

To: Paul Stolee (Chair, Faculty Grievance Committee), Public Health Sciences, UW
Roland Hall, Biology, UW
Kirsten Morris, Applied Mathematics, UW

Cc: James W.E. Rush, Vice President, Academic and Provost, UW
Mark Giesbrecht, Dean, Faculty of Mathematics, UW
Adrienne Dwyer, Tribunal Clerk
Alice Raynard, Associate University Secretary
David Porreca, President-Elect, FAUW
Roydon Fraser, Academic Freedom and Tenure Committee, FAUW

Re: Reply to your “Tribunal Decision Regarding the Grievances of Edward R. Vrscay vs. University of Waterloo” signed on May 30, 2023

Date: June 8, 2023

Respected Members of the Tribunal:

Let me first acknowledge the great amount of time and effort invested by each of you during this extremely lengthy arbitration process. In retrospect, it appears that the formulation of the Rules and Procedure for this process may have consumed a significant portion of your investments. That being said, it is unfortunate that it took so long for both the Provost and the FAUW Executive to recognize the need to commence all necessary preparations to process the grievances that were being filed by a number of “noncompliant” faculty members (including myself), starting in early January 2022. These preparations, of course, included the filling of vacancies in the Faculty Grievance Committee as well as the formulation of Rules and Procedure.

You may well be wondering why I would be writing a reply since, as you have written at the end of your Decision, “the Tribunal’s decision is final and binding on both parties,” as per Section 9, “Grievance and Arbitration” of the Memorandum of Agreement. Furthermore, there is no mechanism in the M of A to appeal your decision, so all appears to be said and done. The purpose of this letter, however, is to inform the Tribunal that its Decision must be deemed as invalid, for reasons to be provided below. As such, I am requesting that (i) the Tribunal withdraw its Decision and (ii) an entirely new Tribunal (i.e., a Tribunal composed of three new members) be appointed to arbitrate my two grievances. Since we may now be sailing in “completely uncharted waters”, I have sent copies of this letter to David Porreca, President-Elect, FAUW and Roydon Fraser, Academic Freedom and Tenure Committee, FAUW.

There does exist, unfortunately, the possibility that this dispute cannot be settled within UW. For this reason, I shall also be discussing this matter with a lawyer who specializes in employment law.

My requests in (i) and (ii) are based primarily on a number of statements in the Tribunal’s Decision which reveal a blatant disregard for impartiality and independence, resulting in significant bias towards the University and against the Grievor. During the course of the grievance process, the Grievor pointed out actions by the University which he deemed to be unacceptable. The University either refused to provide adequate explanations to justify these actions or simply brushed them aside. In other words, it

did not deal with the Grievor's complaints. In its Decision, however, the Tribunal provides possible "explanations" of the University's actions in an effort to justify them. It was certainly not the business of the Tribunal to step in and act on behalf of the University. Such unacceptable behaviour, which violates "due process", warrants disqualification of the Tribunal and its Decision.

The first example is to be found in the top paragraph on Page 5 where Tribunal attempts to explain the University's use of the term "mandate" as opposed to "policy", viz.,

At the University of Waterloo, policies typically refer to one of the "capital P" Policies (e.g., Policy 33), which are required to follow a defined process before they can become adopted. Thus, the term 'Policy' was not feasible during the rapidly evolving crisis-situation of the pandemic during the summer and fall of 2021.

My response: **It is NOT the duty of the Tribunal to try to "explain" any of the University's actions. It was the duty of the University to provide any such explanation, which it never did – in any of its communications to the Tribunal! Why is the Tribunal attempting to act on behalf of the University? And why should one even believe any "explanations" offered by the Tribunal?**

This example should itself be sufficient to warrant a disqualification of the Tribunal. But let us, in any case, continue our analysis to show that the Tribunal's "explanation" is not only weak but without merit. I draw your attention to the following webpage from the Tribunal Chair's own School of Public Health Sciences, the heading of which is "Academic policies and guidelines":

<https://uwaterloo.ca/public-health-sciences/current-undergraduate-students/enrollment-policies-and-guidelines/academic-policies-and-guidelines>

On this webpage are to be found terms such as "final exams policies", "Petitions Policy", "Transfer credit policy". Some of these apply to "capital P" Policies of the University of Waterloo. Others do not. One can find similar appearances of "policy" on other UW webpages. This should be sufficient to suggest that the above "explanation" provided by the Tribunal has little or no merit. But there is more.

