IN THE MATTER OF AN INTEREST ARBITRATION

Between:

Toronto Metropolitan University

and

The Toronto Metropolitan University Faculty Association

Before: William Kaplan
Sole Arbitrator

Appearances

For the University: Simon Mortimer
Collen Nevison
Hicks Morley
Barristers & Solicitors

For the Association: Steven Barrett
Emma Philips
Simon Archer
Danielle Sandhu
Goldblatt Partners
Barristers & Solicitors

The matters in dispute proceeded to a hearing held in Toronto on April 27 & 28, 2024.

Introduction

Toronto Metropolitan University (University) is one of Canada's most innovative and progressive post-secondary institutions with its main campus in downtown Toronto (and soon a medical school in Brampton). It offers more than 125 undergraduate and graduate programs as well as continuing education and non-credit courses. There are seven academic schools or faculties, the Faculty of Arts, the Faculty of Community Services, the Faculty of Engineering and Architectural Science, the Faculty of Science, The Creative School, the Lincoln Alexander School of Law, and the Ted Rogers School of Management. The Toronto Metropolitan University Faculty Association (Association) represents Faculty, Professional Librarians and Professional Counsellors. The parties enjoy a mature bargaining relationship.

The previous collective agreement expired on June 30, 2023. The parties subsequently met in collective bargaining starting in April 2023, and at mediation the following December. The parties were able to reach agreement on numerous outstanding issues; the remainder were referred to interest arbitration as required under the collective agreement. A hearing was held in Toronto on April 27 & 28, 2024. The collective agreement settled by this award shall be composed of the unamended provisions of the predecessor collective agreement, all agreed-upon items, including green items in the University brief, and the terms of this award. Any University or Association proposal not directly dealt with in this award is dismissed.

Association Submissions

Overview

In the Association's view, its bargaining proposals had to be placed in context. The University was understaffed, faculty were underpaid, especially when inflation and the Toronto cost of living were considered, they were also overworked (with insufficient and inadequate TA/GA supports and a complete lack of any recognition of the additional workload arising from student accommodation and academic consideration requests), and the workplace was unsafe: University facilities were inadequately protected against airborne diseases. Collegial decision making was in urgent need of reform, especially in the Faculty of Law. It was long past time for Professional Counsellors to be afforded the same academic freedom and job security protections as faculty members, as well as research and study leave (sabbaticals). Pension benefits required improvement and they were affordable given the healthy state of the plan. Related to this, retiree benefits required stabilization and protection. The Association made proposals to address all these and other issues but turned its attention first to the criteria regularly considered at interest arbitration beginning with the appropriate comparators.

The Comparators

The University was best compared with the University of Toronto (U of T) and York University (York). When Association salaries were compared with U of T and York, the case for catch-up was compelling. In 2021/2022, for example, Association salaries lagged approximately 3.4% behind York and 8.9% behind U of T. Settlements at other Ontario universities were instructive, but they were not governing as none of the other universities were in the GTA where the cost of living, especially housing, was considerably higher. When the direct comparators – U of T and

York – were reviewed, together with other post-secondary settlements and settlements more generally, a persuasive case, the Association argued, was made for significant across-the-board increases, the ones that it proposed (below).

Replication

The overriding goal of interest arbitration, the Association observed, was to replicate the agreement that the parties would have reached had free collective bargaining concluded with a collective agreement. Bill 124 distorted some comparator results, so caution was required, even when they were adjusted by reopeners. Nevertheless, there were university outcomes that were extremely instructive from a replication perspective, in the Association's submission. For example, Queen's University and its faculty association – which as a matter of timing never served a Bill 124 moderation period, negotiated, in March 2023, a three-year agreement with general wage increases of 3.5% (2022-23), 3% (2023-24) and 3% (2024-25). The University of Ottawa and its faculty association agreed on 3.25% for 2023-2024.

While other university outcomes ranged from 2% to 6% (2023-24) and 2% to 4% (2024-25), notably none of them were in the GTA with its associated higher cost of living, especially housing, and many of them were reached in a context informed by inaccurate predictions of anticipated declining inflation. These results were not, in any event, sufficient to narrow the gap with the applicable comparators, again U of T and York. When a wider net was cast, and negotiated and awarded increases from all sectors, not just the traditional ones, were considered, the case for higher increases was even more manifest (and the evidence established that

settlements and awards now routinely and meaningfully took inflation into account). Simply put, replication required that existing inequities be addressed with substantial catch-up increases.

The University's Fiscal Situation/The Economy

Overall, in the Association's submission, the economy was strong, defined by recovery not recession. The University was, likewise, in excellent financial shape as was revealed in its consolidated financial statements. One reason explaining why the University's fiscal health was so positive was its student-to-faculty ratio: the highest in Ontario (and this high ratio was also directly linked to larger classes and increased faculty workload). At the same time, the University was spending a smaller proportion of its total operating expenditures on faculty salaries and benefits. There was no issue, therefore, in the Association's submission, about the affordability of its proposals.

Significant economic improvements were required, the Association argued, to address corrosive and continuing inflation. Since 2022, inflation had dramatically affected spending power; it was 6.8% that year and just shy of 4% the next. Since then, it had remained persistent, yet Association salaries had not kept pace. Over the life of the previous collective agreement – July 1, 2020, to June 30, 2023 – the consumer price index increased by 14.3% but Association salaries only grew by 8.25% (and the Bill 124 reopener amounts had not adequately addressed this issue, negotiated as they were under the shadow of the government's appeal of the decision of the Ontario Superior Court invalidating the legislation). Inflation had not, as erroneously predicted, returned to 2% norms. Nor was it realistically expected to do so anytime soon, and certainly not during the term of the collective agreement. By and large, Association salaries had historically

kept pace with, and even exceeded inflation, until Bill 124, when that unconstitutional legislation distorted collective bargaining. That bargaining pattern of keeping pace with inflation had to be restored.

