

FAUW Response to Administration's Arbitration Brief
March 20, 2024

The Administration's Offer

[Redacted]

Health Care Benefits

[2] FAUW has been advised (by Eckler Benefits Consulting, and by some of our own Faculty Members) that a HCSA is not a good option given that we don't currently have an adequate comprehensive health care benefits program. The reason is that the money in a HCSA is often double- or triple-counted in the sense that an employer may claim that there is no need for Vision Care coverage because you can use the HCSA, and there is no need for increased Mental Health Care coverage because you can use the HCSA. [Redacted] Therefore, small HCSAs, [Redacted] represent a disadvantage and weaken the ability to negotiate for proper comprehensive health care benefits, ones that include appropriate Vision Care and Mental Health Care coverage. HCSAs, in their current form, are intended to *complement*, not to substitute for comprehensive coverage.² Indeed, of our comparators, those that offer HCSAs also offer Vision and Mental Health coverage well in excess of UW's current plan.

[3] [Redacted]

[4] [Redacted]

[5] FAUW notes that the estimated cost of our Mental Health Care and Vision Care proposal (total \$0.33M) is lower than the cost of the [Redacted] HCSA (\$0.4M).

¹ [Redacted]
² [Redacted] HCSA [Redacted] as a substitute for a comprehensive package, we dispute [Redacted] that the HCSA offers a more equitable solution. Further [Redacted] HCSAs do not scale with dependents, which puts faculty with multiple dependents in a more vulnerable position.

Inflation and Cost of Living

[6] [REDACTED] prediction for year-end inflation for 2024 [REDACTED] rather than the annual average inflation for 2024. Looking at the January 2024 Monetary Policy Report itself (rather than just the opening statements), the reader may see that the annual average projection for 2024 is **2.8%**. The annual average inflation prediction is the appropriate measure to use and, indeed, the annual average inflation from the year-prior is [REDACTED] adjust our annual Faculty Professional Expense Reimbursement Plan (FPER) per our MoA. Inflation for the last month of the year **understates** the actual wage erosion occurring over the course of the year when we are in a declining inflationary environment.

[7] [REDACTED] FAUW's calculation of KW specific wage erosion. We did not simply add KW cost of living on top of CPI. We calculated an adjustment to the Canadian CPI to reflect differences between KW and the rest of Canada. We did this by taking the difference between Canada wide shelter cost increases and KW shelter cost increases, and then scaled this amount down to the 30% weight (which is the weight of shelter costs in the CPI). FAUW further points out that even though a fair settlement would redress KW-specific wage erosion, our offer conservatively foregoes this request and asks only for inflationary catch-up based on the Canada wide measure.

Salaries, Costs, and Fiduciary Responsibility

[8] [REDACTED] salaries as a significant cost [REDACTED]. We take this opportunity to point out that faculty are also the University. Moreover, faculty are what brings in revenue (via education and research) and produce the "good" of post-secondary education. Paying fair wages is not some extraneous cost. It is the cost of our most fundamental input to production. Furthermore, while higher wages represent a higher cost to production, higher wages also bring in and maintain a higher productivity workforce: not just improving the competitiveness of our institution, but also increasing overall returns to education. Costs cannot be viewed in isolation of the benefits they bring. Fiduciary responsibility involves more than just minding costs, it is about responsible investment. Failure to invest in Faculty, the most fundamental input to our production of post-secondary education, represents a poor investment decision.

[9] [REDACTED] If [REDACTED] perpetually able to divert large portions of University resources to new buildings, and then claim that "prior" commitment of operating funds for capital construction projects prevents them from investing in faculty, then faculty salaries would be, as Arbitrator Kennedy points out, treated as "the residual component of a budget."³

Poverty and Ability to Pay

[10] [REDACTED] analysis of MCU measures, UW is in excellent financial health. <see FAUW arbitration brief A.20.>. As Arbitrator Kennedy notes "In a case of ability to pay, there is a heavy onus upon the party pleading poverty to establish that fact."⁴ Indeed, many Ontario universities, particularly in the north, are truly facing financial crisis, but UW's objectively excellent financial position leaves us far from a crisis and certainly nowhere close to being in poverty.

