In the Matter of an Arbitration
Pursuant to the Ontario *Labour Relations Act*

Between:

CARLETON UNIVERSITY
(the University/Employer)

- and -

CARLETON UNIVERSITY ACADEMIC STAFF ASSOCIATION
(the Association)

Re: Association Policy Grievance 14-P-00009 - Workload

A W A R D

Paula Knopf - Arbitrator

Appearances:

For the Employer:	Michael Kennedy, Counsel Lisetta Chalupiak - Asst. Director, HR Advisory Services (Academic) Lisa Hughes - Researcher, Labour Relations HR Malcolm Butler - Dean of Science
For the Association:	David Wright, Counsel Kimberly Benoit, Executive Director Janice Scammell, Chief Negotiator Jennifer Steward, Member - Negotiating Team Pum van Veldhoven, Member - Negotiating Team

This matter was heard in Ottawa on February 6 and May 4 and 6, 2015.

1. The Association is challenging the workload being assigned to Instructors in the Faculty of Arts and Social Sciences. The grievance arises out of the application of new language that was negotiated into the Collective Agreement in the Summer of 2014. The Association alleges that the University is not abiding by the terms of the contract and/or that it is estopped by its own representations during bargaining or the past practice of the parties. The Employer has responded by asserting that it is abiding by the terms of the Collective Agreement and that nothing in the parties' past practice or negotiations precludes the workloads being assigned to Instructors. The relevant portions of the Collective Agreement are:

> **Article 13: Academic Workload**
>
> **13.1 Workload of Faculty Employees**
>
> The normal workload of faculty employees shall include teaching, research/scholarly/creative activities, and service to the University in proportions of approximately 50%, 35% and 15% respectively of each employee's time, as governed by and varied in accordance with past practice. For each faculty a normal workload shall be defined by past practice.
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> **13.2 Teaching Workload of Faculty Employees**
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> **(a)** Subject to Article 13.2(b), within a normal workload, "normal teaching load" within a Faculty shall be defined by past practice in relation to the number of full-course equivalents taught per faculty member or as may be agreed to hereafter by the parties. <u>Each faculty member will be assigned a teaching workload of less than 2.5 credits.</u> [emphasis added to denote new language]
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> **(b)** Subject to approval by the appropriate Dean, the appropriate Chair/Director or equivalent shall, with due notice and consultation, assign teaching duties to individual faculty members in accordance with the provisions of Article 25 of the Collective Agreement in the light of the individual's discipline, abilities and specialties, and consistent with the normal teaching load of the faculty and department in question. . . . Teaching duties shall include, but not be limited to, advising students and prospective students, and conducting schedules classes. . . . . .
>
> **(d)(ii)** Where the employee's performance in research/scholarship . . . is substantially below the norm and has been so for at least five (5)

consecutive years and where the Dean has addressed the issue with the employee in each of the five (5) years, the Dean may assign the employee more than the normal teaching load for the employee's department….

(f) The Chair/Director shall give consideration to the factors affecting faculty teaching workload which include, but are not necessarily limited to, the following:

(i) the number of separate courses taught by each faculty employee;
(ii) the number of scheduled contact hours per course;
(iii) the number of hours of preparation, grading, and administration per course;
(iv) the number of students enrolled, on average, per course;
(v) the number of hours per student counselling per course;
(vi) the level (introductory, upper year, graduate, etc.) of each course;
(vii) the type (lecture, seminar, etc.) of each course;
(viii) assistance of graduate students or colleagues in the teaching of courses;
(ix) additional hours of preparation required for a new course;
(x) the relation of thesis and special project supervision to classroom teaching;
(xi) the relation of the individual faculty employee's teaching responsibilities to their research and scholarship;
(xii) comparison of faculty workload at Carleton with that of other universities in Ontario;
(xiii) the relationship between workload policy and other aspects of long-range academic planning;
(xiv) whether the course if filmed or videotaped;
(xv) the deployment and supervision of teaching assistants.

13.4 Instructor Employees

(a) General
(i) The workload of Instructor employees includes assigned teaching responsibilities, professional and/or instructional development, assigned administrative tasks and, where the position in question is governed by a job description . . . such duties as are contained in the relevant job description. . . . .
(iv) Instructor employees shall devote about three-quarters (3/4) of their time to teaching, directly related activities, and/or, where appropriate, duties specified in the employee's job description. Instructor employees shall have most of the remaining time available for professional and related development . . . .
(vi) . . . . The provisions of Article 13.2(f) shall apply, *mutatis mutandis,* to Instructor employees. Where an Instructor employee is not satisfied with

the work assigned, though it falls within the provisions of this Agreement, they may appeal to the appropriate Dean.

(b) Instructor Positions Without Individual Job Descriptions
(i) **. . . .** Instructor employees shall not teach more than three and one half (3.5) credits or the equivalent of one-and-one half (1.5) times the normal full teaching load of faculty employees in the same unit or sub-unit, whichever is less, averaged over each consecutive twenty-four (24) month period, and shall not teach more than the equivalent of one-half credit course in excess of 1.5 times the normal faculty employees' teaching workload in any academic year ending August 31. [emphasis added to denote the new language]
. . . . .
(v) Where an Instructor employee is assigned the co-ordination of a multi-section course, or other substantial duties over and above the instructor's normal duties, there shall be an appropriate compensatory reduction in other assigned teaching workload.

15.3 Rights and Responsibilities of Instructor Employees
(a) The prime role of Instructor employees shall be to disseminate knowledge and understanding through teaching. In addition to teaching, Instructor employees shall undertake such other activities as may be defined by this Collective Agreement or by the job description for their position, where such has been agreed upon by the parties. Instructor employees are not expected to conduct research or scholarship, other than that directly related to their teaching or job description duties.

(b) All Instructor employees shall have the following rights and responsibilities: . . . . .

(xv) Where course load release is customary for faculty employees, instructor employees who fulfill the same duties shall receive the same course load release.

The last sentence of Article 13.2(a) is the new language that imposed what the parties referred to as a fixed "cap" on workload for the first time in the Collective Agreement. That "cap" is critical to the calculation of Instructors' teaching credits in Article 13.4(b)(i) which goes to the core of this case.

2. After the Collective Agreement was ratified in August 2014, the Committee of Faculty of Arts and Social Sciences Chairs and Directors issued a "Guideline" for the implementation of the new language with regard to workload assignments.

