

IN THE MATTER OF AN INTEREST ARBITRATION
(Pursuant to Article 12 of the Memorandum of Agreement
dated July 17, 2017)

BETWEEN:

The Ontario College of Art & Design University

and

The Ontario College of Art Faculty Association

Before: William Kaplan
Sole Arbitrator

Appearances

For the College: Jonathan Maier
Amanda Lawrence-Patel
Hicks Morley
Barristers & Solicitors

For the Association: Steven Barrett
Chris Donovan
Emily Denomme
Goldblatt Partners
Barristers & Solicitors

The matters in dispute proceeded to a number of days of mediation and then to interest arbitration on April 25 & 29, 2021.

Introduction

The Ontario College of Art & Design University (OCAD) is Canada's pre-eminent art and design university. The academic program is delivered to almost five thousand undergraduate and graduate students through the Faculty of Art, the Faculty of Design and the Faculty of Arts & Science. The Ontario College of Art & Design Faculty Association (Association) represents faculty (Tenured/Probationary, Continuing Appointments, Contractually Limited Term Appointments, Teaching-Intensive Stream Appointments, Sessional Instructors) as well as Permanent/Probationary Technicians, Permanent/Probationary Academic Counselors, Contract Academic Counselors and Contract Teaching Assistants. The parties have a long-standing relationship and normally resolve their collective bargaining disputes without resort to arbitral intervention.

The previous Memorandum of Agreement expired on June 30, 2020. A number of issues were resolved in mediation. Some matters in dispute, however, remained outstanding and they proceeded to a hearing held by Zoom on April 25 & 29, 2021.

Reasons for Decision

In determining these outstanding issues, careful consideration has been given to the well-accepted criteria that govern the adjudication of faculty agreements, most particularly replication: attempting to achieve in this award what the parties would have agreed to in free collective bargaining; reflected in large part by long-standing well-established norms. Attention to replication, and other interest arbitration criteria – including demonstrated need and gradualism – has informed this award as has the parties' commitment to decolonization, equity, diversity and inclusion; a shared goal that principally includes meaningfully addressing the under-representation of racialized and indigenous faculty and staff.

Careful attention has been paid to the report of the 2017 *Presidential Task Force on the Under-Representation of Racialized and Indigenous Faculty and Staff*; a report that both parties referred to and one that sets out as a foundational objective eliminating barriers to the recruitment and retention of indigenous and racialized faculty and staff. Notably, the *Task Force* did not just make recommendations but combined them into an action plan.

Recommendation 14 stated:

We recommend and encourage management and labour to work together to realize appropriate changes to collective agreements to realize these recommendations.

In its communications to its membership, the Association has gone regularly on record, as it did in these proceedings, acknowledging the importance of having faculty and academic staff demographics better align with the student population and the community more generally.

Notably, both OCAD and the Association advanced detailed and robust proposals to this effect.

Indeed, this is a commitment that is shared by OCAD and the Association: achieving real progress in making the university more inclusive and representative, and it has been underway for some time: for instance, the parties have collaboratively addressed these issues through targeted cluster hiring of indigenous and Black tenure-stream faculty. But, as both parties agreed, further and more muscular steps are necessary. And they are clearly a joint priority. Based on that, and in response to the unambiguous, specific, direct and categorical request of

the parties, these issues are fully addressed in this this award with the requested degree of granularity.

In addition, and inextricably related, job security for the most precarious members of this academic community is also addressed, especially sessional and Teaching Intensive Stream faculty. This is not a new issue; it has been on the agenda for successive bargaining rounds. At the same time, and as seen through an equity lens, it is important to ensure that in providing enhanced job security no new barriers to opportunities or benefits are inadvertently constructed.

Needless to say, the University's Flow Curricular Change Process has been studied. Flow anticipates significant and comprehensive multi-year restructuring given well-known infrastructural, spatial and financial challenges. Projections indicate substantial reductions in course sections leading to reduced employment opportunities for sessional faculty. Even so, it is quite clear, upon the most careful of examination of the data the parties provide – and many assumptions were contested – that there is considerable room, space in another

word, for equity hiring in the sessional ranks.

