

In the Matter of an Arbitration

Between:

UNIVERSITY OF PRINCE EDWARD ISLAND FACULTY ASSOCIATION

(the "Association")

and

UNIVERSITY OF PRINCE EDWARD ISLAND

(the "Employer" or the "University")

**Re: Association Grievance - FA-24-02-A
Grievance of Brian Murphy - FA-24-03-M**

A W A R D

Paula Knopf - Arbitrator

Appearances:

For the University: Murray Murphy, K.C.
Jacob Zelman, Counsel

For the Association: Jillian Houlihan, Counsel

At the Parties' request this case was presented by way of documentation and written submissions, filed up to October 11, 2024

This case concerns the rights of Sessional Instructors with three-year Recurring contract(s) to certain teaching assignments.

The Grievor is a Sessional Instructor in the McDougall Faculty of Business at the University of Prince Edward Island. At all material times, he held two three-year Recurring contracts. The contract relevant to this case is BUS 2410: Management Information Systems. In the 2024 Summer semester, the Faculty of Business offered two sections of BUS 2410: BUS 2410-01 and BUS 2410-02. The University assigned the first section of BUS 2410 to the Grievor. He was available to teach the second section of BUS 2410, but it was assigned to a different Sessional Instructor who did not hold a Recurring contract. The Association is alleging that a Sessional Instructor with a Recurring contract is entitled to be offered the course assignment before any other Sessional Instructor, even one with the Right of Recall to that course. Two grievances were filed: an individual grievance on behalf of the Grievor and an Association grievance seeking remedies for any other Sessional Instructor affected by the University's decisions on this issue.

The relevant provisions of the Collective Agreement are as follows, with some language highlighted because it was introduced in the last round of bargaining:

A2.4 The Parties agree that they shall exercise their respective rights under this Agreement fairly and reasonably, and in a manner consistent with the provisions of this Agreement.

A-10 MANAGEMENT RIGHTS

A10.1 Consistent with the Employer's rights and obligations in law, all the functions, rights, powers and authority which are not specifically abridged, delegated or modified by this Agreement are recognized by the Association as being retained by the Employer.

SECTION G-1 SESSIONAL INSTRUCTORS

G1.1 Applicability

The Parties recognize that, while Sessional Instructors are not Faculty Members as defined by this Agreement, nevertheless, they are an integral part of the delivery of the curriculum at the University. . . .

G1.2 Sessional Instructors

- a) A Sessional Instructor is a person who is not a Faculty Member and who has full or joint responsibility for teaching one (1) or more credit courses.
- b) Sessional Instructors teach fewer than nine (9) contact hours per semester or summer session. When a Member is asked to teach nine (9) or more contact hours per semester, the Member shall be offered a full-time term contract.

G1.3 Hiring Procedures for Sessional Instructors

- a) Any course offered by an academic unit which cannot be staffed by Faculty Members as part of the normal teaching load **or Sessional Instructors with three year Recurring contracts**, may be offered to Sessional Instructors **on a per course basis or to Faculty Members as overload**. The Department, through the Chair, will identify the need for Sessional Instructors or overload. The Chair will forward a written request for Sessional Instructors or overload together with supporting information, to the Dean for approval.
- b) Upon receipt of approval from the Dean, the Chair (or Dean in non-departmentalized Faculties) or Director or Coordinator of Interdisciplinary Academic Programs will initiate the hiring process in accordance with G1.3.
- c) If a member on the Sessional Roster of the academic unit has fulfilled the requirements for the Right of Recall (as specified in G1.7.2) for the course, and has not already been assigned one (1) course in the academic unit in the semester in question, the course shall be offered to the member and does not need to be advertised. If there are two or more such members with the Right of Recall, the course shall be offered to the most qualified member (as defined in G1.6). If they are equally qualified, the course shall be offered to the member with the greatest Seniority (as defined in G1.7.1).
- d) If no member not already assigned a course in the academic unit in the semester in question has the Right of Recall, the position shall be advertised for a period of not less than two (2) weeks either: in an advertisement indicating that the competition is open only to members of the Sessional Roster of the academic unit (in this case posting in the academic unit and on the UPEI website shall be

deemed sufficient); or in an advertisement stating that members of the Sessional Roster and fulltime and term contract Faculty Members of the academic unit will be given priority. In the latter case, the advertisement shall also appear in - 109 - local media. No offer of appointment shall be made before the application deadline.

