agreement, MUALA agreed to 0% across the board increases to salary for the first two years of the agreement, and then a 1.7% across the board increase in each of the last two years. MUALA further agreed to a potential merit increase of 2% for the first two years, 2.2% in the third year, and 2.4% increase in the last year of the agreement. The actual merit increases granted to individual members will vary based on performance.

ii. Employee Groups Have Agreed to Increase Their Pension Contribution Rates and Have Closed the Salaried Plan to New Hires

91. In view of the rising costs of the post-retirement promise, the University has negotiated increases to the employee contribution rates for all employees in the University's Salaried Plan.³³ Effective January 10, 2010, the pension contribution rates on regular annual salary for almost all of employee groups in the University's Salaried Plan were 5.5%-5.75% for the amount up to the YMPE and between 7.25%-7.5% for the amount over the YMPE. Furthermore, by January 8, 2012, the pension contribution rates on regular annual salary for

³³ University's Book of Documents, Tabs 11 and 12.

almost all of the employee groups in the University's Salaried Plan will be 6.5% for the amount up to the YMPE and 8.75% for the amount in excess of the YMPE. For the period from January 10, 2010 to the present time, the pension contribution rates of MUFA Faculty and MUFA Librarians has been 5% for the amount up to the YMPE and 6.5% for the amount in excess of the YMPE.

MUFA, SAAO, TMG, CAW, Unit 1 - Employee Pension Contribution Increases:

| Effective Date | Pension Contributions on Salary up to YMPE* | | | Pension Contributions on Salary above YMPE* | | |
|-----------------------|--|-----------------------|------------------|--|-----------------------|------------------|
| | MUFA | SAAO & TMG | CAW Staff | MUFA | SAAO & TMG | CAW Staff |
| July 1, 2009 | 5.0% <small>(CURRENT)</small>  | 5.0% | 5.5% | 6.5% <small>(CURRENT)</small>  | 6.5% | 7.0% |
| January 10, 2010 | | 5.5% | 5.75% | | 7.25% | 7.5% |
| January 9, 2011 | | 6.0% | 6.25% | | 8.0% | 8.25% |
| January 8, 2012 | | 6.5% | 6.5% | | 8.75% | 8.75% |

92. In addition, because of the recently concluded collective agreement with MUALA, MUALA's pension contributions will increase – with retroactive application – and will be as follows:

- (a) before the collective agreement became effective, MUALA's contributions rates were 5% up to the YMPE and 6.5% over YMPE, which is the same as MUFA Faculty and MUFA Librarians are currently paying;
- (b) effective July 6, 2010, 5.5% up to the YMPE and 7.25% over YMPE;
- (c) effective January 9, 2011, 6% up to the YMPE and 8% over YMPE;

(d) effective January 8, 2012, 6.5% up to the YMPE and 8.75% over YMPE.

93. Moreover, five of the six trade unions who represent employees that participate in the Hourly Plan have agreed to increase their pension contributions to 6.5% for the amount up to the YMPE and 8.75% for the amount above the YMPE during the life of their present collective agreements.³⁴ The CAW, who represents security employees at the University, will be commencing negotiations with the University in the near future. The University will seek the same pension contribution increases from the CAW as it has obtained from the other trade unions.

94. The pension contribution level of MUFA Faculty and MUFA Librarians has a significant impact on the University's Salaried Plan. An increase in the pension contributions is also required for the University to be able to receive temporary solvency relief from the Province of Ontario. Since January 10, 2010, other major employee groups in the Salaried Plan have been contributing at higher rates than MUFA Faculty and MUFA Librarians even though these latter groups receive a much higher salary. By the point at which the agreement at issue in this arbitration comes into effect on July 1, 2011, MUFA Faculty and MUFA Librarians will have paid significantly lower pension contributions into the Salaried Plan than employees in TMG, SAAO, CAW staff, and MUALA for a period ranging from 12-18 months. The estimated impact of employee pension contributions that would have been collected from MUFA members had their contribution rates increased on January 10, 2010, and again on January 9, 2011, is approximately \$1.4 million.³⁵

³⁴ University's Book of Documents, Tab 11.