At the very minimum, in the Association's submission, general wage increases to salaries were required to reflect losses from inflation that had already incurred – there was a need for catch-up – and losses from current inflation, which was expected to continue well into the future. Compensation needed to reflect the rising cost of essentials. For example, the cost of housing was especially pernicious making both Toronto rentals and purchases both unaffordable and out of reach. The evidence was clear: Association members were teaching more students, often in increasingly larger classes, for salaries that had not kept up with inflation or with the cost of living in the GTA, and that were inferior to the salaries received by their peers at U of T and York, and many other Ontario post-secondary institutions. Above-average compensation increases were required. This unacceptable situation needed to be redressed.

Association Proposals

Faculty, Librarian and Professional Counsellor Compensation

The Association sought significant compensation increases to address inflation, past and present, and to narrow, if not eliminate, the average faculty salary gap between it and U of T and York, by increasing base salaries for faculty, librarian and professional counsellors together with across-the-board increases of 5.25% in 2023-2024, 4.5% in 2024-2025, and 4.5% in 2025-2026, 50% as a flat dollar amount and 50% as a percentage increase. Bifurcating compensation in this manner

would help ensure that the lowest paid Association members – usually those at the beginning of their academic careers – achieved a modestly higher increase.

There was another salutary benefit: apportioning salary in this manner would limit the otherwise growing gap between the highest and lowest paid. Its proposals, the Association observed, were fully justified, comprised, as they were, of a normative number adjusted and informed by inflation and the high cost of living in the GTA, especially rent and home ownership costs, and other factors, together with a catch-up to comparators amount. The Association proposal amounted to 14.25% over the three-year term, which was completely supported by the application of all relevant criteria. Also sought was introduction of a cost-of-living escalator if inflation exceeded 3% in the second and third year of the collective agreement. The parties had, the Association observed, negotiated COLA increases in the past, and it was appropriate to do so again to ensure that if inflation did not return to historical norms, that Association members did not fall even further behind.

The Association observed that by any metric, the University proposals for salaries, increments and allowances were "simply inadequate." The fact was, the Association pointed out, its members received across-the-board increases of 8.25% for a period when the Consumer Price Index went up 14.3%, while the salary gap between the University and its U of T and York comparators continued to widen.

The University's submissions about its financial constraints should, the Association argued, be summarily rejected. There was no reason to pay Association members less than their

comparators, as the authorities made crystal clear. In any event, and legally and factually material, the University had provided no evidence whatsoever to support what was in effect an inability to pay argument. In fact, the opposite was true. The 2024-25 Budgetary Report and the 2024 unaudited financial statements indicated that the University was on track to meet its 2023-24 budget. In addition, government funding was increasing, and investment income was rising, among other positive economic indicators establishing that the University's economic position was positive. Notably, the University had already budgeted for salary increases beyond what it was offering in this proceeding.

Other Association Monetary Proposals

Among the major monetary improvements sought by the Association were changes to the pension plan by increasing the benefit paid to members from 1.35% to 1.55% of the average pensionable salary under the YMPE (in respect of prior years of service and future accruals). The Association observed that there had not been an improvement to the plan for over twenty years, and the proposed change was completely affordable given its fully funded status (based on conservative assumptions): a surplus position and growing prior year credit balance. Another reason to award the proposal, in the Association's submission, was that it would have a proportionally greater impact on lower income earning members and would, a comparison indicated, bring the total value proposition of the TMU Plan closer to comparator plans.

A modest increase in LTD coverage from $14,000 to $15,000 was, in the Association's view, necessary to bring the benefit up to date for an appreciable number of Association members (together with increasing eligibility to age 70). The Association sought introduction of a new

Child Care Benefit Plan: a fund with a maximum pooled value of $300,000 per year to support members with dependent children under the age of seven, with each child eligible for up to a maximum of $2000 per year (modeled on the U of T plan and found in other sector comparators). To meet the high cost of housing, the Association proposed a Housing Loan Guarantee Program giving members access to a second mortgage from an affiliated bank of up to $350,000 for the purchase of a home near the University. Other universities had similar programs providing varying loan amounts.

The Association sought an increase to the overload stipend, increases to Career Development Increments (CDI) amounts for faculty, librarians and professional counsellors, increases to the Professional Expense Reimbursement Fund (PER), continuation of the status quo on salary anomaly funds ($100,000 per year), but introduction of a new gender anomalies fund ($100,000 per year) replacing the provision agreed to in the previous collective agreement: a one-time payment of $200,000), introduction of a new benefit for Surrogate and Fertility Services and a substantial improvement to vision care through introduction of a new lifetime amount for laser eye surgery, refractive lens exchange or similar vision corrective surgery, all material and necessary changes that the Association estimated that could be provided at close to negligible cost.

The Association further sought removal of the age 72 cap on access to business travel insurance, and benefit equalization between active and retired members of the entitlement to Prosthodontic Procedures. An increase to the Special Fund – it provides post-retirement benefits through a Health Care Spending Account – was, the Association argued, necessary given the growing

cohort of retirees. Retiree benefits at TMU were inferior to almost every other university in the province. There was limited access to insured benefits. The Association suggested an increase to $1,200,000 from the current $855,0000, along with a commitment to maintaining the fund equivalent to $2000 per retiree per year.

The Association's Faculty Complement proposal was directed at ensuring that the number of tenure stream faculty across all ranks not fall below 90% of the approved faculty complement (from the current 70%). TMU student growth had been exponential, and the University, as mentioned, had the highest faculty-student ratio in the province. Given projected growth, the current ratio was simply unsustainable. Guardrails were necessary, in the Association's view, to protect the quality of education and the overall student experience.

