Grievance Arbitration pursuant to the Memorandum of Agreement between the University of Waterloo and the Faculty Association of the University of Waterloo

BETWEEN:

Edward Vrscay

the Grievor

-and-

University of Waterloo

the University

Written Submissions of the University

Overview

1. The University provides these submissions further to Tribunal Order #6 dated December 22, 2022.

2. Pursuant to Order #6, the University will limit its submissions to case law and legal arguments, and will not submit additional facts or documents. The University will also refrain from a line-by-line parsing of Professor Vrscay's Response of December 10, 2022, as this would result in the University restating its position on various facts in dispute.

3. The Grievances do not clearly indicate what the issues in dispute are, including the provisions of Memorandum of Agreement and/or University Policies the University allegedly breached. The issues in dispute and/or the issues Vrscay seeks to raise in this grievance arbitration process are still unclear after reviewing Vrscay's Response and the academic papers submitted with that Response.

4. However, the University respectfully requests the Tribunal consider the following. The University adopted its Vaccination Requirement in the fall of 2021. The University disciplined Vrscay for refusing to comply with that Requirement. Vrscay filed Grievances in response to the discipline he received. Accordingly, the relevant issues in dispute are therefore: (1) was the University required and/or entitled to adopt a mandatory workplace vaccination policy (i.e. the Vaccination Requirement)?; and (2) did the University have just cause to discipline Vrscay for refusing to comply with the Requirement? The answers to both questions, as detailed more fully below, are "yes".

5. The University acknowledges the Tribunal's statement in Order #5 that it does not have jurisdiction over matters outside the MOA and University Policies. With respect to matters outside the MOA, such as the instructions issued by Ontario's Chief Medical Officer of Health (the "Instructions"), the Regulations under *Reopening Ontario Act* (the "Regulations"), and the *Occupational Health and Safety Act* ("OHSA"), the University references these orders and statutes for the following purpose: if the University was required or empowered by law to adopt a mandatory vaccination policy (as opposed to merely *choosing* to adopt

the policy), this supports the University's position that it had just cause to discipline Vrscay for refusing to comply. Moreover, these statues and orders are relevant to Vrscay's repeated suggestion that the University was not required to adopt a policy requiring vaccination, and that the University had engaged, in his words, in "sleight-of-hand" tactics.

6. The University's submissions will therefore focus on two issues. First, the University will establish that it was required, by law, to adopt a mandatory vaccination policy (its "Vaccination Requirement"), despite Vrscay's continued suggestion to the contrary. To be absolutely clear, the University was compelled by law to adopt a policy requiring COVID-19 vaccination for all employees. This position is fully supported by the existing arbitral case law.

7. Second, the University will establish it had just cause to discipline Vrscay for refusing comply with the Vaccination Requirement. "Just cause" is the relevant standard enshrined in Article 8.1 of the MOA. The University gave ample warning to Vrscay of the consequences of continued refusal to comply. Moreover, the University followed a progressive approach to such discipline by first issuing a 3-day paid suspension, followed by a more serious 8-day unpaid suspension.

Application of Law to Facts

The University was required by law to adopt a mandatory vaccination policy (i.e. the Vaccination Requirement).

8. The Instructions (coupled with the Regulations) compelled post-secondary institutions to adopt vaccination policies requiring all persons attending campus to provide: (1) proof of full vaccination; (2) proof of a medical exemption (alongside rapid antigen testing); or (3) proof of completing an educational session (alongside rapid antigen testing).

9. Vrscay is correct that the Instructions permitted option (3), which allowed an education session and testing instead of vaccination (although the University of not aware of any post-secondary institutions that adopted this third option). While Vrscay may state he has "not challenged OMCOH's Instructions and the content of those Instructions", he clearly does continue to challenge the University's decision to adopt a mandatory vaccination requirement. This is evidenced by Vrscay's Response, including his concluding remarks wherein he expressly states the University "resorted to falsehoods….to justify its mandate."