³⁵ Based on an analysis of the current population of MUFA Faculty as of November of 2010 (prepared by Human Resources Services).

95. Even though MUFA members are paying less than other members of the University's Salaried Plan, they are receiving the same pension plan benefits. This is simply unfair and has created a significant issue of internal inequity. If MUFA pension contributions remain at their present levels, by January 8, 2012, a disparity of 25% in annual employee pension contributions will exist between employees in the TMG and members of MUFA for the same pension benefit.

96. In addition, effective June 16, 2009, new employees hired by the University into TMG and SAAO are not eligible to participate in the Salaried Plan, but instead participate in the University's Group RRSP. Further, based on an award from Arbitrator George Adams, employees hired into the CAW staff bargaining unit on or after May 1, 2010, participate in a revised defined benefit plan, with substantially reduced benefits. Finally, the recently concluded collective agreement between the University and MUALA provides for mandatory enrolment of new hires after March 16, 2010 into the University's Group RRSP plan.

97. The University has elected not to make the same request of MUFA Faculty and MUFA Librarians through this process; it simply needs MUFA Faculty and MUFA Librarians to contribute their fair share towards pension contributions. In this process, the University is not even seeking that the pension contributions for MUFA Faculty and MUFA Librarians be retroactive. It is simply requesting that their pension contribution increases be phased in so that they contribute the same as every other employee group in the Salaried Plan.

iii. Eligibility Criteria for Post-Retirement Benefits Have Changed

98. Due to the increasing cost of the post-retirement promise and the increasing uncertainty in determining those costs, the University has sought, and has obtained,

agreements with MUFA and all other bargaining agents representing employees at the University regarding the eligibility criteria for post-retirement benefits for new employees in their respective bargaining units. Each of these bargaining units has agreed to create a 10-year threshold for new employees before they become entitled to post-retirement benefits. Those employees in the MUFA Faculty who were hired after July 1, 2006 are subject to this 10-year threshold. MUFA Librarians who were hired after June 16, 2006 are subject to this 10-year threshold.

99. In addition to establishing a 10-year threshold for new employees before they become entitled to post-retirement benefits, due to the University's need for cost containment and predictability, the University has also adopted the Co-Pay System. At this point in time, the following groups have adopted the Co-Pay System: CAW staff and parking and transit services employees hired after October 1, 2009 and March 16, 2010 respectively, SEIU operation and maintenance employees and machinist employees hired after October 1, 2010, IUOE operating engineers hired after March 1, 2010, and SEIU hospitality employees hired on or after January 1, 2011. In addition, in the collective agreement recently concluded between the University and MUALA, MUALA has also agreed to participate in the Co-Pay System. The employees for which the Co-Pay System applies will qualify for post-retirement benefits if they:

- (a) have completed the required years of continuing service as at the date of their retirement in accordance with the table below, and have participated in the extended health and dental benefit plans available to employees during that period;
- (b) have attained the Rule of 80 or age 65 as at the date of retirement;
- (c) collect an immediate annuity, whether reduced or unreduced, upon retirement; and

(d) agree to participate in the Co-Pay System as of the date of retirement.

100. Under the Co-Pay System, the employees that qualify for receive post-retirement benefits pursuant to the following formula:

| Years of Continuing Service | % of Yearly Cost Payable by Retirees | % of Yearly Cost Payable by University |
|-----------------------------|--------------------------------------|--|
| 30 or more | 25 | 75 |
| 25-30 | 50 | 50 |
| 20-25 | 75 | 25 |
| 10-20 | 100 | 0 |

101. By having certain employees who are automatically eligible for post-retirement benefits, other employees who have a 10-year cumulative service eligibility requirement, and other employees in the Co-Pay System, the CAW, SEIU, IUOE, and MUALA have agreed to a multi-tier system for eligibility for post-retirement benefits for their members. There is no reason why the same standard should not apply to MUFA members.