The sessional job security proposal that is awarded – and both parties presented prescriptive proposals on this exact issue – attempts to incorporate as much as possible the considerable common ground and to do so in a manner that acknowledges, and is sensitive to, collective bargaining and its realities, and therefore respectful of the interests of long-serving faculty members all the while ensuring that the parties can practically, realistically and expeditiously achieve their shared equity objectives by providing real and meaningful access opportunities for members of equity seeking groups to the largest number of OCAD course offerings, a situation that will continue even as Flow rolls out. The authorities – and both parties filed cases and academic articles on point – are fully aligned with this architecture and approach.

OCAD noted in its brief, “The use of these restricted cluster hiring processes generated very successful results.” Two points: First, the sessional job security award specifically provides for the continuation of

this initiative. And second, it also creates even more space for equity hiring through introduction of a limitation, a reduction in other words, on the number of courses that can be taught by a single sessional faculty member. On the one hand, precarity is being addressed; on the other, equity hiring initiatives are being facilitated. The award, therefore, reflects the shared goals of both parties as is reflected in their proposals.

On the Teaching Intensive Stream – it exists and has for many years – and it is beyond normative that where teaching streams have been agreed-upon by universities and faculty associations, some measure of job security, in due course, inevitably follows. The details of how that is to be best accomplished has been remitted to the parties.

A few final observations are in order. OCAD, like many post-secondary institutions, faces financial and other challenges, detailed and documented in the written submissions and referred to at the hearing, OCAD is also subject to Bill 124, *Protecting a Sustainable Public Sector for Future Generations Act*. This legislation limits to 1% the compensation increases that can be agreed to or awarded in each year

of the three-year moderation period. As is customary in cases of this kind, I remain seized to reopen compensation issues should outstanding constitutional challenges prove successful, or should Bill 124 be otherwise modified or repealed with retroactive effect, or for some other legally relevant reason.

In this regard, mention must be made of OCAD's submission that I only remain seized of this issue during the term of this collective agreement. This request is rejected. The fact of the matter is that a constitutional challenge has been mounted – it may or not be successful – but if it is, it may be determined that Association members were deprived in *this round* of their entitlement to free collective bargaining. In these circumstances, remaining seized to deal with any remedial issues that might arise from any finding is entirely appropriate. Putting over any remedy – should one be granted – to some other round would be a completely unfair leading, as it inevitably would, to an intermingling and conflating of historical and then current issues, to the obvious, inevitable and axiomatic detriment of the Association and its members, assuming for the sake of argument that constitutional rights are found to have been infringed.

The Memorandum of Agreement settled by this award shall consist of the un-amended provisions of the previous agreement, items agreed upon in bargaining/mediation, and the terms of this award. Any OCAD or Association proposal not directly dealt with is dismissed.

Award

Term

July 1, 2020 to June 30, 2023.

Wages

July 1, 2020: 1%

July 1, 2021: 1%

July 1, 2022: 1%

Remainder

The parties were agreed on the remainder amount. Allocation remitted to the parties to be determined as expeditiously as possible.

One further observation, the Graduate Student Stipend was eliminated as part of a bargain reached by the parties that significantly advanced the interests of Association members in the last collective bargaining round. It was integral to the bargain that was reached: *There were tradeoffs*. Given the to and fro of free collective bargaining that occurred at that time, it would be completely improper to award this amount in the context of these or any other proceedings. Only under a technical construction that ignores the deal that was reached could this amount be awarded. It would be a windfall, and the fact that Bill 124 has restrained collective bargaining – rightly or wrongly as will be determined by the courts – does not alter this fundamental fact.

Collective Agreement Amendments/Additions

Employment and Educational Equity

1.1.2 The Parties are committed to hiring and retaining diverse faculty

The Parties agree that OCAD University is institutionally committed to equity and to fostering diverse cultures and points of view in our community. The parties further agree that an active strategy to achieve representational diversity among OCAD University faculty is necessary and desirable.