10. In response to the position Vrscay continues to take, the University will reiterate that all times relevant to the Grievances and the Requirement, it acted not only on the Instructions and Regulations, but also on its obligations arising under the *OHSA* and Policy 34 – Health, Safety and Environment. Even if the Instructions and Regulations permitted option (3) above (although to the extent the University was empowered to removed option (3), the University maintains its position that this decision cannot be challenged in the grievance arbitration process), the University's obligations under the OHSA and Policy 34 did not permit option (3).

11. Section 25(2)(h) of the OHSA requires all employers to: "take every precaution reasonable in the circumstances for the protection of a worker;" (see the relevant provision here: https://www.ontario.ca/laws/statute/90o01).

12. Similarly, Policy 34 compels the University to: "…take every precaution reasonable in the circumstances to protect the health and safety of its employees, students and visitors." Policy 34 also requires the

University to "…comply with applicable legislation governing health and safety…". The obligation to comply with applicable health and safety legislation requires the University to comply with s.25(2)(h) of the OHSA.

13. The statutory and Policy obligations noted above required the University to adopt a mandatory vaccination policy on campus in response to the COVID-19 pandemic, because such a policy was a "precaution reasonable in the circumstances." This conclusion is evident from the existing case law detailed below.

14. In *Toronto District School Board and CUPE, Local 4400*, 2022 CanLII 22110 (**Tab 1**), Arbitrator Kaplan considered a grievance filed by CUPE against TDSB's mandatory workplace vaccination policy. CUPE specifically argued that TDSB did not need to implement mandatory vaccination, as it could have utilized a rapid antigen testing alternative. As an aside, it is worth noting that TDSB was not subject to a mandatory public health order similar to the Instructions.

15. Arbitrator Kaplan specifically considered CUPE's argument that TDSB ought to have offered rapid antigen testing as an alternative and concluded:

> *…[the] expert evidence is that vaccination was the number one and best method of reducing the contactor and spread of COVID-19. In these circumstances, it is impossible to conclude that requiring employees to be fully vaccinated is not a precaution reasonable in the circumstances*. [emphasis added]

16. To summarize, in a workplace similar to the University's (i.e. one where employees and students frequently come into close proximity to each other), Kaplan found that mandatory vaccination was a precaution reasonable in the circumstances. TDSB was therefore obligated under the OHSA to require vaccination, and mandatory vaccination was a reasonable exercise of TDSB's managerial rights.

17. Arbitrator Stewart made similar comments in *Alectra Utilities Corporation and Power Workers' Union*, 2022 CanLII 50548 (**Tab 2**), where she considered Alectra's mandatory vaccination policy and concluded:

> *…While individuals can take measures to restrict their activities and exposures outside of the workplace, in the workplace they are, for the most part, unable to individually manage their environment and must depend on the employer taking reasonable precautions to protect their health. The Policy does that by removing the risks associated with the potential for transmission associated with the presence of unvaccinated employees in the workplace. This is not an example of paternalism, as Mr. Monger suggested, but, in my view, is an instance of protection, in accordance with the Employer's important statutory obligation to take every precaution reasonable in the circumstances to protect the health of those in its workplaces.* [emphasis added]

18. Even in the absence of any confirmed workplace cases of COVID-19, arbitrators have endorsed mandatory vaccination policies. For example, see Arbitrator Herman's comments at para 29 *of Bunge Hamilton Canada, Hamilton, Ontario and UFCW*, Local 175, 2022 CanLII 43 (**Tab 3**) where he stated:

> *The nature of COVID-19 and the risks of exposure and the potential consequences of becoming infected, particularly for unvaccinated persons, are significant, and this remains true even if no employee working at either location has become infected*

> *through workplace transmission since the issuance of the Old Policy. The lack of recent confirmed cases does not render unreasonable what is otherwise a reasonable policy*.