Would the University, or perhaps the Tribunal, suggest that we replace the word "Policy" that appears in the phrase "Tri-Council Policy"? Of course not – it is an important word that was used by the Tri-Council itself. The Tri-Council obviously wanted to make it clear that this was a "Policy" and not a "Proposal".

Now note that the word "policy" is employed in the Instructions issued by the Office of the Chief Medical Officer of Ontario (OCMOH), as quoted below,

Every Covered Organization (as defined below) must establish a COVID-19 vaccination policy by no later than September 7, 2021 and implement it by no later than September 7, 2021.

In fact, the term "vaccination policy" appears five times in the Instructions issued by the OCMOH!

Clearly, the word "policy" is a very important term in these Instructions. In fact, during a panel discussion entitled, "COVID at 1000 Days", hosted by the School of Policy Studies at Queen's University on March 7, 2023, Dr. Kieran Moore, the CMOH, said the following,

From the government's vantage point, when we asked, we asked for a vaccine policy. That policy, if, should have been to the point that if you don't get vaccinated, they offer, whatever the policy was, they offer an alternate to the individual. So, if you couldn't, if the school didn't want you to come to the classroom at a university of college, then you would be allowed virtual. So, so, in our vantage point, we,

we wanted it to, to, to be a policy framework rather than a mandate. And that we did not have a mandate in Ontario, from this government's vantage point.

These are the exact words of Dr. Moore's response to a question from an audience member. You can watch and hear Dr. Moore's words directly at the following link, start time 1:06:01, end time 1:06:39,

<https://www.youtube.com/watch?v=czEKMSUDNr8&t=3961s>

What could be more clear about the intentions of the OMCOH than the phrases, "we asked for a vaccine policy" and "rather than a mandate"? Why, then, would the University then use an alternate word, i.e., "mandate", in its communications to "noncompliant" UW employees? This is, of course, the question asked by this Grievor several times throughout the grievance process – a question which was never answered by the University, but which the Tribunal has tried to answer in its Decision which, of course, is unacceptable.

What makes matters worse, however, is that the Tribunal does not stop here in its "meddling". Perhaps realizing the weakness of its "explanation" quoted earlier, it continues as follows,

*The University likely used the term 'mandate' as a term to communicate a vaccination requirement drawn up in response to the instructions issued by the OMCOH, while avoiding the term 'Policy' which has specific meaning at the University. The Tribunal noted the lack of clarity in the wording of "policy" vs. "mandate", however decided that **this did not affect communication at the time of concern and was not significant.** (Boldface added by the writer of this letter.)*

Once again, the Tribunal has absolutely no business in trying to provide a reason – admittedly guessing one here ("likely") – for the University's use of the term "mandate". An outsider should clearly see the egregious nature of the Tribunal's action: **It is as if the judge of a court case takes the liberty to provide testimony – correction, a conjecture – on behalf of the prosecution and then judges the case on the basis of the evidence – correction, conjecture – that (insert appropriate pronoun) provided!** Clearly, the evidence – correction, conjecture – is not the only thing that should be thrown out of court.

The severity of the matter does not stop here, however. By writing what is presented in bold above, with particular use of the phrase "was not significant," the Tribunal is essentially stating that it was acceptable for the UW administration to repeatedly communicate the following false statement in its letters to those deemed to be "noncompliant" to the "Requirement":

The University was required by statute to adopt a COVID-19 vaccination mandate.