Non-Monetary Proposals

The Association advanced several significant non-monetary proposals. One priority was an amendment to the Financial Exigency provision to prohibit the University from initiating proceedings under insolvency legislation, such as the *Companies Creditors Arrangement Act* without first invoking the Financial Exigency provision. Another priority proposal was extending Academic Freedom, Financial Exigency, Redundancy and Layoffs, and sabbaticals to Professional Counsellors. In the Association's view, key protections for academic freedom and job security for faculty should equally apply to Professional Counsellors (and the University had made a small step in this direction by agreeing in this round to extend Articles 9 and 20 to Professional Counsellors).

In the Association's view, it was now sector normative for professional counsellors to enjoy academic freedom just like members of faculty, and it was completely anomalous and unacceptable that they did not. The fact of the matter was that the University's Professional Counsellors, just like faculty, research and publish, produce and perform creative works, engage in service to the institution and the community, and participate in professional and representative academic bodies. It was axiomatic, in these circumstances, that they be free to express their opinions. While the pattern of activities varied among the Professional Counsellor cohort, it was incontestable that as a group they regularly engage in activities falling under the rubric of academic freedom, both in and outside of their Professional Counsellor duties. The existing collective agreement protections were completely inadequate and inappropriately restrictive.

In support of this proposal, the Association pointed to various comparators, and it also extensively canvassed the work of Professional Counsellors. To be sure, much of their effort was expended in the provision of therapeutic counselling, but that was just part of the job. It also included broadly related professional duties – described in the Association brief and at the hearing – but there was much more to it than that as was elaborated in will-says from some counsellors demonstrating significant teaching, scholarly (including scholarship of application), research and creative activities, not to mention service to the University and to the profession. In the Association's submission, Professional Counsellors do conduct teaching and SRC. Indeed, they did so daily; this was incontrovertible based on the evidence the Association provided.

The union sought application of the Financial Exigency and Redundancy provisions to the Professional Counsellors. There was no reason why Professional Counsellors should have a

materially lower standard of job security than faculty and librarians at the very same institution. The Professional Counsellors were in the same bargaining unit as faculty and librarians and it was simply unacceptable, in the Association's submission, to subject them to inferior terms and conditions of employment. It was also imperative for professional practice reasons, the Association explained, and related to job security, that collective agreement language be awarded to ensure that Professional Counsellor functions were not performed by other University employees or contracted out. Likewise, changes needed to be made to how Professional Counsellors were appointed, and the Association's proposal was intended to safeguard and improve the collegial nature of their appointment process.

Along with recognition of sector norms for academic freedom, financial exigency and redundancy, together with enhanced collegial governance, came, the Association submitted, sabbatical leaves and an increase to Professional Development Days. As academic staff, Professional Counsellors should be entitled to apply for research leave to expand and deepen their expertise to provide for the ever-increasing and changing developmental and counselling needs of students, enhance their scholarship and/or expand their scope of practice through further intensive clinical training and certification. The benefits of sabbatical leaves were obvious: benefits to the Professional Counsellor, of course, but to the students and University as well (also documented in the Association brief and will-says). The value of modestly increasing the number of Professional Days was equally evident. The current cap was out-of-date and prohibited and unduly restricted opportunities for professional development. In short, there was, the Association submitted, demonstrated need for all its Professional Counsellor proposals.

Another one of the Association priorities was amending the Faculty of Law Appointment Process, including the law faculty tenure process. It was completely unacceptable, from the Association's perspective, that appointments at the law school were not subject to the same collegial appointment process that was otherwise ubiquitous across the University. A detailed proposal was advanced to remedy this situation (which was focused in large part on reducing the Dean's role in accordance with sector norms, which the Association reviewed). The evidence established that while hiring models varied at Canadian law schools, general structures were in place to promote broad collegial participation and to ensure, in recruitment and tenure decisions, that the Dean's voice not predominate. Safeguards were required to prevent the Dean from exercising undue influence in these critical academic decision-making processes.

The appointment process for Chairs/Directors also required reform and a number were proposed, all with the objective of facilitating more meaningful collegial participation, increasing accountability and fostering collegiality. In short, chairs/directors should be elected, not appointed by the Dean on the advice of a search committee. A parallel proposal set out new processes for the appointment of Associate Chairs. A proposal to limit the terms of Chairs/Directors to three years would enhance greater collegial participation in units, while other proposed changes would provide transparency in any negotiated research support.

The Association sought to restrict the appointment of Limited Term Faculty (LTF) for various reasons including to reduce the risk that they could be exploited by individual units; forced to carry a heavier workload and, in that way, misused by the University as inexpensive sources of precarious labour. There was evidence, in some units, that LTFs were being hired to teach the

same course many years in succession, demonstrating a long-term hiring need that should be more appropriately filled by a tenure-stream faculty.

Faculty workload was another matter requiring urgent attention. The Association proposed that a TA/GA formula be introduced providing faculty members with the assistance they required (and the Association strenuously opposed any reduction of existing entitlements). The Association pointed out that instead of increasing resources over recent years, the broad trend across the University had been a steady decline in TA/GA hours allocated per student, resulting in an increase in faculty workload, a problem that was even further exacerbated by growing class sizes (and the unacceptably high faculty-student ratio already mentioned). No faculty member should, in the Association's submission, be required to commit more than twenty hours in a course to duties that could and should otherwise be assigned to an assistant, a completely reasonable threshold in the Association's estimation. The University should also be required to allocate at least one teaching support hour per student for each course to each faculty. Uneven distribution of TA/GA hours across the University likewise needed to be addressed (namely, the bias in allocation favouring the Faculty of Science and Faculty of Engineering and Architectural Science).