The Guideline that follows triggered this grievance, with the portions being challenged italicized:

> . . . For faculty members who are actively engaged in research, the baseline teaching expectation in Faculty of Arts and Social Sciences will be established as the equivalent of four half-courses in each academic year, commencing September 1st, **plus** some combination of other less formally scheduled teaching activities, including but not limited to thesis supervision, directed studies and tutorials, participation on graduate examination committees, etc., to *be assigned a nominal credit value of 0.4.* This is in accordance with the Collective Agreement's provision that teaching shall be "less than 2.5 credits". … *Faculty members appointed at the rank of Instructor will be expected to teach, on average, the equivalent of 3.5 credits per academic year.*

The Grievance alleges that this document contravenes the new Collective Agreement in several ways. The Grievance alleges:

> This document . . . . includes a teaching load calculation assigning course and partial course credit to what the Dean terms as 'less formally scheduled teaching duties' for which there is no such calculation or scheduling of within the Collective Agreement.
>
> The policy further is in conflict with the document signed August 28, 2014, "Memorandum of Agreement Further to Minutes of Settlement between CUASA and CU of July 27, 2014 Re: Article 13 in the 2014-2017 CUASA Collective Agreement". This document details how assigned teaching credits will be dealt with under the new workload negotiated into the 2014-2017 Collective Agreement for both faculty and instructors.
>
> Under Item 1, the 'policy' also states that "Faculty members appointed at the rank of Instructor will be expected to teach, on average, the equivalent of 3.5 credits per academic year." This contravenes Article 13.4(b)(i).

The Association's grievance challenges the introduction of the 0.4 "nominal credit" for the "less formally scheduled teaching activities" because of its impact on the calculation of Instructors' teaching loads. The Association asserts that the new cap on workload limits the University to assigning no more than 3.0 credits to Instructors by virtue of Article 13.4(b)(i). It should be noted here that there is nothing in the Collective Agreement that sets out how "credits" are to be valued, although the parties accept that teaching a full-year course earns one credit, and teaching a half-year (or one-semester) course garners 0.5 credits. The

Grievance is not challenging the workload being assigned to the Faculty members in the Faculty of Arts and Social Sciences. The Grievance challenges the workload being assigned to the Instructors in that Faculty. Much of the evidence and argument focused on the Faculty members' "normal teaching load" because the formula for Instructors' workload is determined by an equation that factors in the number of credits attributed to Faculty employees; see Article 13.4(b)(i).

3. Evidence of the bargaining history was presented by both parties in support of their respective positions with regard to the estoppel issue. There is no dispute about the relevant facts. From 2003 to 2012, there was no fixed limit or "cap" on Faculty members' workload. Article 13.2 provided:

> ….. within a normal workload, "normal teaching load" within a Faculty shall be defined by past practice in relation to the number of full-course equivalents taught per faculty member or as may be agreed to hereafter by the parties.

This language allowed for a great deal of variation across the Faculties and Departments at the University. In 2009, the Collective Agreement introduced a limit for Instructors of four credits or one-and-a-half times the normal full teaching load of Faculty members. For the Faculty of Arts and Social Sciences, the workload for Faculty members engaged in research had a "baseline" teaching expectation of five half-courses, and Instructors were expected to teach the equivalent of an average of 3.75 credits per academic year. The 2008 Workload Guideline that had been in place before the new one [cited in paragraph 2 above] contained the following language:

> Teaching responsibilities are not limited to undergraduate students, nor to formal classroom hours. Faculty members who undertake significant tutorial or thesis supervision work with senior undergraduate students, or who participate in postgraduate programs, and who are actively engaged in thesis or dissertation supervision with Master's and Doctoral students, may routinely have their classroom teaching requirement reduced by one half course per annum. In other words, their formal "classroom teaching" assignment will be two full credits per academic year plus one half-credit for other "non-classroom" teaching. . . .

In the 2012-2014 Collective Agreement, the parties introduced a "Workload Plan" in Article 13.8 with the stated purpose of achieving "workloads for faculty and instructors, which balance fairly and appropriately each member's ability to engage in teaching, research and/or professional development, and service." This provision set up a "process" to "ensure that all Units establish a teaching workload of less than 2.5 credits for faculty members." Each Unit was to complete its "Plan" by January 2015. The provision did not impose a limit on workloads, but instead implemented a process designed to "work towards" the agreed target of "less than 2.5 credits for faculty members". The Plan was described by Dr. Malcolm Butler, the University's Chief Negotiator, as "aspirational".

4. When the parties began bargaining for the renewal of the 2012-2014 Collective Agreement, not all Departments had created their "plans" or achieved their 'aspirational' targets. As a result, one of the Association's goals in the 2014 bargaining was to achieve teaching load equity across the campus. The other goal was to achieve workload reductions. Accordingly, the Association proposed new language. The chronology of Association's proposals and the counter-proposals tabled by the University is as follows, with **bold type** indicating a proposed change and a ~~strike through~~ indicating language from the previous Collective Agreement or a rejected proposal.

> July 4th - Association proposal:
> 13.2(a):
> Subject to Article 13.4(b), within a normal workload, "normal teaching load" within a Faculty shall be defined by past practice in relation to the number of full-course equivalents taught per faculty member or as may be agreed to hereinafter by the parties. **In no case shall a faculty member be assigned more than 2.0 full-course equivalents per academic year.**
>
> 13.4(b)(i):
> " . . . Instructor employees shall not teach more than ~~four (4)~~ **three (3)** credits or the equivalent of one-and-one half (1.5) times the normal teaching load of faculty employees in the same unit or sub-unit, whichever is less, averaged over each consecutive twenty-four (24) month

period, and shall not teach more than the equivalent of one-half credit course in excess of 1.5 times the normal faculty employee's teaching workload in any academic year ending August 31."

July 7, 2014 - Employer Counter-proposal:
13.2(a):
Subject to Article 13.4(b), within a normal workload, "normal teaching load" within a Faculty shall be defined by past practice in relation to the number of full-course equivalents taught per faculty member or as may be agreed to hereinafter by the parties. ~~**In no case shall a faculty member be assigned more than 2.0 full course equivalents per academic year.**~~ **Each faculty member will be assigned a teaching workload of less than 2.5 credits.**

July 9 - Association Counter-proposal:
13.2(a):
Subject to Article 13.4(b), within a normal workload, "normal teaching load" within a Faculty shall be defined by past practice in relation to the number of full-course equivalents taught per faculty member or as may be agreed to hereinafter by the parties. ~~In no case shall a faculty member be assigned more than 2.0 full course equivalents per academic year.~~ Each faculty member will be assigned a teaching workload of less than ~~**2.5**~~ **2.25 credits**.

13.4(b)(i):
" . . . Instructor employees shall not teach more than ~~four (4)~~ ~~**three (3)**~~ **three and one half (3.5)** credits or the equivalent of one-and-one half (1.5) times the normal teaching load of faculty employees in the same unit or sub-unit, whichever is less, averaged over each consecutive twenty-four (24) month period, and shall not teach more than the equivalent of one-half credit course in excess of 1.5 times the normal faculty employee's teaching workload in any academic year ending August 31."