9.1.1 The Parties are committed to addressing issues of Employment and Educational Equity, in order to eradicate barriers that prevent racialized and Indigenous peoples, people with disabilities, women, and other equity seeking and under-represented groups including LGBTTTQQI2SA, from participating fully as students or employees.

9.1.2 The Parties agree that the Employment and Educational Equity Committee (EEEC) shall be maintained for the duration of the Memorandum of Agreement to review the progress made to date with employment and educational equity and to develop recommendations to further advance issues of equity. In fulfilling its mandate, the EEEEC shall consult widely with the University community.

9.1.3 The EEEEC shall consist of:

9.1.3.1 Members of the under-represented groups as outlined in Article 9.1.1;

9.1.3.2 Representatives of OCADFA, OPSEU, and the OCAD U Student Union; and

9.1.3.3 Individual students, faculty, academic staff, and other OCAD U staff and managers.

Collection of Demographic Information

The parties will collaborate, through the EEEEC, or otherwise as mutually agreed, to capture recruitment, hiring, promotion and retention data, and have the functionality to compare workforce representation to census data, by faculty, program and/or department, and type of appointment.

Strategies for the Retention of Faculty from Equity Seeking Groups

To build a complete understanding of attrition among equity seeking groups, the Employer will request exit interviews of any faculty or staff member who identifies as being part of an equity-seeking group. Human Resources shall conduct these interviews and the member may have an OCADFA representative present. The results of such interviews will be shared with the EEEEC.

20.1.1 The primary responsibility of faculty is the pursuit, production and transfer of knowledge and understanding through an appropriate combination of Teaching & Teaching-Related Responsibilities, Professional Practice/Research, and Service. The workload of the faculty member at the University involves a synergized output and balanced contributions within the following three areas of engagement as assigned by the Dean of Faculty or designate in consultation with faculty and in consideration of individual faculty expertise and University needs. During this process the Dean of faculty shall consider the unique burden carried by faculty members from equity seeking groups in both the measurement and assignment of workload. The Employer will coordinate and implement culturally-relevant support and mentorship to faculty, including sessional faculty, on an on-going basis.

Developing, Implementing and Assessing Employment and Educational Equity Mechanisms

The Employer commits to providing appropriate administrative and financial resources (including training of hiring committee members in best practices in equitable hiring, and in preventing and addressing individual, institutional and systemic racism) in order to support the recruitment and retention of faculty and staff from equity seeking group. This includes adoption of an evidence-based approach together with consideration of the recommendations of the 2017 Presidential Task Force on the Under-Representation of Racialized and Indigenous Faculty and Staff and the Task Force on Indigenous Learning.

Hiring Processes – Equity, Diversity and Inclusion

Sessional Hiring Process:

23.3.2 The appointment process for Sessional faculty is conducted by the Associate Dean of Faculty, or designate. A list of Sessional vacancies is posted on the University's website, with further external advertising for at least 3 weeks. Such advertisements shall encourage applicants who identify as members of equity seeking groups to indicate so on their application and shall include OCAD University's statement on equity and diversity.

23.3.4 All applications received for Sessional faculty positions must be reviewed by the Sessional Faculty Appointment Committee. The Committee determines which applicants require interviews and the nature of such interviews. The Sessional Hiring Committee shall seek to interview the most diverse possible candidate pool.

23.3.6 The Committee makes a determination as to the most qualified candidate(s). When considering applications to sessional positions, the hiring committee shall consider an inclusive range of qualifications, where strength is measured in all possible dimensions relevant to an academic appointment, including equity, diversity and inclusion in addition to those specific to the assignment.

Teaching Intensive Stream Hiring Process

23.5.7 The Committee makes a determination as to the most qualified candidate(s). Should there be any concerns with respect to the decision or process followed, the Chair refers the matter back to the Committee for further discussion and deliberation. When considering applications to Teaching Intensive Stream positions, the hiring committee shall consider an inclusive range of qualifications, where strength is measured in all possible dimensions relevant to an academic appointment, including equity, diversity and inclusion together with those specific to the assignment.