(However, by the fall of 2021, the University had in fact experienced cases on campus: https://uwaterloo.ca/coronavirus/news/case-tracking-ten-new-cases-outbreak-declared-all-residences).

19. Generally, this issue is perhaps best summarized by Arbitrator Jesin's comments in one of the earlier vaccination policy cases involving Maple Leaf Sports and the Teamsters Union (*Teamsters Local Union 847 and Maple Leaf Sports and Entertainment*, 2022 CanLII 544 at **Tab 4**). In that case, as in *Bunge* and *TDSB* noted above, the union challenged the employer's decision to implement a mandatory vaccination policy. Again, even in the absence of a public health directive similar to the Instructions, Arbitrator Jesin concluded:

> *It is clear that the weight of authority supports the imposition of vaccine mandates in the workplace to reduce the spread of Covid 19. That is particularly so where employees work in close proximity with other employees, as they do in this case. The authority to impose such mandates arises not only from management's right to implement reasonable rules and regulations but also from the duty of employers to take any necessary measures for the protection of workers as set out in OHSA…* [emphasis added]

20. There are now perhaps a few dozen of arbitration cases supporting the proposition that adopting mandatory workplace vaccination policies, in or around the fall of 2021, was a "precaution reasonable in the circumstances" and hence required by the OHSA. This conclusion is largely beyond question at this point, at least with respect to most employers and workplaces.

21. The reasonableness of Laurier's vaccination policy was specifically considered by Arbitrator Wright in *Wilfred Laurier University and UWFC* (**Tab 5**). Laurier and the University are located within a few kilometres of one another and faced the same risks. Although Arbitrator Wright was not required to comment on employee discipline, on the reasonableness of Laurier's requirement for all employees to be vaccinated, he concluded:

> *I find that it was reasonable for the University to exercise the discretion granted to it under the Instructions from the Chief Medical Officer of Health to remove the rapid antigen testing option from its Policy.*

There is no reason a different conclusion should be reached in the instant case. (As an aside, Arbitrator Wright also found that Laurier was justified in keeping its policy in place until May 1, 2022, the same date the University rescinded its Vaccination Requirement).

22. Mandatory vaccination policies have also generally been endorsed by the highest court in Ontario. In *National Organized Workers Union and Sinai Health System*, 2021 ONSC 7658 (**Tab 6**), the NOWU sought an injunction restraining Sinai Heath from implementing a mandatory vaccination policy for its employees. The Superior Court denied the injunction in November 2021 and the NOWU appealed. On appeal, the Ontario Court of Appeal upheld the Superior Court's decision and made the following helpful comments:

> *…The application judge made no palpable and overriding factual error in the findings she made about the harm at issue if injunctive relief were not granted. At its core, the harm*

> *at issue was the potential for being placed on leave without pay or terminated under the Policy, if an employee chose to remain unvaccinated. The appellant's members were not being forced to be vaccinated, denied bodily autonomy, or denied the right to give informed consent to vaccination. They could choose to be vaccinated or not. If they chose not to be vaccinated, they faced being placed on unpaid leave or having their employment terminated. This potential harm is fundamentally related to employment…*
>
> See the Court of Appeal's decision, 2022 ONCA 802, at **Tab 7**.

23. The University also acknowledges Vrscay's repeated assertions that vaccines are dangerous, and his reliance on academic papers that purport to show the same. Two brief comments are in order.

24. First, the academic papers submitted by Vrscay should be given no weight by the Tribunal. These papers are not only hearsay, but this sort of evidence can only be adduced and commented on by an expert. Vrscay is not an expert in any field related to vaccines, medicine, or epidemiology. Similarly, the Tribunal should give no weight to any of the publications of Dr. Michael Palmer or Dr. John Turri referenced by Vrscay. Again, this is hearsay evidence. Moreover, Palmer and Turri were both disciplined for non-compliance with the Vaccination Requirement. They are not in positions to provide impartial, expert opinions on COVID-19 vaccination or the University's Requirement.