July 10 - Employer Counter-proposal
13.2(a):
Subject to Article 13.4(b), within a normal workload, "normal teaching load" within a Faculty shall be defined by past practice in relation to the number of full-course equivalents taught per faculty member or as may be agreed to hereinafter by the parties. ~~**In no case shall a faculty member be assigned more than 2.0 full course equivalents per academic year.**~~ **Each faculty member will be assigned a teaching workload of less than** ~~**2.5 2.25**~~ **2.5 credits.**

July 11 - Association Response:
13.2(a):
Subject to Article 13.4(b), within a normal workload, “normal teaching load” within a Faculty shall be defined by past practice in relation to the number of full-course equivalents taught per faculty member or as may be agreed to hereinafter by the parties. ~~**In no case shall a faculty member be assigned more than 2.0 full course equivalents per academic year.**~~ **Each faculty member will be assigned a teaching workload of less than ~~2.5 2.25~~ 2.5 credits.**

13.4(b)(i)
Instructor employees shall not teach more than ~~four (4)~~ **three and one half (3.5)** credits or the equivalent of one-and-one half (1.5) times the normal teaching load of faculty employees in the same unit or sub-unit, whichever is less, averaged over each consecutive twenty-four (24) month period, and shall not teach more than the equivalent of one-half credit course in excess of 1.5 times the normal faculty employee’s teaching workload in any academic year ending August 31.”

On July 27th, the language of the Association’s July 11th response was accepted and signed off by the parties, along with Minutes of Settlement resolving the entire Collective Agreement with a term of 2014-2017.

5. Dr. Richard Dancereau is an Assistant Professor[1] in the Department of Systems and Computer Engineering. He is also the Salary and Benefits Officer for the Association and has served on its bargaining team in the negotiations for the last three Collective Agreements. His evidence explained the Association’s perspective of the development of the language that was adopted into Article 13(2)(a) in the Summer of 2014. He described the exchange of proposals with the parties in separate rooms, being aided by a provincial conciliator. Dr. Dancereau said that the Association was “pleased” with the University’s acceptance of the concept of a “cap” on teaching load because there had been no such limit in previous contracts. The introduction of a “cap” in Article 13.2 meant the Association would achieve its goal of creating workload equity across the campus. However, the Association was apprehensive about what “less than 2.5” meant. Members of the Association’s bargaining team wanted a fixed cap of

[1] Full Professor effective July 1, 2015

"no more than" 2 credits. However, the team was reminded by Dr. Dancereau that some Faculties had credit courses that ran for only six weeks, instead of a full 12-week semester. Other Units had situations of 'co-teaching' where Faculty members shared responsibility for courses and split the course credit. In those two scenarios, Faculty members received a credit of 2.25 towards their teaching workload. In light of this, the Association was willing to move to a cap of 2.25 for Faculty members. Dr. Dancereau explained that this also "made sense" and allowed for more flexibility in the context of the Instructors averaging their credits over 24 months. That would enable Instructors to teach seven half-courses in one year and five half-courses in the next, giving them an average of six credits over the 24-month period. If the Association had continued to insist on a cap of 3 credits in one year, the averaging would not work. Therefore, the Association was willing to accept a cap of 3.5 in Article 13.4(b) based on the assumption that the workload figure in Article 13.2(a) would be the critical component to be applied to the equation that determined Instructors' workload. However, the Association sought assurance about what the meaning and implications were of the Employer's proposed language of "less than 2.5" for Article 13.2(a). Therefore, the Association asked the provincial conciliator to seek clarification from the Employer.

6. Under the Ontario *Labour Relations Act*, a conciliator is not a compellable witness. However, the Association sought to introduce evidence of what the conciliator said to them in caucus, not to establish what the Employer might have said to the conciliator, but to establish the "framework" of the Association's understanding during the later exchanges with the Employer at the bargaining table. Given that the University was going to introduce evidence of what was actually said to the Association by the University, the evidence of what the conciliator said to the Association in caucus was introduced.

7. Dr. Dancereau testified that the conciliator told the Association's bargaining team that "less than 2.5 credits" meant that Faculty members would

only be assigned a teaching load of 2.0 credits. Further, the Instructor Representative on the Association's team, Dr. Pum van Veldhoven, was told by the conciliator that she would never have to teach more than three credits in the future. After hearing this, the Association was still "wary", and asked to meet directly with the Employer for purposes of "clarification".

8. Accordingly, the two bargaining teams came together. The undisputed evidence about the ensuing discussion is that it began with the Association asking whether the Employer's rejection of the proposed 2.25 cap was because of quarter term or co-teaching situations. The University's Chief spokesperson, Dr. Butler, responded by explaining that the Employer would not agree to a fixed cap of 2.0 because of the difficulty in quantifying workload in light of additional non-classroom teaching responsibilities and the differences in Units across the campus. Further, Dr. Butler explained that the University did not want a Faculty member teaching 2.0 credits refusing to do supervision or other duties if the cap was "not more than 2.0". In other words, the University, as Employer, was concerned that a cap of 2.0 teaching credits would enable a Faculty member to insist on a course load of 1.5 credits plus "other duties" of 0.5 credits to meet the sum of 2.0 credits. The University made it clear to the Association that such a result would not be accepted. This is why the University insisted on a cap of "less than 2.5" credits. Subsequent correspondence from the Association demonstrated that this explanation was understood. The Association confirmed that the Employer had indicated to the Association that there was no intent of assigning more than 2.0 credit courses but that the University did not want Faculty members to refuse "other non-assigned course/teaching duties" on the basis this would bring them above 2.0 assigned course equivalents. The correspondence shows that the Association understood that this was why the Employer was insisting on the language of "less than 2.5".

9. In the face-to-face meeting on July 27th, the Association also asked if the Employer intended to "monkey with workload" by introducing values such as 0.3,

0.49 or 0.48 for course credits. Dr. Butler responded by saying that the University had no intention of doing that.

10. At this point it is important to note what was not discussed or addressed by the parties during this face-to-face meeting. The evidence is clear that there was no discussion about the notion of assigning a credit value of 0.4 for non-classroom teaching duties. Nor was there any discussion about the implications of the term "less that 2.5" on Instructors or the formula in Article 13.4(b)(i). Therefore, the parties never discussed together the mathematics of the equation that would be applied to Article 13.4(b)(i). Nor did the Association try to work out the equation on its own.