- e) Any member of the Sessional Roster of the academic unit who applies for a position, meets the qualifications of academic credentials and teaching competence, and has not already been assigned one (1) credit course in the academic unit in the semester in question, shall be considered for the position at this stage. Among these, the most qualified applicant (as defined in G1.6) shall be assigned the course. If the applicants are equally qualified, the applicant with the most seniority shall be assigned the course. If one or more applicants have taught the course in the past, this may be considered above Seniority when assigning the course.
- f) Once all members of the Sessional Roster of the academic unit who have Right of Recall, or who applied for a position and met the qualifications of academic credentials and teaching competence, have been assigned one (1) course in the academic unit in the semester in question, members on the Sessional Roster of the academic unit may be assigned a second course, following the procedures in G1.3 c-e).
- g) If there are no members of the Sessional Roster of the academic unit who: have the Right of Recall or applied for the position; have met the qualifications; and have not already been assigned two (2) courses in the academic unit in the semester in question; the academic unit **may consider full-time and term contract Faculty Members available to teach as overload.**

If no full-time and term contract Faculty Members are available to teach as overload the academic unit may consider other applicants.

If the advertisement in G1.3 d) indicated the position was only open to members of the Sessional Roster of the academic unit, the position should be re-advertised for a period of not less than two (2) weeks as an open competition prior to consideration of new applicants. The advertisement should be posted in the academic unit and on the UPEI website, and appear in local media. No offer of appointment shall be made before the application deadline.

- h) In departmentalized Faculties, the Chair, in consultation with the department, shall recommend to the Dean the appointment of a Sessional Instructor arising from this process at either step c), e), f) or g). In other Faculties or Schools, the Dean shall determine the appointment of a Sessional Instructor arising from this process at either step c), e), f) or g).

Article G1.5 Recurring Appointments of Sessional Instructors

- a) After three (3) years of teaching service, having taught at least one course in each of those years, and in the presence of demonstrated, continuing instructional need, a Sessional Member may apply to the department Chair or Coordinator or Director of an Interdisciplinary Academic Program for a three-year Recurring contract to teach courses for which they already hold Right-of-Recall. If two or more equally qualified Members (as defined by G1.6) apply for a Recurring contract, the Member with more seniority shall be granted the contract. Recurring contracts shall not be construed to limit the ability of the Sessional Instructor to accept additional course assignments, up to the normal limits for a Sessional Instructor;
- b) In the event that the course is not available in a given year, the Sessional Instructor shall be offered an alternate course that they are qualified to teach in order to fulfill the Recurring contract. The Dean shall notify Human Resources of any such course assignment changes.
At the expiration of a Recurring contract and in the presence of demonstrated, continuing instructional need, the contract shall be renewed for an additional three (3) years, to be issued on or before July 1.
.....
- f) Sessional Instructors holding Recurring Appointment contract(s) shall be included on the Sessional Roster and their Seniority accumulated and their appointments are subject to the protocol outlined in G1.3 and G1.7. The provision in G1.3(c) requiring that a second course must first be offered to other Members of the Sessional Roster shall not apply when a Member holds two Recurring Appointment Contracts...

Article G1.7.2 Right of Recall

Where a Sessional Instructor has taught a course, or a course substantially equivalent to the course, at least three (3) times and where that Sessional Instructor has a demonstrated record of satisfactory teaching as measured by the criteria above, the Sessional Instructor shall be deemed to have Right of Recall for that course.