102. Finally, newly hired employees of the University into TMG and SAAO, depending on their date of hire, are no longer eligible for post-retirement benefits. TMG employees hired on or after June 16, 2006, are not eligible for any post-retirement benefits regardless of their length of service with the University. SAAO employees hired by the University on or after June 16, 2009, are not eligible for any post-retirement benefits regardless of their length of service with the University.

I. The University's Proposal Keeps MUFA Near The Top Of The G-6

103. In previous negotiations, the University and MUFA have agreed that the other G-6 universities are a reasonable faculty comparison to use when assessing terms and conditions of employment. A number of other G-6 Universities have been able to reach agreements with their faculty that achieve cost containment and predictability.

104. The University of Waterloo has recently entered into a Memorandum of Settlement with its Faculty Association that provides for 0% salary increases in 2010 and 2011, followed by 3% salary increases in 2012, 2013, and 2014. In addition, the members of the Faculty Association had their pension contributions increase effective May 1, 2009, from 4.55% for the amount up to the YMPE and 6.5% for the amount over YMPE to 5.80% for the amount up to the YMPE, 8.30% for the amount in excess of the YMPE to two times the YMPE, and 9.65% for the amount in excess of two times the YMPE. Furthermore, these Minutes of Settlement do not provide for any lump sum payments to be made throughout the life of the agreement.

105. The University of Western Ontario has recently entered into a Memorandum of Settlement with its Faculty Association that provides for 1.5% salary increases in each year of a four year agreement, as well as a lump sum payment of between \$800 to \$1200 for full-time faculty in the third and four years of the agreement. While the Faculty Association at the University of Western Ontario received a slightly higher increase than that proposed by the University in this process, when normalized to the cost of living, the salaries of faculty at McMaster University have historically been greater than the salaries of faculty at the

University of Western Ontario, and will continue to be so if the University's position is accepted.

106. An agreement between the University of Toronto and its Faculty Association was recently arbitrated, with the decision being rendered by Arbitrator Teplitsky on October 5, 2010.³⁶ The decision provided the University of Toronto Faculty Association with a 1.25% salary increase at the commencement of the agreement on July 1, 2009, a 2.25% salary increase in 2010 (1% on January 1, 2010 and 1.25% on July 1, 2010) and a 1% salary increase on January 1, 2011.³⁷ The overall total compensation granted by Arbitrator Teplitsky in his award was 5% and the decision did not include an increase in pension contributions. In rendering his decision, Arbitrator Teplitsky explicitly stated that his position was that the University of Toronto Faculty Association should be "at the top of the market". Finally, and in any event, when normalized to the cost of living, at the present time faculty at the University of Toronto earn significantly less than MUFA Faculty and MUFA Librarians.

PART IV – LAW AND ARGUMENT

A. The Role of an Arbitrator in Final Offer Selection is Replication

107. An arbitrator's role is to attempt to replicate the bargain that similarly situated parties freely negotiate.³⁸

³⁶ University's Book of Documents, Tab 13.

³⁷ This across the board increase is less than what members of MUFA were receiving during parts of the relevant time period. Effective July 1, 2009, MUFA members received a 3% across the board increase, whereas the University of Toronto faculty members received a 2.25% increase. Effective July 1, 2010, MUFA members received a 3.25% across the board increase, whereas the University of Toronto faculty members received a 2.25% increase.

³⁸ *Hamilton Health Sciences Corporation v. CUPE (Service, Office & Clerical Group, Trades & Maintenance Group)*, 2006 CanLII 32600; *Abitibi-Consolidated Company of Canada (Fort Frances) v. International Association of Machinists & Aerospace Workers, Local 771 and International Brotherhood of Electrical Workers, Local 1744*, 2006 CanLII 32601; University's Book of Authorities, Tab 1 and 2.

108. Other factors, such as the total compensation principle, demonstrated need, ability to pay, and appropriate comparators are also considered by arbitrators. These factors are all geared towards addressing what other parties freely negotiate,³⁹ while at the same time ensuring that the award is fair and reasonable.⁴⁰

B. The Replication Principle Leads to the University's Salary, Pension Contribution and Post-Retirement Benefits Proposals Being Awarded

109. The University's salary, pension contribution, and post-retirement benefits proposals are fair and reasonable. Given the University's financial situation and the Government's desire to freeze compensation plans at their current levels for a two year period, the University's proposal to provide a merit increase of 2.43% to all MUFA Faculty and MUFA Librarians, as well as a \$1,500 increase to base salaries, is an appropriate award in the present circumstances.