11. However, the evidence did reveal what the Association concluded as a result of this joint meeting and why it agreed to the University's proposal of a Faculty member's assigned "teaching workload of less than 2.5". From the Association's perspective, it knew that the Employer had only ever assigned a credit value of 1.0, 0.5 or 0.25 for classroom teaching and 0.5 for the non-classroom responsibilities. Therefore, the Association understood and/or assumed that the Employer would only use factors of 1.0, 0.5 or 0.25 to determine a Faculty member's "teaching workload". Further, the Association understood and/or assumed that "less than 2.5" meant that the Faculty members' classroom teaching would be limited to 2.0 credits or less, or 2.25 for the few who were involved in half-semester courses or co-teaching. As Dr. van Veldhoven said, "We felt reassured that 'less than 2.5' really meant 2 credits." As a result, for purposes of the application of the equation in Article 13.4(b)(i), the Association assumed and anticipated that Instructors would be assigned no more than 1.5 x 2.0 (Faculty teaching load) = 3.0 credits averaged over a 24-month period. On the basis of those assumptions, the Association agreed to the language that is now found in the Collective Agreement. However, from the Employer's perspective, the 'less than 2.5' cap for Faculty members multiplied by the 1.5 factor for Instructions yielded 'less than 3.75' credits, or the "not more

than 3.5", that being the cap agreed upon for Article 13.4(b). This amounted to a reduction from the 4 credits that had been in the previous Collective Agreement.

12. Once the language of 13.2 and 13.4(b)(i) had been agreed and other items were resolved, the negotiating teams signed off on all the terms of their Collective Agreement on July 27th. However, in the days leading up to ratification, the University became concerned about the way the workload issue was being presented to the Association membership with regard to Instructors. For example, the Association's "Summary" of the proposed contract advised its membership: "Instructor teaching load reduced to 3.0 credits (averaged over two years)." The Employer did not agree with this interpretation. This led to discussions between the parties and the realization that they had not dealt with the phasing in of the new formula and the fact that assignments were already in place for the 2014 - 2015 academic year. The parties then reached a Memorandum of Agreement on August 28, 2014, allowing for the phasing in of the new workload formula, in light of the fact that some units would not be operating in accordance with the new language of 13.2(a) of 13.4(b)(i). However, the Memorandum contained nothing that dealt with the parties' different understandings of the implications of the new workload provisions on Instructors. After ratification, further discussions and correspondence ensued because the Employer was concerned that the bargaining unit was not being given accurate information about the implications of the new language on Instructors' workloads. The University asked the Association to "take immediate steps to correct the record with your members." The Employer expressed concern that the Instructors had "false expectations" about workload and were expecting their teaching load to be reduced to 3.0 credits averaged over two years. The Employer's concern was that the Association was only giving their members information about teaching credits, not the full teaching load. Correspondence exchanged by the parties about this issue in September 2014 confirms that the parties had fundamentally different understandings of the implications of the new language that they had adopted.

13. Both Association witnesses testified that if it had ever been suggested to them that the Employer would assign a credit value of anything other than 1.0, 0.5 or 0.25 for non-classroom teaching duties, the Association would not have agreed to the Employer's language. The Association suggested that attributing 0.4 credit to "other teaching duties" negates the equity that the Association hoped to achieve with regard to workload across the campus. For example, Dr. Dancereau teaches in the Faculty of Engineering and Design. He said that he typically teaches three half-courses, giving him 3 x 0.5 = 1.5 credits, plus he has additional "teaching responsibilities" that have never been assigned a credit weighting, such as student advising and graduate supervision. He described this as the "norm" for his Unit. On the other hand, Dr. van Veldhoven is an Instructor in the Faculty of Arts and Social Sciences. She explained that the Faculty members in her Unit have had a "normal teaching load", calculated on the basis of 0.5 for non-classroom teaching plus 2 in-class credits, totaling 2.5. As an Instructor in the Faculty of Arts and Social Sciences, her normal teaching load has been 3.5 credits. This has been the norm in her Unit for years. The new Collective Agreement has generated no change in her workload, although she expected that the changes in language would result in her having to teach only 3 credits. She based that on the assumption that "less than 2.5" meant "2", so that Instructors' average workload would be "no more than 3.5 credits" or 2 x 1.5 = 3, *whichever is less*. Accordingly, she assumed a limit of 3 credits. Instead, as a result of the Guideline quoted in paragraph 3 above, the Faculty of Arts and Social Sciences is expecting Instructors to teach an average of 3.5 credits, by multiplying 1.5 x 2.4 [Faculty members' 2.0 credits + 0.4 for other teaching duties], bringing Instructors to "essentially" 3.5 credits, or no change in their teaching load.

14. The Employer does not accept the Association's contention that there has been a consistent practice on the campus with regard to the assignment of "weight" or credit value to non-classroom teaching duties. Some Departments or

Units do credit it; some do not. Some Units have had a practice of assigning a credit value of 0.5 to these factors. This is most apparent when workload reductions are put in place for individuals, with Faculty or Instructors being relieved of a half or a full credit of teaching responsibilities. Prior to the implementation of this Collective Agreement, the Employer had never assigned a "nominal credit value" of 0.4 for the out of classroom teaching responsibilities. In the Faculty of Arts and Science Workload Guideline in place from 2013-2014, Faculty members were expected to teach five half courses in each academic year. With the implementation of the new Collective Agreement, the Faculty's "Guideline" was amended to become a "Policy" mandating four half-courses in each academic year, plus a combination of non-classroom teaching duties that were assigned the "nominative credit value of 0.4". Since those Faculty members had been given 0.5 credit for those non-classroom duties in the past, the adoption of the cap of "less than 2.5" credits meant that with 2.0 credits for classes and 0.4 of "other teaching duties," their workload has not actually changed. The Guideline for Instructors' workloads had allowed for them to teach 3.7 credits, although they were only teaching 3.5 credits per academic year. In other Units or Departments, where the teaching load had been higher for Faculty and Instructors, the teaching workload was reduced by the adoption of the "cap" into Article 13.2.

The Submissions of the Parties

The Submissions of the Association

15. The Association submitted that Faculty of Arts and Social Sciences' Guideline and application of the new workload provisions violate the Collective Agreement with respect to the assignments to Instructors in the Faculty of Arts and Sciences for four reasons:

> i) The Collective Agreement does not provide for the weighting of out of classroom teaching;

ii) Deeming a weighting of 0.4 for out of classroom teaching is not consistent with the past practice in the Faculty of Arts and Social Sciences;
iii) Deeming a weighting of 0.4 violates the parties' Memorandum of Agreement dated August 28, 2014;
iv) In the alternative, if the out of classroom teaching can be weighted as 0.4 for Faculty employees, Instructors should also be credited for out of classroom teaching duties.

16. Further, or in the alternative, the Association asserted that the Employer is estopped from assigning a value of 0.4 for non-classroom teaching responsibilities to Faculty members, on the basis of past practice and/or representations made during bargaining. The Association also relied upon this evidence to resolve what was said to be ambiguity in the language of the Collective Agreement with regard to its application on Instructors' teaching load.