Accommodation obligations were becoming an increasing and onerous part of faculty workload. The Association suggested a Task Force on Student Accommodations and Academic Considerations. During and since the pandemic, there has been, as the Association described it, an explosion in the number of student accommodation requests. Faculty members were now required to handle and respond to dozens and sometimes hundreds of individualized

accommodation requests, all in addition to their normal heavy workload. This situation called out for study, followed by appropriate action.

Course delivery needed to be updated to reflect the contemporary situation, the Association argued. What that required was an amendment to the Teaching Duties provision of the collective agreement to ensure that faculty members not be required to teach an online or hybrid course without their consent. As well, it needed to be made clear that the mode of course delivery was a collegial decision to be made by the relevant department school (in conformity with the requirements of the curriculum as approved by Senate). In another proposal, at least six days (up from the current four) should be allocated for reporting exam results.

University facilities needed to be upgraded. Initially designed for a 10,000 strong student body, there were now 43,000 undergraduate and graduate students enrolled at the University, and more than 8000 students taking Continuing Education courses. The University had plans on the books to increase enrolment to 60,000 students. In the meantime, the facilities were woefully out-of-date. The Association sought a new provision imposing on the University an obligation to maintain reasonable standards of safety, security, cleanliness and hygiene across the campus. There was demonstrated need for this, as was outlined by the Association in its brief. The campus was not safe, for faculty, staff or students, and it was long past time for these important concerns to be addressed. In a more targeted proposal, the Association sought to ensure that appropriate air quality standards were met and then maintained.

The Association advanced some changes to the discipline provision: procedural fairness protections for members subjected to workplace investigations that could lead to discipline. Abuses, and potential abuses, characterizing the current regime, one which was largely informed by University policies, cried out for reform. Delays were inordinate, impacting Association members whether they were the complainant or the respondent (particularly if interim measures had been imposed). The Association had filed many grievances in relation to delayed and procedurally unfair investigations. A better avenue to resolve these concerns, and to ensure a best practices regime, was through carefully considered collective agreement safeguards, which the Association proposed.

To help promote faculty renewal, and for other reasons as well, the Association proposed a new facilitative retirement provision. Under the Association's proposal, faculty who met the eligibility criteria – age 60 and at least ten full years of pensionable service, could request, for their last year of employment, a teaching assignment of 100% research or a combination of research and service, with a maximum of 20% service, among other terms and conditions. This proposal, in the Association's view, would support faculty transitioning to retirement by allowing them to appropriately conclude research projects and service commitments. Related somewhat to this proposal was an Association request for an amendment to the Layoff Article removing the restriction that a member who was laid off after their normal retirement date was ineligible for notice or pay in lieu of notice.

Finally, the Association turned its attention to the new Brampton Campus – a medical school is anticipated to open in September 2025 with 40 tenure stream faculty and over 1500 clinical

faculty – and proposed a Memorandum of Understanding dealing with the extension of the collective agreement, application of the complement ratios, assignment of faculty to Brampton and other matters including provision of Association office space.

Association Position on Key Employer Proposals

Insofar as the University pension plan proposal was concerned, the Association's position was categorical: it should, indeed must, be rejected. The existing collective agreement provision – setting out Association member contribution rates – was a long-standing feature of the collective agreement. First, there was no overriding legal requirement that employees pay 50% of the cost, and these parties had negotiated a different arrangement and one that was part and parcel of the collective agreement (and had been affirmed in an arbitration award that the University did not judicially review: *Ryerson & RFA* 2022 CanLII 32449 (ON LA), a decision that found that the collective agreement provision setting the contribution rate for Association members was governing and could not be unilaterally increased by the University but could be changed by agreement).

The fact that the University might be required to offset amounts beyond that paid by members was not, the Association submitted, evidence of a crisis requiring a collective agreement change, but a feature of the plan design. Second, the pension plan was not in crisis: it was funded 122% on a solvency basis and 146% on a going concern basis. It was healthy and well managed, and there was no present, or indeed, any future anticipated need to change the agreed-upon contribution rate. And third, the University comparators were inapplicable. They had nothing to do with this pension plan which was a defined benefit single-employer pension plan (where the

Association, unlike the situation with some of the comparators relied upon by the University, had no real control over governance and decision-making).

In the Association's submission, the University not wanting to bargain pension contribution rates – which was the current model, and the one which these parties had followed since 1969 – did not establish demonstrated need for a change in the way in which Association members contributed, or for the employer to offset if need be. The fact that other University unions had different pension plan contribution arrangements did not mean that the Association should agree to abandon its longstanding collective agreement entitlements. If the University wished to change the contribution rate, it should collectively bargain it, as it has done in the past.

To be sure, the Association acknowledged, it was public policy that broader public sector pensions move toward shared normal cost contributions, but that was expressly subject to collective bargaining. The Association had bargained about this, for example in 2012, and would continue, to bargain pension plan contributions, but could not, and would not, agree to the change proposed by the University, especially when there was no demonstrated need (and there was no evidence of funding risk, governance risk, etc.). Notably, the University had recently lowered the contribution rates for the other union participants to make them equal to the contributions of Association members.

The Association rejected the University's proposals for a Teaching and Tenure stream. Imposition of a teaching stream required negotiation; there was not a single example of it ever having been imposed by an interest arbitrator. Imposing a teaching stream would not replicate

free collective bargaining. It would not lead to a result that the parties would have reached had collective bargaining been allowed to run its course. The Association has consistently and forcefully rejected a teaching stream every time the University proposed it. And one of the many reasons for doing so was because of the University's unique history and culture. As of January 1, 1992, all new recruits have been hired as Mode II. Introduction of the University's proposed teaching stream would lead to the re-stratification of faculty – back to two tiers in other words – with predictable impact: a faculty divide and low morale that could be readily anticipated to accompany it.