As you will recall, I pointed out that this statement was **false** in my Grievance No. 2 and repeated this claim in the two subsequent documents that I submitted to the Tribunal. (Clearly, Dr. Kieran Moore, CMOH, has confirmed my claim.) As I tried to emphasize in the Summary of my Response to the University's Written Submissions (Page 7), I considered the repeated communication of falsehoods to be one of several examples of serious, unethical behaviour of the UW administration which provided the basis of my grievances. Furthermore, as I wrote in the Summary (Page 8, Point No. 3), "What makes matters even worse is that the University considers this propagation of falsehoods to be "largely irrelevant to the key issues in dispute" (Paragraph 52 of its Submissions). **Both the University and the Tribunal seem to consider the propagation of falsehoods as being unimportant. This is an extremely serious matter. If the Tribunal does not understand the fundamental difference between "vaccination**

policy” and “vaccination mandate”, or is unwilling to acknowledge any difference or the enormous implications of this difference, then it is not qualified to arbitrate these grievances.

Let us finally move to Point No. 3 on Page 7 of the Tribunal’s Decision:

On the “false statement” that the “University was required by statute to adopt a COVID-19 vaccination mandate”: when the University adopted its COVID-19 Vaccination Policy, the Tribunal finds the University’s decision to be consistent with the Instructions and, as noted above, that the University did take reasonable precautions to protect its employees and students.

This is a truly remarkable statement, indeed. Here, the Tribunal deals with the issue of repeated communication of falsehoods by completely denying their existence! **The Tribunal is now employing the same tactics employed by the UW Administration in the various documents that it submitted to the Tribunal, namely deception.** Once again, there is only one solution: disqualification of the Tribunal and its Decision.

Respected members of the Tribunal: A lie is a lie is a lie, period. Just because the UW administration, the FAUW Executive and, indeed, the Tribunal itself have refused to see it as a lie, and just because the majority of the UW community – faculty, staff and students – were willing to tolerate such a lie does not negate its existence, nor does it make it a “non-lie”. To deny the significance (Tribunal) or relevance (University) of a lie does not diminish its evil. Such denial is, among other things, an insult to the minority of UW community members – the noncompliant “lepers” – who saw the lie for what it was and who, for a number of valid reasons, refused to be vaccinated by coercion. An environment in which a lie is not recognized as a lie is necessarily “poisoned” since it discriminates against those who see the lie. An institution that supports such an environment has forfeited its right to have a motto such as *Concordia cum Veritate*.

Indeed, the Tribunal attempts to deal with the issue of a “poisoned environment” at UW on Page 6 of its Decision, where the following is stated,

The Tribunal did not find the University had created a Poisoned Environment. The Grievor provided no evidence that would have supported that allegation.

Dear members of the Tribunal, you yourselves provide some of the “missing evidence” in your very next paragraph,

*The Grievor argued further that the University was unresponsive to suggested options and concerns, such as the possibility of teaching online, and questions about the status of his NSERC grant, and saw a lack of respect in that his letters were not acknowledged. **In the view of the Tribunal, the University, as an employer, could have, but was not required to, acquiesce, or respond to each of the Grievor’s requests or suggestions.*** (Boldface added by writer of this letter.)

(Let me first point out that the above paragraph fails to mention the most important point of concern of this Grievor, namely, how his graduate students would be affected, e.g., financial support, supervision. I wrote much about this in my Grievances as well as subsequent documents.) Has it been forgotten, dear

members of the Tribunal, that we are talking about a University and not a factory or a corporation? Or has the distinction been lost? Evidently it has: Your statement in bold indicates that you refuse to consider the University as anything else but an employer. Let us recall what I wrote in my Response to UW's Written Decision (Page 5),

*Such a statement would be expected from the Manager or the CEO of a corporation but **not** from a senior administrator of a university. The arrogance of this statement and the neglect of academic ethics are astounding.*

It is indeed a sad state of affairs that the above sentences apply to the Tribunal's statement in bold, where "senior administrator" is to be replaced with "(faculty) members of a Faculty Grievance Committee". In fact, given its importance the revised statement needs to be presented explicitly for the benefit of the reader,

Such a statement would be expected from the Manager or the CEO of a corporation but not from (faculty) members of a Faculty Grievance Committee of a university. The arrogance of this statement and the neglect of academic ethics are astounding.