17. The Association's argument pointed out that the Collective Agreement differentiates the terms "normal workload" and "normal teaching load", defining the latter by past practice in Article 13.1. It was stressed that this Collective Agreement must be read to recognize that teaching duties, workload and the normal teaching load are not synonymous. Further, the Association placed weight on the use of the word "assigned" in Articles 13.2(a) and (b), arguing that only "teaching duties" are "assigned", in contrast to the other workload responsibilities. The Association then focused on Article 13.4(b)(i), stressing that it promises that Instructors will not teach more than 3.5 credits or 1½ times the normal "full teaching load" of Faculty in the same Unit, whichever is less. Further, the Association relied upon the 2008 Workload Guideline [cited above at paragraph 3] that valued non-classroom teaching as a 0.5 credit in the Faculty of Arts and Social Sciences. This was said to indicate the past practice in that Faculty with regard to crediting those duties and to support the notion that the University cannot now assign a "nominal value" of .4 for those responsibilities.

18. It was also stressed that the University has only ever assigned credit values at the levels of 1.0, 0.25, or 0.5 for any workload purposes. While it was

acknowledged that there has been no consistent practice of assigning a credit for out of classroom responsibilities, the Association submitted that assigning a credit of 0.4 for those duties to the Faculty members in the Faculty of Arts and Social Sciences amounts to a violation of the past practice. It was suggested that the reason the University wants to attribute the 0.4 credit for those duties is to "get around" the cap of "no more than 3.5" for the Instructors because of its impact on the equation in Article 13.4(b)(i).

19. In the alternative, the Association argued that if the Collective Agreement does allow for a credit weighting to be given to non-classroom duties, the Instructors should also be credited for their out of classroom work. This was said to follow from the application of Articles 13.4(a)(iv) and 15.3.

20. Further, or in the alternative, the Association argued that the Employer is estopped from assigning a credit of 0.4 for out of classroom activities as a result of the parties' face-to-face discussions about credit weighting and the meaning of "less than 2.5" on July 27th. It was stressed that the undisputed evidence established that the Association was seeking clarification and reassurances from the Employer and were told that the University had no intention of changing course credit values to figures such as .49 or .8 from the previous values of 1.0, 0.25 or 0.5. This was said to be "clear and cogent" evidence of a representation that there would be no alteration of the credit values that would be applied to the workload calculations. The Association argued that the Employer had a positive obligation to signal any intention of assigning a value 0.4 to non-classroom duties for the purposes of the application of the formula that applies to Instructors. The Association also drew upon the evidence of its witnesses who said that they would never have agreed to the Employer's proposed language if they had been made aware of how the University intended to implement it. It was stressed that the information received from the Employer led the Association to be confident that Instructors would not be assigned more than 3.0 credits, because they assumed if Faculty were being assigned two classroom credits, the formula for

Instructors would then simply be 1.5 x 2 = 3 for purposes of 13.4(b)(i). On the basis of this, the Association said that it detrimentally relied on the Employer's assurances, thereby creating a situation of estoppel. Accordingly, the Association contends that the Employer should not be able to administer the Collective Agreement in the way it is now doing.

21. Further, or in the alternative, the Association submitted that the language of the Collective Agreement is ambiguous with regard to whether non-classroom duties can be given a credit of other than 1.0, 0.25 or 0.5. It was said that the extrinsic evidence about what occurred in bargaining, as well as the past practice and documentary evidence, establish that if and when such activity was credited, it was only credited as 0.5, not the way the Employer is now doing it. This was said to compel an interpretation of the Collective Agreement that would not attribute a weighting of less than 0.5 for those duties. The Association presented the following cases to support these submissions: *Memorial University of Newfoundland and Memorial University of Newfoundland Faculty Association,* 1992 CarswellNfld 501, 27 C.L.A.S. 251 (Christie); *Canadian Broadcasting Corp. v. Canadian Media Guild, Unit II,* 2005 CarswellNat 4636, 84 C.L.A.S. 74 (Chapman); *Ellisdon Corp. v. Ontario Sheet Metal Workers' and Roofers Conference,* (2013) ONSC 5808, [2013] O.L.R.B. Rep. 1207, 117 O.R. (3d) 16.

22. By way of remedy, the Association seeks a declaration that the Workload Policy implemented by the Faculty of Arts and Social Sciences in October 2014 violated the Collective Agreement insofar as it:

> a) assigned a credit weighting for all Faculty out of classroom teaching duties, and/or
> b) assigned a credit weighting of 0.4 for all Faculty out of classroom teaching duties, and/or,
> c) expected Instructors to teach 3.5 credits.

Further, the Association asked that the University be required to revoke the 2014 Faculty of Arts and Social Sciences' Workload Policy in its current form. Finally, the Association asked that all Instructors who suffered a loss as a result of the

Employer's actions be "made whole," but to remit this last issue back to the parties and remain seized should the parties require further assistance.

The Submissions of the Employer

23. The University asserted that the parties embarked on the mutual aim of achieving workload equity during their 2014 collective bargaining based upon their longstanding and mutual understanding of the meaning of "teaching workload" for Faculty and Instructors in Articles 13.2(a) and 13.4. It was stressed that the parties have always understood that Article 13.4(b)(i) creates a mathematical formula of 1.5 x the "normal full teaching load of faculty employees in the same unit." That language has remained unchanged in the last five rounds of bargaining. The Employer stressed that the evidence disclosed that there was no discussion at the bargaining table about how the new cap of "less than 2.5" would impact on the calculation for Instructors. In contrast, the Employer emphasized that the evidence revealed that the parties did discuss the concept of crediting non-class teaching duties in terms of the University's stated concern that a Faculty member with 2.0 course credits might refuse other non-classroom duties if the cap were left at 2.0. Therefore, it was said that the Association should not have assumed that those other duties would not be included in the calculation of the Instructors' workload. Addressing the discussion that took place when the Association asked if the University intended to "monkey" with the credits by assigning a course credit with a numeric other than 1.0 or 0.5, it was stressed that the Employer answered accurately when it said that it had no such intention. However, it was also stressed that this discussion related to the course unit credits, not the "other" teaching duties that are the crux of the issue in this case.

24. Therefore, the Employer submitted that the evidence fails to establish the kind of clear representation that is required to found an estoppel. It was said that the Instructors in the Faculty of Arts and Social Sciences should not have

expected to have their workloads reduced because that Faculty had already achieved the capped faculty teaching workload of the equivalent of two full courses or class credits, plus "other" teaching duties. Further, it was stressed that the Association's evidence acknowledged that the normal teaching load in the Faculty of Arts and Social Sciences included 2.0 course credits and 0.5 non-classroom duties, totally 2.5 credits. Therefore, it was said that the Employer is operating consistently with its past practice of crediting non-classroom duties in the Faculty of Arts and Social Sciences and creating equity by attributing 0.4 credits across the campus for this work. It was suggested that the parties engaged in bargaining that resulted in them agreeing upon language that achieved their shared goal of workload equity, but that the two bargaining teams had different understandings or perceptions about its application or implications. Therefore, it was submitted that the evidence of bargaining history does not support the Association's claim of estoppel, nor does it reveal and/or resolve any ambiguity. Reliance was placed on Brown and Beatty's Canadian Labour Arbitration, Chap. 2:2211; *Grand Erie District School Board v. OSSTF, Local 23,* [2008] O.L.A.A. No. 44 (Knopf); and *DHL Express (Canada) Ltd. and C.A.W. Canada, Locs. 4215,144 &4278,* (2004) 124 L.A.C. (4th) 271 (Hamilton).