A teaching stream was also not a sectoral norm (and the Association reviewed different models in its brief and reply brief and at the hearing to illustrate that it was far from normative and where teaching streams exist, they often came about, for example, to address precarity). A teaching stream was inconsistent with governing principles of demonstrated need and gradualism. It would be a breakthrough, and the law on that was clear: breakthroughs were best left to the parties to reach on their own without arbitral intervention absent exceptional circumstances. Making matters even worse, what the University proposed was completely unworkable. It was doubtful, the Association suggested, that there was a ready of pool of highly accomplished practitioners with expertise in pedagogical design, which was required under the University's proposed model. It was completely unrealistic to expect any faculty member to meet these criteria and carry a seven-course load while also being responsible for research and service. In the Association's estimation, the University's proposal was completely ill-conceived, an unworkable workload grab, and one that should be soundly rejected.

What should also be rejected, the Association submitted, were all the University's proposed changes to the Departmental/School Teaching Standard. The University's proposals were a solution in search of a problem; it was one that did not exist. It would fundamentally alter the collegial process and would undermine the active participation of faculty members. Instead of remedying inefficiencies, it would introduce new ones by creating administrative barriers and delay into an otherwise straightforward and largely successful, equitable and transparent process for developing and altering teaching standards.

University Submissions

Overview

The University began its submissions by observing that several of the proposals that it advanced in this proceeding had been brought forward – unsuccessfully – in the past. Its proposal, for example, for a teaching stream, was commonplace and normative in the sector but in this round, as in previous rounds, it was summarily and reactively rejected by the Association. There was demonstrated need for a teaching stream, and replication dictated that one be awarded. The University's proposal was modest and incremental, but despite repeatedly bringing this issue forward in successive rounds, despite facilitated discussions, and despite a significant curtailing of the University ask, the Association refused to engage. The proposal was an important one to the University – it was a priority – but because of the Association's attitude and approach, and its refusal to engage, it had been allowed to fester for far too long. It was long past overdue that this fully justified proposal be awarded.

Another example of a proposal that the Association refused to address was the University's pension plan proposal: enshrinement of the equal pension contribution principle. Other University pension plan participants were subject to an equal contribution regime, and there was no reason why Association members should not be as well. In fact, the University's proposal was made even more urgent by that grievance arbitration award (above) that failed to give that principle proper effect, a principle that was necessary to ensure the sustainability and viability of the single pension plan for all employee groups. Continuation of the status quo was inappropriate and unfair to all other pension plan members whose contributions matched those of the University. This situation could never be a result of free collective bargaining in a strike lockout regime and should not, the University argued, be a result of this proceeding.

The Criteria

The Economy/The University's Fiscal Situation

In the University's view, provincial finances, and its finances, were not nearly as rosy as portrayed by the Association. Ontario had the largest subnational debt in the world, and a budget surplus was not anticipated until 2025-26 (and it would be extremely modest). The province faced an uncertain economic future; growth, including employment, would, at best, be slow (in fact, unemployment rates were projected to rise). Inflation remained a concern, but the numbers were improving. Likewise, the University's finances raised red flags: its revenues were flat – the result of frozen tuitions and grants – while its expenses were growing. The Board of Governors had recently approved a 3.5% budget cut to address the widening gap between revenue and expenditures. The University was projecting at $15.3 million deficit for the upcoming fiscal year.

The future was highly uncertain. There was, the University argued, simply no money to fund the Association demands.

Replication

The replication criterion was critical to the resolution of this dispute: awarding the University's key proposals would replicate sectoral norms. What replication did not include was awarding Association proposals that sought to address philosophical preferences, hypothetical concerns and/or aspirations. Replication did not include what is right or what is fair. Replication did not include choosing from the Association's long laundry list of proposals but, rather, identifying what really mattered and considering whether there was any demonstrated need, itself a key criterion to be considered (and there was none when the Association proposals were carefully examined). In the University's submission, the question to be asked, and answered, is what would the parties have achieved if collective bargaining had reached its natural conclusion: a collective agreement? The best place to begin, the University argued, was with the settlements it had reached with its other unions, and sectoral settlements more generally. Those settlements supported the University's proposals and should, therefore, be followed.

Other Criteria

Another criterion the University identified was total compensation. Particular economic proposals might appear persuasive and plausible on their face, but the total cost of all the proposals had to be considered to arrive at a total compensation result that was fair to employees and sound for the University. There was also a presumption against awarding breakthroughs and several Association proposals fell squarely within that camp. Gradualism needed to be

considered. In general, the University submitted, long-standing and freely negotiated provisions should not be tampered with absent the strongest evidence of demonstrated need.

The University's Proposals

The Teaching and Tenure Stream

First and foremost, the University tendered a teaching stream proposal: A Teaching and Tenure Stream category. These faculty members would be focused primarily on teaching activities with the objective of providing effective, practice-oriented instruction to supplement core pedagogical instruction. The new category was not intended to replace the traditional faculty role, nor to create a lower tier of faculty. Members of this new stream would enjoy all the same entitlements as other members of faculty, including tenure, sabbatical, research as part of their job duties, and rank. The new stream would lessen reliance on contract faculty, and it would enhance student offerings and curriculum development.