CLTA Hiring Process

23.7.6 When considering applications to CLTA positions, the hiring committee shall consider an inclusive range of qualifications, where strength is measured in all possible dimensions relevant to an academic appointment, including equity, diversity and inclusion together with those specific to the assignment.

Continuing Hiring Process

23.9.7. When considering applications to Continuing positions, the hiring committee shall consider an inclusive range of qualifications, where strength is measured in all possible dimensions relevant to an academic appointment, including equity, diversity and inclusion together with those specific to the assignment.

Tenure Hiring Process

23.11.5 The Committee shortlists applicants, conducts interviews, and makes a determination as to the most qualified candidate(s), in accordance with criteria contained in the position description and following principles of diversity, equity and inclusion. In addition to interviews, the selection process may include meetings with faculty and students, public lectures and guest critiques.

Contract Academic Staff Hiring Process

34.3.6 When considering applications to contract academic staff positions, the hiring committee shall consider an inclusive range of qualifications, where strength is measured in all possible dimensions relevant to an academic appointment, including equity, diversity together with those specific to the assignment.

Permanent Academic Staff Hiring Process

34.7.5 When considering applications to academic staff positions, the hiring committee shall consider an inclusive range of qualifications, where strength is measured in all possible dimensions including equity, diversity and inclusion in addition to those specific to the assignment in together with those specific to the assignment.

Sessional Faculty – Right of Reappointment

The Right of Reappointment provided herein is subject to any agreement between the parties to engage in targeted, restricted or cluster sessional hiring of members of under-represented groups including indigenous and racialized peoples.

16.1.2.2 Have a maximum course assignment of four (4) Studio (half-credit courses or three (3) Liberal Arts & Sciences half credit courses....

16.1.2.3 Have no job security beyond the current contract, except for Sessional Faculty who have been awarded the Right of Reappointment to one or more courses in accordance with Article 16.1.6 and 23.3....

16.1.6 Sessional faculty may be awarded the Right of Reappointment to one or more course(s) as set out in this Article and may exercise that right as part of the Sessional hiring process in Article 23.3.1. Such Right of Reappointment shall not limit the University's Management Rights as outlined in article 7.1.1.3, 7.1.1.4 and 7.1.1.5.

16.1.6.1 Sessional faculty are eligible to apply for the Right of Reappointment for a course after having taught that course a minimum of four (4) times over a period of the past fifteen (15) terms. In Article 16.1.6.1, a "course" refers to a specific course or a renamed, renumbered or revised version of what is essentially the same course. If a Sessional faculty member teaches more than one section of the same course in a term, only one section in each term shall be counted toward the satisfaction of each of these requirements.

16.1.6.1.1 Upon written request by a Sessional faculty, the Dean or their designate may extend the fifteen (15) term period referred to in Article 16.1.6.1 by:

(a) the length of any leave set out in the *Employment Standards Act, 2000*; (b) the length of any teaching development opportunity which does not exceed twelve (12) months; or

(c) the length of time during which serious personal circumstances

beyond the Sessional faculty's control, including illness, injury or care-giving responsibilities, preclude them from accepting a teaching assignment, which will not normally exceed twelve (12) months.

16.1.6.2 Once a Sessional faculty member has taught a course three (3) times, the Sessional Faculty Appointments Committee shall subject the Sessional faculty member to a teaching review during their next appointment to that course (the "Fourth Course Appointment") or as soon as is practicable thereafter. The teaching review shall include any and all of the Sessional faculty member's prior performance evaluations.

16.1.6.2.1 If the Sessional Faculty Appointments Committee does not or cannot conduct this teaching review during the applicant's Fourth Course Appointment, or if the review is not complete by the application deadline, the applicant will be granted a Right of Reappointment on a conditional basis until the Sessional Faculty Appointments Committee has completed its review.

16.1.6.3 Applications for Right of Reappointment for the following Academic year are submitted by no later than October 1. The Dean of Faculty (or designate) will make every effort to notify candidates no later than March 31 of the results of their application for the Right of Reappointment. An application for the Right of Reappointment will identify the relevant course(s) for which the Right of Reappointment is being sought and will include course syllabi, an up-to-date curriculum vitae (CV), and the results of the teaching review, if completed, as conducted under 16.1.6.2. Applicants may include other material relevant to their Teaching & Teaching-Related Responsibilities and quality of teaching.