25. Putting aside the extrinsic evidence, the Employer argued that there has been no violation of the Collective Agreement. It was stressed that Article 13.4(b)(i) mandates that Instructors shall not teach more than 3.5 credits or the equivalent of 1.5 times the "normal full teaching load of faculty employees in the same unit", whichever is less. The Employer pointed out that the reduction to 3.5 from 4 "credits" in this round of bargaining did not alter how the Instructors' full teaching load is to be calculated. It simply reduced the limit. Therefore, it was submitted that if an Instructor is assigned 1.5 x the former Faculty of Arts and Social Sciences normal full teaching load of 2.5 (or the new 2.4), and thereby ends up with an assignment of 3.5 credits, there is no violation of Article 13.4(b)(i). While the Employer acknowledged that Instructors may have been expecting a reduction in workload as a result of these negotiations, it was

submitted that because the Faculty of Arts and Social Sciences was effectively already in compliance with the goal of having Faculty assigned a teaching workload of less than 2.5, the expectation of a reduction was unwarranted.

The Association's Reply Submissions

26. The Association argued that the "fatal flaw" in the Employer's argument is that it failed to explain how or why non-classroom teaching duties are now being assigned a value of 0.4. It was submitted that this valuation is contrary to the past practice for the Faculty of Arts and Social Sciences and that it is the past practice that defines the normal workload for each faculty. Further, in response to the Employer's contention that the discussion during direct bargaining regarding "monkeying around" with course credits was about in-class teaching only, the Association stressed that there were discussions about both classroom and non-classroom teaching, without either party drawing any distinctions. It was pointed out that when the Employer assured the Union that it would not change the way it had been attributing in-class credits, it did not reveal that it would change the way it would credit non-classroom duties and thereby failed to meet the duty of disclosure to the Association.

27. The Association also stressed that while the parties shared the goal of creating equitable workloads across campus, this can only be achieved if Instructors are accorded credit for their in-class and non-classroom teaching factors, in accordance with Article 13.4(a)(vi).

The Decision

To a large degree, the Association's grievance is based on what happened during collective bargaining and its contention that the Employer made representations that are inconsistent with the way it is now applying the new language in the Collective Agreement. This is the basis of the Association's estoppel argument. Therefore, it is helpful to begin by making reference to the

jurisprudence that deals with estoppel. The principles are well established. To begin, one party to a contract makes a clear representation, by words or conduct, concerning the interpretation or application of the contract and the other party relies upon the representation by doing something, or foregoing the opportunity to do something. If, as a consequence, that party would have acted otherwise but for the representation and its reliance was detrimental because the situation cannot be restored to what it was when the representation was made, the elements of estoppel have been established. For example, if representations are made during bargaining about the meaning to be applied to language and that is the basis that the other party relies upon when agreeing to that language, those representations can form the basis for an estoppel. However, since another principle of labour arbitration is that the wording of the Collective Agreement should be the complete code that governs the parties' relationship and because negotiations are often fraught with miscommunications and misunderstandings, arbitrators require "clear and cogent" evidence to prevent reliance on the language of a contract; see *Memorial University, supra,* at paras. 52-67, and the following quotation contained therein from Arbitrator Adams in *Sudbury District Roman Catholic School Separate School Board* (1985), 15 L.A.C. (3d) 284, at pp. 286-87:

> …… evidence establishing an estoppel in the form of a representation made during negotiations and inconsistent with the clear working of a collective agreement must be in the form of clear and cogent evidence. Labour relations statutes in all Canadian jurisdictions require that a collective agreement be in writing and it is simply too easy for parties in difficult negotiations, on the conclusion of the collective agreement, to allege that representations were made contrary to the document signed. Much is said in collective bargaining negotiations and because of the nature of that process, parties tend to hear what they wish to hear. Tactics and strategy underlie the communications between the parties as they attempt to persuade and cajole each other into agreement. But it is well understood that on the conclusion of a collective agreement, the parties' rights are to be found in the agreement and not in the *rationale* and arguments made during the negotiations preceding the document's execution…….
> ….. collective bargaining negotiations are conducted under considerable pressure and often, . . . agreements are arrived at under physically trying

> circumstances. In collective bargaining negotiations much is said and much can be misunderstood or misinterpreted. But what should be clear to parties involved in the process is that the language they have achieved in their agreements is the language on which they must generally rely.

However, where there is clear and cogent evidence that a promise was made in order to induce a party into foregoing a right or accepting certain language, that may form the basis of estoppel if all the other elements of the concept are established. Further, since the purpose of the application of the doctrine of estoppel is fairness, arbitrators who are conversant with the dynamics of bargaining have also said that when one party seeks clarification of the other party's proposal, it is incumbent on the party being asked for clarification to disclose its intentions or intended meaning; see *C.B.C. v. Media Guild, supra,* at paras. 64-65.

28. Applying these principles to the case at hand, we have undisputed evidence that the parties came together in negotiations on July 27, 2014, for the Association "to gain assurances" or clarification about what the Employer intended with its insistence on the language "a teaching workload of less than 2.5 credits." It is also clear from the evidence that the Association was distrustful, fearing that the Employer might "monkey with" the way course credits would be valued and asked specifically about this. The Employer replied that it had no intention of altering the value of course credits. The evidence also shows that there have been no changes from the past practice of crediting classroom teaching at either 1.0, 0.5 or 0.25, depending on whether the course is a full-year, one semester, half-semester or co-taught. The Association did not ask about how non-classroom credits would be valued. However, the subject did come up in a different context when the parties were discussing why the University would not agree to a hard cap of 2.0. In that part of their exchange, the Employer pointed out that it would not accept language that would allow a Faculty member to refuse non-classroom responsibilities on the basis that s/he had already been assigned 2.0 credits. Therefore, the Employer made it clear

that it expected Faculty members to accept assignments of 2.0 classroom credits plus the other teaching duties. Further, there had to be allowances for co-teaching and half-semester courses. That was why the University was insisting on the “less than 2.5” cap.