25. Second, as noted by the University in its Written Decision with Reasons, the University requests that the Tribunal take notice of the fact that the safety and efficacy of COVID-19 vaccination is well established. We would invite the Tribunal to consider existing Ontario cases where courts have taken judicial notice of the following: (1) that the COVID-19 illness poses a serious health risk to all individuals (see *Rouse v Howard*, 2022 ONCJ 23 at para 13 at **Tab 8**); (2) that COVID-19 vaccinations are safe, including for children (see *A.B.S. v S.S.*, 2022 ONSC 1368 at para 4 at **Tab 9**; see also *Saint-Phard v Saint-Phard,* 2021 ONSC 6910 at paras 5-7 at **Tab 10**); and (3) that COVID-19 vaccinations are effective (see *Dyquiangco v Tipay*, 2022 ONSC 1441 at paras 22 and 23 at **Tab 11**).

26. The decisions noted in the foregoing paragraph fully support the conclusion that a mandatory vaccination policy (i.e. the University's Vaccination Requirement) was a "precaution reasonable in the circumstances" as contemplated by both the OHSA and Policy 34. Moreover, the Requirement was required by and/or fully consistent with, the OCMOH Instructions.

27. The University will now explain that, not only are employers generally entitled to discipline employees who refuse to comply with mandatory workplace health and safety rules like the Requirement, but that legal decision-makers have specifically accepted an employer's right to discipline employees who refuse to comply with COVID-19 vaccination policies.

The University had just cause to suspend Vrscay for refusing to comply with the Vaccination Requirement.

28. The University must establish "just cause" to discipline any faculty member (see Article 8.1 of the MOA). Examples of "just cause" for dismissal are included in Articles 8.5 and 8.6 of the MOA, although the Grievances do not relate to a dismissal. Rather, the Grievances relate to significantly less serious discipline and, accordingly, a lower threshold for "just cause" applies.

29. In any event, "just cause" is a relatively well understood term in the existing labour arbitration jurisprudence. The University relies on this jurisprudence to support the discipline issued to Vrscay for his

continued and ongoing refusal to comply with a compulsory workplace health and safety policy. Ultimately, it is the University's position that it had just cause to discipline Vrscay and that his Grievances are without merit.

(a) Refusing to comply with workplace health and safety policies is misconduct warranting discipline.

30. Employers are entitled to adopt reasonable workplace rules and to enforce such rules through normal disciplinary processes. This is particularly true in the context of rules that are *required* by health and safety legislation, as was the case for the Vaccination Requirement.

31. It is generally accepted that breaching a rule promulgated to ensure workplace health and safety is particularly serious (as compared with say, a rule related to employee dress codes or other practices). On this point, see Arbitrator Lanyon's comments in *Island Tug and Barge Ltd. and CMSG* (Reid), 2012 CarswellNat 5503 (**Tab 12**), where he stated:

> *As I stated in Lamar Lake Logging v. U.S.W.A., local 1-2171 [2008, 174 L.A.C. (4th) 118 (B.C. Arb.)], June 25, 2008 (Lanyon) more severe penalties may be imposed in respect to infractions concerning health and safety matters. In such circumstances progressive discipline gives way to the seriousness of any breach of health and safety regulations, and as a result, general deterrence is given greater weight.*

32. Similarly, in *Imperial Tobacco Canada Ltd.,* [2001] O.L.A.A. No 565 (**Tab 13**), a grievance related to an employee dismissed for a safety violation, Arbitrator Lynk described the following two principles which are particularly relevant in these circumstances:

> *…Safety in the workplace is both a stringent statutory obligation and an important industrial relations concern that involves employers, unions and employees. Given the potential consequences, safety infractions are among the most serious of workplace offences.*
>
> *As the industrial relations party with the pre-eminent control over the workplace, the employer has a legal obligation to provide a safe and secure workplace for its employees. Hand in hand with this obligation is the employer's authority to insist that workers perform their duties in a safe and efficient manner….*

Arbitrator Lynk described other general principles which are less applicable here.