[11] [REDACTED]

³ McMaster University and McMaster University Faculty Association, 1987 [CanLII 8478 \(ON LA\)](#), retrieved on 2024-03-10

⁴ McMaster University and McMaster University Faculty Association, 1987 [CanLII 8478 \(ON LA\)](#), retrieved on 2024-03-10

[REDACTED]

In our 2000 arbitration hearing, the Administration cited stringent funding, frozen operating grants, and tuition constraints.

[REDACTED]

[12] In previous negotiations FAUW has obtained or negotiated above-CPI salary increases despite [REDACTED]. Rather, the Parties' bargaining history and the overarching principle of replication, perceived or professed lack of ability to pay has not been a major factor in the past, and it should not be a major factor in this round either.

[13] [REDACTED] temporary international study cap, and [REDACTED]. We expect we may see some effect, but a minor one, for three reasons. First, the cap only applies to new students, therefore fees from existing students will continue, and given UW's high retention rates, we expect that amount to remain high. Second, the cap is not anticipated to be distributed equally, but is intended to address concerns regarding "bad actors," of which UW is not one. And third, this cap does not apply to graduate students, which represent a large proportion (approximately 1/3) of our international students.

[14] [REDACTED] While acknowledging deferred maintenance is an issue for Ontario universities, FAUW questions why we should expect deferred maintenance be paid for by suppressing faculty salaries rather than suppressing new builds.

[15] We note that per the 2019-2020 Triennial Inventory of Physical Facilities, UW compares well in space per FTE student. While UW has more older spaces relative to the average, it also has more newer spaces, and higher than average administrative office space, labs, plant maintenance, study space and academic offices.⁵ In the latest available COU Facilities Condition Assessment Report (2015), UW facilities are assessed as very good relative to the average.⁶ Moreover, [REDACTED] timing and budgetary allocation. UW's May 2023 Building and Properties Committee Agenda⁷ presented a renewal plan precisely costed out for \$21 million for 2023-2025, with Provincial grant monies sought and obtained (\$6M confirmed for fiscal year 2023/2024).⁸ This committee also references to a five-year plan with less concrete estimates over subsequent years. Therefore, we [REDACTED] question how this is relevant to faculty salaries when other reasonable sources of budgetary restraint are available (e.g. multi-million dollar new builds, additions and renovations).

⁵ <https://cou.ca/wp-content/uploads/2022/03/2019-20-Triennial-Inventory-Physical-Facilities-Updated.pdf>

⁶ <https://cou.ca/wp-content/uploads/2016/06/COU-Facilities-Condition-Assessment-Program-Report-2015.pdf>

⁷ <https://uwaterloo.ca/secretariat/sites/default/files/uploads/documents/2023-05-17-bpc-agenda-package-open.pdf>

⁸ https://uwaterloo.ca/secretariat/sites/default/files/uploads/documents/2023-10-11-bpc-agenda-package-confidential-v2.open_.pdf

[16]

budgeting is a discretionary act. The outcome of budgeting alone cannot be proof of the employer's inability to pay. As Arbitrator Getz puts it in *Simon Fraser University and Simon Fraser University Faculty Association*,

What all of this amounts to, in my view, is an assertion by the University that having been told last April how much it would receive from the provincial government, in accordance with its policies and priorities it made a judgment in preparing its budget about how much it was willing to allocate to the payment of salaries and benefits to members of the Faculty Association. But it is surely not correct to say that it was unable to pay more to those members than it allocated in the budget. It could have paid more if it was willing to spend less on other things. That is a matter of choice. As the Association notes in its submissions, "budgeting ... is often a discretionary act".

A budget is not on its face evidence of an inability to pay. The University lacks the ability to pay only because it has budgeted the expenditure of funds for other purposes considered more pressing, or more justifiable in the circumstances. These may include obligations to other union groups, and other educational priorities. There is nothing in principle wrong with this, but it does not amount to an inability to pay more.

The position would be different had the University shown that the nature and extent of the recurring claims on its resources was such as to leave no room for the exercise of any discretion in the allocation of those resources. Nothing like that has been shown.⁹

Cost of Merit Component

[17]

- *UW salary structure includes a Merit system, with a pot of money allocated to performance/career progression
- *UW pays annual Merit to individuals based on a performance- and faculty-specific share of an SIU
- *The current SIU is \$4,214
- *For simplicity, assume that on average a faculty member gets \$4,214 in Merit (the average Merit increase for UW faculty is actually considerably lower than the SIU)
- *each year the SIU is adjusted upward by scale.