29. In hindsight it is very easy to say that it would have been preferable for the parties to have actually discussed how non-classroom duties would be credited for purposes of Faculty members’ workload in Article 13.2(a) and the implications this would have on Instructors’ workload in Article 13.4(b)(i). However, these negotiations were conducted by highly intelligent people who were very familiar with the language of those articles. They knew the meaning and difference between the terms “normal workload” and “teaching workload”, and that there were different practices within different Departments. Those terms were never in dispute. While there was no consistent practice across campus, it was known that teaching workload had always factored in the classroom and the non-classroom duties in 13.2(f) in the Faculty of Arts and Social Sciences and in some other Departments. Further, the figure used in Article 13.4(b)(i) for purposes of determining the Instructors’ workload equation had always included the “other” teaching duties in the number used for the Faculty members’ normal full teaching load. Therefore, it cannot be concluded that the Employer said anything that implied that the non-classroom teaching would not form part of what the Employer would factor into a Faculty member’s teaching workload for purposes of calculating the Instructors’ teaching load. To the contrary, the Employer made it clear to the Association that while there was no intention of assigning more than 2.0 teaching credit courses, the University did not want Faculty members to refuse “other non-assigned teaching duties” on the basis this would bring them above the “less than 2.5” credits. The undisputed evidence is that the Employer plainly signaled that it expected Faculty members to be assigned 2.0 course equivalents plus the other out of classroom teaching duties, even with the new cap of “less than 2.5”. That is why the University would not agree to the cap of 2 credits. It therefore follows that the Employer signaled the

intention of factoring the non-classroom components of teaching into the teaching workload calculation. Further, since that was already the practice in the Faculty of Arts and Social Sciences, it cannot be said that it was incumbent on the Employer to spell this out to the Association during bargaining. The parties knew that the other non-classroom duties had always been a factor in the calculation of the many Faculty members' teaching workloads and that this was the longstanding practice, particularly in the Faculty of Arts and Social Sciences. Accordingly, given this context, it cannot be concluded that there was an obligation on the Employer to point out that it would continue to factor Faculty non-classroom duties into the formula used to calculate Instructors' teaching load. On the flip side, there is no evidence to suggest that the Employer realized or could have anticipated from the face-to-face meeting that the Association was assuming that "less than 2.5" meant that no Faculty member would be assigned a workload of no more than two credits, inclusive of in-class and other duties. If that assumption had been made apparent, there might have been an opportunity to correct it, and a failure to do so might have established an estoppel. However, since that assumption did not come to light until much later, it was not addressed before the parties agreed on the language that we now find in their Collective Agreement.

30. The question then becomes whether the Employer made any representation, by words or silence, that would estop it from attributing a value of 0.4 to the "less formally scheduled teaching" or non-classroom activities. The evidence established that where those duties are credited, such as in the Faculty of Arts and Social Sciences, it has had a value of 0.5 in the past. The University did not say that it would now value this at 0.4 during bargaining or that there would be a change in the Faculty of Arts and Social Sciences. That is unfortunate given the problems and disappointed expectations that followed. The concept of 0.4 credit came as a complete surprise to the Association. However, it cannot be said that there was a positive obligation for the Employer to disclose the new value for non-classroom teaching, whether it was planned or

not. The case law does mandate that the "duty to disclose" comes into play in order to prevent a misrepresentation of the material facts from occurring, or when a party is aware that the other party has a different apprehension of the situation; see *Vancouver Police Board and Vancouver Police Union,* as cited in *DLR Express (Canada) Ltd. and C.A.W.*[2]*, supra,* at para. 100. In the case at hand, as the evidence made clear, the University was not aware that the Association assumed "less than 2.5" meant "2". Further, the Employer was clear that its insistence on its proposed language included the expectation that Faculty members would perform 2.0 assigned classroom duties plus non-class duties, for a total "teaching load of less than 2.5 credits." The only way to achieve that would be to attribute less than 0.5 to the non-classroom duties for that Faculty. While the Association accepted that language, it did not realize the implications of the mathematics. However, the mathematics dictates that result. The only way the Faculty of Arts and Social Sciences could assign 2.0 course credits and credit the "other" teaching duties to achieve a total of less than 2.5 credits would be to attribute something less than 0.5 to the non-classroom duties. The Association did not realize this at the time. However, with the benefit of hindsight, no other reasonable result could be projected.

31. Looked at from another perspective, if the Association's suggestion of only ever attributing 0.5 to non-classroom duties is accepted, it would mean that a Faculty member could only be assigned 2.0 in-classroom course credits and could refuse the "other" duties or insist on a course load of only 1.5 credits plus 0.5 other duties under the new language of "less than 2.5 credits". However, both those scenarios were specifically discussed at the joint bargaining session and were soundly rejected by the Employer. Therefore, the only way to factor the non-classroom "other" duties into the assigned teaching load in a Faculty where this was the practice was to give them a value of less than 0.5 to keep the expected faculty assigned teaching load at "less than 2.5 credits." In practical terms, that essentially left the Faculty of Arts and Science Instructors with the

[2] (1987), 32 L.A.C. (3d) 214 at p.231

same workload that had been in place before the Association achieved the cap of less than 2.5 for Faculty members. There had been an expectation of a reduced workload for Instructors because of the reduction of number of "teaching credits" in Article 13.4(b) from 4 to 3.5. However, the parties did not discuss the resulting application of the "less than 2.5" language on Instructors. Nor did the Association apply the "less than 2.5" factor to the formula in Article 13.4(b)(1). If that figure had been applied to Article 13.4(b)(i) to see the impact on Instructors, it would have been seen that <2.5 x 1.5 = <3.75, which is still greater than the 3 credit cap the Association thought/hoped it had achieved. No fault should be attributed to the Association because it operated on the understandable assumption that since the formula for Instructors' workload had remained unchanged, it would be applied in the same way as it had been in the past. Indeed it did. However, what the Association failed to realize was the necessary implication of the change in language for Faculty members on Instructors' workload. However, on a positive note, the new language resulted in the achievement of the Association's main goal of attaining equity across the campus.

32. For all these reasons, it cannot be concluded that there is clear and cogent evidence that the Employer made a representation or failed to say anything that would now estop it from attributing a weight of 0.4 to the non-classroom teaching duties in the Faculty of Arts and Sciences. This situation is very different from the set of facts in *C.B.C. and Canadian Media Guild, supra,* where it was found that the Guild could not "reasonably have anticipated" what the employer did after the language had been discussed. In the case at hand, this Employer gave the Association sufficient indication of its intentions, and the attribution of less than 0.5 credits for non-classroom teaching was the reasonable, if not the only logical, result of what had been discussed.