16.1.6.4 Applications for the Right of Reappointment are submitted to the relevant Associate Dean of Faculty, for review by the Sessional Faculty Appointments Committee, as defined in Article 23.3.3. The Right of

Reappointment shall be awarded to an applicant that demonstrates to the Sessional Faculty Appointments Committee that they fully meet expectations for Teaching & Teaching-Related Responsibilities in Article 20.2.1 with regard to the course(s) for which the Right of Reappointment is sought. Otherwise, the application will be

unsuccessful and any conditional Right of Reappointment granted pursuant to Article 16.1.6.2 shall cease.

16.1.6.5 Sessional faculty who are unsuccessful in applying for the Right of Reappointment may re-apply for a Right of Reappointment after a minimum of two (2) consecutive Academic Employment Years since their last application.

...

23.3 Hiring of Sessional Faculty

23.3.1 Current Sessional faculty who seek a teaching assignment for the following Academic Year must indicate their interest in writing to the relevant Associate Dean of Faculty no later than February 1. The Associate Dean of Faculty, in consultation with the Program Chair or designate, shall review such current Sessional faculty for reappointment and shall forward such recommendations to the Dean of Faculty for approval.

23.3.1.1 After having indicated their interest in reappointment in accordance with Article 23.3.1, a Sessional faculty member with the Right of Reappointment shall have the right to accept reappointment to the course(s), for which they have the Right of Reappointment, and will have seven (7) calendar days from the date they receive their offer of a reappointment contract to exercise that right.

23.3.1.2 Where there are multiple sections of a course in the same term, a Sessional faculty member with the Right of Reappointment may exercise this right for a maximum of one section of that course within the term.

23.3.1.3 Where the number of Sessional faculty members with a Right of Reappointment for the same course exceeds the number of sections of that course in a term, the Sessional faculty member(s) with a Right of Reappointment shall be selected in the order in which they were awarded their Right of Reappointment for the course. Where at least two such Sessional faculty members were awarded their respective Rights of Reappointment in the same academic year, they shall be selected in the order in which they first commenced employment as a Sessional faculty member at the University.

23.3.1.4 The University shall maintain a roster of Sessional faculty members, which shall include the following information:

23.3.1.4.1 a record of all courses taught by each Sessional faculty member; and

23.3.1.4.2 a record of the course(s) for which a Sessional faculty member has been awarded a Right of Reappointment, if any, and when each such Right of Reappointment was awarded and used.

23.3.1.4.3 a record of any performance evaluations.

23.3.1.5 A Sessional faculty member's Right of Reappointment shall be terminated only in the following circumstances:

23.3.1.5.1 the Sessional faculty member removes their name from the University's roster of sessional faculty;

23.3.1.5.2 the Sessional faculty member does not hold a Sessional faculty appointment for a period of twenty-four (24) consecutive months, excluding any time spent on an authorized leave;

23.3.1.5.3 the Sessional faculty member fails to exercise their Right of Reappointment for a period of twenty-four (24) consecutive months, excluding any time spent on an authorized leave; or

23.3.1.5.4 The Sessional faculty member declines to participate in a teaching review;

23.3.1.5.5 The Sessional faculty member receives an evaluation where they fail to fully meet expectations for the course in question with regard to Teaching & Teaching-Related Responsibilities.

Teaching Intensive Stream

16.2.2.3.1 Where a Teaching Intensive Stream faculty member receives a third contract renewal, the third contract shall have no end date.

Remit to parties: criteria/process for contract review/renewal transitional provisions including minimum number of years of service given that contracts may be for 3 to 5 years/effective dates/preconditions for granting permanent status.

Conclusion

At the request of the parties, I remain seized with respect to the implementation of my award.

DATED at Toronto this 7th day of May 2021.

“William Kaplan”

William Kaplan, Sole Arbitrator