H1.9 Overload

H1.9.1 Faculty Members may be offered the opportunity to teach extra courses as overload, **subject to Articles D3.1 and G1.3, and to the assessment of qualifications to teach such courses by the Chair, or Dean in a non-departmentalized faculty.**

The Submissions of the Association

The Association bases its case principally on the new language in Article G1.3(a) that is said to prescribe that the University can only offer a course to a Sessional Instructor if the course cannot be staffed by Faculty Members as part of the normal teaching load or by a Sessional Instructor with three-year Recurring contracts. It was argued that in the situation that gave rise to this grievance, the University violated Article G1.3(a) by relying on Article G1.7. to prioritize a Sessional Instructor with the Right of Recall. The Association asserted that the new language in Article G1.3 equates Faculty Members to Sessional Instructors with Recurring contracts, giving them priority for course assignments over 'Sessional Instructors with Right of Recall'.

The Association stressed that the Grievor was available to teach the second section of BUS 2410 in the 2024 Summer semester. The Association's concern is that if the University's interpretation is accepted, a Sessional Instructor with a Recurring contract would not have priority for their course or would only be considered for an additional section of their course after it was offered to Sessional Instructors with the Right of Recall and all qualified Sessional Instructors on the Roster. The Association is concerned that if the University's interpretation is accepted, the Sessional Instructors with a Recurring contract would rarely, if ever, get assigned a second section of their course. This was said to be contrary to Article G.1.3(a) and G1.5 which were said to be designed to give priority to Sessional Instructors with Recurring contracts due to their longer teaching experience in a course, qualifications, and seniority.

In support of its arguments, the Association relied on the principles of contract interpretation set out in *Cape Breton University v Cape Breton University Faculty Association*, 2022 CanLII 87262 (NS LA) at pages 21 to 26; Prince Edward Island

Nurses' Union v Health Prince Edward Island, 2024 CanLII 10079 (PE LA) (Demont), citing Imperial Oil Strathcona Refinery, 2004 CanLII 94735 (AB GAA) and Brown and Beatty's Canadian Labour Law, §4.20. In particular, the Association asked that this arbitrator adopt the approach taken in University of Prince Edward Island Faculty Association and University of Prince Edward Island, 2009 CanLII 101185 (PE LA) (Bladon).

The Association submitted that because the Grievor had a Recurring contract to teach BUS 2410 and was available to teach the second section of BUS 2410 in the Summer 2024 semester, the section ought to have been awarded to him. The Association asked that the Grievor be made whole in terms of compensation, seniority and other losses that may have resulted from the Employer's breach. Further, the Association asked that any other member should also be made whole who may have been adversely affected by the University's similar application of the relevant provisions.

The Submissions of the University

The University described the evolution of Article G1.3, and asserted that the newly negotiated language was intended to alter the order of course assignments so "overload" course assignments to Faculty Members were only made after assignments were made to Faculty Members as part of their normal teaching load, to Sessional Instructors with three-year Recurring Contracts to the course being assigned, and to Sessional Instructors with a Right of Recall to the course being assigned. Article H1.9.1 of the Collective Agreement was also said to mirror this intention.

The University acknowledged the importance of Articles G1.3(a) and (c). However, it also suggested that the Collective Agreement provides no guidance as to whether one of these sub-Articles ought to be read to the exclusion of the others, or whether they ought to be read sequentially. Since Article G1.3(a) is not referenced elsewhere in the Collective Agreement, it was suggested that the meaning should be ascertained from where it is referenced in Article G1.5(f), in the specific context of Recurring Appointments of Sessional Instructors.