Furthermore, you write the following a little earlier in your Poisoned Environment paragraph,

The Tribunal considers that the situation also became confrontational because of the Grievor's position and that the Grievor could be seen as on the verge of harassing the Dean. The Grievor himself made veiled threats to the Dean of going to the media, threatening lawsuits, for instance in emails to the Dean, and of talking to his students.

It will undoubtedly be of great concern to future Grievors – especially those judged as "noncompliant" to the "Requirement" or some other questionable "small-P policy" adopted by the UW administration in the future – to know that Tribunals judging their cases may find it acceptable for the Employer, i.e., the University, to exercise its "rights" but not the other way around, as has been clearly demonstrated in my case. (How can "talking to his students" be viewed as a veiled threat or harassment? Please read my original e-mail to the Dean again.)

Let me finally address the following comment in Point No. 4, Page 7,

The Tribunal rejected the Grievor's assertion that his being "non-non-compliant" equated his being compliant.

We now have on record that both the Respondent (Paragraph 55 of its Written Decision) and the Tribunal reject basic logic. (Based on our earlier discussions, would one have expected otherwise?) Once again, the reader is referred to the excellent post by Professor J. Turri, Canada Research Chair in Philosophy and Cognitive Science and Director of the Philosophical Science Lab at UW,

<https://mandates.substack.com/p/the-university-of-waterloo-keeps>

There are a number of other serious points of concern in the Tribunal's Decision but they do not need to be discussed here. A more detailed analysis of its Decision will appear elsewhere.

In summary, a clear and obvious case for the dismissal of the Tribunal and its Decision has been presented in this letter. As such, I trust that the Tribunal, in consultation with the FAUW if necessary, will withdraw its Decision and that a new Tribunal (acceptable to both Grievor and University, of course) be appointed to arbitrate my two grievances. Should the Tribunal disagree with my request, however, then it should not simply attempt to hide behind Article 9.6.10 of the Memorandum of Agreement, i.e., “The decision shall be binding on the Grievor and the University.” Indeed, the Tribunal can, in no way, be defended by the M of A since its actions, as I have discussed in great length, have disqualified it to be considered as a valid arbitrator of these grievances. Let us hope that the Tribunal will at least agree to a next step in the process, such as an independent judgment of its Decision document by an External Arbitrator. Of course, this represents even deeper “uncharted waters” since no such provision is discussed in the Memorandum of Agreement. I trust that both the President and the AF&T Committee of the FAUW would play an important leadership role here.

It should also be clear that the Provost, as Respondent for the University, cannot have any say or influence in this matter – any such involvement on his part would represent a conflict of interest. For example, the Tribunal does not, in fact cannot, require the Provost’s approval to withdraw its Decision nor can the Provost refuse the right of the Tribunal to withdraw its Decision. And the Provost most certainly cannot act as an adjudicator for this particular dispute between myself and the Tribunal.

I ask that the Chair of the Tribunal respond to this letter with its decision within one month, i.e., by July 8, 2023. If I do not hear from the Chair by that date, then I reserve the right to pursue other avenues of action.

Let me finally mention that should the Tribunal not agree to either of the two options given above, i.e., (1) a withdrawal of its Decision and the appointment of a new Tribunal or (2) an independent judgment of its Decision – which I certainly hope will not be the case for all parties concerned – then it is sending a serious message to potential Grievors, especially those with grievances associated with the “Requirement” or any other questionable future “policy” of the UW administration. The message is that these Grievors should not necessarily expect their grievances to receive the fair and unbiased treatment supposedly guaranteed to them according to Section 9, “Grievance and Arbitration,” of the Memorandum of Agreement. In fact, all UW faculty members should be made aware of this deplorable message and its consequences.

Edward R. Vrscaj
Department of Applied Mathematics, UW

Dated June 8, 2023, the Solemnity of Corpus Christi (Most Holy Body and Blood of Christ)