110. In addition, the University's proposed increase in pension contributions for MUFA Faculty and MUFA Librarians is fair and reasonable. It brings those contribution levels in line with all other major employee groups who participate in the Salaried Plan.

111. Further, the Salaried Plan is in major deficit and remains threateningly high. In order to achieve the necessary cost containment to ensure the future viability of the Salaried Plan, as well as to have any possibility that the University will receive the temporary solvency relief it needs from the Provincial Government, the pension contributions of MUFA Faculty and MUFA Librarians must be increased to the same levels as other employee groups.

³⁹ *City of Ottawa v. CIPP*, 2005 CanLII 40164; University's Book of Authorities, Tab 3.

⁴⁰ *Prince Rupert (City) v. Prince Rupert Fire Fighters Assn. Local 559* (2004), 135 L.A.C. (4th) 418; University's Book of Authorities, Tab 4.

112. Finally, the Co-Pay System proposed by the University is fair and reasonable. It brings MUFA members in line with other major employee groups on campus. In fact, since certain members of TMG and SAAO, which includes the new President of the University, Dr. Patrick Deane, will never receive any post-retirement benefits, new faculty members who participate in the Co-Pay System will receive superior benefits than other major employee groups on campus.

113. The University has negotiated similar salary increases for the other employee groups in the Salaried Plan, as well as the same changes to pension contributions and post-retirement benefits. It would be unfair and unreasonable for employees in TMG, SAAO, CAW staff, and MUALA to be granted lower salary increases and bear a greater cost for the same defined benefit pension plan than MUFA Faculty and MUFA Librarians. Furthermore, it would be unfair and unreasonable to adopt the Co-Pay System for all employees represented by a trade union, but not MUFA Faculty and MUFA Librarians.

C. Total Compensation for MUFA Faculty and MUFA Librarians is Both Fair and Competitive

114. Even with the changes proposed by the University, MUFA Faculty and MUFA Librarians will continue to be one of the most highly compensated employee groups at the University. If the University's proposals are adopted, MUFA Faculty and MUFA Librarians will still have a net increase in their compensation. Furthermore, existing MUFA Faculty and MUFA Librarians will receive an identical post-retirement promise under the University's proposed agreement as they did under the predecessor agreement. As a result, the University's proposals in relation to salaries, pension contributions, and post-retirement benefits are

focused, fair, and reasonable, and are meant to address the University's demonstrated need for cost containment and predictability.

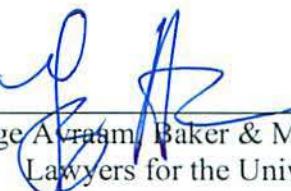
D. The Experience of Appropriate Comparators Leads to the Salary, Pension Contribution and Post-Retirement Benefits Proposals Being Awarded in Order to Maintain Internal Equity

115. There is a clear demonstrated need for the University to limit salary increases and to make structural changes to the post-retirement promise. Even with such a demonstrated need, however, the University has sought its changes in a measured and responsible fashion. It has not sought to eliminate all salary increases despite Government Policy that provides that the University will not receive funding for any compensation increases. Furthermore, it has requested that MUFA Faculty and MUFA Librarians make the same pension contributions as all other major employee groups in the Salaried Plan. Finally, it has not requested a change to the terms of its post-retirement benefits for current MUFA Faculty and MUFA Librarians.

116. The University has taken the necessary steps with its other employee groups to account for its present financial circumstances. An award that accepts the University's proposals regarding salaries, pension contributions, and post-retirement benefits is another necessary measure that the University needs in order to obtain cost containment and predictability. More importantly, it will result in fairness and internal equity between the employee groups at the University.

117. The University therefore respectfully requests that its proposals regarding salaries, pension contributions, and the post-retirement benefits be awarded.

ALL OF WHICH IS RESPECTFULLY SUBMITTED



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