33. Moreover, it would be absurd if an employee's personal opinions on a particular health and safety-related rule could exempt that employee from discipline for refusing to follow it. In a decision which is particularly relevant to this issue, *Hodgkin v Aylmer (Town)*, 1996 CarswellOnt 4343 (**Tab 14**), the employer terminated an employee, for cause, for refusing to comply with a requirement to shave his beard to use applicable respiratory equipment.

34. As in the instant case, the employee in *Aylmer* was disciplined for refusing to comply with a workplace health and safety policy due to a personal opinion/choice that conflicted with that policy. The court upheld the termination, finding in favour of the employer. The court concluded:

> …the plaintiff's conduct incompatible with his duties and going to the root of his employment contract with the result that the employment relationship was too fractured to expect the employee to be provided a second chance.

35. The foregoing cases show that an employer will generally have just cause to discipline an employee who refuses to comply with workplace health and safety rules. The University submits that the Tribunal ought to reach the same conclusion in this case. Moreover, as described more fully below, the specific case law that has arisen during the pandemic also fully supports the University's decision to suspend Vrscay.

(b) Refusing to comply with a mandatory workplace vaccination policy is misconduct warranting discipline.

36. As a preliminary comment, at risk of stating the obvious, the fact that a particular employer (i.e. Laurier or TDSB) may have decided not to issue disciplinary suspensions to employees is irrelevant to whether the University was entitled to suspend Vrscay. Any employer is free not to exercise a right it may otherwise have, and the jurisprudence fully supports the University's right to discipline Vrscay in these circumstances.

37. For example, in *Fraser Health Authority v British Columbia General Employees' Union*, 2022 CanLII 25560 (**Tab 15**), Arbitrator Kandola dismissed a grievance filed in response to the employer terminating a substance abuse counsellor, for cause, for refusing to comply with a province-wide mandatory vaccination order for healthcare employees. The province-wide order in *Fraser Health* is akin to the province-wide Instructions issued by OCMOH in August 2021. After noting the absence of any collective agreement obligation to place the grievor on an unpaid COVID-19 leave, Kandola noted at para 28:

> *Further, in November 2021, the Omicron variant had taken hold and was posing serious challenges regarding transmission and hospitalization. Then and now, the PHO has stated we are still in a pandemic, not endemic, stage. Unlike other PHO orders, the Hospital and Community Order does not include an expiry date. Importantly, I find that, at the time of the termination, the PHO had not provided any indication that the Order would be lifted in the foreseeable future and, indeed, has repeatedly stated that vaccination is a key tool in the continued response to the virus both in the short-term and long-term. It is speculative to opine when the pandemic may end and even so, it would be speculation to assume that the vaccination requirement in the Order will be lifted once the PHO determines we have moved to an endemic stage*.

38. The comments above are broadly applicable to the situation facing the University. The University adopted a vaccination policy further to public health directions in Ontario and the Omicron variant was beginning to spread in the fall of 2021. The conclusion in *Fraser Heath* that the employer had just cause to terminate

the grievor clearly supports the University issuing Vrscay less serious disciplinary penalties (i.e. the two disciplinary suspensions).

39. Adjudicator Filliter's comments from *Poulos v Treasury Board (Regional Development Corporation)*, 2022 CanLII 37635 (**Tab 16**) are also helpful. In *Poulos*, a long-term public servant in New Brunswick was terminated for cause for refusing to provide proof of vaccination or submit to regular "point of care testing". Filliter dismissed the grievance, noting at paras 94 and 95:

> *While, as stated by the grievor, her conduct was not a serious act, such as theft, dishonesty, violence etc., I find that her conduct was sufficiently serious to be incompatible with the fundamental terms of her employment relationship.*
>
> *The decision of the grievor to decline the testing requirement did constitute wilful disobedience. She claims the policy contravened her right to privacy and to autonomy in personal medical decision making but ignores the obligation of the employer and indeed herself pursuant to the OHSA.* [emphasis added]

40. Further to Filliter's comments above, it is unclear, in principle, why Vrscay's refusals to comply with the University's Requirement should be viewed as materially different from an employee refusing to follow any other necessary workplace health and safety rule. Moreover, the University provided ample notice to Vrscay of the continued consequences of non-compliance.