The University urged for the “modern” rules interpretation to be applied to this case, asking for the Collective Agreement to be read as a whole, applied in context, its words given their ordinary and grammatical meanings, to be read harmoniously with the scheme of the agreement, the Parties’ object and intentions honoured, and ensuring that the result will not lead to an absurdity. Support for these basic principles was cited from *C.E.P., Local 777 v. Imperial Oil Strathcona Refinery*, 2004 CarswellAlta 1855, [2004] A.G.A.A. No. 44 and David M Beatty, Donald J Brown & Adam Beatty, *Canadian Labour Arbitration*, 5th ed, (Toronto: Thomson Reuters Canada, 2006, loose-leaf); *Dufferin Peel Catholic District School Board and OECTA*, Re, 2012 CarswellOnt 14819, [2012] O.L.A.A. No. 575; *CBI Home Health Hamilton v Service Employees International Union*, Local 1 Canada, 2015 CanLII 35855 (ON LA) at para 17; *Ontario Public Service Employees Union v College Employer Council*, 2019 CanLII 81429 (ON LRB) at para 46.

The University submitted the effect of Article G1.5(f) is that Sessional Instructors with Recurring Contracts are to be included on the Sessional Roster and Article G1.3(c) requires that “a second course” (i.e. a further “course offered by an academic unit which cannot be staffed by Faculty Members as part of the normal teaching load” as referenced at Article G1.3(a)) “must first be offered to other Members of the Sessional Roster.” It was stressed that the express exception of this requirement is in circumstances when a “Member holds two Recurring Appointment Contracts.” The University contends that this language is designed to ensure a Sessional Instructor with “concurrent” Recurring Appointment Contracts is assigned courses over which they hold a Recurring Appointment Contract, over Sessional Instructors with a Right of Recall who would otherwise have priority to a course over which they hold a Right of Recall.

The University argued that the Grievor did not hold “concurrent” Recurring Appointment Contracts in relation to BUS 2410 during the Summer semester, only a single Recurring Appointment Contract pursuant to which he was already assigned BUS 2410-01.

The University argued that the Association should not be able to rely on the decision of *University of Prince Edward Island Faculty Association and University of Prince Edward*

Island, supra, as it was based on the language in effect in 2012 and therefore in advance of the current language of G1.3 and G1.5 which has been the subject of many refinements since the negotiation of Recurring Appointments.

On that premise, the University submitted that the “only reasonable interpretation” of Article G1.5(f) with Article G1.3(c) is that any course offered by an academic unit which cannot be staffed by Faculty Members as part of the normal teaching load (“beyond those which a Sessional Instructor holds a Recurring Contract to”) should first be offered to a Sessional Instructor with a Right of Recall to that specific course who has not already been assigned one course in the academic unit in the semester in question, except in circumstances where a Sessional Instructor holds concurrent Recurring Contract appointments to the specific course being assigned.

Since the Grievor was assigned BUS 2410-01 in accordance with his three-year Recurring Contract and was said to not hold two concurrent Recurring Appointment Contracts in relation to BUS 2410-01 and BUS 2410-02, the University asserts that it was required to assign BUS 2410-02 to the Sessional Instructor with the Right of Recall pursuant to Article G1.3(c) as he had not yet been assigned a course, and held a right of Right of Recall to BUS 2410-02. The University stressed that the purpose of Article G1.3 is not to provide a Sessional Instructor who holds a Recurring Contract in relation to a section of a course with a monopoly over all sections of a course.

The University also argued that the Association’s position would prevent a “harmonious interpretation” to Article G1.3(a) because it would imply that a single Recurring contract entitles a Sessional Instructor to every section of that course, in every semester, up to the limit of nine credit courses. The University is concerned that such an interpretation would give rise to anomalies with negative impacts on the Sessional Instructors, other Sessional Instructors with Recurring Contracts, as well as the smooth operations of the academic unit.

The University responded directly to the Association’s suggestion that the University’s interpretation would mean that a Sessional Instructor with a Recurring contract would rarely get assigned a second section of their course. It was said that Article G1.5(b)

prescribes that when the course is not available in a given year, a Sessional Instructor shall be offered an alternate course which they are qualified to teach. The University suggested that the Grievor's appointments amount to five Recurring Contracts for multiple sections, and multiple courses. This was said to ensure he is guaranteed five courses per year, even if the contracted courses are not all available.