The advantages of this new Teaching and Tenure stream to the University and to the Association were obvious, and the University argued, compelling. The proposal was also sector normative. Sixteen of the nineteen Ontario universities had some form of teaching stream, and they could be found at many other Canadian universities. The University proposal also included a cap: the new Teaching and Tenure stream would not exceed 15% of the total approved complement. This cap was deliberately designed to allay Association concerns that the new stream might undermine the traditional faculty member model and its normative 40-40-20 breakdown of teaching, SRC and service. Some related and ancillary changes were proposed to properly integrate and account for

the new stream in the collective agreement, such as, to give two examples, workload and the criteria for tenure.

The Pension Plan

Changes to the pension plan were another University priority. Very simply, the University proposed that the University and faculty members each contribute 50% of the normal cost (current service) of the plan as required by actuarial valuation. All University employees were members of the plan, and along with those represented by CUPE and OPSEU (40% of the active members), contributed on the basis that the University proposed: equal to the University. There was demonstrated need for this change given that recent arbitration award that concluded that Association members could continue to pay less than everyone else (leading to the University being required to top up their contributions if need be).

Consistent with sector norms, and long-term sustainability, it was a widely accepted best practice that contribution requirements not be set out in a collective agreement – the status quo for Association members – but be determined by the valuation cycle, and by the ongoing measurement of the financial health of the plan. It was public policy, and increasingly normative, that employer and employee contributions be equally shared. While it was true enough that a recent actuarial valuation report enabled a contribution reduction for non-Association members, a disparity may arise in the future and now was therefore the appropriate time to make the requested change. It was also necessary to address a completely unfair situation, one that insulated Association members and required the University to bear the entire burden of any adverse outcomes (by potentially requiring it to offset Association member contributions). The

proposal was needed to address Income Tax Regulations and the dysfunctional operation of the joint pension committee.

Compensation

In terms of wages, there was, in the University's submission, no need for catch-up since the voluntarily agreed upon Bill 124 adjustments already accounted for that. Moreover, its proposed across-the-board increases were fully in line with results at other Ontario universities. The University argued that comparator settlements advanced by the Association, especially a recent U of T award, must be rejected. U of T's approach to wages was top of the market, an approach never followed at the University. University rates were already squarely in line with York. In these circumstances, there was no need for an adjustment relative to either U of T or York.

Accordingly, the University proposed across-the-board increases of 2%, 2.75% and 3% for Faculty, Librarians and Professional Counsellors in each of the three years of the term. The sectoral trend was across-the-board increases only, not increases to base salaries together with across-the-board amounts. The University rejected the Association's COLA proposal and its other sought-after enhancements, together with all its proposed benefit improvements, some of which, vision for example, were described as breakthroughs (and without any demonstrated need).

Other Economic Items

The Association's proposed pension plan improvement was not only cost prohibitive, but particularly unjustified when any of the internal or external comparators were considered. The

pension plan had the richest indexation arrangements in the sector. In these circumstances, awarding the Association proposal would lead to an anomalous and unacceptable situation where Association members contributed less than anyone else in the plan while receiving far more generous benefits (and that could adversely impact sustainability). That would not replicate free collective bargaining in a context where, throughout its history, the pension plan has provided the same benefits to all its members. The University proposed no changes to the CDI. It rejected any increase to the PER. It was out of line with the comparators that the Association said it most relied upon, U of T and York, and was without any evidence of demonstrated need.

Professional Counsellors

The University rejected the Association proposal that Professional Counsellors be treated like full academics, entitled to Academic Freedom, sabbatical leaves, and subject to the very same job security provisions, Financial Exigency, Redundancy and Layoffs. Professional Counsellors were highly valued. However, in the University's view, there was simply no basis to extend academic freedom to this group. While Professional Counsellors may choose to conduct research, or engage in the development of their profession, that was not their role at the University. The University described in detail what that role was, including as set out in a will-say from the Director of Student Integrated Health and Wellbeing. At some universities, where academic freedom was extended to professional counsellors, they had a different role, and those comparators were, for obvious reasons, inapplicable.

In particular, at the University there was no expectation that the Professional Counsellors participate in the type of work that requires academic freedom. They were not assigned scholarly

work, and they were not asked to conduct research. If a Professional Counsellor chose to teach a course at the University, that was their choice (and this occurred infrequently and was not subject to the collective agreement with the Association but was subject to the CUPE collective agreement and its academic freedom protections). If a Professional Counsellor chose to engage in research, that too was their choice. The University was not aware, for example, of any Professional Counsellor having Research or Ethics Board approval to conduct research at the University. Deciding to teach or conduct research was a personal decision and not one required by the University and was not work that the concept of academic freedom was designed to protect. A review of Article 11 – the definition of academic freedom agreed to by the parties and memorialized in their collective agreement – made that abundantly clear as it was entirely inapplicable to Professional Counsellors:

> B. Academic freedom is the right to search for truth, knowledge and understanding and to express freely what one believes.
>
> C. The University as an institution and the community of its scholars have a duty to protect and defend the search for knowledge and understanding by all who inquire, teach, offer professional library service and learn under their auspices. They shall be free to teach, to carry out scholarly research and creative activities and to publish the results thereof, and to discuss and to criticize both the University and the wider society it serves.

The Association submission that Professional Counsellors required academic freedom to criticize the University did not rise to the standard of establishing demonstrated need for academic freedom. There was also no need for the exigency and related financial crisis provisions. They were intended to ensure that if absolutely needed, the academic mission of the University could continue, albeit pared down. As Professional Counsellors were not required to teach or conduct research, they should not be covered, the University argued, by these provisions. The University had agreed to extend Articles 9 and 20 to Professional Counsellors, however, and sought some modifications to the hiring language clarifying that a hiring committee would only be formed if

there was an approved position, together with reaffirming existing language that the Director, Student Integrated Health and Wellbeing was a full member of the hiring committee.