41. Arbitrator Murray's award in *Ontario Power Generation v PWU* (**Tab 17**) is also particularly relevant. OPG's policy stated that employees who refused vaccination and testing would be placed on a 6-week unpaid leave and, thereafter, terminated. Murray dismissed PWU's grievance and stated:

> *The Company has made it clear that termination of employment at the end of the 6-week period will typically occur. It is important for those individuals who are fired for choosing to not be tested to understand that they are very likely to find the termination of employment upheld at arbitration. Effectively, employees who refuse testing will likely will have made a decision to end their career with this Company.*

42. In both *Poulos* and *OPG*, the decision-makers were prepared to support the employers' decision to terminate employees refusing to comply with workplace testing and vaccination policies. Again, these decisions support the University's treatment of Vrscay in these circumstances, who received less significant discipline.

43. In *Revera Inc. (Brierwood Gardens et al.),* 2022 CanLII 28657 (**Tab 18**), Arbitrator White commented on the importance of notifying employees of the consequences of continued refusal to comply with vaccination policies (which the University clearly did in Vrscay's case) and of the appropriateness of eventually disciplining non-compliant employees. At paragraph 155, he stated:

> *Save the Electrical Safety Authority and Chartwell decisions that I have addressed above, I am unaware of any decision suggesting that disciplinary responses, including*

> *discharge, would be inappropriate for unvaccinated employees should they not comply with a reasonable mandatory vaccination rule. Indeed, several arbitrators have suggested that placing employees on notice respecting the potential consequence of their decision is a matter of fairness.*

44. Arbitrator Chauvin's comments *Maple Leaf Foods Inc. v UFWC, Local 175*, 2022 CanLII 28285 (**Tab 19**) are also supportive of the University's actions in this case. In *Maple Leaf Foods*, the employer adopted a mandatory vaccination policy which contemplated possible discipline. The employer asked Arbitrator Chauvin to opine on "how long" the employer needed to wait before disciplining or discharging non-compliant employees. The Arbitrator comment as follows at para 58:

> *…there may be other factors that are relevant to the decision to impose discipline, and when to do so. For instance, the employee may now be trying to become vaccinated, but may be encountering difficulties or delays in doing so. There may be other factors that are unforeseeable at this time. Accordingly, it is difficult to provide one fixed timeline for all of the employees for when discipline or discharge can be imposed, and it will have to be assessed when the discipline is imposed whether just cause exists. However, it may be helpful to the employees to inform them that if they remain unvaccinated for two months, being May 31, 2022, they may very well be subject to discipline or discharge, in accordance with the principles discussed above.* [emphasis added]

45. One can derive two helpful principles from Chauvin's comments which are applicable in the instant case. First, an employee taking steps towards vaccination, or perhaps an employee who is merely hesitant of vaccination, might be treated more leniently than an employee who outright refuses vaccination and makes it clear he/she will never comply with a vaccination policy. Vrscay not only refused vaccination, he made it clear that under no circumstances would be comply with the Requirement (in fact, he made his opinions on the matter quite public).

46. Second, Arbitrator Chauvin approved of a general "two-month" timeline between an employee becoming non-compliant with a workplace vaccination policy and the employer imposing discipline or discharge. Vrscay became non-compliant with the Requirement on October 17, 2021, but the disciplinary process did not begin until about 2.5 months after this date (i.e. on a timeframe consistent with the timeframe supported by Arbitrator Chauvin).