In summary, the University submitted the assignment to Sessional Instructors should "strike a balance" by giving security and precedence to more senior Sessional Instructors while providing opportunities to those more recently hired. It was said that the Collective Agreement does this by mandating that those with Right of Recall get precedence over one course, but other members of the Sessional roster get an opportunity before others get a second course.

The University asked that both the individual's and the Association's Grievances be dismissed. In the alternative, it was submitted that any financial redress should be limited to the Grievor on the basis that there was insufficient evidence to justify a broader award of compensation and the language at issue in this case is new to the Parties' Collective Agreement.

Association's Reply Submissions

The Association responded to the University's submissions by suggesting that they are based on the erroneous assumption that the Grievor held five Recurring contracts for each section and each semester, when, in fact he was approved for, and granted two Recurring contracts, each for an entire year, one for BUS 2410 and one for BUS 4650. Neither contract was specific to a semester or a section. Accordingly, the Association adopted the University's description of the nature of the Grievor's status as being;

" . . . a Sessional Instructor who holds a three-year Recurring Contract in relation to BUS 2410 pursuant to Article G1.5 of the Collective Agreement."

The Association also refuted the University's suggestion that the Association's position implies a Sessional Instructor with a Recurring contract would be entitled to "every

section of that course, in every semester, up to the limit of less than nine course credits". The Association stressed that its position is simply that the effect of Article G1.3(a) is that the University cannot assign a section to a regular Sessional Instructor if there is a Sessional Instructor with a Recurring contract who can staff the course. The Association acknowledged the Collective Agreement is silent as to how sections should be assigned when there are multiple Sessional Instructors with Recurring contracts for the same course.

The Association further disputed the suggestion that it is asking for Recurring contracts to be issued for a single section of a course in a semester. The Association stressed its submissions are focused on the Recurring contracts issued for a course, that run for three academic years and are not limited by section or semester. For example, it was submitted that a Sessional Instructor who holds a Recurring contract to teach ENG 1010, would be entitled to teach at least one section of ENG 1010 every semester. If a second section was also available, the Association submitted that the Employer would have to assign that person a second section before offering the section to a Sessional Instructor without a Recurring contract.

The Decision

This is a contract interpretation case. An arbitrator's responsibility is to apply and interpret the collective agreement. An arbitrator does not have the right or the power to apply operational or even academic concerns to the specific language of a collective agreement.

The rules for contract interpretation are well established and are set out in the following citation, which I adopt:

The author Geoff R. Hall in *Canadian Contractual Interpretation Law*, 2nd ed. (Markham: LexisNexis Canada Inc., 2012), describes the search for contractual meaning as the balancing of, "a consideration and reconciliation of both the words used and the context of their use" at p.9 with the following illustrative commentary:

Words and their context, therefore, are the primary theme of the law of interpretation of contracts, and set the parameters for the interpretative exercise. An interpretation which strays too far from the words selected by the parties is not legitimate because it fails to give effect to the very means the parties invoked to define their legal obligations. An interpretation which strays too far from the context in which the parties used those words risks inaccuracy; even if an interpretation is literally correct, if the words are taken out of context, the meaning does not accurately correspond to what the parties were attempting to do. Interpretation therefore involves a search for meaning within the constraints of the words and their context. An ideal interpretation is one which accords with both.

See, CBI Home Health Hamilton v Service Employees International Union, Local 1 Canada, supra.

These principles of interpretation must now be applied to the facts of this case and the specific terms of the Collective Agreement that are applicable to the situation that gave rise to these grievances.

The first critical fact to note is the nature of the Grievor's appointment. The documentation filed and, indeed the University's submissions ultimately recognize what his status was. At the material time, the Grievor was a Sessional Instructor who held a "three-year Recurring Contract in relation to BUS 2410 pursuant to Article G1.5 of the Collective Agreement". He also held a second Recurring contract for BUS 4650. Each contract covered an entire academic year. His rights to teach any section(s) of any course depend directly on this status.