Other Outstanding Association Proposals

The University rejected the Association's proposal respecting the appointment and tenure process at the Faculty of Law. They were simply not in accord with sectoral norms. The Association's complement proposal, if granted, would require an increase of 165 additional tenure stream faculty members. There was no need for this, demonstrated or otherwise, and it was unaffordable. Also unaffordable, and without demonstrated need, was the Association's TA/GA proposal of one teaching support hour per student for each course to each faculty member. In 2022-23, the University had 328,815 course registrations. That meant, if the Association proposal was awarded, 328,815 TA/GA hours with an unaffordable annual cost of approximately $17 million, well beyond what was currently allocated and without any demonstrated need (and the University took issue with Association assertions about the faculty/student ratio).

What also made no sense, in the University's submission, was the Association's proposal that faculty members determine teaching mode. The University pointed out that there have been no instances where a faculty member has been directed to teach remotely where the faculty member has not consented to do so. There have been occasions where a request to teach remotely was denied, and it was denied because the University agreed with the Association that in-person instruction was preferred. The request to extend the timeline for submitting grades was hard for the University to understand as it was not aware of a single instance in which faculty have not

been able to complete their grading within the prescribed period. Other Association proposals, for example, its facilitated retirement initiative, was basically unknown in the sector.

There was also no need for limiting the appointment of LTFs, the proposed restrictions were unreasonable, unwarranted and inconsistent with sectoral norms. It would also lead to more CUPE appointments which would be counter-productive from a precarity perspective. There was no need, in the University's submission, for the Association's facilities proposals. The University recognized its responsibilities under the *Occupational Health and Safety Act.* It had, and would continue, to take every reasonable precaution to protect its employees. Association members could, if they wished, file grievances.

The University brought forward some proposed changes to Article 10.17: in its current iteration it was unwieldly and inefficient. Under the University's proposal, a Faculty Teaching Standards Committee would only be initiated if a Teaching Standard required review and feedback, (along with other proposed structural changes and clarification of the dispute resolution process). On the other hand, in the University's view, massive changes proposed by the Association were unnecessary to Article 26, the Duties, Conditions of Appointment, and Appointment of Chairs and Directors (although the University also proposed some of its own which it described as incremental). The current provision was functioning satisfactorily – the hiring process was updated in the last round – and there was no demonstrated need for its wholescale revision, especially the Association's proposal that would gut the academic leadership role of the position, and with no demonstrated need to do so. The University was not aware of any significant issues

in searches for Chairs/Directors, certainly not any issues justifying the magnitude of the changes being proposed.

For reasons set out in its brief, the University did not agree to changes to the investigatory process, and to providing access to draft reports. There was no reason to depart from the standard process, and the Association had the right to grieve that the University failed to exercise its management rights in a reasonable manner. No increase was required to the Special Fund. No change was required to the financial exigency provision as the definitions made it clear that financial exigency would occur prior to the University becoming insolvent or bankrupt. No term limit on Chairs/Directors was required and certainly there should be no changes based on vague and hypothetical concerns raised by the Association. The same was true about the Association's Associate Chair proposal.

Discussion

These parties have voluntarily agreed on an interest arbitration regime to resolve collective bargaining impasses. This is a mainstay of their collective agreement, and their relationship.

In resolving the outstanding issues in dispute, careful attention has been paid to governing interest arbitration criteria, especially replication of free collective bargaining. This criterion, arguably the most important of all, requires interest arbitrators to do their best to arrive at a collective agreement that reflects what the parties would have achieved had their bargaining run its course by replicating what appropriate comparators have freely bargained (or have been awarded at interest arbitration). Also relevant are the other interest arbitration criteria of

demonstrated need, total compensation and gradualism. It is not normative for either party to achieve all their priorities in a single round, or for an interest arbitration award not to seek a balance between the competing positions and priorities of the parties. It would also not be normative for an interest arbitrator to weigh in and significantly change core, long-standing and freely negotiated provisions, absent exceptional circumstances or true demonstrated need. This is something the parties should do in the give and take of collective bargaining.

This point requires context and elaboration (and the following observations apply in the context of this long-standing and entirely voluntary interest arbitration bargaining relationship, and do not apply where, for example, interest arbitration is imposed to ensure continuation of essential services). Several of the important issues in dispute are not new to this round. The University, for example, has long sought a teaching stream. The Association response has always been a hard no. The Association, for example, has long sought major governance reforms at the Lincoln Alexander School of Law. The University response has always been a hard no. In this round, the University seeks to change the pension funding arrangements. The Association not only says no but advances a proposal for a major pension plan improvement. In another example, the Association seeks recognition of academic freedom for Professional Counsellors and everything that goes with it, including job security and sabbaticals (as with faculty and librarians). The University says no. A further example is the completely contrasting positions of the parties on the appropriate level of TA/GA support. (Obviously, a collaborative approach would be the best practice in allocating scarce (and expensive) TA/GA resources.)

One need not comment on the legitimacy of any of the outstanding proposals. A different point needs to be made. These are matters – together with just about all the other outstanding

proposals, particularly those touching on collegial governance – where the parties need to engage. They should bargain and make trade-offs. They are in the best position, in the too-ing and fro-ing of collective bargaining, to identify the compromises that need to be offered to achieve their objectives (even if only incrementally at first). The parties were able to resolve many issues at the mediation held in December 2023, and in other rounds, and there is no reason why they cannot tackle the major issues in dispute, should they focus their attention on collective bargaining.

Obviously, there is nothing wrong with a party saying no. And there is nothing wrong with the parties bringing their most intractable disputes to an interest arbitrator (especially where there is sectoral support for a proposal, or it is otherwise normative, or there is persuasive demonstrated need, to give just three examples). After all, that is the responsibility of the interest arbitrator: to resolve disputes when the parties are at impasse, and that can, and often does, involve awarding proposals without trade-offs (provided the award itself is, in the overall, balanced).