47. There are a few final arguments raised by Vrscay which the University ought to address. Vrscay continues to allege the disciplinary process was somehow flawed because Vrscay was unable to have persons interviewed as part of the disciplinary process. Vrscay also continues to suggest that the University's use of the word "mandate" instead of "policy" is somehow significant, and that definition of "non-compliant" in the Requirement was less than clear. In response to these issues Vrscay, the University submits the following.

48. Vrscay cannot reasonably maintain the position that the disciplinary process was somehow flawed. Vrscay had a month between receipt of the first Article 8.8 letter and his disciplinary meeting with the Dean. He had ample opportunity to provide any sort of additional submissions he desired or believed might be

helpful. The MOA does not compel the University to interview witnesses at the sole discretion of a faculty member.

49. Also, Vrscay's continued reliance on the Univeristy's use of the word "mandate" instead of "policy" in certain documents is simply not significant or even relevant. As articulated in detail above, the University was required by law to adopt a mandatory vaccination policy; an alternative conclusion is not supported by the existing jurisprudence.

50. With respect to the definition of "non-compliant", Vrscay cannot reasonably suggest he was not aware of what the University considered "non-compliant." The University's position on this issue is clearly articulated at paragraphs 53 and 54 of the Written Decision with Reasons.

51. Finally, the University submits that "just cause" should be interpreted and assessed in light of the case law that has arisen during the pandemic. This case law fully supports the University's position in these Grievances: the University had "just cause" pursuant to Article 8.1 of the MOA to issue a 3-day paid suspension and 8-day unpaid suspension, in response to Vrscay's repeated refusal to comply with the Vaccination Requirement.

Conclusion

52. Vrscay continues to raise various issues in his submissions, including his communications with Dean Giesbrecht in the fall of 2021, that courses could have been delivered online in Winter 2022, that the University dishonestly used the word "mandate" instead of "policy", and that he should have been permitted to interview persons as part of the discipline process. Although the University disputes Vrscay's interpretation of these various facts, they are nonetheless largely irrelevant to the key issues in dispute.

53. The University invites the Tribunal to consider the following, which in the University's view, are the key issues in dispute in these Grievances:

    a. Was the University required by law or otherwise entitled to adopt the Vaccination Requirement?

    b. Did the University have just cause to discipline Vrscay for refusing to comply with the Requirement?

    Irrespective of the specific facts Vrscay continues to quibble about, the answer to both questions is "yes" and the Grievances therefore ought to be dismissed.

54. The University will summarize the relevant points supporting the foregoing conclusions:

    a. The University was compelled to adopt a mandatory vaccination policy (i.e. the "Vaccination Requirement"). The Requirement was a "precaution reasonable in the circumstances" (and

therefore required by the OHSA and Policy 34) and the Requirement was constituent with the Instructions.

b. Vrscay was provided with ample warning of the consequences of refusing to comply with the Requirement. By the time the disciplinary process began in January 2022, there can be no doubt that Vrscay knew the University considered him non-compliant.

c. The University followed a progressive approach to discipline, beginning with a less serious penalty (a 3-day paid suspension), followed by a more serious penalty for continued non-compliance (an 8-day unpaid suspension).

d. Refusing to comply with workplace health and safety policies is particularly serious misconduct.

e. The disciplinary process provided Vrscay with ample time to prepare and provide any additional submissions or information he desired. Vrscay was not prejudiced, in any way, by any alleged flaws in this process. Moreover, at no point did Vrscay submit an exemption request for reasons related to the *Code*.

f. Vrscay intimated he would not, under any circumstances, comply with the Requirement in the future (he made his views on the subject quite public).

g. The existing case law related to disciplining employees for refusing to comply with workplace vaccination policies supports the University's position that, in the circumstances, it had just cause to suspend Vrscay.

55. The University submits that the Tribunal ought to dismiss both Grievances and that Vrscay is not entitled to any remedies. Although Vrscay has not yet lost any pay because of the 8-day unpaid suspension, the University is not requesting an order from the Tribunal for Vrscay to pay the University a sum equal to the wages he received over this 8-day period.