33. This takes us to the Association's argument that the extrinsic evidence should be relied upon to interpret and resolve what was said to be the ambiguous language in the Collective Agreement. The first question that an arbitrator should

technically ask is whether an ambiguity exists. However, we can "cut to the chase" without answering that question since the extrinsic evidence is of no help in revealing or resolving any ambiguity that might have been said to exist. This is because the purpose of extrinsic evidence is to "shed light on the situation so that the mutual intentions of the parties can be exposed or revealed"; see *Grand Erie District School Board and OS.S.T.F, supra,* at para. 19. However, the evidence in this case does not reveal any shared intention or understanding that benefits the Association's case. As set out above, it has long been recognized that caution must be exercised in relying on negotiating history to resolve an alleged ambiguity. This is because of the complex dynamics of bargaining, the "trade-offs" that take place and the fact that not all eventualities can ever be anticipated. Therefore, when negotiating history is being relied upon to interpret contractual language, arbitrators demand that the evidence establish that the parties were of a "single mind" with regard to the meaning and application of the language in dispute; see *DLR Express (Canada) Ltd. and C.A.W., supra,* at para. 97. However, the evidence in this case fails to support a conclusion that the parties achieved a mutual understanding with regard to the meaning or application of the changes to the workload language. To the contrary, as the evidence clearly demonstrated, each side left the bargaining table with completely different expectations and understandings. This was made abundantly clear from the evidence of the witnesses and the events and correspondence leading up to and after ratification of the Collective Agreement. The evidence demonstrated that the parties had not addressed how the new cap would be phased in and that the Employer disagreed with the Association telling the members of the bargaining unit that Instructors' workloads would be reduced to three credits. Attempts to resolve those differences yielded an agreement about phasing in, but left unresolved their different understandings about the application of the new language on Instructors. Therefore, as is too often the case with extrinsic evidence, it has revealed that there was an unfortunate lack of mutual understanding. Therefore, the evidence of negotiation history is of no

assistance to the Association in resolving the meaning of the language in its favour.

34. Further, the fundamental problem with the Association's case is that it is asking that the new cap of "less than 2.5 credits" in Article 13.2 be interpreted as meaning 2 credits. That interpretation essentially reads out the words "less than 2.5" and the concept of 3.5 credits being assigned to Instructors. "Less than 2.5" is a far different concept than 2. The Employer made this clear to the Association's bargaining team when Dr. Butler said that the University would not accept a cap of 2 because that would effectively allow a Faculty member to limit his/her course load to1.5 credits in order to take into account non-classroom duties. The Association understood and accepted that. Further, the Association was prepared to accept the figure of 3.5 in Article 13.4(b)(i) to allow for averaging so that Instructors could teach seven half-courses (3.5 credits) in one year and five half-courses (2.5 credits) in the next, yielding an average of 6 credits over two years. That is inconsistent with the notion that Instructors would never teach more than 3 credits. Accordingly, if there was any shared intention revealed by the evidence, it must be said that the language cannot be interpreted to mean that teaching load does not include non-classroom duties or that the parties had agreed that Instructors' teaching loads would be capped at 3 credits.

35. As a result, we are left with the language of the Collective Agreement itself. It must be analyzed to see if the Employer's interpretation of the new language complies with its terms. To understand the workload provisions, it is helpful to parse them out as follows:

> <u>Faculty:</u>
>
> - "normal workload" includes teaching, research/scholarly/creative activities, and service to the University; Article 13.1
>
> - "normal workload" is defined for each Faculty by past practice; Article 13.2(a)

- “the Dean assign teaching duties . . . consistent with the normal teaching load of the faculty and department in question”; Article 13.2(b)

- “normal teaching load” within a Faculty is defined by past practice in relation to the number of full-course equivalents per faculty member; Article 13.2(a)

- factors affecting the “teaching workload” include, but are not limited to, the items listed in Article 13.2(f)

- ‘teaching duties’ include, but are not limited to, advising students and perspective students, and conducting scheduled classes; Article 13.2(b)

- a faculty member will be assigned a “teaching workload of less than 2.5 credits”; Article 13.2(a)

<u>Instructors</u>

- “general workload” includes teaching responsibilities, professional development, assigned administrative tasks and the duties in the assigned job description; Article 13.4

- the provisions of Article 13.2(f) apply to Instructors; Article 13.4(vi)

- Instructor employees shall not teach
  - more than 3.5 credits
    OR
  - 1.5 x the “normal full teaching load of faculty employees in the same unit”

  whichever is less, averaged over each consecutive 24-month period
  AND
  shall not teach
  - more than 1 half-credit course in excess of 1.5 x “the normal faculty employees’ teaching workload” in any academic year; Article 13.4(b)

This exercise illustrates that the Collective Agreement use of the term “teaching workload” includes the scheduled classes, as well as the duties listed in 13.2(f), many of which relate to classroom instruction, but others that can be fairly characterized as “less formal teaching” or non-classroom teaching duties. Further, the Deans, Chairs/Directors “assign teaching duties” [13.20(b)] and must give consideration to the factors in 13.2(f) “affecting teaching workload”. Teaching duties include scheduled classes and other non-scheduled

responsibilities. Therefore, it must be accepted that in calculating the number that is to be attributed to the "normal full teaching load of faculty employees", both the scheduled classes and non-classroom duties can and should be factored into the final number. That is important for the operation of Article 13.4(b)(i). It means that the "full teaching load" becomes the multiplier used in the equation. Therefore an Instructor cannot be expected to teach more than 3.5 credits, which must mean course credits, or 1.5 times the "full faculty teaching load" for Faculty members in that unit, whichever is lesser. For an Instructor in the Faculty of Arts and Social Sciences, where the normal teaching workload has included a value of 2.0 for scheduled classes and 0.5 for other activities, if the new value of 2.4 is attributed to the "full teaching load," that creates an equation of 2.4 x 1.5 = 3.6. However, there is no evidence of an Instructor being asked to teach more than 3.5 credits. Further, there is nothing in the Collective Agreement that prevents the Employer from attributing a weight of .4 for non-classroom teaching duties.

36. Before concluding, there is one further aspect of the Association's case that must be addressed. The Association pointed out that Articles 13.4(a)(vi) and 15.3(xv) indicate that the non-classroom factors in 13.2(f) that affect teaching load for Faculty members should also be taken into consideration in the assignments of teaching workload for Instructors. No evidence was called by either party on this issue, and it received little focus in argument. However, the evidence that was received did indicate that the Faculty of Arts and Social Sciences does not include those non-classroom factors in the calculation of the Instructors' workload, although they may have been taken into consideration for purposes of relief from classroom duties. However, I must also note that Article 13.4(b) dictates how many credits an Instructor can be assigned to teach. In other words the Instructors' workload is capped at the number of credit courses that are assigned. In contrast, the cap in Article 13.1 speaks to Faculty members' "teaching workload", a concept that includes more than credit courses. The evidence before me simply indicates that the Faculty of Arts and Social

Sciences' Instructors are not being assigned more than 3.5 credits. That is what the Collective Agreement allows.

37. For all these reasons, the grievance must be dismissed.

Dated at Toronto this 11th day of June, 2015

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Paula Knopf - Arbitrator