So at most (assuming a much higher average Merit increase than typically prevails, and setting aside changes in the pot of money due to retirements vs new hires), the increased cost to UW of a 1% scale increase for 1380 faculty members would be: $4,214 * 0.01 * 1380 = \$58,153$
Not 5.8M

$4,214 * 1380 = 5.8M$. This 5.8M however has nothing to do with the scale increase, and therefore nothing to do with these negotiations.

Comparators

[18]

⁹ *Simon Fraser University and Simon Fraser University Faculty Association*, [1992 CanLII 14108 \(BC LA\)](#) at 19 of PDF.

[REDACTED]

“Waterloo’s position as being well ahead of other universities in the comparator group, except Toronto.”

<see C.1, page 3>

University’s position at <https://uwaterloo.ca/faculty-association/advocacy/compensation-negotiations/fauw-salary-settlements/may-2000-arbitration-hearing-results>

[REDACTED]

[REDACTED] Brock, and Nipising [REDACTED]
[REDACTED] are not among the comparators agreed to by FAU [REDACTED]

[REDACTED] incorrect and incomplete scale information for some [REDACTED]

There are a few other cases and we have provided a table with the correct numbers¹⁰ in A.15. of our own Brief. We did not collect the historic data for non-comparators.

Wage Erosion and the Reopener

[19] FAUW has already established in our Brief that the reopener did not address wage erosion. We will add, however, that [REDACTED] the reopener early appears to have saved [REDACTED] money relative to later reopeners. Later reopeners have been higher than UW’s +3% (e.g. among our comparators, Ottawa obtained +5.5%).¹¹ Moreover, even later reopeners were hampered by being negotiated outside of the Associations’ typical bargaining framework. Toronto, whose agreement was settled in arbitration (the third year was left open - not a reopener), has been the latest settlement amongst our comparators and achieved substantial inflationary correction at +7%. Where Toronto leads, the U6 have followed, for two decades, as demonstrated by figure 1 on page 16 of FAUW’s arbitration brief. We expect our comparators’ upcoming settlements to reflect Toronto’s large shift in scale and address the substantial wage erosion that the re-openers did not permit.

[20] In no way is addressing wage erosion a “double recovery” [REDACTED] Even the largest reopeners fall well short of addressing wage erosion.

[21] [REDACTED]

Arbitrator Shime's decision, when read in full, actually [REDACTED]

¹⁰ [REDACTED]

¹¹ For context among our other comparators: McMaster had a built-in clause signed before inflation rose to extreme levels. Western’s original settlement occurred after inflation spiked and their reopener followed within less than a year of that settlement; thus their original settlement was higher and their reopener modest. York has not yet settled.

The FAUW's offer, to be clear, includes catch-up for unanticipated wage erosion that occurred over the course of the last settlement period. There is, to use Arbitrator Shime's words, a "temporal immediacy" in that FAUW's offer is limited to the most recent settlement period and does not "reach back historically".¹² Arbitrator Shime did not take issue with this. Rather, he took issue with comparing extensively historical inflation with extensively historical levels of salary.¹³

[REDACTED] treating decades-old settlements as ongoing savings accounts, ready to set-off against [REDACTED]

[22] [REDACTED] FAUW contends that these scales must be taken in the appropriate context. We quote [REDACTED]

[REDACTED]

[REDACTED] age-adjusted salaries [REDACTED] Waterloo was second only to Toronto, within the comparison group. [REDACTED] same framework in the 2000 arbitration award [REDACTED] FAUW has noted that for McMaster, and to some extent Queen's and Western, age-adjusted salary trends track well above what their relative scales would suggest. <See figure 1 in FAUW arbitration brief.>

[23] On a final note, FAUW wishes to clarify that mistakes and misunderstandings are a natural part of the negotiation and bargaining process. FAUW does not suggest [REDACTED] Opportunities for corrections are important, and we provide corrections here to ensure that both of the Parties and the Arbitrator may be accurately informed.

¹² *McMaster University and McMaster University Faculty Assn., Re, 1990 CanLII 12727 (ON LA)* at 200.

¹³ *McMaster University and McMaster University Faculty Assn., Re, 1990 CanLII 12727 (ON LA)* at 201.