However, and in my respectful opinion – and I have been involved as a mediator and arbitrator with these parties for decades – it appears as if saying no has become the default. But there are other options: incremental change, as mentioned above, and pilot projects to give two examples. Stated somewhat differently, in a mature collective bargaining relationship like this one, the parties should be able to find some middle ground where they can achieve digestible progress on their priorities (and not hold out for the complete revamping of existing provisions and terms and conditions of employment). In my view, and for these parties in particular, awarding major changes under their voluntary interest arbitration regime should be a last resort, turned to only

after every reasonable effort to reach a collective agreement has been thoroughly and fully exhausted.

For these reasons, this award has paid most attention to bread-and butter-issues, to use the vernacular. Compensation needs to consider the continuing impact of inflation and freely bargained sector norms. For obvious reasons, the Association is entitled to know exactly what benefits they receive. A requirement for transparency on actual entitlements should be memorialized in the collective agreement and carry forward annually (while acknowledging that the information is currently posted on the University's Human Resources portal). Surrogate and Fertility Services coverage has been introduced in an amount equivalent to that agreed to by the University and one of its other bargaining units. It goes almost without saying that this type of reproductive assistance is vital to many Canadians and is increasingly found in collective agreements. LTD has been increased as proposed by the Association, a change made necessary to keep pace with increases in salaries over time. This is necessary to ensure that this benefit is updated to provide reasonable salary coverage. Overload compensation has not been increased since it was first introduced in 2011. It is far below sectoral standards, and an adjustment is accordingly appropriate. The CDI increase is normative. The proposed PER increase is not justified from a replication perspective.

The Association's Professional Counsellor proposal has not been accepted. I simply cannot conclude on the evidence before me that the Association has made out its case.

To be sure, the will-says presented by the Association indicate impressive activities by many of the Professional Counsellors. However, one cannot objectively review the parties agreed-upon collective agreement definition of academic freedom and then conclude that it applies to Professional Counsellors when engaged in the myriad activities of their professional practice. On the other hand, Professional Counsellors regularly exhaust the current allotment of professional development days in circumstances where there is no dispute between the parties that those days are vital to them in meeting their continuing education requirements, attending professional training and conferences, etc. On this proposal, it is my view that the Association has presented a compelling case to increase the number of Professional Development Days.

Retiree benefits require attention. The award reflects that and, importantly, imposes an obligation on the Association to be fully transparent on the expenditure of funds. Related to this is the award, at relatively small cost, but of great importance to retirees, of prosthodontic procedures. The status quo on Salary Anomaly Adjustments is continued (i.e., the funding is renewed as in the predecessor collective agreement, but the additional Association expansion asks are rejected).

There is demonstrated need to consider the impact of growing accommodation requests on faculty workloads. The number of students registered with the Student Wellbeing Academic Accommodation Supports at TMU has increased by 48% between 2017 and 2023. The number of students with disabilities at Ontario universities and colleges echoes this as is illustrated by the data in the submissions. Faculty are often, although not always, an important part of the accommodation process. Many accommodations – course-based for example – require the direct and continuing involvement of faculty and raise a host of other issues requiring careful

consideration. Obviously, assisting and participating in the accommodation process is a core duty and responsibility, required by legislation. This also reflects shared University and Faculty values. Notably, this issue was similarly addressed in a different interest arbitration proceeding where a task force was ordered and directed to consider, among other issues, the impact on workload of student accommodation requirements in Ontario's community colleges. See: *OPSEU (College Academic Employees) v College Employer Council*, 2022 CanLII 86598 (ON LA).

The opening of the Brampton campus is remitted to the parties (although I remain seized on this issue should they not reach agreement). When the Lincoln Alexander School of Law was underway, the parties were able to reach agreement about the application of the collective agreement, and there is no reason to believe that working collaboratively they will be unable to do so with the new medical school.

Award

Term

As agreed, three years: July 1, 2023, to June 30, 2026.

Increases to base salaries (minima) and Individual Rates

July 1, 2023: 3.5%

July 1, 2024: 3.0%

July 1, 2025: 3.0%

Retroactivity within sixty days to current and former members.

Benefits

General

Association to be provided annually with a list of the reasonable and customary limits applying to benefits:

Each January 1, the Faculty Association will be provided with a schedule of the reasonable and customary limits applying to the benefits described in the policy referred to in Memorandum of Understanding 11 (Benefits).

Surrogate and Fertility Services

Effective sixty days following issue of award increased to lifetime maximum of $20,000.

Long-Term Disability

Effective date of award, LTD benefit amount: lesser of $15,000 and 80% Insured Earnings.

Prosthodontic Procedures

Effective sixty days following issue of award restriction removed for Class B.

Special Fund

Effective July 1, 2024, eligible members entitled to $2000 annually. The University to ensure adequate contributions to maintain this entitlement over collective agreement term. The Association directed to create and maintain appropriate records and provide them to the University on request (while maintaining retiree member confidentiality).

Salary Anomalies

$100,000 in each year of the collective agreement to address general anomalies and $200,000, one-time payment over the term of the collective agreement to address gender anomalies.

CDI

Association proposal awarded.

Overload

Effective July 1, 2024, increase by $2000.

Professional Development Days (Professional Counsellors)

Effective July 1, 2024, increase by 2 days.

Task Force on Student Accommodations and Academic Considerations

Task Force awarded. Composition, membership and terms of reference remitted to the parties.

Brampton Campus LOU

Remitted to the parties.

Conclusion

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

DATED at Toronto this 16th day of July 2024.

"William Kaplan"

William Kaplan, Sole Arbitrator