All Sessional Instructors can teach up to nine contact hours per semester or summer session. Each section of a course is typically equal to three contact hours per semester. As a result, Sessional Instructors can teach up to two courses, or up to two sections of a course at one time.

Section G contains specific provisions for Sessional Instructors. Since every word in a collective agreement must be given meaning, it cannot be ignored that Section G differentiates between the rights of some Sessional Instructors over others. "Sessional

Instructors with Recurring appointments” are dealt with differently than “Sessional Instructors with a Right of Recall”.

A ‘Sessional Instructor with Recurring Appointments’ is someone who has been appointed to that status pursuant to Article G1.5 after three years of teaching service, having taught at least one course in each of those years, and when there is a demonstrated and continuing need to teach courses for which they already hold a Right of Recall.

The ‘Right of Recall’ for a Sessional Instructor is “deemed” to arise under Article G.7.1 when a Sessional Instructor has taught a course, or a course substantially equivalent to the course, at least three (3) times and where that Sessional Instructor has a demonstrated record of satisfactory teaching as measured by the Parties’ established criteria.

Article G1.3(a) is clear. It contains new language that prescribes that the University can only offer a course to a Sessional Instructor if the course cannot be staffed by Faculty Members as part of the normal teaching load or by Sessional Instructors with three-year recurring contracts. For those with the status of a Sessional Instructor, this means that those with three-year Recurring contracts have priority over other Sessionals. That is the plain and ordinary meaning of Article G1.3(a).

The University suggests that Article G.1.3(a) is modified by G1.3(c) and G1.5(f). While the contract must be read as a whole, it would take clear language for these other two provisions to override or even modify the effect of Article G1.3(a). Articles G1.3(c) and G1.5(f) deal with the offering of an academic unit when it cannot be staffed by members of the Faculty as part of the normal teaching load or by Sessional Instructors with three-year teaching contracts. It is only then that the rights arise for other Sessional Instructors to teach an academic unit and triggers the rest of Article G1.3 to mandate the Department Chair to “identify the need for Sessional Instructors or overload”. At that point the Chair must forward a written request for the appointment of other Sessional

Instructors or overload to the Dean for approval. Once approval is given the hiring process is initiated in accordance with G1.3 (c-h). That process prescribes that the Rights of Recall under Article G.1.7 are respected. What is critical to note is that the rights of Sessional Instructors with three-year Recurring Contracts are identified in Article G1.3(a) as being distinct from the rights of Sessional Instructors generally or those with Rights of Recall. Therefore, the rights of the Sessional Instructors who do not hold Recurring contracts would not be triggered if the academic unit could be staffed by a Sessional Instructor with a three-year Recurring Contract. This conclusion is consistent with the reasoning in the decision between the Parties, *University of Prince Edward Island Faculty Association and University of Prince Edward Island, supra*. In that case, Arbitrator Bladon affirmed the sequential nature of rights under Article G1.3. I note and respect the fact that the language of Article G1.3 has evolved considerably since that decision was issued in 2009. However, the sequential nature of this provision has not changed, except for the elevation of the rights of those holding Recurring appointments, culminating in the current language set out in Article G1.3(a). To be clear, Arbitrator Blandon set out a sequence for each Department to follow:

36. The responsibility of the department in the selection of sessionals is articulated in Section G1:3:

1. Can the course be staffed by full-time faculty as part of their normal teaching load or overload?
2. If not, the course "shall" be offered to a sessional with right of recall found in Section G1.6.2 - who has not been assigned one course in the academic unit for the semester.
3. If not, these positions "shall" be advertised with notice of the priority to be given to members of the sessional roster – G1.6 1a).
4. Members of the sessional roster "shall" be considered providing they meet the "qualifications of academic credentials and teaching competence and not having been assigned one course in the academic unit for the semester in question." – G.13d).
5. If only one application for the position from a qualified candidate is received, that applicant shall be assigned the course.
6. If more than one application is received and none of the applicants has

taught the course "in the past", then the course "shall" be assigned to the applicant with the highest seniority – G1.3 d).

7. If more than one application is received and one or more of the applicants has taught the course, then prior teaching "may" be considered above seniority when assigning the course – G1.3 d).

8. The Chair of the Department "shall" recommend the applicant selected by the Department to the Dean – G1.3 g).

9. If the sessional, roster is exhausted in terms of the assignment of two courses for the semester, other applicants may be considered – G1.3 f).

While the Parties have amended Article G1 3 since the Blandon Award, the only relevant modification that affects the present case is their decision to equate the rights to a course for Sessional Instructors with three-year contracts to the rights of full-time Faculty members' normal teaching load. The rights to the course for Sessionals Instructors with the Right of Recall are only triggered after the rights of the Sessionals with recurrent contracts have been observed.

This leaves the question of the effect of Article G.5 on Article G.1. Article G1.5(a) states: "Recurring contracts shall not be construed to limit the ability of the Sessional Instructor to accept additional course assignments, up to the normal limits for a Sessional Instructor". G1.5(f) then says; "The provision in G1.3(c) requiring that a second course must first be offered to other Members of the Sessional Roster shall not apply when a Member holds two Recurring Appointment Contracts". As the University correctly stated, all these provisions must be read in harmony. They cannot contradict or override each other; and they do not. They allow for Sessional Instructors with Recurring Contracts to accept additional course assignments, up to the limits on contact hours prescribed in the Collective Agreement. Article G1.5(f) then stipulates that it is not a breach of Article G1.3(c) to grant two recurring contracts to a Sessional Instructor. Read together with Article G1.3(a), they simply mean that the University cannot assign a section of a course to a Sessional Instructor when a Sessional Instructor with a Recurring contract is available to teach the section or even a second section of the course. This is also consistent with the nature of a Recurring contract for a course that

runs for three academic years and every semester. That is the nature of the Recurring contract granted to the Grievor, that being to teach BUS 2410. Further, it is consistent with Article G1.5(f) which recognizes that Sessional Instructors can be granted two Recurring Appointment contracts.

Finally, the University seems to have based its decision to give the second section of the summer course to a Sessional with a Right of Recall to the course on the premise that Sessional Instructors with three-year Recurring Contracts can only be considered for an additional section of their course after it has been offered to Sessional Instructors with Right of Recall and all qualified Sessional Instructors on the Roster. Such an interpretation would essentially read out of the Collective Agreement the effect of the changes adopted in Article G.1.3(a) in the recent round of bargaining.

These conclusions do not lead to some of the situations of concern raised by the University. They do not dictate that a Sessional Instructor with a Recurring contract is entitled to every section of every course. They simply spell out the priority of those with Recurring contracts over other Sessional Instructors.

For all these reasons, the Grievances must be allowed.

I declare that:

- a) The University violated Article G.3(a) by failing to offer the Grievor the opportunity to teach a section of BUS 2410 in the Summer 2024 Semester;
- b) The Grievor is entitled to a remedy that takes into consideration any losses that may have arisen with respect to seniority, teaching history, rights of recall and compensation;
- c) The University is bound by the rulings in this Award and required to follow them in the application of the Collective Agreement in the future.

I decline to order any compensation for any other Faculty Association members. There is no evidence to support a broader award, no suggestion of wide-spread problems or bad faith. As the Parties extensive submissions indicated, the issue in this case was new and required the application of complex language. This Award binds the University for future appointments and closes the door to situations that were not brought forward on an individual basis.

Dated at Toronto this 7th day of November, 2024

A handwritten signature in black ink, appearing to read "Paula Knopf", written in a cursive style.

Paula Knopf - Arbitrator